

**ORDINANCE NO. O-2020-84**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 19, ARTICLE IV., INDUSTRIAL WASTES, OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, RELATED THE UNIFORM REQUIREMENTS FOR USERS OF THE CITY OF TYLER WASTERWATER COLLECTION SYSTEM AND PUBLICALLY OWNED TREATMENT WORKS ENABLING THE CITY TO COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS, INCLUDING THE CLEAN WATER ACT, 33 U.S.C. 1251 ET. SEQ., AND THE GENERAL PRETREATMENT REGULATIONS, 40 CFR 403; AND ESTABLISHING AN EFFECITVE DATE.**

**WHEREAS**, it is the intent of the City Council to protect the public health, safety and welfare; and

**WHEREAS**, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of local self-government; and

**WHEREAS**, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City of Tyler may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof; and

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether expressed or implied, shall be exercised and enforced, in the manner prescribed by the Charter, or when not prescribed in the Charter, in such manner as shall be provided by ordinances or resolutions of the City Council; and

**WHEREAS**, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers

enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

**WHEREAS**, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by the State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

**WHEREAS**, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**WHEREAS**, The City of Tyler maintains a wastewater collection system and publically owned treatment works that has industrial users who must follow all rules and requirements set forth by the State and Federal laws, including the Clean Water Act, 33 U.S.C. 1251 et. seq., and the General Pretreatment Regulations at 40 CFR Part 403; and

**WHEREAS**, Tyler's Industrial Waste Ordinance needs amendment to fully express the uniform requirements, the objectives of which are to prevent the introduction of pollutants into the publically owned treatment works, including slug use and disposal; and

**WHEREAS**, To prevent such pollutants from passing through the system inadequately treated and into receiving waters; and

**WHEREAS**, To ensure that the wastewater treatment plant sludge is maintained at a disposable level in compliance with applicable State and Federal laws; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:**

**PART 1:** That Tyler City Code Chapter 19, Utilities, Article IV., "Industrial Wastes", is hereby amended by amending Sections 19-72 through Section 19-87 to read as follows:

## **ARTICLE IV. INDUSTRIAL WASTES**

### **Sec. 19-72. General provisions.**

a. Purpose and policy. This division sets forth uniform requirements for users of the wastewater collection system and publicly owned treatment works (POTW) for the City and enables the City to comply with all applicable State and Federal laws including the Clean Water Act (33 U.S.C. 1251 et seq.), and the General Pretreatment Regulations (40 CFR Part 403). The objectives of this division are:

1. To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW, including slug use and disposal;

2. To prevent the introduction of pollutants into the POTW which will pass through the POTW inadequately treated, into the receiving waters or otherwise be incompatible with the POTW;
  3. To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
  4. To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment, and to protect the general public;
  5. To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW;
  6. To provide for fees for the equitable distribution of the cost of operation, maintenance and improvement of the POTW; and
  7. To enable the City to comply with its NPDES permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the POTW is subject.
- This division shall apply to all industrial users of the POTW. The division authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance and enforcement activities; establishes administrative review procedures; requires industrial user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

- b. Administration. Except as otherwise provided herein, the Manager shall administer, implement and enforce the provisions of this division. Any powers granted to, or duties imposed upon the Manager may be delegated to other qualified City personnel.
- c. Definitions. Unless a provision explicitly states otherwise, the following terms and phrases, as used in this division, shall have the meanings hereinafter designated.
  1. Reserved.
  2. Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.
  3. Approval Authority. The Director of the Texas Commission on Environmental Quality (TCEQ), or his/her designee.
  4. Authorized or duly authorized representative of the industrial user.
    - (a) If the industrial user is a corporation, authorized representative shall mean:
      - (1) 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;
      - (2) The manager of one (1) or more manufacturing, production, or operation facilities provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

- (b) If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or proprietor, respectively;
  - (c) If the industrial user is a federal, state, or local governmental facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her designee;
  - (d) The individuals described in paragraphs a through c 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 Manager.
5. Best management practices (BMPs). Means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 19-72 a, 1 and 2; 19-73 a [40 CFR 403.5(a)(1) and (b)]. BMPs 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.
  6. Biochemical oxygen demand (BOD<sub>5</sub>). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures, five (5) days at twenty (20) degrees centigrade, expressed in terms of mass and concentration [milligrams per liter (mg/l)].
  7. Categorical Industrial User. An Industrial User subject to a categorical Pretreatment Standard or categorical Standard.
  8. Categorical pretreatment standard or categorical standard. Any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of industrial users and which appear in 40 CFR, Chapter I, Subchapter N, Parts 405 through 471.
  9. Chemical oxygen demand (COD). The measure of the oxygen consuming capacity of inorganic and organic matter present in water or wastewater (expressed in mg/l).
  10. City. The City of Tyler or the City Council of Tyler.
  11. Color. The optical density at the visual wave length of maximum absorption relative to distilled water. One hundred (100) percent transmittance is equivalent to zero (0.0) optical density.
  12. Composite sample. The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.
  13. Control Authority. The City of Tyler.
  14. Daily maximum limit. The maximum allowable discharge of pollutant during a calendar day. Where daily 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.
  15. Direct discharge. The discharge of treated or untreated wastewater directly to the waters of the state.
  16. Environmental Protection Agency or EPA. The U.S. Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the Regional Water Management Division Director or other duly authorized official of said agency.

