

California Regional Water Quality Control Board, Colorado River Basin
Prosecution Team Evidence
on the matter of
Administrative Civil Liability Complaint R7-2014-0041
Exhibit 28

Article II. Wastewater Pretreatment.

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Sec. 22.10. Purpose and policy.

This chapter sets forth uniform requirements for users of the publicly owned treatment works for the city and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 USC Section 1251 et seq.) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). The objectives of this chapter are:

1. To prevent the introduction of pollutants into the publicly owned treatment works that will interfere with its operation;
2. To prevent the introduction of pollutants into the publicly owned treatment works that will pass through the publicly owned treatment works, inadequately treated, into receiving waters, or otherwise be incompatible with the publicly owned treatment works;
3. To protect both publicly owned treatment works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
4. To promote reuse and recycling of wastewater and sludge from the publicly owned treatment works;
5. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the publicly owned treatment works; and
6. To enable the city to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other federal or state laws to which the publicly owned treatment works is subject.

This chapter shall apply to all users of the publicly owned treatment works. This chapter authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.11. Administration.

Except as otherwise provided herein, the city manager shall administer, implement, and enforce the provisions of this chapter. Any powers granted to or duties imposed upon the city manager may be delegated by the city manager to other city personnel.

(Ord. No. 2013-03, § 1, 6-18-2013)

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Sec. 22.12. Abbreviations.

The following abbreviations, when used in this chapter, shall have the designated meanings:

- (1) BOD - Biochemical Oxygen Demand;
- (2) CFR - Code of Federal Regulations. Where necessary to the enforcement of this chapter cited regulations shall be deemed incorporated by reference;
- (3) COD - Chemical Oxygen Demand;
- (4) EPA - U.S. Environmental Protection Agency;
- (5) gpd - gallons per day;
- (6) mg/l - milligrams per liter;
- (7) NPDES - National Pollutant Discharge Elimination System;
- (8) POTW - Publicly Owned Treatment Works;
- (9) RCRA - Resource Conservation and Recovery Act;
- (10) SIC - Standard Industrial Classification;
- (11) TSS - Total Suspended Solids;
- (12) USC - United States Code. Where necessary to the enforcement of this chapter, cited statutes shall be deemed incorporated by reference.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.13. Definitions.

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

"Act" or "the Act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC Section 1251 et seq.

"Approval authority" means the state of California, Colorado River Basin Regional Water Quality Control Board.

"Authorized representative of the user" is defined as follows:

- (1) If the user is a corporation:
 - a. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - b. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (2) If the user is a partnership or sole proprietorship; a general partner or proprietor, respectively.

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- (3) If the user is a federal, state, or local governmental facility; a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
- (4) The individuals described in subsections (1-3) of this section may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

"Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in [section 2.15](#) (a) 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.

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

"Categorical pretreatment standard" or "categorical standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 USC Section 1317) which apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

"Categorical industrial user" or "CIU" means an industrial user subject to a categorical pretreatment standard or categorical standard.

"Chemical oxygen demand" or "COD" means a measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

"Daily maximum" means the arithmetic average of all effluent samples for a pollutant collected during a calendar day.

"Daily maximum limit" means the maximum allowable discharge limit of a pollutant during a calendar day. Where daily maximum limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where daily maximum 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.

The "City of Brawley" as represented by the City Council of Brawley.

"Environmental Protection Agency" or "EPA" means the U.S. Environmental Protection Agency or, where appropriate, the regional water management division director, or other duly authorized official of said agency.

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

"Grab sample" means a sample which is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen minutes.

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

"Instantaneous maximum allowable discharge limit" or "instantaneous limit" means the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

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

"Local limit" means specific discharge limits developed and enforced by the city upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b) [of the] Act.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

"Monthly average" means the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Monthly average limit" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"New source."

- (1) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
 - a. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - b. The building, structure/facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection (1)b or c above but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) Construction of a new source as defined under this subsection has commenced if the owner or operator has:
 - a. Begun, or caused to begin, as part of a continuous onsite construction program:
 1. Any placement, assembly, or installation of facilities or equipment; or
 2. Significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities, which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

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- b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.

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

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

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

"pH" is a measure of the acidity or alkalinity of a solution, expressed in standard units.

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

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

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

"Pretreatment standards" or "standards" means prohibited discharge standards, categorical pretreatment standards, and local limits.

"Prohibited discharge standards" or "prohibited discharges" means absolute prohibitions against the discharge of certain substances; these prohibitions appear in [section 22.15](#) of this chapter.

