ITEM NO. 40

STAFF REPORT

CITY OF OCEANSIDE

DATE: July 6, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **CITY OF OCEANSIDE NEW PRETREATMENT ORDINANCE AND INDUSTRIAL WASTE PRETREATMENT PROGRAM ENFORCEMENT RESPONSE PLAN**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council introduce an Ordinance of the City Council of the City of Oceanside amending Chapter 29, Sewers and Sewage Disposal, of the Oceanside City Code by the repeal of Article VI and the addition of Article X, Regulation of Discharge into City Sewer System, which includes the Industrial Waste Pretreatment Program Enforcement Response Plan.

BACKGROUND

The City of Oceanside's current ordinance Sec. 29.45-29.51 adopted August 11, 1982, does not comply with all applicable State and Federal laws, including the Federal Clean Water Act, 33 United States Code Section 1251 et seq., as amended and United States Environmental Protection Agency's General Pretreatment Regulations and included in Title 40 Code of the Federal Regulations (CFR), Part 403.

The United States Environmental Protection Agency (EPA) requires that municipalities operating Publically Owned Treatment Works (POTWs) to develop pretreatment programs to regulate industrial discharges to their sanitary sewer systems. Federal EPA encourages municipalities to use the EPA model Pretreatment ordinance released in January 2007 as a guide for adopting new or revised provisions of local law to implement and enforce a pretreatment program that fulfills requirements set out in the Code of Federal Regulations. EPA also requires that municipalities consider conditions at its POTW and consult State Water Quality law (i.e., California Porter-Cologne Water Quality Act) to determine what adjustments might need to be made to their current ordinances and what provisions are authorized under State law.

ANALYSIS

Under the amended 40 CFR Part 403, the City is required to revise its current Sewer Use Ordinance (SUO) and implement the Federal Pretreatment Streamlining Rules released in February 2006 as a guide to draft a local ordinance to control non-domestic

dischargers within its jurisdiction. Pursuant to the requirements set forth in 40 CFR 403.8(f)(5) and in accordance with the City's Sewer Use Ordinance, the City is required to revise its Enforcement Response Plan. The new ordinance must also include an updated study report containing the Technically Based Local Limits for the City's two treatment plants (La Salina and San Luis Rey Wastewater Treatment Plants). The Local Limits study must meet all regulatory requirements and protect the treatment plants, their discharge, and by-products from pass-through or interference caused by regulated (industrial) dischargers. A mass balance around the City's treatment plants will be used to determine the removal rates for each pollutant of concern.

The primary objectives of the City's new ordinance and industrial waste pretreatment program enforcement response plan (copies attached) are:

A. To prevent the introduction of pollutants into the POTW that will interfere with its operation;

B. To prevent the introduction of pollutants into the POTW that would pass through, into receiving waters, or otherwise be incompatible with the POTW;

C. To protect both the general public and POTW personnel who may be affected by wastewater and sludge in the course of their employment;

D. To promote and protect the ability to reuse, recycle and reclaim wastewater, bio-solids and wastewater byproducts;

E. To allow for fees adoption for the equitable distribution of the cost of operation, maintenance, and improvement of the POTW; and

F. 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 that the POTW is subject to.

G. To enable the City to compel industrial dischargers to reduce their impact to the City sanitary sewer system and impose fines to the violators of this ordinance. The City's fine must be as stringent as the State Porter-Cologne Water Quality Act.

This ordinance shall apply to all users of the POTW. The ordinance authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides authority to adopt fees at a future date for the equitable distribution of costs resulting to the end users receiving the service. There are no fees being considered at this time in conjunction with the proposed action.

This ordinance shall supersede all previous regulations and policies of the City governing items covered in this ordinance. The proposed changes to the City's pretreatment ordinance are considered a modification to its approved pretreatment program. All modifications to the City's pretreatment program and industrial waste

pretreatment program enforcement response plan must be approved by the State Regional Water Quality Control Board in San Diego.

FISCAL IMPACT

The primary fiscal impact of the proposed action is the cost to develop Technically Based Local Limits (TBLL) using the 2004 Federal EPA Guidelines. Council had awarded the work to RvL Associates of Costa Mesa on February 24, 2010. The work has been completed at a cost of $55,400.

INSURANCE REQUIREMENTS

Does not apply.

COMMISSION OR COMMITTEE REPORT

The Utilities Commission approved staff's recommendation at its scheduled meeting on May 24, 2011.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff and the Utilities Commission recommend that the City Council introduce an Ordinance of the City Council of the City of Oceanside amending Chapter 29, Sewers and Sewage Disposal, of the Oceanside City Code by the repeal of Article VI and the addition of Article X, Regulation of Discharge into City Sewer System, which includes the Industrial Waste Pretreatment Program Enforcement Response Plan.

PREPARED BY:

Greg Blakely
Administration Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Cari Dale, Water Utilities Director

Teri Ferro, Financial Services Director

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING CHAPTER 29 OF THE OCEANSIDE CITY CODE BY THE REPEAL OF ARTICLE VI AND THE ADDITION OF ARTICLE X

WHEREAS, on August 11, 1982, the City Council approved Ordinance No. 82-37 related to regulations of discharge into the City sewer system;

WHERERAS, Ordinance No. 82-37 does not comply with all applicable State and Federal laws, including the Federal Clean Water Act and the United States Environmental Protection Agency General Pretreatment Regulations;

NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

SECTION 1. Article I of Chapter 29 of the Oceanside City Code is amended as follows:

Sec. 29.1 Definitions

Delete the following definitions:

Authorized representative of industrial user, Biochemical oxygen demand (BOD), Categorical industrial user, Categorical standards, Control authority, Industrial user, Industrial wastewater, Instantaneous maximum allowable discharge limit, Interference, National categorical pretreatment standard or pretreatment standard, New source, Pass through, Pollutant, POTW treatment plant, Pretreatment or treatment., Pretreatment requirements, Publicly owned treatment works (POTW), Significant industrial user, Significant noncompliance, Slug, Suspended solids, Technical review criteria (TRC), Total suspended solids, Total toxic organics, Toxic organic management plant (TOMP), and User.

SECTION 2. Article VI of Chapter 29 of the Oceanside City Code is hereby repealed.

SECTION 3. Article X of Chapter 29 is hereby added and shall read as follows;

ARTICLE X. REGULATION OF DISCHARGE INTO CITY SEWER SYSTEM

Sec. 29.129 Purpose and Policy

This ordinance sets forth uniform requirements for Users of the Publicly Owned Treatment Works (POTW) for the City of Oceanside (the City) and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act, 33 United States Code

Section 1251 et seq., as amended and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403).

The primary objectives of this ordinance are:

A. To prevent the introduction of pollutants into the POTW that will interfere with its operation;

B. To prevent the introduction of pollutants into the POTW that would pass through, into receiving waters, or otherwise be incompatible with the POTW;

C. To protect both the general public and POTW personnel who may be affected by wastewater and sludge in the course of their employment;

D. To promote and protect the ability to reuse, recycle and reclaim Wastewater, Biosolids and Wastewater by products;

E. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the POTW; and

F. To enable the City to comply with its National Pollutant Discharge Elimination System (NPDES) permit conditions, sludge use and disposal requirements, and any other Federal or State laws that the POTW is subject to.

This ordinance shall apply to all Users of the POTW. The ordinance 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.

This ordinance supersedes all previous regulations and policies of the City governing items covered in this ordinance.

29.130 Definitions. As used in this article, the following terms are defined in this section.

Approval Authority. The Director of the local Regional Water Quality Control Board.

Authorized or Duly Authorized Representative of the User.

(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 operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager.

(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, 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.

(5) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the above requirements must be submitted to the Water Utilities Director before any reports to be signed by an authorized representative will be accepted.

Best Management Practices or BMPs. Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices

to implement the prohibitions listed in Section 29.131. 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). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at twenty (20) degrees centigrade expressed in terms of weight and concentration (milligrams per liter (mg/l)).

Bypass. The intentional diversion of wastestreams from any portion of an industrial User's treatment system.

Categorical Industrial User. An Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard.

Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA according to Sections 307(b) and (c) of the Act (33 U.S.C. Section 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

Control authority. The term "control authority" shall refer to the "approval authority," defined hereinabove; or the director if the city has an approved pretreatment program under the provisions of 40 CFR 403.11.

Daily Maximum Limit or Daily Maximum. The maximum allowable discharge of pollutant during a calendar day. Where Daily Maximum limitations are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum limitations are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

Existing Source. Any source of discharge that is not a "New Source".

Industrial wastewater. All water-carried wastes and wastewater of the community excluding domestic wastewater and uncontaminated water. Includes all wastewater from any producing, manufacturing, processing, institutional, commercial, agricultural, or other operation where the wastewater discharged includes significant quantities of wastes of nonhuman origin.

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

Interference. A discharge that, 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 or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: 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 SubstancesControl Act; and the Marine Protection, Research, and Sanctuaries Act.

Local Limit. Effluent limitation developed for Industrial Users by the Water Utilities Director to specifically protect the "Publicly Owned Treatment Works" (POTW) from "Interference" and "Pass Through" based on site-specific design and disposal limits and conditions of the POTW. Local Limits are developed to assure that IU discharges to POTWs do not cause the POTW to violate its permit limits, upset the POTW's biological, chemical or physical treatment processes, prevent the disposal of biosolids (sludge), impact worker health and safety or harm the collection system infrastructure.