17. Existing source. Any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.
18. Garbage. Animal and vegetable wastes and residue from preparation, cooking, and dispensing of food; and from handling, processing, storage, and sale of food products and produce.
19. Grab sample. A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and without consideration of time.
20. Indirect discharge. The introduction of nondomestic pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.
21. Industrial user or user. A source of indirect discharge.
22. Industrial waste. The water-borne solids, liquids, or gaseous wastes resulting from and discharged, permitted to flow, or escaping from any industrial, manufacturing, food processing, trade or business operation or process, or from the development of any natural resource, or any mixture of these with water or wastewater distinct from normal domestic wastewater.
23. Interference. A discharge which alone or in conjunction with a discharge or discharges from other sources: 1) inhibits or disrupts the POTW, its treatment processes, or operations, or its sludge processes, use, or disposal; and 2) 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 there under (or more stringent state or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), 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 SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.
24. Medical waste. Isolation wastes, infectious agents, human blood and blood byproducts, pathological wastes, sharps, body parts, fomites, etiologic agents, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.
25. Monthly Average Limit. The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during that month.
26. New source.
  - (a) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
    - (1) The building, structure, facility or installation is constructed at a site at which no other source is located; or
    - (2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
    - (3) The production or wastewater generating processes of the building, structure, facility or installation 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, shall be considered.
- (b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of Subsection (a) (2) or (3) above but otherwise alters, replaces, or adds to existing process or production equipment.
- (c) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
- (1) Begun, or caused to begin as part of a continuous on-site construction program.
- (i) Any placement, assembly, or installation of facilities or equipment; or
- (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase, or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.
27. Noncontact cooling water. Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
28. Normal domestic wastewater. The "normal" sewage for the City in which the average concentration of total suspended solids (TSS) and BOD<sub>5</sub> is established at not more than two hundred fifty (250) mg/l of each, the average concentration of COD is established at not more than three hundred (300) mg/l, and the average concentration of total dissolved solids (TDS) is established at not more than one thousand one hundred (1,100) mg/l. Industrial wastes and stormwater are excluded from this term.
29. Pass through. A discharge which exits the POTW into waters of the U.S. in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the City's NPDES permit (including an increase in the magnitude or duration of a violation).
30. Person. Any individual, partnership, co partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all federal, state or local governmental entities.
31. pH. A measure of the acidity or alkalinity of a substance, specifically the logarithm (base 10) of the reciprocal of the hydrogen ion concentration, expressed in standard units (s.u.).
32. Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes discharged into water, and possessing the characteristics of wastewater (i.e. pH, temperature, TSS, turbidity, color, BOD<sub>5</sub>, COD, toxicity, odor).

33. 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.
34. Pretreatment requirements. Any substantive or procedural requirement related to pretreatment imposed on an industrial user, other than a pretreatment standard.
35. Pretreatment standards or standards. Pretreatment standards shall mean prohibitive discharge standards, categorical pretreatment standards, local limits, and daily maximum limits.
36. Process wastewater. Any water which, during manufacturing or processing, comes into direct contact with, or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.
37. Prohibited discharge standards or prohibited discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 19-73a. of this division.
38. Publicly owned treatment works or POTW. A "treatment works" as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes, and any conveyances which convey wastewater to a treatment plant. The term also means the municipal entity having jurisdiction over the industrial users and responsibility for the operation and maintenance of the treatment works.
39. Septage (septic tank wastes). Any waste pumpings from septic tanks.
40. Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).
41. Significant industrial user. Shall apply to:
  - (a) Industrial users subject to categorical pretreatment standards; and
  - (b) Any other industrial user that
    - (1) Discharges an average of twenty-five thousand (25,000) gallons per day (gpd) or more of process wastewater;
    - (2) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the treatment plant, or
    - (3) Is designated as significant by the Manager on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
    - (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 of Tyler may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a Significant Industrial User.
  42. Slug load. Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in section 19-73a. of this division or any discharge of a non-routine, episodic nature, exceeding any daily maximum limit, including but not limited to, an accidental spill or a non-customary batch discharge.

43. Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget.
44. Stormwater. Any flow occurring during or following any form of natural precipitation, and resulting there from, including snowmelt, surface runoff, and drainage.
45. Manager. The person designated by the City Manager to manage the operation of the POTW, and who is charged with certain duties and responsibilities by this division, or his duly authorized representative.
46. SurchARGE. The charge in addition to the sewage service charge which is made on those persons whose wastes are greater in strength than the concentration values established as representative of normal domestic wastewater.
47. SurchARGE limit. A base limit for the conventional pollutants (BOD<sub>5</sub>, COD, TSS, or TDS), which when exceeded will result in a surcharge. Where surcharge limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where surcharge limits 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.
48. Total dissolved solids (TDS). The total matter dissolved in water, wastewater, or other liquid which is not removable by normal laboratory filtering.
49. Total suspended solids (TSS). The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, which is not in solution, and which is removable by laboratory filtering.
50. Toxic pollutant. One of one hundred twenty-six (126) pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by the EPA under the provision of Section 307 (33 U.S.C. 1317) of the Act.
51. Wastewater. Liquid and water-carried industrial wastes, and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated.
- d. Interpretation. "Shall" is mandatory; "may" is permissive or discretionary. The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.
- e. Abbreviations. The following abbreviations shall have the designated meanings:

Manager - Quality	the Division Manager of Water Production and Water Quality
BMP	- Best Management Practice
BOD <sub>5</sub>	- 5-Day biochemical oxygen demand
CIU	- Categorical Industrial User
CFR	- Code of Federal Regulations
COD	- Chemical oxygen demand
EPA	- U.S. Environmental Protection Agency
gpd	- Gallons per day
L	- Liter
mg	- Milligrams
mg/L	- Milligrams per liter
NPDES	- National Pollutant Discharge Elimination System
O&M	- Operation and maintenance
POTW	- Publicly owned treatment works
RCRA	- Resource Conservation and Recovery Act
SIC	- Standard industrial classification

SWDA	-	Solid Waste Disposal Act (42 U.S.C. 6901, et seq.)
TDS	-	Total dissolved solids
TSS	-	Total suspended solids
USC	-	United States Code

(Ord. No. O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. O-2020-84; 08/26/2020)

