

ORDINANCE NO. 13-5600

AN ORDINANCE OF THE CITY OF BILLINGS,
AMENDING BILLINGS MUNICIPAL CODE ARTICLE
26, INDUSTRIAL WASTE DISCHARGE. PROVIDING
FOR CERTIFICATION AND AMENDING ALL
ORDINANCES AND RESOLUTIONS INCONSISTENT
THEREWITH.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS,
MONTANA:**

Section 1. AMENDMENT. Pursuant to Billings Municipal Code, Article 26, Industrial Waste Discharge is hereby amended as shown in Attachment "A".

Section 2. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

PASSED by the City Council on first reading this 13th day of May, 2013.

PASSED, ADOPTED and APPROVED on second reading this 28th day of May, 2013.

CITY OF BILLINGS

By _____
Thomas W. Hanel, Mayor

ATTEST:

By _____
Cari Martin, City Clerk

ARTICLE 26-600. - INDUSTRIAL WASTE DISCHARGE

- Sec. 26-601. — Purpose, ~~P~~policy, ~~A~~applicability and Authority of the City.
- Sec. 26-602. - Definitions.
- Sec. 26-603. - Abbreviations.
- Sec. 26-604. — Prohibited Discharges and Limitations~~General discharge prohibitions.~~
- Sec. 26-605. — Pretreatment and Monitoring Facilities~~Accidental discharges; protection; notice.~~
- Sec. 26-606. — Industrial Discharge Permits~~Specific pollutant limitations.~~
- Sec. 26-607. — ~~Recordkeeping. Pretreatment program administration.~~
- Sec. 26-608. — Confidential Information~~Fees.~~
- Sec. 26-609. — ~~Confidential information~~ Reserved.
- Sec. 26-610. — Sample Collection and Analytical Methods~~Actions for violation; enforcement.~~
- Sec. 26-611. — Reporting and Notification Requirements~~Pretreatment authority outside of city.~~
- Sec. 26-612. — Right of Entry~~Severability; repealer; effective date.~~
- Sec. 26-613. — Fees.
- Sec. 26-614. — Compliance and Enforcement.
- Sec. 26-615. — Pretreatment Authority Outside of City.
- Sec. 26-616. — Affirmative Defenses to Discharge Violations.
- Sec. 26-617. — Severability; Repealer; Effective Date.

Sec. 26-601. — Purpose, ~~P~~policy, ~~A~~applicability and Authority of the City.

- (a) *Purpose.* This ~~article~~ Article sets forth uniform requirements for Industrial Uusers of the ~~city~~ City's ~~P~~publicly ~~O~~owned Treatment Works (POTW) wastewater systems (WWS) and enables the ~~city~~ City to comply with applicable ~~S~~state and federal laws, including the ~~-~~Clean Water Act (33 U.S.C. Section 1251 et seq.) of 1977, and the federal-General Pretreatment Regulations (40 CFR, Part 403), all as amended and the City's Montana Pollutant Discharge Elimination System (MTPDES) permit. The objectives of this ~~article~~ Article are to:

- (1) Prevent the introduction of pollutants into the POTW municipal wastewater system which will interfere with or upset the operation of the POTW wastewater system treatment plant, or interfere with sludge use or disposal~~contaminate treatment plant sludge with toxic or hazardous materials.~~
- (2) Prevent the introduction of ~~incompatible~~ pollutants into the POTW municipal wastewater system and the wastewater system treatment plant which may pass through the system without adequate treatment and into receiving waters or the atmosphere or otherwise be incompatible with the system.