Monthly Average Limit or Monthly Average. The arithmetic mean of the effluent samples collected during a calendar month or specified 30-day period.

New Source.

(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 that will be applicable to such source if such standards are thereafter promulgated, 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 in 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, that 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 that are intended to be used in its operation within a reasonable time. Options to purchase or contracts that 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. Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

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

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

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

Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a User, other than a Pretreatment Standard.

Pretreatment Standards or Standards. Pretreatment Standards shall mean prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.

Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 29.131 of this ordinance.

Publicly Owned Treatment Works or POTW. A treatment works, as defined by Section 212 of the Act (33 U.S.C. Section 1292), that 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, that convey wastewater to a treatment plant.

Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

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

Significant Industrial User (SIU). Except as provided in paragraphs (3) and (4) of this section, a Significant Industrial User is:

(1) A User subject to categorical Pretreatment Standards; 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 blow down wastewater);

(b) Contributes a process wastestream that makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(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 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 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 Section 29.146.1 B, 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) of this part 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 according to procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a Significant Industrial User.

Slug Load or Slug Discharge. Any discharge at a flow rate or concentration that could cause a violation of the prohibited discharge standards in Section 29.131 of this ordinance. A Slug Discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, that has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or permit conditions.

Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

User or Industrial User. A source of indirect discharge.

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

Water Utilities Director. The person designated by the City to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this ordinance. The term also means a duly authorized representative of the Water Utilities Director.

Sec. 29.131 Prohibited Discharge Standards.

29.131.1 General Prohibitions. No User shall introduce or cause to be introduced into the POTW, directly or indirectly, any pollutant or wastewater that causes Pass Through or Interference with the operation or performance of the POTW. 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.

29.131.2 Specific Prohibitions. No User shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

(1) Pollutants that create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides and any other substances that the City, the State or EPA has notified the User is a fire hazard or a hazard to the system.

(2) Any wastewater having a pH less than 5.0 or greater than 12.0, or otherwise causing corrosive damage or hazard to structures, equipment, and/or personnel of the POTW;

(3) Solid or viscous substances in amounts that will cause obstruction of the flow to the POTW resulting in Interference; such as, but not limited to, grease, garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, plastics, gas, tar, asphalt residues, residues from refining, or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.

(4) Any pollutants, including oxygen-demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which will cause Interference with the POTW. In no case shall a slug load have a flow rate or contain concentration or qualities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times the average twenty-four-hour concentration, quantities, or flow during normal operation.

(5) Wastewater having a temperature that will inhibit biological activity in the treatment plant resulting in Interference, but in no case wastewater that causes the

temperature at the introduction into the treatment plant to exceed 104 degrees F (40 degrees C);

(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through or any substance that will cause the POTW to violate any disposal permit or the receiving water quality standards.

(7) Pollutants that 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 that, 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 that imparts color that cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, that 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 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, Noncontact Cooling Water, and unpolluted wastewater, unless specifically authorized by Water Utilities Director;

(13) Sludges, screenings, unreasonably large amounts of suspended solids or other residues from the pretreatment of industrial wastes;

(14) Medical Wastes, except as specifically authorized by Water Utilities Director in a wastewater discharge permit;

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

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

(17) The brine from a nonresidential self-regenerative type water softener or cooling tower or the brine from the residential use of self-generative type water softeners not complying with the requirements of State law;

(18) Any wastewater containing toxic pollutants in sufficient quantity to, either singly or by interaction with other pollutants, injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or exceed the limitation set forth in a categorical Pretreatment Standard. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the Act;

(19) Any material inducing a high pH and or that causes incrustations, scales or precipitates on sewer walls or other adverse effects on the wastewater system.

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.

Sec. 29.132 National Categorical Pretreatment Standards.

Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471.

29.132.1. Where a categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Water Utilities Director may impose equivalent concentration or mass limits See Section 29.132.5 and 29.132.6.

29.132.2. When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Water Utilities Director may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

29.132.3. When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, the Water Utilities Director shall impose an alternate limit using the combined wastestream formula.

29.132.4. A CIU may obtain a net/gross adjustment to a categorical Pretreatment Standard in accordance with the following paragraphs of this section.

(1) Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section. Any Industrial User wishing to obtain credit for intake pollutants must make an application to the City. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraph (2) of this section are met.

(2) Criteria.

a. Either (i) The applicable categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or (ii) The Industrial User demonstrates that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.

b. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

c. Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this section.

d. Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The City may waive this requirement if it finds that no environmental degradation will result.

29.132.5. When a categorical Pretreatment Standard is expressed only in terms of pollutant concentrations, an Industrial User may request that the City convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Water Utilities Director. The City may establish equivalent mass limits only if the Industrial User meets all of the following 1a-e conditions:

(1) To be eligible for equivalent mass limits, the Industrial User must:

a. Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its wastewater discharge permit;

b. Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;

c. Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;

d. Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and

e. Have consistently complied with all applicable categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.

(2) An Industrial User subject to equivalent mass limits must:

a. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

b. Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

c. Continue to record the facility's production rates and notify the Water Utilities Director whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in Sec.29.132.5(1)(c) of this section. Upon notification of a revised production rate, the Water Utilities Director will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

d. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to Sec.29.132.5(1)(a) of this section as long as it discharges under an equivalent mass limit.

(3) When developing equivalent mass limits, the Water Utilities Director:

a. Will calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based Daily

Maximum and Monthly Average standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor;

b. Upon notification of a revised production rate, will reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

c. May retain the same equivalent mass limit in subsequent wastewater discharge permit terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to Sec.29.136. The Industrial User must also be in compliance with Sec.29.143.6 regarding the prohibition of bypass.

29.132.6. The Water Utilities Director may convert the mass limits of the categorical Pretreatment Standards of 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Industrial Users. The conversion is at the discretion of the Water Utilities Director. When converting such limits to concentration limits, the Water Utilities Director will use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by Sec.29.136 of this Ordinance. The Water Utilities Director will document how the equivalent limits were derived for any changes from concentration to mass limits, or vice versa, and make this information publicly available.

29.132.7. Once incorporated into its wastewater discharge permit, the Industrial User must comply with the equivalent limitations developed in Sec.29.132 in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

29.132.8. Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum Monthly Average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

29.132.9. Any Industrial User operating under a wastewater discharge permit incorporating equivalent mass or concentration limits calculated from a production based Standard shall notify the Water Utilities Director within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Water Utilities Director of such anticipated change will be required to meet the mass or concentration limits in its wastewater discharge permit that were based on the original estimate of the long term average production rate.

Sec. 29.133 State Pretreatment Standards.

Users must comply with Federal Pretreatment Standards, which the State of California has adopted in accordance with the Memorandum of Agreement between the EPA and the California State Water Resources Control Board dated September 25, 1989.

Sec. 29.134 Local Limits.

29.134.1. The Water Utilities Director is authorized to establish Local Limits pursuant to 40 CFR 403. The Local Limits are reviewed periodically and revised as necessary.

29.134.2. Pollutant concentration limits are established to protect against Pass Through and Interference. No person shall discharge wastewater containing in excess of the Daily Maximum Limit.

29.134.3. The Local Limits apply at the point where the wastewater is discharged to the POTW. All concentrations for metallic substances are for total metals unless indicated

otherwise. The Water Utilities Director may impose mass limitations in addition to, or in place of, the concentration-based limitations.

29.134.4. The Water Utilities Director may require Best Management Practices (BMPs) by ordinance or in wastewater discharge permits, from industries using Best Available Technology (BAT) to implement Local Limits and the requirements of Sec. 29.131.

Sec. 29.135. 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 consistent with the purpose of this ordinance.

Sec. 29.136. Dilution.

No User shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Requirement. The Water Utilities 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.

Sec. 29.137. Oil, Sand and Grease Interceptors.

For oil and grease, and inorganic material such as sand, grit, etc., interceptors shall be provided in all cases as required by published building codes and when in the opinion of the Water Utilities Director, they are necessary for the proper handling of liquid wastes containing floatable grease and oil, or other potential hazardous wastes in excessive amounts as specified in Section 29.131 of this ordinance, or any flammable wastes, sand, or other harmful ingredients. Such interceptors shall not be required for single family living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Uniform Plumbing Code and shall be so located to be readily and easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned and repaired regularly, as needed, by the Users at their expense. Commercial kitchens are covered under Chapter 29, Article IX of the Oceanside City Code.

Oil, sand and grease interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily movable covers that when bolted in place shall be gas tight and watertight.

Where installed, all oil and grease, and oil sand interceptors shall be maintained by the owner, at the owner's expense. The owner shall provide for the proper removal and disposal of the captured material and shall maintain records for a period of at least 3 years from the dates and means of disposal that shall be subject to review by the Water Utilities Director or his or her authorized agent at any time. Frequency of maintenance will be as required to ensure continuous efficient operation and subject to the authority of source control inspectors to assure compliance with discharge limitations. Restaurant grease control devices shall be pumped in accordance with the requirements of Chapter 29, Article IX of the Oceanside City Code. Failure to comply with these standards will result in enforcement action.