### **Sec. 19-73. General sewer use requirements**

- a. Prohibited discharge standards. No industrial user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all industrial users of the POTW whether or not they are subject to categorical pretreatment standards or any other federal, state, or local pretreatment standards or requirements. Wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW, except that any floor drains connected to the POTW located in a process or material storage area may be allowed by the Manager provided proper controls are in place. No industrial user may contribute the following substances to the POTW:
  1. Pollutants which create a fire or explosive hazard in the municipal wastewater collection system and POTW, including, but not limited to, wastestreams with a closed-cup flash point of less than one hundred forty (140) degrees Fahrenheit (60° C) using the test methods specified in 40 CFR 261.21.
  2. Any wastewater having a pH less than five (5.0) or more than eleven and five-tenths (11.5), or otherwise causing corrosive structural damage to the POTW or equipment, or endangering City personnel.
  3. Solid or viscous substances in amounts which will cause obstruction of the flow to or within the POTW resulting in interference, but in no case solids greater than five-tenths (0.5) inch in any dimension.
  4. Any wastewater containing pollutants, including oxygen demanding pollutants (BOD5, COD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause pass through or interference with the POTW or any wastewater treatment or sludge process; or which will constitute a hazard to human or animal life.
  5. Any wastewater having a temperature greater than one hundred fifty (150) degrees Fahrenheit (65° C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the water temperature at the introduction into the treatment plant to exceed one hundred four (104) degrees Fahrenheit (40° C).
  6. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through. Any discharge of such oil is limited to one hundred (100) mg/L.
  7. Any discharge of fats, oils, or greases of animal or vegetable origin in a concentration greater than one hundred (100) mg/L.
  8. Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
  9. Any trucked or hauled pollutants, except at discharge points designated by the Manager in accordance with Section 19-74e.
  10. Any noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance, a hazard to life, or to prevent entry into the sewers for maintenance and repair.

11. Any wastewater which imparts color that cannot be removed by the treatment process, such as, but not limited to, dye wastes or vegetable tanning solutions, and which consequently imparts color to the treatment plant's effluent thereby violating the City's NPDES permit. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than ten (10) percent from the seasonably established norm for aquatic life.
  12. Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the Manager in compliance with applicable state or federal regulations.
  13. Any wastewater causing the effluent from the treatment plant to fail a toxicity test.
  14. Any wastes containing detergents, surface active agents, or other substances which cause excessive foaming in the POTW.
- b. Federal categorical pretreatment standards. The national categorical pretreatment standards found in 40 CFR Chapter I, Subchapter N, Parts 405 through 471 are hereby incorporated.
1. When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, [the Superintendent] shall impose an alternate limit in accordance with 40 CFR 403.6(e).
- c. Local Limits.
1. The following pollutant limits are established to protect against pass through and interference. No person shall discharge wastewater containing in excess of the following daily maximum limits:
- |               |           |
|---------------|-----------|
| Arsenic (As)  | 0.60 mg/l |
| Cadmium (Cd)  | 0.20 mg/l |
| Chromium (Cr) | 5.00 mg/l |
| Copper (Cu)   | 0.60 mg/l |
| Cyanide       | 0.30 mg/l |
| Lead (Pb)     | 0.30 mg/l |
| Mercury (Hg)  | 0.01 mg/l |
| Nickel (Ni)   | 2.00 mg/l |
| Silver (Ag)   | 0.10 mg/l |
| Total phenols | 2.00 mg/l |
| Zinc (Zn)     | 2.00 mg/l |
2. Concentrations apply at the point where the industrial waste is discharged to the POTW unless otherwise permitted. All concentrations for metallic substances are for "total" metal unless indicated otherwise. Mass limitations in addition to, or in place of, the concentration based limitations above may be imposed by the Manager.
- d. City's right of revision. The City reserves the right to establish, by division or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW if deemed necessary to comply with:
1. The objectives presented in Section 19-72a. of this division; or
  2. The general and specific prohibitions in paragraphs a. through c. of this section.

- e. Special agreement. The City reserves the right to enter into special agreements with industrial users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a pretreatment standard or requirement. However, the industrial user may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. They may also request a variance from the categorical pretreatment standard from EPA. Such a request will be approved only if the industrial user can prove that factors relating to its discharge are fundamentally different from the factors considered by EPA when establishing that pretreatment standard. An industrial user requesting a fundamentally different factor variance must comply with the procedural and substantive provisions in 40 CFR 403.13.
- f. Dilution. No industrial 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 Manager may impose mass limitations on industrial users when that industry is using dilution to meet applicable pretreatment standards or requirements.
- g. Discharge to manholes. No person shall discharge any substance into a sewer appurtenance intended for maintenance, including but not limited to a manhole or inspection port, without written permission from the Manager.
- h. Direct discharges. Unless authorized by the Texas Natural Resource Conservation Commission, no person shall deposit or discharge any wastewater, industrial waste, or polluted liquid on public or private property, into or adjacent to any natural outlet, natural watercourse, storm sewer, street, gutter, drainage ditch, or other area within the jurisdiction of the City.

(Ord. No. O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. O-2020-84; 08/26/2020)

#### **Sec. 19-74. Pretreatment of wastewater.**

- a. Pretreatment facilities. Industrial users shall provide necessary wastewater treatment as required to comply with this division and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in Section 19-73 a. through c. above within the time limitations specified by EPA, the state, or the Manager, whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided, operated, and maintained at the industrial user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the Manager for review, and shall be acceptable to the Manager before construction of the facility is initiated. The review of such plans and operating procedures will in no way relieve the industrial user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the City under the provisions of this division.
- b. Additional pretreatment measures.
  1. Whenever deemed necessary, the Manager may require industrial 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 industrial user's compliance with the requirements of this division.
2. Grease, oil, and sand interceptors shall be provided as required by the City Plumbing Code or as determined by the Manager. All interception units shall be of type and capacity specified by the plumbing code and shall be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly by the owner, at his expense in accordance with the requirements of the City's Grease Trap Ordinance.
- c. Accidental discharge/slug control plans. The Manager may require any industrial user to develop and implement an accidental discharge/slug control plan. The city is required to keep records of the activities associated with slug control evaluation and results of such activities are required to be available to the Approval Authority upon request. At least once every two (2) years, the Manager shall evaluate whether each significant industrial user needs such a plan. The Manager has the authority and responsibility to evaluate, within one (1) year of being designated as a significant industrial user, whether each such significant industrial user needs a plan or other action to control slug discharges. Any industrial user required to develop and implement an accidental discharge/slug control plan shall submit a plan which addresses, at a minimum, the following:
1. Description of discharge practices, including non-routine batch discharges.
  2. Description of stored chemicals.
  3. Procedures for immediately notifying the POTW of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any of the prohibited discharges in Section 19-73a of this division.
  4. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to: inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.
- d. Tenant responsibility. Where an owner of property leases premises to any other person as a tenant under any rental or lease agreement, if either the owner or the tenant is an industrial user, either or both may be held responsible for compliance with the provisions of this division.
- e. Hauled wastewater.
1. Domestic septage may be accepted into the POTW at a designated receiving structure within the treatment plant area, and at such times as are established by the Manager, provided such wastes do not violate Section 19-73 of this division or any other requirements established or adopted by the City. Septage disposal permits for individual vehicles to use such facilities shall be issued by the Manager in accordance with Article V, Chapter 19 of the City Code.
  2. The discharge into the POTW of hauled industrial wastes is prohibited.
  3. Waste haulers are subject to all other sections of this Code.
  4. Fees for dumping septage are established in Section 19-102.
- f. Vandalism. No person may maliciously, willfully, or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment, or other part of the POTW. Any person found in violation of this provision shall be subject to the sanctions contained in Sections 19-81 through 19-84 below.