"Publicly owned treatment works" or "POTW" means a "treatment works," as defined by Section 212 of the Act (33 USC Section 1292), which is owned by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

"Septic tank waste" means any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

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

"Significant industrial user (SIU)." Except as provided in subsections (3) and (4) of this definition, a significant industrial user is:

- (1) An industrial user subject to categorical pretreatment standards; or
- (2) A industrial user that:
 - a. Discharges an average of twenty-five thousand gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);

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- b. Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
 - c. Is designated as such by the city on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
- (3) The city may determine that an industrial user subject to categorical pretreatment standards is a non-significant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than one hundred gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:
- a. The industrial user, prior to the city's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;
 - b. The industrial user annually submits the certification statement required in section 35.12 [see 40 CFR 403.12(q)], together with any additional information necessary to support the certification statement; and
 - c. The industrial user never discharges any untreated concentrated wastewater.
- (4) Upon a finding that a user meeting the criteria in subsection 2 has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the superintendent may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.
- (5) A CIU may be designated by the city as a middle tier CIU if its discharge of categorical wastewater does not exceed the following:
- a. 0.01 percent of the design dry weather hydraulic capacity of the POTW, or five thousand gpd, whichever is smaller;
 - b. 0.01 percent of the design dry weather organic treatment capacity of the POTW; and
 - c. 0.01 percent of the maximum allowable headworks loading for any pollutant for which approved local limits were developed by a POTW.

In order to classify a CIU as a middle tier CIU, the city must also demonstrate that the CIU has not been in significant noncompliance for any time in the past two years and that the reduced reporting requirements would still result in data that is representative of conditions occurring at the facility and in the discharge during the reporting period.

"Slug load" or "slug" means any discharge of a non-routine episodic nature, including, but not limited to, an accidental spill or a non-customary discharge that has a reasonable potential to cause interference or pass through or in any other way violate the POTW's regulations, local limits or permit conditions.

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

"Stormwater" means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation.

"Superintendent" means the city manager or such person as the city manager may from time to time designate.

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

"User" or "industrial user" means a source of indirect discharge.

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

"Wastewater treatment plant" or "treatment plant" means that portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.14. Reserved.

Sec. 22.15. Prohibited discharge standards.

- (a) General Prohibited. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements.
- (b) Specific Prohibitions. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
 - (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140;deg;F (60;deg;C) using the test methods specified in 40 CFR 261.21;
 - (2) Wastewater having a pH less than 6.0 or more than 9.0 or otherwise causing corrosive structural damage to the POTW or equipment;
 - (3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than three-eighths inch or 0.95 cm in any dimension;
 - (4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
 - (5) Wastewater having a temperature greater than 140;deg;F (60;deg;C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104;deg;F (40;deg;C);
 - (6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
 - (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
 - (8) Trucked or hauled pollutants, except at discharge points designated by the superintendent in accordance with [section 22.28](#)
 - (9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
 - (10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the city's NPDES permit;

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- (11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations;
- (12) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water, and unpolluted wastewater, unless specifically authorized by the superintendent;
- (13) Sludges, screenings, or other residues from the pretreatment of industrial wastes;
- (14) Medical wastes, except as specifically authorized by the superintendent in a wastewater discharge permit;
- (15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;
- (16) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;
- (17) Fats, oils, or greases of animal or vegetable origin in concentrations greater than forty mg/l; or
- (18) Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than fifty percent or any single reading over seventy-five percent of the lower explosive limit of the meter.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.16. National categorical pretreatment standards.

The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated.

- (1) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the superintendent may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- (2) 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 using the combined wastestream formula in 40 CFR 403.6(e).
- (3) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
- (4) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.17. State pretreatment standards.

All applicable state pretreatment standards shall be incorporated as a portion of this chapter.

(Ord. No. 2013-03, § 1, 6-18-2013)

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Sec. 22.18. Local limits.

The following pollutant limits are established to protect against pass through and interference. No person shall discharge wastewater containing in excess of the following instantaneous maximum allowable discharge limits:

Pollutants	Local Limits		
	Instantaneous Maximum (mg/L)	Daily Maximum (mg/L)	Monthly Average (mg/L)
Inorganic Metals			
Arsenic	-	0.04	-
Cadmium	-	.012	-
Chromium	-	0.5	-
Copper	-	0.1	-
Cyanide (Total)	-	0.2	-
Cyanide (Free)	-	0.02	-
Lead	-	0.05	-
Mercury	-	0.0002	-
Molybdenum	-	0.04	-
Nickel	-	0.3	-
Selenium	-	0.01	-
Silver	-	0.2	-
Zinc	-	0.4	-
Organic Compound and Others			