- (3) Prevent water quality violations resulting from direct discharges into waters of the ~~State~~, or violations of the ~~MT Montana Pollution Discharge Elimination System~~ permit for the wastewater system treatment plant.
 - (4) Improve the opportunity to recycle and reclaim wastewaters and sludges from the system.
 - (5) Provide for equitable distribution of the costs of the program.
 - (6) ~~To provide for and promote the general health, safety and welfare of the citizens residing within the City and connecting jurisdictions. Establish and maintain a data base and inspection program sufficient to determine compliance with pretreatment requirements.~~
 - (7) Enhance the efficiency and cost-effective operation of the ~~POTW wastewater system.~~
 - (8) Protect the health and safety of ~~city City residents and~~ wastewater system workers and the general public.
 - (9) Protect the municipal wastewater system and wastewater treatment plant from physical damage.
- (b) *Policy.* This ~~article Article~~ provides for the regulation of industrial users contributors or users of the ~~city City~~'s wastewater system through implementation and enforcement the development of thean I-industrial Ppretreatment pProgram. ~~The City is authorized to ,including issuance of industrial discharge permits to significant industrial users, and through enforcement of Pretreatment Standards and Requirements, general requirements for the significant industrial users. This article authorizes monitor discharges to the POTW, require industrial user monitoring and reporting and take other actions to meet the objectives of this Article.ing and enforcement activities, requires user reporting, The Industrial Pretreatment Program~~ protects the wastewater system treatment and hydraulic capacity, improves the ability to serve existing and new customers within the service area of the wastewater system, outlines fees and charges for the equitable distribution of costs resulting from the program established herein; and ~~establishes~~ penalties and remedies for violations of ~~Ppretreatment Standards and Rrequirements.~~
- (c) *Applicability.* ~~This article, Any Industrial User, the discharge from which directly or indirectly enters the City's POTW from areas within or without the boundaries of the City, shall be bound by this Article as amended. This Article may be enforced against any Industrial User. the Aet (as defined in section 26-602), and all adopted supplemental rules and regulations apply within the City of Billings and to persons outside the city who are, by contract or agreement with the city, users of the city's wastewater system. It shall be unlawful for any Industrial User to discharge any domestic or non-domestic wastewater into any natural waterway, any surface drainage, or storm drain in any area under the jurisdiction of the City. No industrial wastewater shall be discharged to the POTW unless done so in compliance with the provisions of this Article. Where an owner of property leases premises to a person as a tenant under any rental or lease agreement, if either the owner or the tenant is an Industrial User, either or both may be held responsible for compliance~~

with the provisions of this Article. Except as otherwise provided herein, the ~~Administrator or their designee,~~ shall implement, administer and enforce the provisions of this ~~article~~ Article.

(d) Authority of the City.

- (1) Except as otherwise specified, the City Administrator shall administer, implement, and enforce the provisions of this Article. Any powers granted to or duties imposed upon the City Administrator may be delegated by the City Administrator to other City personnel.
- (2) The City shall attempt to notify in writing any Industrial User whom they have cause to believe is subject to a Categorical Pretreatment Standard or Requirement, or other applicable requirements promulgated by the EPA under the provisions of Section 204(b) or 405 of the Act, or under the provisions of sections 3001, 3004, or 4004 of the Solid Waste Disposal Act. Failure of the City to so notify industrial users shall not relieve said industrial users from the responsibility of complying with applicable requirements. It is the responsibility of Significant Industrial Users to apply for and receive a permit prior to discharge, whether or not the Industrial User has been identified and formally requested to do so.
- (3) If wastewaters containing any pollutant, including excess flow, or as otherwise defined in this Article, are discharged or proposed to be discharged to the POTW, the City may take any action necessary to:
 - (i) Prohibit the discharge of such wastewater;
 - (ii) Require an Industrial User to demonstrate that in-plant facility modifications will reduce or eliminate the discharge of such substances in conformity with this Article;
 - (iii) Require treatment, including but not limited to storage facilities or flow equalization necessary to reduce or eliminate the potential for a discharge to violate this Article;
 - (iv) Require the Industrial User making, causing or allowing the discharge to pay any additional cost or expense incurred by the City for handling, treating, disposing or remediation costs as a result of wastes discharged to the wastewater treatment system;
 - (v) Require the Industrial User to apply for and obtain a permit;
 - (vi) Require timely and factual reports from the Industrial User responsible for such discharge; or

(vii) Take such other action as may be necessary to meet the objectives of this Article.

~~(Ord. No. 85-4663, § 1, 9-9-85; Ord. No. 91-4886, § 1, 9-9-91)~~

Sec. 26-602. - Definitions.