**Sec. 19-75. Wastewater discharge permit eligibility.**

- a. **Wastewater survey.** When requested by the Manager, industrial users must submit information on the nature and characteristics of their wastewater by completing a wastewater survey prior to commencing their discharge. The Manager is authorized to prepare a form for this purpose and may periodically require industrial users to update the survey. Failure to complete this survey may be reasonable grounds for terminating service to the industrial user, and shall be considered a violation of this division.
- b. **Discharge permit requirement.**
  1. It shall be unlawful for any significant industrial user to discharge wastewater to the POTW without first obtaining a wastewater discharge permit from the Manager. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this division and subjects the wastewater discharge permittee to the sanctions set out in Sections 19-81 through 19-84. 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.
  2. The Manager may require other industrial users to obtain wastewater discharge permits as necessary to carry out the purposes of this division.
  3. It shall be unlawful for any significant industrial user connected to the POTW to operate without first obtaining a wastewater discharge permit from the Manager.
  4. Any User required to obtain an individual 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 ninety (90) days after said date, apply to the Manager for an individual wastewater discharge permit in accordance with Section 19-75.d of this ordinance, and shall not cause or allow discharges to the POTW to continue after ninety (90) days of the effective date of this ordinance except in accordance with an individual wastewater discharge permit issued by the Manager.
  5. Any User required to obtain an individual 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 individual wastewater discharge permit, in accordance with Section 19-75.d of this ordinance, must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.
- c. **Discharge permitting; interjurisdictional industrial users.**
  1. Any significant industrial user located beyond the City limits shall submit a wastewater discharge permit application in accordance with paragraph (d) of this section, and obtain a wastewater discharge permit before connecting to the POTW.
  2. The Manager may require other industrial users located beyond the City limits to submit a wastewater discharge permit application in accordance with paragraph (d) of this section, and obtain a wastewater discharge permit before connecting to the POTW.

d. Permit application contents.

1. In order to be considered for a wastewater discharge permit, all industrial users required to have a wastewater discharge permit must submit the information required by Section 19-77a.2. of this division. The Manager shall approve a form to be used as a permit application. In addition, the following information may be requested:
    - (a) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could be accidentally or intentionally discharged to the POTW.
    - (b) Number and type of employees, hours of operation, and proposed or actual hours of discharge to the POTW.
    - (c) Each product produced by type, amount, process or processes, and rate of production.
    - (d) Type and amount of raw materials processed (average and maximum per day).
    - (e) The site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, flow direction, actual flow rate, and all points of discharge.
    - (f) Time and duration of the discharge.
    - (g) Name, home address, home phone, driver's license number, and date of birth (DOB) of the industrial users' authorized representative.
    - (h) Any other information as may be deemed necessary by the Manager to evaluate the wastewater discharge permit application.
  2. The Manager will evaluate the data furnished by the industrial user and may require additional information. Incomplete or inaccurate applications will not be processed and will be returned to the industrial user for revision/correction. Following receipt of a complete wastewater discharge permit application, the Manager will determine whether or not to issue a wastewater discharge permit.
  3. The Manager may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit.
- e. Application signatories and certification. All wastewater discharge permit applications and industrial user reports must contain the following certification statement and be signed by an authorized representative of the industrial user:

"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."

**Sec. 19-76. Wastewater discharge permit issuance process.**

- a. Permit duration. Wastewater discharge permits shall be issued for a specified time period, not to exceed five (5) years. A wastewater discharge permit may be issued for a period less than five (5) years at the discretion of the Manager. Each wastewater discharge permit will indicate a specific date upon which it will expire.
- b. Non- Transferability. Wastewater discharge permits are non-transferable without, at a minimum, prior notification to the manager or his delegated representative and provision of a copy of the existing permit to the new owner or operator.
- c. Permit contents.
  1. Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Manager, including those 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.
  2. Wastewater discharge permits must contain the following conditions:
    - (a) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years.
    - (b) A statement that the wastewater discharge permit is nontransferable.
    - (c) Effluent limits, including Best Management Practices, applicable to the user based on applicable standards in federal, state, and local law.
    - (d) Self-monitoring, sampling, reporting, notification, record keeping requirements, and documentation associated with Best Management Practices. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law.
    - (e) Statement of applicable civil, criminal, and administrative 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.
    - (f) Requirements to control Slug Discharge, if determined by the Manager to be necessary.
  3. Wastewater discharge permits may contain, but need not be limited to, the following:
    - (a) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
    - (b) Limits on the instantaneous, daily, and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
    - (c) 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.
    - (d) Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges.

- (e) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.
- (f) The unit charge or schedule of industrial user charges and fees for the management of the wastewater discharged to the POTW.
- (g) Requirements for installation and maintenance of inspection and sampling facilities and equipment.
- (h) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit.
- (i) A statement that the permittee shall indemnify the City against fines or other penalties imposed by regulatory authorities on the City for violations of the City's permit caused by fault of the permittee.
- (j) Other conditions as deemed appropriate by the Manager to ensure compliance with this division, and State and Federal laws, rules, and regulations.

d. Permit modification.