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Bis(2-ethylhexyl) phthalate	-	0.5	-
Conventional Pollutants			
BOD ₅	250	-	76
TSS	250	-	180
COD	900	-	-
Ammonia as Nitrogen	50	-	30
Total Nitrogen	73	-	-
Oil and Grease		40	-
pH	6.0 - 9.0	6.0 - 9.0	-
Temp(;;deg;F)	140	-	-

The above limits apply at the point where the wastewater is discharged to the POTW. All concentrations for metallic substances are for total metal unless indicated otherwise. The superintendent may impose mass limitations in addition to, or in place of, the concentration-based limitations above.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.19. Brawley's right of revision.

The city reserves the right to make revisions to the standards or requirements on discharges to the POTW.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.20. Dilution.

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

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(Ord. No. 2013-03, § 1, 6-18-2013)

Secs. 22.21—22.24. Reserved.

Sec. 22.25. Pretreatment facilities.

Users shall provide wastewater treatment as necessary to comply with this chapter and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in [section 22.15](#) of this chapter within the time limitations specified by EPA, the state, or the superintendent, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the superintendent for review, and shall be acceptable to the superintendent before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the city under the provisions of this chapter.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.26. Additional pretreatment measures.

- (a) Whenever deemed necessary, the superintendent may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this chapter.
- (b) The superintendent may require any person discharging into the POTW to install and maintain, on his property and at his expense, a suitable storage and flow control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
- (c) Grease, oil, and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the superintendent and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at his expense.
- (d) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.27. Accidental discharge/slug control plans.

At least once every two years, the superintendent shall evaluate whether each significant industrial user needs an accidental discharge/slug control plan. The superintendent may require any user to develop, submit for approval, and implement such a plan. Alternatively, the superintendent may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;

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- (3) Procedures for immediately notifying the superintendent of any accidental or slug discharge, as required by [section 22.55](#); and
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.28. Hauled wastewater.

Septic tank waste may be introduced into the POTW only at locations designated by the superintendent, and at such times as are established by the superintendent. Such waste shall not violate [section 22.15](#) or any other requirements established by the city. The superintendent may require septic tank waste haulers to obtain wastewater discharge permits.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.29. Reserved.

Sec. 22.30. Wastewater analysis.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.31. Wastewater discharge permit requirement.

- (a) No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the superintendent, except that a significant industrial user that has filed a timely application pursuant to [section 22.32](#) may continue to discharge for the time period specified therein.
- (b) The superintendent may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of this chapter.
- (c) Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this chapter and subjects the wastewater discharge permittee to the sanctions set out in sections [22.70](#) through [22.87](#). 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.
- (d) Annual Certification for Non-Significant Categorical Industrial Users. A facility determined to be a non-significant categorical industrial user by the superintendent pursuant to sections [22.13](#) and [22.35](#) [Note: See 40 CFR 403.3(v)(2)] must annually submit the certification statement in section 22.35.1 signed in accordance with the signatory requirements in [section] [22.13](#) [Note: See 40 CFR 403.120(l)]. This certification must accompany an alternative report as required by the superintendent.

(Ord. No. 2013-03, § 1, 6-18-2013)

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Sec. 22.32. Wastewater discharge permitting—Existing connections.

Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of the ordinance codified in this chapter and who wishes to continue such discharges in the future shall, within ninety days after said date, apply to the superintendent for a wastewater discharge permit in accordance with [section 22.34](#), and shall not cause or allow discharges to the POTW to continue after two hundred days after the effective date of the ordinance codified in this chapter, except in accordance with a wastewater discharge permit issued by the superintendent.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.33. Wastewater discharge permitting—New connections.

Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit, in accordance with [section 22.34](#), must be filed at least ninety days prior to the date upon which any discharge will begin or recommence.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.34. Wastewater discharge permit application contents.

All users required to obtain a wastewater discharge permit must submit a permit application. The superintendent may require all users to submit as part of an application the following information:

- (1) All information required by [section 22.50\(b\)](#);
- (2) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
- (3) Number and type of employees, hours of operation, and proposed or actual hours of operation;
- (4) Each product produced by type, amount, process or processes, and rate of production;
- (5) Type and amount of raw materials processed (average and maximum per day);
- (6) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
- (7) Time and duration of discharges; and
- (8) Any other information as may be deemed necessary by the superintendent to evaluate the wastewater discharge permit application.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.35. Application signatories and certification.

- (1) All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or

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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."