Sec. 29.138. Monitoring Facilities.

29.138.1. The City shall require to be provided and operated at the User's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the User's premises, but the City may, when such a location would be impractical or cause undue hardship on the User, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

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

29.138.3. Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the city's requirements and all

applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification by the City.

Sec. 29.139. Control Manholes.

29.139.1. All domestic or sanitary wastewaters from restrooms, showers, drinking fountains, etc., shall be kept separate from all industrial wastewaters until the industrial wastewaters have passed through any required pretreatment system or device. The owner of any property discharging industrial wastes or other non-domestic water into the public sewer shall install and maintain, at its expense, a control manhole for each separate discharge conveying process wastewater from its facility to the City sewerage system. Each such control manhole shall have ample room to allow the City to perform inspections, sampling and flow measurement operations. They must be fully accessible at all times and safely located, and shall conform to the most recent edition of the City of Oceanside Water, Sewer and Reclaimed Water Design and Construction Manual and be constructed in accordance with plans and specifications approved by the Water Utilities Director.

29.139.2. Control manholes are required where circumstances indicate that monitoring may be required at some future time due to a facility's location, design, or intended future use.

29.139.3. Existing industries undergoing remodeling, that require a building permit or Change in Operations, shall be required to install a control manhole that meets the set criteria. An application for a new Wastewater Contribution Permit must be submitted with the building permit.

29.139.4. Existing industries with a current City of Oceanside Wastewater Contribution Permit at the time of the adoption of this ordinance shall not be required to install control manholes until the industry undergoes remodeling that requires a building or tenant improvement permit or has a change in ownership, lease, transfer or assignment of the business or premises or a Change in Operations.

Sec. 29.140. Fees

29.140.1. The City may adopt charges and fees that may include, but not be limited to:

(1) Fees for reimbursement of costs of setting up and operating the City's pretreatment program;

(2) Fees for monitoring, inspections and surveillance procedures;

(3) Fees for reviewing accidental discharge procedures and construction;

(4) Fees for permit applications;

(5) Fees for filing appeals;

(6) Other fees as the City may deem necessary to carry out the requirements contained herein.

These fees relate solely to the matters covered by this article and are separate from all other fees chargeable by the City. These fees are set from time to time by resolution of the City Council.

29.140.2 The costs incurred by the City in performing sampling and laboratory analyses of discharges from a non-domestic User shall be reimbursed by that non-domestic User and collected in the same manner as service charges, as described in Oceanside City Code Section 29.19.

Sec. 29.141. Authority for Control of Wastewater Discharges.

If any waters or wastes are discharged or are proposed to be discharged to the public sewers that contain the substances or possess the characteristics enumerated in Sec. 29.131 through Sec. 29.134, and that in the judgment of the Water Utilities Director may have a harmful effect upon the wastewater facilities, processes, equipment, or receiving waters, including violation of applicable water quality standards, or that otherwise create a hazard to life or constitute a public nuisance, the Water Utilities Director may:

(1) Reject the waste;

(2) Require pretreatment to an acceptable condition for discharge to the City sewer;

(3) Require control over the quantities and rates of discharge;

(4) Require payment to cover the additional cost of handling and treating the waste under the provisions of Sec. 29.153.

Sec. 29.142. Wastewater Having High Concentrations of BOD, CBOD, TDS, TSS and Ammonia (NH3).

The admission into the City sewer of any waters or wastes having concentrations of any acceptable pollutants in excess of those concentrations normal to domestic sanitary sewage shall be subject to review and approval by the Water Utilities Director. But under no circumstances shall the concentration of these pollutants be in excess of the prohibited limits as provided in the City Local Limits. The limits apply at the point of discharge to the POTW.

When excessive concentrations (greater than normal domestic concentrations but less than the prohibited concentrations as defined in the Local Limits) are permitted to be discharged into the City sewer, the discharger shall be charged for the treatment of these excessive materials in accordance with the extra strength surcharges established by City Ordinance.

Sec. 29.143. PRETREATMENT OF WASTEWATER

29.143.1. Pretreatment Facilities

Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all categorical Pretreatment Standards, Local Limits, and the prohibitions set out in Sec. 29.131 of this ordinance within the time limitations specified by EPA, the State, or the Water Utilities 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 Water Utilities Director for review, and shall be acceptable to the Water Utilities 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 ordinance.

29.143.2. Additional Pretreatment Measures

A. Whenever deemed necessary, the Water Utilities 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 ordinance.

B. The Water Utilities Director may require any person discharging into the POTW to install and maintain, on that person's property and at that person's 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. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

29.143.3. Accidental Discharge/Slug Discharge Control Plans

At least once every two (2) years, the Water Utilities Director shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control Slug Discharges. The Water Utilities Director may require any User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control Slug Discharges. An Accidental Discharge/Slug Discharge control plan shall address, at a minimum, the following:

A. Description of discharge practices, including non-routine batch discharges;

B. Description of stored chemicals;

C. Procedures for immediately notifying the Water Utilities Director of any accidental or Slug Discharge, as required by Sec. 29.146.6 of this ordinance; and

D. 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.

29.143.4. Toxic Organics Management Plan

The City may require any User to submit a Toxic Organic Management Plan (TOMP) to address the prevention of Discharge of Toxic Organics to the City's Sewerage System or the environment. A TOMP shall contain, at a minimum, the toxic organic compounds used, the method(s) of disposal, and the procedures for assuring that toxic organics do not spill into the wastewater being discharged. The Water Utilities Director may allow a User to develop and implement a TOMP in lieu of required self-monitoring for Toxic Organics.

29.143.5. Spill Containment Facilities

All Users shall provide, maintain and pay for spill containment facilities to protect against discharge in violation of this ordinance. Spill containment facilities shall be designed to secure 110% of the capacity of the tank(s) within the structure and prevent it from entering the City's Sewerage System, in accordance with reasonable engineering standards.

29.143.6. Bypass

A. No discharger shall "bypass" or intentionally divert wastestream from any portion of an industrial User's treatment system, 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 that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The industrial User submitted the notices discussed below.

B. The Water Utilities Director may approve an anticipated bypass only after considering its adverse effects, and if the Water Utilities Director determines:

(1) The bypass will not cause violation of Pretreatment Standards or Requirements or any provision of this ordinance; and

(2) The bypass is for essential maintenance to ensure the efficient operation of pretreatment systems.

C. If an Industrial User knows in advance of the need for bypass, the User shall submit a written notice to the Water Utilities Director at least ten (10) business days before the date of the bypass, and shall not permit the bypass without the Water Utilities Director's authorization.

D. An Industrial User shall submit oral notice to the Water Utilities Director of an unanticipated bypass that exceeds applicable Pretreatment Standards or Requirements, immediately upon becoming aware of the bypass. Additionally, the Industrial User shall submit within five (5) business days of oral notification, a written report describing the bypass event and its cause; the bypass duration, including exact times and dates; and if the bypass has not been corrected, the time it is expected to continue and measures taken to reduce, eliminate, and prevent its recurrence.

E. Notification of Bypass shall not relieve the User of any expense, loss, damage or other liability that may be incurred as a result of damage or loss to the City or any other damage or loss to person or property; nor shall such notification relieve the User of any fees or other liability that may be imposed by this ordinance or other applicable law.

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.

29.144. WASTEWATER DISCHARGE PERMITS

29.144.1.Wastewater Analysis

When requested by the Water Utilities Director, a User must submit information on the nature and characteristics of its wastewater within thirty (30) calendar days of the

request. The Water Utilities Director is authorized to prepare a form for this purpose and may periodically require Users to update this information.

29.144.2. Wastewater Discharge Permit Requirement

A. No Significant Industrial User shall discharge wastewater into the POTW without first obtaining an individual wastewater discharge permit from the Water Utilities Director, except that a Significant Industrial User that has filed a timely application pursuant to Sec. 29.144.3 of this ordinance may continue to discharge for the time period specified therein.

B. The Water Utilities Director may require other Users whose wastewater contains or may contain pollutants not normally found or in concentrations in excess of those normally found in domestic wastewater to obtain wastewater discharge permits.

C. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sec. 29.150 through 29.152 of this ordinance. 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.

29.144.3. 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 ordinance and who wishes to continue such discharges in the future, shall, within thirty (30) calendar days after said date, apply to the Water Utilities Director for a wastewater discharge permit as set forth in Sec. 29.144.5 of this ordinance, and shall not cause or allow discharges to the POTW to continue after one hundred eighty (180) calendar days of the effective date of this ordinance except in accordance with a wastewater discharge permit issued by the Water Utilities Director.

29.144.4. Wastewater Discharge Permitting: New Connections

Users with an existing permit may continue to discharge to the POTW under the conditions of the existing permit. The Water Utilities Director may require Users with an existing permit to submit a new application in accordance with Sec. 29.144.5.

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, in accordance with Sec. 29.144.5 of this ordinance, must be filed at least ninety (90) calendar days prior to the date upon which any discharge will begin or recommence.

29.144.5. Wastewater Discharge Permit Application Contents

A. All Users required to obtain a wastewater discharge permit must submit a permit application. The Water Utilities Director may require Users to submit all or some of the following information as part of a permit application.

(1) Identifying Information.

a. The name and address of the facility, including the name of the operator and owner.

b. Contact information, description of activities, facilities, and plant production processes on the premises.