- 1. The Manager may modify the wastewater discharge permit for cause including, but not limited to, the following:
  - (a) To incorporate any new or revised Federal, State, or Local pretreatment standards or requirements.
  - (b) To address significant alterations or additions to the industrial user's operations, 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 or hazard to the POTW, the health, safety, or welfare of any person, 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 pursuant to 40 CFR 403.13.
  - (h) To correct typographical or other errors in the wastewater discharge permit.
- 2. The filing of a request by the permittee for a wastewater discharge permit modification does not stay any wastewater discharge permit condition.

e. Permit revocation.

- 1. Wastewater discharge permits may be revoked for the following reasons:
  - (a) Failure to notify the Manager of significant changes to the wastewater prior to the changed discharge.
  - (b) Failure to provide prior notification to the Manager of changed condition(s) pursuant to Section 19-77e.
  - (c) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application.
  - (d) Falsifying self-monitoring reports.
  - (e) Tampering with monitoring equipment.
  - (f) Refusing to allow the Manager 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) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this division.
2. Prior to having a wastewater discharge permit revoked, an industrial user shall be notified of the proposed revocation and be offered an opportunity to show cause under Section 19-81c. of this division why the proposed action should not be taken.
  3. Wastewater discharge permits shall be voidable upon non-use or cessation of operations. Issuance of a new industrial wastewater discharge permit supersedes and replaces any previously issued permit for the same discharge.
- f. Permit reissuance. Any permitted industrial user shall apply for wastewater discharge permit reissuance by submitting a completed wastewater discharge permit application in accordance with Section 19-75d. A minimum of ninety (90) days prior to the expiration of the industrial user's existing wastewater discharge permit.

(Ord. No. O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. O-2008-64, 4-23-2008) (Ord. No. O-2020-84; 08/26/2020)

### **Sec. 19-77. Reporting requirements.**

- a. Baseline monitoring reports.
  1. Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing significant industrial users subject to such categorical pretreatment standards, and currently discharging to or scheduled to discharge to the POTW, shall be required to submit to the Manager a report which contains the information listed in Subsection 2. below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the Manager a report which contains the information listed in Subsection 2. below. A new source shall also be required to report the methods of pretreatment it intends to use to meet applicable pretreatment standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.
  2. The industrial user shall submit the information required by this section including:
    - (a) Identifying information. The name and address of the facility including the name of the operator and owners.
    - (b) Wastewater discharge permits. A list of any environmental discharge permits held by or for the facility.
    - (c) Description of operations. A brief description of the nature, average rate of production, and standard industrial classification(s) of the operation(s) carried out by such industrial user. This description shall include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

- (d) Flow measurements. Information detailing the measured average daily and maximum daily flow (in gallons per day) to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e), if applicable.
  - (e) Measurement of pollutants.
    - (1) Identify the categorical pretreatment standards applicable to each regulated process.
    - (2) Submit the results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or by the City) of regulated pollutants at the appropriate sampling location, including non-categorical standard industrial users. Instantaneous, daily maximum, and long term average concentrations (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 19-77j.
    - (3) Submit documentation to demonstrate compliance with a Best Management Practice (BMP) where a required BMP or pollution prevention alternative is part of the categorical standard.
    - (4) Sampling must be performed in accordance with procedure set out in Section 19-77k.
  - (f) Certification. A statement reviewed by the industrial user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis. If pretreatment standards are not being met, the statement will recommend additional operation and maintenance (O&M) and/or additional pretreatment needed to attain compliance.
  - (g) Compliance schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the industrial user will provide such additional pretreatment and/or O&M shall be specified. The completion date in this schedule shall be not later than the compliance date established for the applicable pretreatment standard.
  - (h) Signature; certification. All baseline monitoring reports must be signed and certified in accordance with Section 19-75e.
- b. Compliance schedule progress report. The following conditions shall apply to the schedule required by Section 19-77a.2.(g). 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. The industrial user shall submit a progress report to the Manager no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress and the reason for any delay, and, if appropriate, the steps being taken to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the Manager.
- c. Report on compliance with categorical pretreatment standard deadline.
1. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater to the POTW, any industrial user subject to such pretreatment standards and requirements shall submit to the Manager a report containing the information described in Section 19-77a.2. (d)

through (f). For industrial users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the industrial user's long term production rate. For all other industrial 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 industrial user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 19-75e.

2. The user shall identify the Pretreatment Standards applicable to each regulated process. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable Standards to determine compliance with the Standard

d. Periodic compliance reports.

1. Any permitted industrial user subject to a pretreatment standard and non-categorical industrial users shall, at a frequency determined by the Manager, but in no case less than twice per year (June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by such pretreatment standards. All periodic compliance reports must be signed and certified in accordance with Section 19-75e.
2. 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 Superintendent or the Pretreatment Standard necessary to determine the compliance status of the User.
3. All wastewater samples must be representative of the industrial user's discharge.
4. If an industrial user subject to the reporting requirement in and of this section monitors any pollutant more frequently than required by the POTW using the procedures prescribed in Sections 19-77j. and 19-77k. Of this division, the results of this monitoring shall be included in the report.

e. Report of changed conditions.

1. Each industrial user is required to notify the Manager and the POTW of any planned significant changes to the industrial user's operations or system which might alter the nature, quality or volume of its wastewater, including the listed or characteristic hazardous wastes for which the industrial user has submitted notification, at least ninety (90) days before the change.
2. The Manager may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 19-75d.
3. The Manager may issue a wastewater discharge permit under Section 19-75d. or modify an existing wastewater discharge permit under Section 19-76c.4. No industrial user shall implement the planned changed condition(s) without the Manager's approval.
5. For purposes of this requirement, flow increases of ten (10) percent or greater, and the discharge of any previously unreported pollutants, shall be deemed significant.