- (2) A facility determined to be a non-significant categorical industrial user by the superintendent pursuant to 1.4 GG(3) must annually submit the following certification statement signed by an authorized representative in accordance with the signatory requirements in section 22.13

"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____ to _____ [months, days, year]:

- a. The facility described as [facility name] met the definition of a Non-Significant Categorical Industrial User as described in 22.13
- b. The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and
- c. The facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based on the following information:

_____."

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.36. Wastewater discharge permit decisions.

The superintendent will evaluate the data furnished by the user and may require additional information. Within sixty days of receipt of a complete wastewater discharge permit application, the superintendent will determine whether or not to issue a wastewater discharge permit. The superintendent may deny any application for a wastewater discharge permit.

(Ord. No. 2013-03, § 1, 6-18-2013)

Secs. 22.37—22.39. Reserved.

Sec. 22.40. Wastewater discharge permit duration.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.41. Wastewater discharge permit contents.

A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the superintendent to prevent pass through or interference, protect the quality of the water body

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receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

- (1) Individual wastewater discharge permits must contain:
 - a. A statement that indicates wastewater discharge permit issuance date, expiration date and effective date.
 - b. A statement that the wastewater discharge permit is nontransferable without prior notification to the city in accordance with [section 22.44](#), and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
 - c. Effluent limits, including best management practices, based on applicable pretreatment standards;
 - d. Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law; and
 - e. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state, or local law.
- (2) Wastewater discharge permits may contain, but need not be limited to, the following conditions:
 - a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
 - b. 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;
 - c. Requirements for the development and implementation of spill control plans or other special conditions, including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges;
 - d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
 - e. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
 - f. Requirements for installation and maintenance of inspection and sampling facilities and equipment;
 - g. 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; and
 - h. Other conditions as deemed appropriate by the superintendent to ensure compliance with this chapter, and state and federal laws, rules, and regulations.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.42. Wastewater discharge permit appeals.

The superintendent shall provide public notice of the issuance of a wastewater discharge permit. Any person, including the user, may petition the superintendent to reconsider the terms of a wastewater discharge permit within sixty days of notice of its issuance.

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- (1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- (2) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.
- (3) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.
- (4) If the superintendent fails to act within sixty days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit may be appealed as provided herein.
 - a. Appeals shall be in writing and shall be accompanied by a fee established by the city council to defray all expenses and costs associated with processing the appeal.
 - b. The city clerk shall set the matter for hearing before the city council. The decision of the council shall be an administrative action for the purpose of judicial review.
- (5) Aggrieved parties seeking review of the final administrative wastewater discharge permit decision must do so by filing an appeal with the city clerk.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.43. Wastewater discharge permit modification.

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

- (1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
- (2) To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
- (3) A change in the POTW caused by mechanical failure, natural disaster or war that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- (4) Information indicating that the permitted discharge poses a threat to the city's POTW, the city's personnel, or the receiving waters;
- (5) Violation of any terms or conditions of the wastewater discharge permit;
- (6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
- (7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;
- (8) To correct typographical or other errors in the wastewater discharge permit; or
- (9) To reflect a transfer of the facility ownership or operation to a new owner or operator.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.44. Wastewater discharge permit transfer.

Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least thirty days' advance notice to the superintendent and the superintendent approves the

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wastewater discharge permit transfer. The notice to the superintendent must include a written certification by the new owner or operator which:

- (1) States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
- (2) Identifies the specific date on which the transfer is to occur; and
- (3) Acknowledges full responsibility for complying with the existing wastewater discharge permit.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.45. Wastewater discharge permit revocation.

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

- (1) Failure to notify the superintendent of significant changes to the wastewater prior to the changed discharge;
- (2) Failure to provide prior notification to the superintendent of changed conditions pursuant to [section 22.54](#)
- (3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- (4) Falsifying self-monitoring reports;
- (5) Tampering with monitoring equipment;
- (6) Refusing to allow the superintendent timely access to the facility premises and records;
- (7) Failure to meet effluent limitations;
- (8) Failure to pay fines;
- (9) Failure to pay sewer charges;
- (10) Failure to meet compliance schedules;
- (11) Failure to complete a wastewater survey or the wastewater discharge permit application;
- (12) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
- (13) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this chapter.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.46. Wastewater discharge permit reissuance.

A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with [section 22.34](#), a minimum of ninety days prior to the expiration of the user's existing wastewater discharge permit.

(Ord. No. 2013-03, § 1, 6-18-2013)

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Sec. 22.47. Regulation of waste received from other jurisdictions.