(2) Environmental Permits. A list of any environmental control permits held by or for the facility.

(3) Description of Operations.

a. 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;

b. Types of wastes generated, a list and Material Safety Data Sheets of all raw materials and chemicals used or stored at the facility that are, or could accidentally or intentionally be, discharged to the POTW;

c. Number and type of employees, hours of operation, and proposed or actual hours of operation;

d. Each product produced by type, amount, processes, and rate of production;

e. Type and amount of raw materials processed (average and maximum per day);

f. Site plans, floor plans, mechanical and plumbing plans, and details to show all incoming and outgoing plumbing connections (including incoming potable water), valves, sewers, floor drains, spill containment, Pretreatment facilities, clarifiers and appurtenances by size, location, and elevation, and all points of discharge;

(4) Time and duration of discharges;

(5) The location for monitoring all wastes covered by the permit;

(6) 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 Sec. 29.132.3;

(7) 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 Water Utilities Director, of regulated pollutants in the discharge from each regulated process.

c. 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 Sec. 29.146.9 of

this ordinance. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the Water Utilities Director or the applicable Standards to determine compliance with the Standard.

d. Sampling must be performed in accordance with procedures set out in Sec. 29.146.10 of this ordinance.

(8) Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on Sec. 29.146.4B.

(9) Any other information as may be deemed necessary by the Water Utilities Director to evaluate the wastewater discharge permit application.

B. Incomplete or inaccurate applications will not be processed and will be returned to the User for revision.

29.144.6. Application Signatories and Certifications

A. All wastewater discharge permit applications and User reports must be signed by an Authorized Representative of the User and contain the certification statement in Sec.29.146.13 A.

B. If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this section must be submitted to the Water Utilities Director prior to or together with any reports to be signed by an Authorized Representative.

C. A facility determined to be a Non-Significant Categorical Industrial User by the Water Utilities Director must annually submit the signed certification statement in Sec. 29.146.13 B.

29.144.7. Wastewater Discharge Permit Decisions

The Water Utilities Director will evaluate the data furnished by the User and may require additional information. Within thirty (30) business days of receipt of a completed wastewater discharge permit application, the Water Utilities Director will determine whether or not to issue a wastewater discharge permit. The Water Utilities Director may deny any application for a wastewater discharge permit.

29.145. WASTEWATER DISCHARGE PERMIT ISSUANCE

29.145.1 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 Water Utilities Director. Each wastewater discharge permit will indicate a specific date when it will expire.

29.145.2 Wastewater Discharge Permit Contents

A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the Water Utilities 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.

A. Wastewater discharge permits must contain:

(1) A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date;

(2) A statement that the wastewater discharge permit is nontransferable without prior notification to the City in accordance with Sec. 29.145.4 of this ordinance, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

(3) Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;

(4) Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law.

(5) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Sec. 29.146 B.

(6) 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.

(7) Requirements to control Slug Discharge, if determined by the Water Utilities Director to be necessary.

(8) Any grant of the monitoring waiver by the Water Utilities Director (Sec. 29.146.4 B) must be included as a condition in the User's permit or other control mechanism.

B. 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) Requirements for the development and implementation of spill control plans or other special conditions including management practices

necessary to adequately prevent accidental, unanticipated, or non-routine discharges;

(4) Requirements for notifying the City of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the POTW;

(5) Requirements for notification of Slug Discharges;

(6) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

(7) The unit charge or schedule of User charges and fees for the management of the wastewater discharged to the POTW;

(8) Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;

(9) 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 that become effective during the term of the wastewater discharge permit; and

(10) Other conditions as deemed appropriate by the Water Utilities Director to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

29.145.3 Wastewater Discharge Permit Modification

The Water Utilities Director may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

A. To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements;

B. 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;

C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

D. Information indicating that the permitted discharge poses a threat to the City's POTW, City personnel, or the receiving waters;

E. Violation of any terms or conditions of the wastewater discharge permit;

F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

G. Revision of or a grant of variance from categorical Pretreatment Standards;

H. To correct typographical or other errors in the wastewater discharge permit; or

I. To reflect a transfer of the facility ownership or operation to a new owner or operator when requested.

29.145.4 Wastewater Discharge Permit Transfer

Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least ninety (90) calendar days advance notice to the Water Utilities Director and the Water Utilities Director approves the wastewater discharge permit transfer. The notice to the Water Utilities Director must include a written certification by the new owner or operator that:

A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;

B. Identifies the specific date that the transfer is to occur; and

C. Acknowledges full responsibility for complying with the existing wastewater discharge permit.

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

29.145.5 Wastewater Discharge Permit Revocation

The Water Utilities Director may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

A. Failure to notify the Water Utilities Director of significant changes to the wastewater prior to the changed discharge;

B. Failure to provide prior notification to Water Utilities Director of changed conditions pursuant to Sec. 29.145.5 of this ordinance;

C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

D. Falsifying self-monitoring reports and certification statements;

E. Tampering with monitoring equipment;

F. Refusing to allow Water Utilities Director timely access to the facility premises and records;

G. Failure to meet effluent limitations;

H. Failure to pay fines;

I. Failure to pay sewer charges;

J. Failure to meet compliance schedules;

K. Failure to complete a wastewater survey or the wastewater discharge permit application;

L. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or

M. Violation of any Pretreatment Standard or Requirement, or any terms of the wastewater discharge permit or this ordinance.

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

29.145.6 Wastewater Discharge Permit Reissuance

A User with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a completed permit application, in accordance with Sec. 29.144.5 of this ordinance, a minimum of sixty (60) calendar days prior to the expiration of the User's existing wastewater discharge permit.

29.145.7 Display of Permit

A copy of this permit shall be posted in a prominent location at or near the treatment and disposal facilities, and shall be available to operating personnel at all times.

29.146. - REPORTING REQUIREMENTS

29.146.1 Baseline Monitoring Reports

A. Within either one hundred eighty (180) calendar days after the effective date of a categorical Pretreatment Standard, or the final administrative decision on a category determination under 40 CFR 403, whichever is later, existing Categorical Users currently discharging to or scheduled to discharge to the POTW shall submit to the Water Utilities Director a report that 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 Water Utilities Director a report that 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) All information required in Sec. 29.144.5A (1) (a), Sec. 29.144.5A (2) and Sec. 29.144.5A (3) (a).

(2) Measurement of pollutants.

a. The User shall provide the information required in Sec. 29.144.5A (7) (a) thru (d).

b. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure

the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR 403 in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403, this adjusted limit along with supporting data shall be submitted to the Water Utilities Director or designee;

d. Sampling and analysis shall be performed in accordance with Sec. 29.146.9.

e. The Water Utilities Director may allow the submission of a baseline report that utilizes only historical data so long as the data provide information sufficient to determine the need for industrial pretreatment measures;

f. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW.

(3) Compliance Certification. A statement, reviewed by the User's Authorized Representative and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.

(4) 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 must be provided. 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 Sec. 29.146.2 of this ordinance.

(5) Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Sec. 29.146.13 A of this ordinance and signed by an Authorized Representative.

29.146.2 Compliance Schedule Progress Reports

The following conditions shall apply to the compliance schedule required by Sec. 29.146.16.1(B)(4) of this ordinance:

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 Water Utilities Director no later than fourteen (14) calendar 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 Water Utilities Director.

29.146.3 Reports on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) calendar 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 Water Utilities Director a report containing the information described in Sec. 29.144.5A(6) and (7) and 29.146.1(B)(2) of this ordinance. For Users subject to equivalent mass or concentration

limits established in accordance with the procedures in Sec. 29.132, in accordance with 40 CFR 403, 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 Sec. 29.146.13 A of this ordinance. All sampling will be done in conformance with Sec. 29.146.10.

29.146.4 Periodic Compliance Reports

A. Except as specified in Sec. 29.146.4C, all Users must, at a frequency determined by the Water Utilities Director, submit no less than twice per year, on dates specified, unless required more frequently, reports indicating the nature, concentration, and flow of pollutants in the discharge that are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the Water Utilities Director or the Pretreatment Standard necessary to determine the compliance status of the User.

B. In accordance with 40 CFR 403, the City may authorize an Industrial User subject to a categorical Pretreatment Standard to forgo sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

(1) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical

Standard and otherwise includes no process wastewater.

(2) The monitoring waiver is valid only for the duration of the effective period of the wastewater discharge permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent wastewater discharge permit under Sec. 29.144.5A(8).

(3) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

(4) The request for a monitoring waiver must be signed and include the certification statement in Sec. 29.146.13 A in accordance with 40 CFR 403.

(5) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

(6) Any grant of the monitoring waiver by the Water Utilities Director must be included as a condition in the User's wastewater discharge permit or other control mechanism. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Water Utilities Director for 3 years after expiration of the waiver.

(7) Upon approval of the monitoring waiver and revision of the User's permit by the Water Utilities Director, the Industrial User must certify on each report with the statement in Sec. 29.146.13 C below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User.

(8) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the User's operations, the User must immediately comply with the monitoring requirements of Sec. 29.146.4 A, or

other more frequent monitoring requirements imposed by the Water Utilities Director, and notify the Water Utilities Director.