- f. Reports of potential problems.
  - 1. 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 a slug load which may cause potential problems for the POTW (including a violation of the prohibited discharge standards in Section 19-73a. of this division), it is the responsibility of the industrial user to immediately telephone and notify the City of the incident. This notification shall include the location of discharge, type of waste, concentration and volume (if known), and corrective actions taken by the industrial user.
  - 2. Within five (5) days following such discharge, the industrial user shall, unless waived by the Manager, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, civil penalties, or other liability which may be imposed by this division.
  - 3. Failure to notify the Manager of potential problem discharges shall be deemed a separate violation of this division.
- g. Reports from non-significant industrial users. All industrial users not subject to categorical pretreatment standards and not required to obtain a wastewater discharge permit shall provide appropriate reports to the City as the Manager may require.
- h. Notice of violation/repeat sampling and reporting. If sampling performed by an industrial user indicates a violation:
  - 1. The industrial user must notify the Manager within twenty- four (24) hours of becoming aware of the violation.
  - 2. The industrial user shall repeat the sampling and analysis and submit the results of the repeat analysis to the Manager within thirty (30) days after becoming aware of the violation.
  - 3. Resampling by the Industrial User is not required if the City of Tyler performs sampling at the User's facility at least once a month, or if the City performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the City receives the results of this sampling, or if the City has performed the sampling and analysis in lieu of the Industrial User.
- i. Notification of the discharge of hazardous waste.
  - 1. Any industrial user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge to the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged

- during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under Section 19-77e. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of Section 19-77a., c., and d. above.
2. Dischargers are exempt from the requirements of Subsection i above of this section during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.
  3. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
  4. In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- j. Analytical requirements. All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and 40 CFR §403.12(g), unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.
- k. Sample collection.
1. Except as indicated in subsection 2 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 Superintendent. Where time-proportional composite 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 and 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 Limits.

2. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic chemicals shall be obtained using grab collection techniques.
  3. Samples shall be taken at monitoring points specified by the Manager, and such locations shall not be changed without notification to, and the approval of, the Manager.
  4. For sampling required in support of baseline monitoring and 90-day compliance reports required in 40 CFR §403.12(b) and (d), a minimum of four 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 Superintendent may authorize a lower minimum. For the reports required by paragraphs 40 CFR 403.12(e) and 403.12(h), the IU is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.
1. Determination of noncompliance. The Manager may use a grab sample(s) to determine noncompliance with pretreatment standards.
  - m. Timing. Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the U.S. Postal Service, the date of receipt of the report shall govern.
  - n. Record keeping. Industrial users and the City of Tyler shall retain, and make available for inspection and copying, all records and information required to be gathered and maintained under 40 CFR Part 403, and 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. 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 compliance with this division, or where the industrial user has been specifically notified of a longer retention period by the Manager.

(Ord. No. O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. O-2008-64, 4-23-2008) (Ord. No. O-2020-84; 08/26/2020)

### **Sec. 19-78. Compliance monitoring.**

- a. Inspection and sampling.
  1. The Manager shall inspect and sample the effluent from each significant industrial user at least once per year.
  2. The Manager shall have the right to enter the facilities of any industrial user to ascertain whether the purpose of this division, and any permit or order issued hereunder is being met, and whether the industrial user is complying with all requirements thereof.
    - (a) The manager has the authority to carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Industrial users shall allow the Manager ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- (b) Where an industrial user has security measures in force which require proper identification and clearance before entry into its premises, the industrial user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel from the City, State, and EPA will be permitted to enter without delay, for the purposes of performing their specific responsibilities.
  - (c) Unreasonable delays in allowing City personnel access to the industrial user's premises shall be a violation of this division.
  - (d) Any temporary or permanent obstruction to safe and easy access to the industrial facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the Manager and shall not be replaced. The costs of clearing such an access shall be borne by the industrial user.
3. The City, State, and EPA shall have the right to set up on the industrial user's property or require installation of such devices as are necessary to conduct sampling and/or metering of the user's operations.
    - (a) The Manager may require the industrial 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 industrial user at its own expense. Failure to keep monitoring equipment in proper operating condition shall not be grounds to claim that sample results are not representative of the industrial user's discharge. All devices used to measure wastewater flow and quality shall be calibrated at least annually to ensure their accuracy.
    - (b) The Manager may require the industrial user to install at its own expense, an approved manhole or sampling point. Such manhole or sampling point shall be accessible and safe, and located such that the samples may be taken immediately downstream from pretreatment facilities if such exist, or immediately downstream from the regulated process if no pretreatment exists, and shall be constructed in accordance with plans approved by the Manager.
  4. The Manager or his duly authorized employee shall observe all safety rules applicable to the industrial user's facility during inspections and sampling events.
- b. Search warrants. If the Manager has been refused access to a building, structure, or property or any part thereof, and if the Manager has demonstrated probable cause to believe that there may be a violation of this division or that there is a need to inspect as part of a routine inspection program of the City designed to verify compliance with this division or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the City Attorney shall petition the Municipal Court Judge to issue a search and/or seizure warrant describing therein the specific location subject to the warrant. The warrant shall specify what, if anything may be searched and/or seized on the property described. Such warrant shall be served at reasonable hours by the Manager in the company of a uniformed police officer of the City. In the event of an emergency affecting public health and safety, inspections shall be made without the issuance of a warrant.

(Ord. No. O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. O-2020-84; 08/26/2020)

Information and data on an industrial user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, monitoring programs, and from City inspection and sampling activities, shall be available to the public without restriction unless the industrial user specifically requests, and is able to demonstrate to the satisfaction of the City, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable state law. When requested and demonstrated by the industrial user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

(Ord. No. O-96-4, 1-24-96) (Ord. No. O-2020-84; 08/26/2020)

**Sec. 19-80. Publication of industrial users in significant non-compliance.**

- a. Requirement to publish. The Manager shall publish annually, in a newspaper of general circulation that provides meaningful notice within the jurisdiction served by the POTW, a list of the industrial users which, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements.
- b. Definition of significant noncompliance. The term significant noncompliance shall mean:
  1. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of all the measurements taken during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);
  2. Technical review criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements for the same pollutant parameter taken during a six-month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 2 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
  3. Any other discharge violation of a Pretreatment Standard or requirement (daily maximum, longer term average, instantaneous limit or narrative standard) that the City determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of City personnel or the general public);
  4. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment, or has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge;
  5. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an industrial wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

6. Failure to provide, within forty-five (45) days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
7. Failure to accurately report noncompliance;
8. Any other violation or group of violations which may include a violation of Best Management Practices that the City determines will adversely affect the operation or implementation of the local pretreatment program.