- (a) If another municipality, or user located within another municipality, contributes wastewater to the POTW, the superintendent shall enter into an inter-municipal agreement with the contributing municipality.
- (b) Prior to entering into an agreement required by subsection (a) of this section, the superintendent shall request the following information from the contributing municipality:
 - (1) A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;
 - (2) An inventory of all users located within the contributing municipality that are discharging to the POTW; and
 - (3) Such other information as the superintendent may deem necessary.
- (c) An inter-municipal agreement, as required by subsection (a) of this section, shall contain the following conditions:
 - (1) A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as the ordinance codified in this chapter, and local limits which are at least as stringent as those set out in [section 22.18](#). The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the city ordinance or local limits;
 - (2) A requirement for the contributing municipality to submit a revised user inventory on at least an annual basis;
 - (3) A provision specifying which pretreatment implementation activities, including wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the superintendent; and which of these activities will be conducted jointly by the contributing municipality and the superintendent;
 - (4) A requirement for the contributing municipality to provide the superintendent with access to all information that the contributing municipality obtains as part of its pretreatment activities;
 - (5) Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;
 - (6) Requirements for monitoring the contributing municipality's discharge;
 - (7) A provision ensuring the superintendent access to the facilities of users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the superintendent; and
 - (8) A provision specifying remedies available for breach of the terms of the inter-municipal agreement.

(Ord. No. 2013-03, § 1, 6-18-2013)

Secs. 22.48, 22.49. Reserved.

Sec. 22.50. Baseline monitoring reports.

- (a) Within either one hundred eighty days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW

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shall submit to the superintendent a report which contains the information listed in subsection (b) of this section. At least ninety days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the superintendent a report which contains the information listed in subsection (b) of this section. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

- (b) Users described above shall submit the information set forth below:
- (1) Identifying Information.
 - a. The name and address of the facility, including the name of the operator and owner.
 - b. Contact information, description of activities, facilities, and plant production processes on the premises.
 - (2) Environmental Permits. A list of any environmental control permits held by or for the facility.
 - (3) Description of Operations.
 - a. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operations carried out by such user. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.
 - b. Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
 - c. Number and type of employees, hours of operation, and proposed or actual hours of operation;
 - d. Type and amount of raw materials processed (average and maximum per day);
 - e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge.
 - (4) Time and duration of discharge.
 - (5) The location for monitoring all wastes covered by the permit.
 - (6) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).
 - (7) Documentation related to compliance with BMPs or pollution prevention alternatives.
 - [(8)] Measurement of Pollutants.
 - a. The categorical pretreatment standards applicable to each regulated process.
 - b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the superintendent, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed, in accordance with procedures set out in [section 22.59](#). Record keeping shall comply with the requirements of [section 22.62](#)
 - c. Sampling must be performed in accordance with procedures set out in [section 22.60](#). Samples should be taken immediately downstream from pretreatment facilities if such exist

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or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR 403.6(e) to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e), this adjusted limit along with supporting data shall be submitted to the city. Where the standard requires compliance with a BMP or pollution prevention alternative, the user shall submit documentation as required by the superintendent or the applicable standards to determine compliance with the standard.

[(9)] Certification. A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

[(10)] Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in [section 22.51](#)

[(11)] Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with [section 22.35](#) by an authorized representative as defined in [section 22.13](#)

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.51. Compliance schedule progress reports.

The following conditions shall apply to the compliance schedule required by [section 22.50](#)(b)[(10)]:

- (1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- (2) No increment referred to above shall exceed nine months;
- (3) The user shall submit a progress report to the superintendent no later than fourteen days following each date in the schedule and the final date of compliance, including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
- (4) In no event shall more than nine months elapse between such progress reports to the superintendent.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.52. Reports on compliance with categorical pretreatment standard deadline.

Within ninety days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the superintendent a report containing the information described in [section 22.50](#)(b)(4—6). For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR

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403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with [section 22.35](#).

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.53. Periodic compliance reports.

- (a) All significant industrial users shall, at a frequency determined by the superintendent but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with [section 22.35](#)
- (b) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
- (c) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the superintendent, using the procedures prescribed in [section 22.60](#), the results of this monitoring shall be included in the report.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.54. Reports of changed conditions.

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

- (1) The superintendent may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under [section 22.34](#)
- (2) The superintendent may issue a wastewater discharge permit under [section 22.36](#) or modify an existing wastewater [section 22.43](#) in response to changed conditions or anticipated changed conditions.
- (3) For purposes of this requirement, significant changes include, but are not limited to, flow increases of twenty percent or greater, and the discharge of any previously unreported pollutants.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.55. Reports of potential problems.