(9) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

C. The City may reduce the requirement for periodic compliance reports under Sec. 29.146.4 A in accordance with 40 CFR 403 to a requirement to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by the Approval Authority, where the Industrial User's total categorical wastewater flow does not exceed any of the following:

(1) 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 Industrial User discharges in batches;

(2) 0.01 percent of the design dry weather organic treatment capacity of the POTW; and

(3) 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 in accordance with Sec. 29.134 of this ordinance.

Reduced reporting is not available to Industrial Users that have in the last two years been in significant noncompliance, as defined in Sec. 29.149 of this ordinance. In addition, reduced reporting is not available to an Industrial User with daily flow rates, production levels, or pollutant levels that vary so significantly that, in the opinion of the Water Utilities Director, decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period.

D. All periodic compliance reports must be signed and certified in accordance with Sec. 29.146.13 A of this ordinance.

E. 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.

F. 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 Water Utilities Director, using the procedures prescribed in Sec. 29.146.10 of this ordinance, the results of this monitoring shall be included in the report in accordance with 40 CFR 403.

29.146.5 Reports of Changed Conditions

Each User must notify the Water Utilities Director of any significant changes to the User's operations or system, which might alter the nature, quality, or volume of its wastewater, at least thirty (30) days before the change.

A. The Water Utilities 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 Sec. 29.144.5 of this ordinance.

B. The Water Utilities Director may issue a wastewater discharge permit under Sec. 29.145.6 of this ordinance or modify an existing wastewater discharge permit under Sec. 29.145.3 of this ordinance in response to changed conditions or anticipated changed conditions.

29.146.6 Reports of Potential Problems

A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, a Slug Discharge or Slug Load, that may cause potential problems for the POTW, the User shall immediately telephone and notify the Water Utilities Director of the incident.

This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.

B. Within five (5) business days following such discharge, the User shall, unless waived by the Water Utilities Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability that 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 that may be imposed pursuant to this ordinance.

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

D. Significant Industrial Users are required to notify the Water Utilities Director immediately of any changes at its facility affecting potential for a Slug Discharge.

29.146.7 Notice of Violation/Repeat Sampling and Reporting

If sampling performed by a User indicates a violation, the User must notify the Water Utilities 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 Water Utilities Director within thirty (30) calendar days after becoming aware of the violation.

29.146.8 Discharge of Hazardous Waste

Discharge of hazardous waste under 40 CFR 261 is prohibited.

29.146.9 Analytical Requirements

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed as prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable

categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Water Utilities Director or other parties approved by EPA.

29.146.10 Sample Collection

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that are representative of conditions occurring during the reporting period. The samples should be taken immediately downstream from the User's pretreatment system in accordance with 40 CFR 403. The Water Utilities Director will require the frequency of monitoring necessary to assess and assure compliance by the User with applicable Pretreatment Standards and Requirements.

A. Except as indicated in Section B and C below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Water Utilities Director. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Discharge Limits.

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

C. For sampling required in support of baseline monitoring and 90-day compliance reports required in Sec. 29.146.1 and 29.146.3 in accordance with 40 CFR 403, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist. For facilities for which historical sampling data are available, the Water Utilities Director may authorize a lower minimum. For the reports required by paragraphs Sec. 29.146.4 in accordance with 40 CFR 403, the City will require the number of grab samples necessary to assess and assure compliance by industrial Users with applicable Pretreatment Standards and Requirements in accordance with 40 CFR 403.

29.146.11 Date of Receipt of Reports

Written reports will be deemed to have been submitted on the date postmarked. For reports that 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.

29.146.12 Record Keeping

Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices established under Sec. 29.134.4. Records shall include the date, sample collector name, description of sampling location, sample collection start date and time, sample collection end date and time, sample type (composite or grab), submission date and time to reference laboratory, name of laboratory, chain of custody forms, results, units, analytical method, method detection limit, name of analyst, date received by laboratory, date analyzed, date reported and quality control data. 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 Water Utilities Director.

29.146.13 Certification Statements

A. Certification of Permit Applications, User Reports and Initial Monitoring Waiver

The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Sec. 29.144.6; Users submitting baseline monitoring reports under Sec. 29.144.1 B (5) in accordance with 40 CFR 403; Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under Sec. 29.146.3 in accordance with 40 CFR 403; Users submitting periodic compliance reports required by Sec. 29.146.4 A – F in accordance with 40 CFR 403, and Users submitting an initial request to forgo sampling of a pollutant based on Sec. 29.146.4B. The following certification statement must be signed by an Authorized Representative as defined by Section 29.130:

"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."

B. Annual Certification for Non-Significant Categorical Industrial Users - A facility determined to be a Non-Significant Categorical Industrial User by the Water Utilities Director in accordance with 40CFR 403 must annually submit the following certification statement signed by an authorized representative This Certification must accompany any alternative report required by the Water Utilities Director:

"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 _____, [months, days, year]:

(a) The facility described as _____ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in Section 29.130 in accordance with 40 CFR 403;

(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:

Example - describe disposal method of wastes, _____

_____

_____"

C. Certification of Pollutants Not Present

Users that have an approved monitoring waiver based on Sec. 29.146.4 B must certify on each report with the following statement that there has been no increase in the pollutant in its waste stream due to activities of the User in accordance with 40 CFR 403.

"Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under Sec. 29.146.4.A."

29.147. COMPLIANCE MONITORING

29.147.1 Right of Entry: Inspection and Sampling

The Water Utilities Director shall have the right to enter the premises of any User to determine whether the User is complying with all requirements of this ordinance and any wastewater discharge permit or order issued hereunder. Users shall allow the Water Utilities 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.

A. Where a User has security measures in force that require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Water Utilities Director will be permitted to enter without delay for the purposes of performing specific responsibilities.

B. The Water Utilities Director shall have the right to set up on the User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the User's operations.

C. The Water Utilities 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 according to manufacturer's specifications to ensure their accuracy.

D. 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 oral request of the Water Utilities Director and shall not be replaced. The costs of clearing such access shall be borne by the User.

E. Unreasonable delays in allowing the Water Utilities Director access to the User's premises shall be a violation of this ordinance.

29.147.2 Search Warrants

If the Water Utilities 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 ordinance, 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 ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Water Utilities Director may seek issuance of a search warrant from the Superior Court of the State of California for San Diego County.

29.148. CONFIDENTIAL INFORMATION

Information and data on a User obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the Water Utilities 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 Water Utilities 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 that 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. Wastewater constituents and characteristics and other effluent data, as defined in 40 CFR 2.302, will not be recognized as confidential information and will be available to the public without restriction.

29.149. SIGNIFICANT NONCOMPLIANCE

The Water Utilities Director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Users that, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term

Significant Noncompliance shall be applicable to all Industrial Users that violate paragraphs (A) through (H) of this section and shall mean:

A. 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 taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 2 in accordance with 40 CFR 403.3(l);

B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Sec. 29.130 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

C. Any other violation of a Pretreatment Standard or Requirement as defined by Sec. 29.130 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the Water Utilities 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;

D. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Water Utilities Director's exercise of its emergency authority to halt or prevent such a discharge;

E. Failure to meet, within ninety (90) calendar days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

F. Failure to provide within thirty (30) calendar days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

G. Failure to accurately report noncompliance; or

H. Any other violation(s) that may include a violation of Best Management Practices, that the Water Utilities Director determines will adversely affect the operation or implementation of the local pretreatment program.

29.150. ADMINISTRATIVE ENFORCEMENT REMEDIES

29.150.1 Purpose and Scope

Enforcement of this ordinance is vital for the protection of the public's health and safety, the environment and the POTW. Any violation or continuing violation of a provision of this Ordinance, a Discharge Permit, an administrative order or applicable State or Federal law may be grounds for enforcement action against a User. The City shall conduct enforcement proceedings in accordance with its Enforcement Response Plan, as amended from time to time, to ensure consistent application of the provisions of this ordinance. The City's Enforcement Response Plan is maintained in the Pollution Prevention and Pretreatment Program offices.

29.150.2 Findings of Violation

The City may make findings of violations of a Discharge Permit, this ordinance or applicable law based upon the following:

A. Review of information submitted by a User to the City;

B. Review of the City's inspection of the User's facility and/or sampling of the User's Discharge;

C. A User's failure to submit any required documentation, report or notice;

D. A User's failure to pay any fees, fines, costs or deposits as required by this Ordinance;

E. Any other information received by the City.

29.150.3 Notification of Violation

When the Water Utilities Director finds that a User has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the Water Utilities Director may

serve upon that User a written Notice of Violation (NOV). Within five (5) business 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 Water Utilities 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 Water Utilities Director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

In the event that the notice of violation imposes any administrative enforcement action(s), the City shall issue the NOV by at least one of the following methods: (1) via certified mail with return receipt requested; (2) personal delivery; or (3) posting the notice of violation conspicuously on or in front of the User's premises.

29.150.4 Consent Orders

The Water Utilities 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 Sec. 29.150.6 and 29.150.7 of this ordinance and shall be judicially enforceable.

29.150.5 Show Cause Hearing

The Water Utilities Director may order a User that has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other Pretreatment Standard or Requirement, to appear before the Water Utilities 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) business 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.

29.150.6 Compliance Orders

When the Water Utilities Director finds that a User has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the Water Utilities 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.