(Ord. No.O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. O-2020-84; 08/26/2020)

**Sec. 19-81. Administrative enforcement remedies.**

- a. Notice of Violation. Whenever the Manager finds that any user has violated or is violating this division, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Manager may serve upon said user a written notice of violation. Nothing in this section shall limit the authority of the City to take any action (including emergency actions or any other enforcement action) without first issuing a notice of violation.
- b. Consent Order. The Manager is hereby empowered to enter into a Consent Order establishing an agreement with any user responsible for noncompliance. Such orders will include specific action to be taken by the user to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as the administrative orders issued pursuant to Sections 19-81d. and 19-81e. below and shall be judicially enforceable.
- c. Show Cause Order. The Manager may order any user which causes or contributes to violation(s) of this division, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Manager and show cause why a more severe enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the potential enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least seven (7) days prior to the hearing. Such notice may be served on any authorized representative of the user. Whether or not the user appears as ordered, immediate enforcement action may be pursued following the hearing date. A show cause hearing shall not be a prerequisite for taking any other action against the user.
- d. Compliance Order. When the Manager finds that a user has violated or continues to violate the division, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, he may issue an order to the user responsible for the discharge directing that the user come into compliance within the time specified. If the user does not come into compliance within the specified time, appropriate penalties shall be assessed accordingly unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also 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 federal pretreatment standard or requirement, nor does a Compliance Order release the user of liability for any violation, including any

continuing violation. Issuance of a Compliance Order shall not be a prerequisite to taking any other action against the user.

- e. Cease and Desist Order. When the Manager finds that a user is violating this division, the user's wastewater discharge permit, any order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Manager may issue an order to the user directing it to cease and desist all such violations and directing the user to:
  - 1. Immediately comply with all requirements; and
  - 2. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a Cease and Desist Order shall not be a prerequisite to taking any other action against the user.

(Ord. No. O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. O-2020-84; 08/26/2020)

**Sec. 19-82. Judicial enforcement remedies.**

- a. Consent Decree. Whenever a user has violated a pretreatment standard or requirement, or continues to violate the provisions of this division, wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Manager and the industrial user may petition the State District Court or County Court at Law for a consent agreement for the actions required to attain compliance with the wastewater discharge permit, order, or other requirement imposed by this division.
- b. Injunctive relief. Whenever a user has violated a pretreatment standard or requirement, or continues to violate the provisions of this division, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Manager may petition the State District Court or County Court at Law through the City Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this division on activities of the industrial user. A petition for injunctive relief need not be filed as a prerequisite to taking any other action against a user.
- c. Civil penalties.
  - 1. Any user which has violated or continues to violate this division, any order or wastewater discharge permit issued hereunder, or any other pretreatment standard or requirement, shall be liable for a civil penalty of up to two thousand dollars (\$2,000.00) per violation per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
  - 2. The Manager may recover reasonable attorney's 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.
  - 3. In determining the amount of civil liability, the court may take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, 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.
4. Any person discharging a pollutant which results in the imposition of penalties by any person or regulatory authority on the City shall be liable for said penalties and any other costs incurred thereby.
  5. Filing a suit for civil penalties shall not be a prerequisite for taking any other action against a user.
- d. Criminal prosecution.
1. Any user that willfully or negligently violates any provision of this division, any order or wastewater discharge permit 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 two thousand dollars (\$2,000.00) per violation per day.
  2. Any user that willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of at least one thousand dollars (\$1,000.00). This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.
  3. Any user that 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 division, wastewater discharge permit or order, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or methods required under this division shall, upon conviction, be punished by a fine of not more than two thousand dollars (\$2,000.00) per violation per day.
  4. In the event of a second conviction, a user shall be punished by a fine of not more than two thousand dollars (\$2,000.00) per violation per day.
  5. The City is entitled to pursue all other civil and criminal remedies to which it is entitled under the authority of statutes or other ordinances against a person continuing prohibited discharges or violating any other provision of this division.
- e. Remedies nonexclusive. The provisions in Sections 19-80 through 19-85 are not exclusive remedies. The City reserves the right to 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 City reserves the right to take other action against any user when the circumstances warrant. Further, the City is empowered to take more than one (1) enforcement action against any noncompliant user. These actions may be taken concurrently.

(Ord. No. O-96-4, 1-24-96) (Ord. No. O-99-80, 10/20/99) (Ord. No. O-2020-84; 08/26/2020)

### **Sec. 19-83. Termination of sewer service.**

- a. Emergency suspension.
1. The Manager may immediately suspend a user's discharge (after informal notice to the user) whenever such suspension is necessary in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Manager may also immediately suspend a user's discharge (after notice and opportunity to

- respond) that threatens to interfere with the operation of the POTW, or which presents or may present an endangerment to the environment.
2. 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 Manager shall 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 Manager shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Manager that the period of endangerment has passed, unless the termination proceedings set forth in Section 19-83b. are initiated against the user.
  3. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Manager, prior to the date of any show cause or termination hearing under Sections 19-81c. and 19-83b., respectively.
  4. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.
- b. Termination of discharge.
1. In addition to those provisions in Section 19-76d. of this division, any user that violates the following conditions of this division, a wastewater discharge permit, or any order issued hereunder, 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.
    - (e) Violation of the pretreatment standards in Section 19-73 of this division.
  2. Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 19-81c. Of this division why the proposed action should not be taken.

(Ord. No. O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. O-2020-84; 08/26/2020)

**Sec. 19-84. Supplemental enforcement action.**

- a. Performance bonds. The Manager may decline to reissue a wastewater discharge permit to any user which has failed to comply with the provisions of this division, any orders, or a previous wastewater discharge permit issued hereunder, unless such user first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Manager to be necessary to achieve consistent compliance.
- b. Liability insurance. The Manager may decline to reissue a wastewater discharge permit to any user which has failed to comply with the provisions of this division, any order, or a previous wastewater discharge permit issued hereunder, 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.

- c. Increased monitoring and reporting. When an industrial user has demonstrated a history of noncompliance, the Manager may increase surveillance of that industry, including but not limited to, additional self-monitoring and reporting.