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

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- (b) Within five days following such discharge, the user shall, unless waived by the superintendent, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this chapter.
- (c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in subsection (a) of this section. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
- (d) Non-domestic dischargers shall notify the superintendent immediately when changes at the discharger's facility affect its potential for a slug discharge. Descriptions of the changes and the rationale for the changes as well as the projected impact on the magnitude and nature of slug discharges shall be provided to the superintendent.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.56. Reports from unpermitted users.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.57. Notice of violation—Repeat sampling and reporting.

If sampling performed by a user indicates a violation, the user must notify the superintendent within twenty-four hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the superintendent within thirty days after becoming aware of the violation.

The user is not required to resample if the superintendent monitors at the user's facility at least once a month, or if the superintendent samples between the user's initial sampling and when the user receives the results of this sampling.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.58. Notification of the discharge of hazardous waste.

- (a) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR 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 user discharges more than one hundred kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the 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 months. All notifications must take place no later than one hundred eighty days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste

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discharged. However, notifications of changed conditions must be submitted under [section 22.54](#). The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of sections 22.50, [22.52](#), and [22.53](#)

- (b) Dischargers are exempt from the requirements [of] subsection (a) of this section during a calendar month in which they discharge no more than fifteen 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 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 user discharges more than such quantities of any hazardous waste do not require additional notification.
- (c) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the user must notify the superintendent, the EPA Regional Waste Management Waste Division Director and state hazardous waste authorities of the discharge of such substance within ninety days of the effective date of such regulations.
- (d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this chapter, a permit issued thereunder, or any applicable federal or state law.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.59. Analytical requirements.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.60. Sample collection.

- (a) Except as indicated in subsection (b) of this section, the user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the superintendent may authorize the use of time proportional sampling or a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits. Samples must be taken immediately downstream from the pretreatment facility (if such facility exists) or immediately downstream from the regulated process (if no pretreatment exists). If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR 403.6(e) to evaluate compliance with the pretreatment standards.
- (b) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques. Grab samples collected during a twenty-four-hour period for cyanide, total phenols and sulfides may be composited prior to analysis in

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the laboratory or in the field. Grab samples for volatile organics and oil and grease may be composited prior to analysis in the laboratory if approved by the superintendent.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.61. Timing.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.62. Record keeping.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Secs. 22.63, 22.64. Reserved.

Sec. 22.65. Right of entry—Inspection and sampling.

The superintendent shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this chapter and any wastewater discharge permit or order issued hereunder. Users shall allow the superintendent 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.

- (1) Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the superintendent will be permitted to enter without delay for the purposes of performing specific responsibilities.
- (2) The superintendent shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.
- (3) The superintendent may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated and maintained as recommended by the manufacturer of the equipment to ensure their accuracy.
- (4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the

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superintendent and shall not be replaced. The costs of clearing such access shall be born by the user.

- (5) Unreasonable delays in allowing the superintendent access to the user's premises shall be a violation of this chapter.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.66. Search warrants.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.67. Confidential information.

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the superintendent's inspection and sampling activities, shall be available to the public as required by law, unless the user specifically requests, and is able to demonstrate to the satisfaction of the superintendent, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable state law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. 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. 2013-03, § 1, 6-18-2013)

Sec. 22.68. Publication of users in significant noncompliance.

The superintendent shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction served by the Brawley Wastewater Treatment Plant, a list of the users which, during the previous twelve months, were in significant noncompliance with applicable pretreatment standards and requirements. The term "significant noncompliance" shall be applicable to all significant industrial users (or any other industrial user that violates subsections (3), (4) or (8) of this section) and shall mean:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all the measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits as defined in [section 22.13](#)
- (2) Technical review criteria (TRC) violations, defined here as those in which thirty-three percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the numeric pretreatment standard or requirement

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including instantaneous limits, as defined by [section 22.13](#), 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 violation of a pretreatment standard or requirement as defined by [section 22.13](#) (daily maximum, long-term average, instantaneous limit, or narrative standard) that [the superintendent] determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;
- (4) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in [the superintendent's] exercise of its emergency authority to halt or prevent such a discharge;
- (5) Failure to meet, within ninety days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit [or a general permit (optional)] or enforcement order for starting construction, completing construction, or attaining final compliance;
- (6) Failure to provide, within forty-five days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (7) Failure to accurately report noncompliance; or
- (8) Any other violation(s), which may include a violation of best management practices, which [the superintendent] determines will adversely affect the operation or implementation of the local pretreatment program.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.69. Reserved.