29.150.7 Cease and Desist Orders

When the Water Utilities Director finds that a User has violated, or continues to violate, any provision of this ordinance, 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 Water Utilities Director may issue an order to the User directing it to cease and desist all such violations and directing the User to:

A. Immediately comply with all requirements; and

B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or

terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the User.

29.150.8 Administrative Fines

A. 40 CFR 403 authorizes the POTW to seek or assess civil or criminal penalties for each violation by Industrial Users of Pretreatment Standards and Requirements. The Water Utilities Director may fine the User, in accordance with the latest amendment to the Porter Cologne Water Quality Control Act (Clean Water Act) California Government Code Section 54740 and the City of Oceanside Enforcement Response Plan.

The amount of any civil penalties imposed under this section that have remained delinquent for a period of sixty (60) calendar days shall constitute a lien against the real property of the discharger from which the discharge originated resulting in the imposition of the fines. The lien provided herein shall have no force and effect until recorded with the county recorder and when recorded shall have the force and effect and priority of a judgment lien and continue for 10 years from the time of recording unless sooner released, and shall be renewable in accordance with the provisions of Sections 683.110 to 683.220, inclusive, of the California Code of Civil Procedure. 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 twenty-five (25) calendar days, be assessed an additional penalty of ten percent (10 %) of the unpaid balance, and interest shall accrue thereafter at the prevailing bank rate. 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 to the Water Utilities Director to reconsider the fine along with full payment of the fine amount within ten (10) business days of being notified of the fine. Where a request has merit, the Water Utilities 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 Water Utilities 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.

29.150.9 Emergency Suspensions

The Water Utilities Director may immediately suspend a User's discharge, after informal notice to the User, whenever such suspension is necessary to stop an actual or threatened discharge, that reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons. The Water Utilities 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 that presents, or may present, an endangerment to the environment.

A. Any User notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a User's failure to immediately comply voluntarily with the suspension order, the Water Utilities 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 Water Utilities Director may allow the User to recommence its discharge when the User has demonstrated to the satisfaction of the Water Utilities Director that the period of endangerment has passed, unless the termination proceedings in Sec. 29.150.10 of this ordinance are initiated against the User.

B. A User who 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 Water Utilities Director prior to the date of any show cause or termination hearing under Sec. 29.150.5 or 29.150.10 of this ordinance.

Nothing in this section shall be interpreted as requiring a hearing prior to any Emergency

Suspension under this section.

29.150.10 Termination of Discharge

In addition to the provisions in Sec. 29.145.5 of this ordinance, any User who violates the following conditions is subject to discharge termination:

A. Violation of wastewater discharge permit conditions;

B. Failure to accurately report the wastewater constituents and characteristics of its discharge;

C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

D. Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring, or sampling; or

E. Violation of the Pretreatment Standards in Sec. 29.132 of this ordinance.

Such User will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Sec. 29.150.5 of this ordinance why the proposed action should not be taken. Exercise of this option by the Water Utilities Director shall not be a bar to, or a prerequisite for, taking any other action against the User.

29.150.11 Administrative Appeal

A. A User receiving an administrative fine may appeal within ten (10) business calendar days from the date the citation is served. The appeal must be in writing and must indicate a return address. It must be accompanied by the penalty amount, specifying the basis for the appeal in detail, and must be filed with the City as indicated in the administrative citation. If the deadline falls on any day City Hall is closed, then the deadline shall be extended until the next regular business day.

B. As soon as practicable after receiving the written notice of appeal, the Water Utilities Director will fix a date, time and place for hearing before a hearing officer. Written notice of the time and place for the hearing may be served by first class mail, at the return address indicated on the written appeal. Service of the appeal notice must be

made at least ten (10) business days prior to the date of the hearing to the party appealing the citation.

C. The failure of any User or other responsible party, to receive such properly addressed notice of the hearing shall not affect the validity of any proceedings under this ordinance. Service by first class mail, postage prepaid shall be effective on the date of mailing.

D. Failure of any User to file an appeal shall constitute a waiver of that User's rights to administrative determination of the merits of the citation and the amount of the penalty. If no appeal is filed, the citation shall be deemed a final administrative order.

E. A hearing officer will be designated by the Water Utilities Director for all appeal hearings under this ordinance. The hearing officer will conduct an orderly and fair hearing and accept evidence on which persons would commonly rely in the conduct of their ordinary business affairs. However, the formal rules of evidence and procedure applicable to judicial proceeding shall not apply. Cross-examination of witnesses is not required, but may be permitted as deemed appropriate by the hearing officer.

Notwithstanding any provision of this section to the contrary:

(1) A valid citation shall be prima facie evidence of the violation;

(2) The hearing officer will accept testimony by declaration under penalty of perjury relating to the violation and the appropriate means of correcting the violation;

F. The owner, agent, person responsible for the violation, or any other interested person may present testimony or evidence concerning the violation and the means and time frame for correction.

G. The Water Utilities Director, subject to approval by the city attorney, may establish appropriate administrative regulations for implementing this ordinance, conducting hearings and rendering decisions pursuant to this section.

H. The hearing officer may reduce, waive or conditionally reduce the penalties stated in a citation or any late fees assessed if mitigating circumstances are shown and the hearing officer states specific grounds for reduction or waiver in the written decision. The hearing officer may impose conditions and deadlines for correction of violations or payment of outstanding penalties.

I. The hearing officer will make findings based on the record of the hearing and make a written decision based on the findings. The processing agency shall preserve all exhibits submitted by the parties and shall serve the decision by first class mail to the respondent within ten (10) business working days after the hearing. The decision of the hearing officer is final and conclusive, subject only to review by the superior court. There are no appeals to the City Council.

29.151. JUDICIAL ENFORCEMENT REMEDIES

29.151.1 Injunctive Relief

When the Water Utilities Director finds that a User has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the Water Utilities Director may petition the Superior Court of the State of California for San Diego County through the City's Attorney for the issuance of a temporary or permanent injunction, as appropriate, that restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the User. The Water Utilities 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.

29.151.2 Civil Penalties

A. A User who has violated, or continues to violate, any provision of this ordinance, 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 in

accordance with the latest amendment to the Porter Cologne Water Quality Control Act (Clean Water Act) California Government Code Section 54740. 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 Water Utilities 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 incurred by the City.

C. In determining the amount of civil liability, the Court will 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.

29.151.3 Criminal Prosecution

A. A User who willfully or negligently violates any provision of this ordinance, 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 $1,000 per violation, per day, or imprisonment for not more than six (6) months or both.

B. A User who willfully or negligently introduces any substance into the POTW that causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than $1,000 per violation, per day, or imprisonment for not more than six (6) months or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under the 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 ordinance, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished according to applicable State and Federal law.

29.151.4 Provisions Governing Fraud and False Statements

The reports and other documents required to be submitted or maintained under this ordinance shall be subject to the provisions of 18 U.S.C. section 1001, Section 309 of the Clean Water Act, as amended, 40 CFR 403 and other provisions of law imposing civil and/or criminal penalties for making false statements.

29.151.5 Remedies Nonexclusive

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

29.152. SUPPLEMENTAL ENFORCEMENT ACTION

29.152.1 Performance Bonds

The Water Utilities Director may decline to issue or reissue a wastewater discharge permit to any User who has failed to comply with any provision of this ordinance, 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 Water Utilities Director to be necessary to achieve consistent compliance.

29.152.2 Liability Insurance

The Water Utilities Director may decline to issue or reissue a wastewater discharge permit to any User who has failed to comply with any provision of this ordinance, 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.

29.152.3 Payment of Outstanding Fees and Penalties

The Water Utilities Director may decline to issue or reissue a wastewater discharge permit to any User who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this ordinance, a previous wastewater discharge permit, or order issued hereunder.

29.152.4 Water Supply Severance

Whenever a User has violated or continues to violate any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, water service to the User may be severed by the Water Utilities Director. Service will only recommence, at the User's expense, after it has satisfactorily demonstrated its ability to comply.

29.152.5 Contractor Listing

Users who 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 Water Utilities Director.

29.153. WASTEWATER TREATMENT RATES

29.153.1 Extra Strength Surcharges

In addition to the fixed costs and volumetric charges, any Special User discharging wastewater containing wastes in higher concentrations than are considered normal for domestic wastewater shall pay additional charges as specified in Sec. 29.1 and 29.17.

29.153.2 Sampling and Metering

For the purpose of determining extra strength surcharges, and ascertaining pretreatment compliance, the Water Utilities Director shall have the option of sampling and testing a wastewater and billing the User for the sampling or requiring the User to perform a regular sampling and testing program, approved by the Water Utilities Director, at the User's expense. The User must make all data available to the Water Utilities Director upon request and the Water Utilities Director shall be allowed to sample the wastewater, as necessary, to verify the User's data.

29.153.3 Municipal Contracts or Agreements

In the event service is extended to properties within the corporate boundaries of one or more of the governmental entities within the potential service area of the City POTW, a service contract or agreement shall include but not be limited to the following:

A. Basis of Charges

The government entity or direct customers of the City POTW shall pay for the services that they receive at the same rate as applied against other system Users. This shall include the applicable charges for owning and operating the POTW, the wastewater transmission system and the wastewater collection system.