(Ord. No. O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. O-2020-84; 08/26/2020)

**Sec. 19-85. Affirmative defenses to discharge violations.**

- a. Act of God defense.
  - 1. The Act of God defense constitutes a statutory affirmative defense [Texas Water Code Section 7.251] in an action brought in municipal or State court. If a person can establish that an event that would otherwise be a violation of a pretreatment ordinance, or a permit issued under the ordinance, was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of the ordinance or permit.
  - 2. An industrial user who wishes to establish the Act of God affirmative defense shall demonstrate, through relevant evidence that:
    - (a) An event that would otherwise be a violation of a pretreatment ordinance or a permit issued under the ordinance occurred, and the sole cause of the event was an act of God, war, strike, riot, pandemic, or other catastrophe; and
    - (b) The industrial user has submitted the following information to the POTW and the City within 24 hours of becoming aware of the event that would otherwise be a violation of a pretreatment ordinance or a permit issued under the ordinance (if this information is provided orally, a written submission must be provided within five days):
      - (1) a description of the event, and the nature and cause of the event;
      - (2) the time period of the event, including exact dates and times or, if still continuing, the anticipated time the event is expected to continue; and
      - (3) steps being taken or planned to reduce, eliminate and prevent recurrence of the event.
  - 3. Burden of proof. In any enforcement proceeding, the industrial user seeking to establish the Act of God affirmative defense shall have the burden of proving by a preponderance of the evidence that an event that would otherwise be a violation of a pretreatment ordinance, or a permit issued under the ordinance, was caused solely by an act of God, war, strike, riot, pandemic, or other catastrophe.
- b. Upset. An upset constitutes an affirmative defense in an action brought in federal court.
  - 1. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational

- error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
2. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of Subsection 3. below are met.
  3. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
    - (a) An upset occurred and the industrial user can identify the cause(s) of the upset;
    - (b) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;
    - (c) The industrial user has submitted the following information to the POTW and treatment plant operator within twenty-four (24) hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five (5) days.
      - (1) A description of the indirect discharge and cause of noncompliance.
      - (2) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue.
      - (3) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

c. Bypass

1. For the purposes of this Section,
  - a. Bypass means the intentional diversion of wastestreams from any portion of a User's treatment facility.
  - b. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
2. A User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this Section.

### 3. Bypass Notifications

- a. If a User knows in advance of the need for a bypass, it shall submit prior notice to the Superintendent, at least ten (10) days before the date of the bypass, if possible.
- b. A User shall submit oral notice to the Superintendent of an unanticipated bypass that exceeds applicable Pretreatment Standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Superintendent may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

### 4. Bypass

- a. Bypass is prohibited, and the Superintendent may take an enforcement action against a User for a bypass, unless
  - (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - (iii) The User submitted notices as required under paragraph (C) of this section.

(Ord. No. 0-2010-12, 1/27/2010) (Ord. No. O-2020-84; 08/26/2020)

### **Sec. 19-86. Industrial sewer rates/surcharges.**

- a. Sewer service rates. When an industrial user's wastewater discharge is acceptable for treatment by the City's POTW, the industrial user shall provide payment for sewer service which covers the costs of receiving, handling, and treating such wastewater. Rates for service shall be as approved by the City Council and as shown in Chapter 19, Article IV., Division 1., Section 19-66.
- b. Metering. In the event that any industrial user discharging to the POTW is supplied partially or entirely by water not supplied by the City and the water so supplied is not completely measured by a City water meter, or a meter acceptable to the Manager, then the total amount of water so used and supplied shall be otherwise measured or determined

by the Manager in order to determine the fair and reasonable charge to be made for sewer service provided. The industrial user may install and maintain a meter acceptable to the Manager for said purpose. In the interest of equity, the Manager may require the discharger to provide an acceptable measuring device at a location accessible for reading and checking to determine the quantity of waste being discharged.

- c. Rate review. Industrial sewer rates shall be reviewed periodically and shall be adjusted as necessary in accordance with state and federal regulations for the determination of such rates.
- d. Rate basis. The Manager will establish rates for service on the basis of water used and wastewater discharged, and will reserve the right to determine the applicable rate for each contributing industry and the method to be used for measurement.
- e. Surcharges. A surcharge may be imposed upon an industrial user for discharges of the conventional pollutants of BOD<sub>5</sub>, COD, TSS, and TDS in excess of the surcharge limit, but below the daily maximum limit. The purpose of a surcharge is to recover the City's costs of receiving, handling, and treating excessive conventional pollutant concentrations and encourage industrial users to reduce pollutant loading in their discharges. Once established, a surcharge shall be in full force and effect for a minimum period of six (6) months.

(Ord. No. O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) )(Ord. No. O-2020-XX, 08/28/2020)

#### **Sec. 19-87. Miscellaneous pretreatment charges and fees.**

- a. Right to assess. The City may adopt reasonable charges and fees for reimbursement of costs of setting up and operating the City's pretreatment program.
- b. Charges and fees. Charges and fees which may be adopted by the City include:
  - 1. Fees for wastewater discharge permit applications including the cost of processing such applications.
  - 2. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing an industrial user's discharge, and reviewing monitoring reports submitted by industrial users.
  - 3. Fees for reviewing and responding to accidental discharge procedures and construction.
  - 4. Other fees as the Manager may deem necessary to carry out the requirements contained in this division. These fees relate solely to the matters covered by this division and are separate from all other fees, fines, and penalties chargeable by the City.

(Ord. No.O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. O-2020-84; 08/26/2020)

**PART 3:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 4:** That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall

continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, or later. The effective date of this Ordinance shall be August 28<sup>th</sup>, 2020.

**PASSED AND APPROVED** this the 26<sup>th</sup> day of August A.D., 2020.



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MARTIN HEINES, MAYOR  
OF THE CITY OF TYLER, TEXAS

ATTEST:



Cassandra Brager  
CASSANDRA BRAGER, CITY CLERK



APPROVED:



Deborah G. Puelum  
DEBORAH G. PUELUM,  
CITY ATTORNEY