Sec. 22.70. Notification of violation.

When the superintendent finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the superintendent may serve upon that user a written notice of violation. Within forty-five days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the superintendent. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation.

Nothing in this section shall limit the authority of the superintendent to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.71. Consent orders.

The superintendent may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to sections [22.73](#) and [22.74](#) and shall be judicially enforceable.

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(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.72. Show cause hearing.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.73. Compliance orders.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.74. Cease and desist orders.

When the superintendent finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the superintendent 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 bar against, or a prerequisite for, taking any other action against the user.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.75. Administrative fines.

- (a) In accordance with California Government Code Section 54740.5, when the superintendent finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge

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permit or order issued hereunder, or any other pretreatment standard or requirement adopted or ordered by the city pursuant to California Government Code Section 54739(a)(1) or (2), the superintendent may fine such user in an amount not to exceed the limits in paragraph (e) or equal to the fine imposed by the California Regional Water Quality Control Board (CRWQCB), including city administrative fees. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation.

- (b) The superintendent shall prepare an administrative complaint which shall allege the act or failure to act that constitutes the violation of the local city's requirements, the provisions of law authorizing civil liability to be imposed, and the proposed civil penalty.
- (c) The administrative complaint shall be served by personal delivery or certified mail on the person subject to the city's discharge requirements, and shall inform the person served that a hearing shall be conducted within sixty days after the person has been served. The hearing shall be before a hearing officer designated by the superintendent. The person who has been issued an administrative complaint may waive the right to a hearing, in which case the local agency shall not conduct a hearing. A person dissatisfied with the decision of the hearing officer may appeal to the city council within thirty days of notice of the hearing officer's decision.
- (d) If, after the hearing, or appeal, if any, it is found that the person has violated reporting or discharge requirements, the hearing officer may assess a civil penalty against that person. In determining the amount of the civil penalty, the hearing officer may take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the economic benefit derived through any noncompliance, the nature and persistence of the violation, the length of time over which the violation occurs and corrective action, if any, attempted or taken by the discharger.
- (e) Civil penalties may be imposed by the local city as follows:
 - (1) In an amount which shall not exceed two thousand dollars for each day for failing or refusing to furnish technical or monitoring reports.
 - (2) In an amount which shall not exceed three thousand dollars for each day for failing or refusing to timely comply with any compliance schedule established by the city.
 - (3) In an amount which shall not exceed five thousand dollars per violation for each day for discharges in violation of any waste discharge limitation, permit condition, or requirement issued, reissued, or adopted by the city.
 - (4) In an amount which does not exceed ten dollars per gallon for discharges in violation of any suspension, cease and desist order or other orders, or prohibition issued, reissued, or adopted by the city.
 - (5) The amount of any civil penalties imposed under this section which have remained delinquent for a period of sixty days shall constitute a lien against the real property of the discharger from which the discharge originated resulting in the imposition of the civil penalty. The lien provided herein shall have no force and effect until recorded with the county recorder and when recorded shall have the force and effect and priority of a judgment lien and continue for ten years from the time of recording unless sooner released, and shall be renewable in accordance with the provisions of Civil Procedure Code Sections 683.110 through 683.220, inclusive.
- (f) All moneys collected under this section shall be deposited in a special account of the local agency and shall be made available for the monitoring, treatment, and control of discharges into the local agency's sanitation or sewer system or for other mitigation measures.
- (g) Unless appealed, orders setting administrative civil penalties shall become effective and final upon issuance thereof, and payment shall be made within thirty days. Copies of these orders shall be served by personal service or by registered mail upon the party served with the administrative complaint and upon other persons who appeared at the hearing and requested a copy.

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- (h) Unpaid charges, fines, and penalties shall, after thirty calendar days, be assessed an additional penalty of ten percent of the unpaid balance, and interest shall accrue thereafter at the legal rate per month. A lien against the user's property will be sought for unpaid charges, fines, and penalties.
- (i) Users desiring to dispute such fines must file a written request for the superintendent to reconsider the fine along with full payment of the fine amount within thirty days of being notified of the fine. Where a request has merit, [the superintendent] may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The superintendent may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine. The decision of the superintendent may be appealed to the city council as set forth in [section 22.42](#)
- (j) Any party aggrieved by a final order issued by the city council after granting review of the order of a hearing officer, may obtain review of the order of the board in the superior court by filing in the court a petition for writ of mandate within thirty days following the service of a copy of a decision and order issued by the city council in accordance with California Government Code Section 54740.6.
- (k) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.76. Emergency suspensions.