B. Use of Public Sewers

The same conditions and restrictions governing the use of the City sanitary sewerage system shall apply to the contributing governmental entities or customers as have been promulgated for City POTW Users.

29.154. MISCELLANEOUS PROVISIONS

29.154.1 Pretreatment Charges and Fees

The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's Pollution Prevention and Pretreatment Program that may include:

A. Fees for wastewater discharge permit applications including the cost of processing such applications;

B. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a User's discharge, and reviewing monitoring reports submitted by Users;

C. Fees for reviewing and responding to accidental discharge procedures and construction;

D. Fees for filing appeals;

E. Fees to recover administrative and legal costs associated with the enforcement activity taken by the Water Utilities Director to address Industrial User noncompliance; and

F. Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this ordinance and are separate from all other fees, fines, and penalties chargeable by the City. These fees are set from time to time by resolution of the City Council.

SECTION 3. The City Clerk of the City of Oceanside is hereby directed to publish this ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15) days after its passage in the North County Times, a newspaper of general circulation published in the City of Oceanside.

SECTION 4. Severability.

If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

This ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

INTRODUCED at a regular meeting of the City Council of the City of Oceanside held on the _____ day of _____, 2011, and, thereafter,

PASSED, AND ADOPTED by the City Council of the City of Oceanside, California this _____day of _____, 2011, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____
MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

Barbara Hamilton, ASST.
CITY ATTORNEY

Industrial Waste Pretreatment Program

ENFORCEMENT RESPONSE PLAN

July 6, 2011

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I. Introduction

The City of Oceanside's Enforcement Response Plan (ERP) has been developed pursuant to the requirements set forth in 40 CFR 403.8(f)(5) and in accordance with the City's Sewer Use Ordinance, as amended from time to time. The ERP is intended to support the City's responsibility to enforce all applicable pretreatment requirements in a consistent, fair, and timely manner for all Users. Included in the plan are: the procedures utilized for identifying violations; the types of escalating enforcement mechanisms available to the City; the staff members responsible for initiating each level of enforcement; and guidance in the application of those measures relative to the nature and severity of the violation cited. [See ERP, Appendix A] Maximum monetary fines are recommended at each enforcement level that are intended to recover the cost of enforcement, as well as address the economic benefit derived from the act(s) constituting the violation(s).

II. Identifying Noncompliance

The City's Pollution Prevention and Pretreatment Program staff conducts various activities to identify Industrial User (IU) noncompliance. A summary of these is provided below.

Industrial User Survey – The City gathers information to identify non-domestic dischargers in the service area that require a permit. New IUs are identified through review of monthly business license lists, surveys submitted with new construction permit applications, the telephone book, internet searches and visual inspections of the service area.

Inspections – Permitted IUs are inspected at least annually to determine compliance with applicable regulations, verify information submitted to the City in reports and applications, and identify operational changes. Site visits typically include an inspection of process, chemical and waste storage areas and a review of documents such as operations and maintenance logs, employee training records, and hazardous waste manifests. Additional inspections are conducted in response to IU violations and to confirm the correction of deficiencies noted during annual inspections.

Monitoring – The City performs annual sampling of Significant Industrial Users (SIUs) and intermittent monitoring of other permitted IUs to determine compliance with their permit discharge limitations. SIUs are also required to conduct self-monitoring at least twice a year. Additional samples are collected when violations are identified. Samples are analyzed by the City's Laboratory or another Laboratory certified by the Environmental Laboratory Accreditation Program (ELAP). Test methods and sampling procedures are in accordance with 40 CFR Part 136.

Report Review – Permitted IUs are required to submit various reports such as Baseline Monitoring Reports, semiannual Compliance Status Reports and responses to violation notices. These are carefully reviewed to verify they are: submitted on time; complete; a chain-of-custody form is included; samples collected were the appropriate type; samples were collected during the proper time period; all required constituents were monitored for; samples were analyzed using methods found at 40 CFR Part 136; samples were analyzed within the allowable holding time; sample results are in compliance with permit discharge limitations; and the required certification statements are included and signed by authorized personnel.

III. Enforcement Mechanisms

The enforcement mechanisms available to the City are discussed below. The Sewer Use Ordinance provides the legal authority necessary to implement any and all measures required to guarantee User compliance. Any appeal rights and procedures are set forth in the City's Sewer Use Ordinance.

Notice of Violation - A Notice of Violation (NOV) is a written notice from the City to the IU that:

1. Describes the violation and the basis for the violation;
2. Cites the Ordinance or permit provision violated;
3. Requires correction of the violation and/or a written explanation of the cause of the violation, within a specified time frame, if applicable;
4. Sets forth any enforcement action imposed by the City; and
5. Informs the User of its right to an administrative hearing on the matter, if applicable.

Monetary Fines – In lieu of the civil penalties set forth in California Government Code Section 54740, the City may impose administrative fines.

The City's Industrial Waste Inspector, Pretreatment Program Coordinator, Environmental/Regulatory Compliance Officer and/or Code Enforcement personnel may impose a monetary penalty of:

First citation - NOV
Second citation - $1,000
Third citation - $3,000
Fourth citation - $5,000
Fifth and subsequent citation - $25,000

per violation per day.

In general, the fine is assessed at a level that recovers the economic benefit derived from the acts constituting the violation and is imposed in accordance with the recommendations found in the ERP.

Enforcement Costs – The City may impose on the User additional enforcement costs incurred as a result of the User's violation. These costs are directly related to the additional City staff time, sampling and analysis costs, and other costs incurred by the City as a result of the violation.

Enforcement Security – The City may require a User to post a performance bond, letter of credit, cash or other security sufficient to secure the User's compliance.

Noncompliance Sampling – If the results of a User's self-monitoring indicate a violation has occurred, the User must repeat the sampling and pollutant analysis and submit the results to the City within 30 days of becoming aware of the violation. In response to repeated violations, the City may increase a User's self-monitoring frequency. The City may also conduct additional sampling and analysis of a User's discharge to determine whether the corrective actions taken in response to a violation have returned the User to compliance.

Compliance Inspection – The City's Inspectors may conduct a facility inspection in response to a

violation or to confirm that specific actions have been taken to correct noncompliance. The results of the inspection shall be documented in a report. Based on the report, the Water Utilities Director may resolve a Notice of Violation or take further enforcement actions.

Compliance Meeting – The City may require a User to attend a meeting when there is a pattern of noncompliance or a serious violation has occurred. The User shall be notified of the meeting through a NOV, which shall specify the date, time and location of the meeting. The meeting shall be conducted by the Water Utilities Director or designee. At the meeting, the User shall be asked to provide an explanation for the violation(s) and describe the actions taken or planned to prevent recurrence. The Water Utilities Director or designee shall explain the possible enforcement actions that may apply if the noncompliance continues.

Compliance Order - The Water Utilities Director or designee may impose a Compliance Order (CO), setting forth the actions necessary to comply with the Ordinance or the permit and the deadlines for completing such actions based on best professional judgment. The CO is usually imposed when a User needs to expend capital to construct, acquire or install pretreatment equipment to achieve compliance. The terms and conditions of the CO are intended to be reasonable and are directed towards achieving compliance in the earliest possible time frame.

Consent Order - The Water Utilities Director or designee may enter into a Consent Order (CsO), assurances of voluntary compliance or other similar documents establishing an agreement with the 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 a Compliance Order, and a Cease and Desist Order, and are judicially enforceable.

Cease and Desist Order – The Water Utilities Director or designee may issue a Cease and Desist Order when a User is found: discharging without a permit; discharging unauthorized wastestreams; or discharging wastewater that could cause interference or pass-through or otherwise create an emergency situation. In an emergency, the order to cease and desist may be given by telephone or in person; however, a subsequent written order shall be served on the User, either in person or by certified mail. The Cease and Desist Order will become effective immediately upon receipt and will indicate the steps that must be taken for discharge to resume.

Publication of Violation - The Water Utilities Director or designee may require the User to notify the public and/or other Users of the City's POTW of the User's violation, the User's action(s) taken to correct the violation, and any penalties imposed by the City.

Show Cause Hearing – A Show Cause Hearing is a formal meeting requiring the User to appear, explain its noncompliance, and show cause why severe enforcement actions (e.g. permit suspension, revocation or termination of service) should not be taken. The User shall be notified of the meeting through a NOV, which shall specify the date, time and location of the meeting. The meeting shall be conducted by the Water Utilities Director or designee. The Water Utilities Director or designee shall review the enforcement policies and state the grounds for the proposed enforcement action. The User has the burden of proof to show why permit suspension, revocation or termination of service is inappropriate. After review of the information presented, the Water Utilities Director or designee may proceed with permit suspension, revocation or termination of service. A Show Cause Hearing does not preclude and is not a necessary prerequisite for taking other enforcement actions.

Permit Suspension, Revocation, or Termination of Service - The Water Utilities Director or designee may suspend or revoke a User's permit or physically terminate service whenever the User:

1. Fails to comply with the terms of a NOV or CO;
2. Fails to make timely payments of any amount owed to the City;
3. Fails to provide reports or other documents required by the City;
4. Knowingly provides a false statement to the City;
5. Fails to report a significant change in operations;
6. Refuses access to User's facility upon the City's demand;
7. Discharges any wastewater in violation of its permit or the Ordinance; or
8. Violates any other condition of the permit.