The superintendent may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The superintendent 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.

- (1) User shall keep the city informed as to who will receive notices.
- (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 superintendent may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The superintendent may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the superintendent that the period of endangerment has passed, unless the termination proceedings in [section 22.77](#) 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 superintendent prior to the date of any show cause or termination hearing under [section 22.72](#) or [22.77](#)

Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.77. Termination of discharge.

In addition to the provisions in [section 22.45](#), any user who violates the following conditions is subject to discharge termination:

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- (1) Repeated violations of wastewater discharge permit conditions;
- (2) Failure to accurately report the wastewater constituents and characteristics of its discharge;
- (3) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- (4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
- (5) Violation of the pretreatment standards in sections [22.15](#) through [22.20](#). Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under [section 22.72](#) why the proposed action should not be taken. Exercise of this option by the superintendent shall not be a bar to, or a prerequisite for, taking any other action against the user. The decision of the superintendent may be appealed to the city council in accordance with [section 22.42](#). The city council may convene prior to hearing the appeal to determine whether the decision of the superintendent should be stayed pending the appeal.

(Ord. No. 2013-03, § 1, 6-18-2013)

Secs. 22.78, 22.79. Reserved.

Sec. 22.80. Injunctive relief.

When the superintendent finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the superintendent may petition the court through the city's 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 chapter on activities of the user. The superintendent may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.81. Civil penalties.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

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Sec. 22.82. Criminal prosecution.

- (a) A user who violates any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor.
- (b) A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor.
- (c) A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this chapter, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter shall, upon conviction, be guilty of a misdemeanor.
- (d) Each day shall constitute a separate offense. The applicable penalty shall be as set forth in 40 CFR 403.8 and the California Penal Code.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.83. Remedies nonexclusive.

The remedies provided for in this chapter are not exclusive. The superintendent may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the superintendent may take other action against any user when the circumstances warrant. Further, the superintendent is empowered to take more than one enforcement action against any noncompliant user. Appeals to the city council of decisions made by the superintendent may be taken as set forth in this chapter.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.84. Reserved.

Sec. 22.85. Performance bonds.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.86. Liability insurance.

The superintendent may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this chapter, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

(Ord. No. 2013-03, § 1, 6-18-2013)

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Sec. 22.87. Water supply severance optional.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.88. Public nuisances.

A violation of any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the superintendent. Any persons creating a public nuisance shall be subject to the provisions of the City Code governing such nuisances, including reimbursing the city for any costs incurred in removing, abating, or remedying said nuisance.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.89. Upset.

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

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situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.90. Prohibited discharge standards.

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in [section 22.12\(a\)](#) or the specific prohibitions in [sections 22.15\(b\)\(1—18\)](#) if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.91. Bypass.

(a) For the purpose of this section:

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

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (b) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (c) and (d) of this section.
- (c)
 - (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the superintendent, at least ten days before the date of the bypass, if possible.
 - (2) A user shall submit oral notice to the superintendent of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The superintendent may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.
- (d) [Prohibited; exception.]
 - (1) Bypass is prohibited, and the superintendent may take an enforcement action against a user for a bypass, unless:
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

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- b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - c. The user submitted notices as required under subsection (c) of this section.
- (2) The superintendent may approve an anticipated bypass, after considering its adverse effects, if the superintendent determines that it will meet the three conditions listed in subsection (d)(1) of this section.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.92. Pretreatment charges and fees.

The city may adopt reasonable fees for reimbursement of costs of setting up and operating the city pretreatment program which may 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 a user's discharge, and reviewing monitoring reports submitted by users;
- (3) Fees for reviewing and responding to accidental discharge procedures and construction;
- (4) Fees for filing appeals; and
- (5) Other fees as the city may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this chapter and are separate from all other fees, fines, and penalties chargeable by the city.

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.93. Severability.

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

(Ord. No. 2013-03, § 1, 6-18-2013)

Sec. 22.94. Conflicts.

In the event the provisions of this article conflict with other provisions of this chapter, the provisions of this article shall control.

(Ord. No. 2013-03, § 1, 6-18-2013)

FOOTNOTE(S):

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Article II. Wastewater Pretreatment.

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Editor's note— Ord. No. 2013-03, § 1, adopted June 18, 2013, repealed ch. 22, art. II, and reenacted it to read as set out herein. The former art. II pertained to similar subject matter and derived from Ord. No. 2001-07, § 3; Ord. No. 2001-08, § 3; and Ord. No. 2005-02, § 1. ([Back](#))