A User may petition the Water Utilities Director or designee for a hearing on the suspension, revocation or termination order issued by the Water Utilities Director or designee.

Emergency Suspension, Revocation, or Termination - The Water Utilities Director or designee may take any action to suspend or revoke a User's permit or physically terminate service in the event of an emergency. An emergency occurs when the discharge presents or may present an imminent or substantial endangerment to the health and welfare of the public or the environment. The Water Utilities Director or designee determines the effective date of an emergency action. All other enforcement orders pursuant to a hearing are effective on the date received by the User.

Civil Penalties - In accordance with Government Code section 54740(b), the City may petition the Superior Court to impose, assess, and recover from any person sums not to exceed $25,000 a day for each violation of the Ordinance. Civil action is pursued when the User is recalcitrant or unwilling to cooperate. The City's legal counsel initiates civil action.

Injunction – The City may petition the superior court for a temporary restraining order, or a temporary or permanent injunction to restrain the User from continuing a discharge that is in violation of its permit, the Sewer Use Ordinance, federal, state or local law.

Referral to Other Regulatory Agencies – For violations that warrant criminal prosecution, the City may refer the matter to any other agencies including: the San Diego County Hazardous Waste Task Force, the Regional Water Quality Control Board and/or the EPA.

Publication of Significant Noncompliance (SNC) - In accordance with 40 C.F.R. Section 403.8(f)(2)(viii), the City will publish at least annually a list of Users who within the previous 12 months were in SNC, as defined in 40 C.F.R. Section 403.8(f)(2)(viii)(A)-(H).

IV. Responsibilities

An effective enforcement program involves coordination between different staff members. The following list identifies the City staff and their areas of responsibility.

Industrial Waste Inspector

- Conducts IU inspections and sampling
- Reviews IU reports
- Screens compliance monitoring data
- Conducts service area surveys
- Issues NOVs
- Assesses penalties and enforcement costs for noncompliance
- Drafts compliance schedules and other enforcement correspondence
- Attends compliance meetings
- Issues Administrative Citations

Pretreatment Program Coordinator

- Reviews reports and correspondence drafted by Industrial Waste Inspector
- Reviews all violations
- Recommends appropriate responses to noncompliance
- Reviews IU responses to enforcement actions
- Conducts compliance meetings and Show Cause Hearings
- Tracks enforcement response times
- Approves compliance sampling schedules
- Assesses penalties and enforcement costs for noncompliance
- Consults with the City's Environmental/Regulatory Compliance Officer regarding significant compliance matters
- Ensures consistency of the Pretreatment Program
- Issues Administrative Citations

Environmental/Regulatory Compliance Officer

- Signs Industrial Wastewater Discharge Permits
- Signs compliance schedules, cease and desist orders, and permit suspension/revocation/termination of service orders
- Consults with the Water Utilities Director and/or the City's General Counsel regarding potential legal action
- Refers criminal matters to the San Diego County Hazardous Waste Task Force, Regional Water Quality Control Board and/or EPA
- Acts as Hearing Officer for IU appeals regarding permits, compliance schedules, monetary fines, the suspension or revocation of a discharge permit, or a termination of service order and issues an Administrative Enforcement Order within 30 days after the conclusion of the hearing
- Issues Administrative Citations

Water Utilities Director

- Signs compliance schedules, cease and desist orders, and permit suspension/revocation/termination of service orders
- Consults with the City's General Counsel regarding potential legal action

- Issues Administrative Citations
- Assess fines and penalties
- Hears IU appeals regarding the suspension or revocation of a discharge permit, or a termination Of service order

The City's General Counsel

- Reviews Pretreatment Program documents and provides input regarding potential legal action against IUs, as required
- Initiates civil actions

V. Enforcement Response Plan

Selecting the Appropriate Response - Enforcement mechanisms are implemented according to a progressive enforcement philosophy. To ensure consistency of enforcement application, and to meet the requirements promulgated by 40 CFR 403.8(f)(5), the City has developed the ERP included as Appendix A. The plan describes violations and indicate appropriate enforcement actions based on the nature, duration, and severity of the violation.

The ERP includes recommendations for monetary fines not to exceed a specified amount for each violation scenario. When using the ERP to determine the appropriate enforcement actions for a particular noncompliance event, several factors require consideration. They are:

1. Magnitude and Duration of the Violation – The City will evaluate the volume and strength of the discharge, and the length of time the violation continued. Violations that meet the EPA definition of SNC (based on more than one sampling event) and those that continue over prolonged periods of time will receive an escalated enforcement response.

2. Good Faith Efforts of the User – If a User, in good faith, attempts to comply with pretreatment requirements, the City may respond with a lower level of enforcement action. A User can demonstrate good faith by: responding promptly to requests from the City; consistently complying with permit conditions and reporting requirements; aggressively investigating and correcting violations; and demonstrating a willingness to invest the necessary resources to achieve compliance.

3. Compliance History of the User – When evaluating the level of enforcement action to take, the last twelve months' compliance history will be reviewed. If a pattern of recurring violations for the same parameter is noted, an escalated enforcement action may be warranted. In addition, the City will also consider the effectiveness of previous enforcement actions taken.

4. Impact of the Violation – Violations that cause interference with treatment plant performance, damage to the treatment plant or collection system or NPDES permit violations, or harm to human health or the environment shall receive an escalated enforcement response. At a minimum the response shall include the assessment of penalties and enforcement costs to recover any costs incurred by the City to correct the problem. In some cases, injunctive measures may also be appropriate.

The City weighs each of the above factors in deciding whether to impose the maximum recommended fine or a less stringent response. Additionally, there may be violations and/or noncompliance scenarios that are not reflected in the ERP. For these instances, the general intent of the ERP should be evaluated and the enforcement response should be implemented consistent with those that would be applied to violations of similar magnitude.

Response Timeframes - To promote consistent application of the ERP, the following guidelines for enforcement are set forth below:

1. All violations should be identified and documented within ten (10) working days of receiving compliance information (e.g. lab results, self-monitoring data, inspections, etc.)

2. Initial enforcement mechanisms should occur within thirty (30) calendar days of violation detection.

3. Follow up actions for violations should be taken within sixty (60) calendar days of the initial enforcement response. For all continuing violations, the response should include a Compliance Order (CO).

4. Violations, which threaten health, property or environmental quality are considered emergencies and should receive an immediate response as required.

Appendix A

Enforcement Response Plan

Enforcement Response Plan (ERP)

Type of Noncompliance	Nature of Violation [1,2]	Response [3]	Personnel [4]
Failure to comply with Terms and Conditions of Wastewater Contribution Permit and/or Ordinance requirements	- First occurrence	- NOV	**IWI/PPC**
	- Second occurrence, same violation (occurring within twelve (12) months of issuance of first occurrence)	- NOV, $1,000 Administrative Citation, CM, PN, CDO, CsO	**IWI/PPC/ ERCO**
	- Third occurrence, same violation (occurring within twelve (12) months of last NOV for the same violation)	- NOV, $3,000 Administrative Citation, CO, PN, and/or CsO and/or CDO and/or SCH	**IWI/PPC/ ERCO**
	- Fourth occurrence, same violation (occurring within twelve (12) months of last NOV for the same violation)	- NOV, $5,000 Administrative Citation, PN, PV, and/or CsO and/or SCH and/or ESRT and/or SRT	**IWI/PPC/ ERCO WUD**
	- Fifth occurrence and subsequent occurrences (occurring within twelve (12) months of last NOV for the same violation)	- NOV, $25,000 Administrative Citation and/or SCH, and/or ESRT and/or SRT and/or PN and/or PV and/or JR	**IWI/PPC/ ERCO WUD CA**
	Issuance of an administrative fine will not be a bar against, or a prerequisite for, taking any other action against the User.		
	Harmful	Depending on severity: - NOV, ESRT, SRT, up to $25,000 or $10 per gallon fine, whichever is higher, PN, PV, JR, costs, CO, SCH	**IWI/PPC ERCO WUD/CA**

[1] Occurrences in a twelve-month period.

[2] Harmful means a discharge, alone or in combination with other discharges, that: causes interference or pass-through; endangers the health of POTW personnel or the public; or adversely affect the treatment plant, collection system or the environment.

[3] Guidelines for imposing fines. Determined on a case-by-case basis. Fines are assessed on a per-violation, per day basis. Fines are authorized under City of Oceanside Sewer User Ordinance, 40 CFR 403, Porter-Cologne Water Quality Act and California Government Code 54740.

[4] Personnel: IWI – Industrial Waste Inspector
PPC – Pretreatment Program Coordinator
ERCO – Environmental/Regulatory Compliance Officer
WUD – Water Utilities Director
CA – City Attorney

Abbreviations

NOV - Notice of Violation
ESRT - emergency suspension, revocation or termination of service
SRT - suspension, revocation or termination of service after hearing and appeal
Fine - recommended to recover economic benefit
Costs - any/and all costs incurred by the City as a result of discharger noncompliance
CM – Compliance meeting
CO – Compliance Order
CDO - Cease and Desist Order
SCH - Show Cause Hearing
CsO - Consent Order
PN - public notice in newspaper if it meets criteria of 40 CFR 403.8 (f)(viii)
PV - publication of violation at the User's expense
JR - judicial remedy, civil and/or criminal