Unless the context specifically indicates otherwise, the words and terms used herein are defined and shall be interpreted for purposes of this ~~article~~ Article and the rules and regulations as follows:

~~*Accidental discharge* means the unintentional and temporary discharge to the wastewater system of the prohibited waters or wastes, including those described in sections 26-604 and 26-606 or Chapter 22 of the rules and regulations.~~

~~*Act or The Aact* means the Federal Water Pollution Control Act, Public Law 92-500, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq. and including amendments thereto by the Clean Water Act of 1977, Public Law 95-217, 33. U.S.C. section 466, et. seq., and as subsequently amended.~~

~~*Administrator* means the city~~ City of Billings ~~A~~administrator ~~of the City of Billings~~ or ~~their~~his designee.

~~*Approval A*~~authority is the ~~R~~regional ~~A~~administrator ~~for Region 8, of the~~ Environmental Protection Agency.

~~*Authorized R*~~representative of ~~the a significant I~~industrial ~~U~~user ~~is~~includes:

(a) If the Industrial User is a corporation:

- (1) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or
- (2) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including any person 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 Industrial Discharge Permit

requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- (b) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.
 - (c) If the user is a federal, state, or local government facility: A city or district or highest official appointed or designated to oversee the operation and performance of the activities of the governmental facility, or their designee.
 - (d) The individuals described in paragraphs a. through c. above, may designate another authorized representative if the authorization is made in writing, the authorization specifies the individual or a 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.
- ~~(1) — A principal executive officer of at least the level of vice-president having full actual authority to act on behalf of the corporation, if the significant industrial user is a corporation.~~
 - ~~(2) — A general partner or proprietor if the significant industrial user is a partnership or proprietorship, respectively.~~
 - ~~(3) — A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of facilities from which any discharge originates.~~

Best Management Practices (BMPs) are schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the General and Specific Prohibitions listed in Section 26-604 of this Article. BMPs may also include, but are not limited to, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs shall be considered Local Limits and Pretreatment Standards for the purposes of this Article and Section 307(d) of the Act (40 CFR Section 403.5(c)(4)).

Biochemical Oxygen Demand (BOD₅) is the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure over a period of five (5) days at twenty degrees (20°) Celsius and expressed in terms of milligrams per liter (mg/L).

Categorical Industrial User is an Industrial User subject to a Categorical Pretreatment Standard.

Categorical Pretreatment Standard or Categorical Standard means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section

307(b) and (c) of the Act (33 U.S.C. Section 1317) that apply to a specific category of industrial users and that appear in 40 CFR chapter I, subchapter N, Parts 405-471.

~~*Categorical standards* means national categorical pretreatment standards or pretreatment standard.~~

City means the City of Billings, Montana.

Code means ~~the Code of Ordinances of~~ the City of Billings, Montana City Code.

Composite sample is a representative flow-proportioned sample generally collected within a twenty-four (24) hour period and combined according to flow. Time-proportional sampling may be approved or used by the District where time-proportional samples are believed representative of the discharge.

Control Authority means the City of Billings.

Cooling water means:

- (a) *Contact.* Water used for cooling purposes which comes in contact with any raw material, intermediate product, waste product or finished product.
- (b) *Noncontact.* Water used for cooling purposes which does not comes in contact with any raw material, intermediate product, waste product or finished product and the only pollutant added is heat.

~~*Cooling water* means the water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.~~

Council means the ~~city~~ City Council of the City of Billings, Montana.

Daily Maximum Discharge Limit is the maximum allowable concentration of a pollutant(s) that may be discharged during a twenty-four (24) hour period or as specified in an industrial user discharge permit. Where daily maximum limitations are expressed in units of mass, the discharge is the total mass discharged over the sampling period.

Department means the Public Works Department of the City of Billings.

Director is the City of Billings Director of Public Works or designee that supervises the operation of the Publicly Owned Treatment Works and who is charged with certain duties and responsibilities under this Article, or their duly authorized representative.

~~*Discharge* is the direct or indirect introduction of treated or untreated wastewater into the waters of the State of Montana, either through the municipal wastewater system and wastewater system treatment plan, or through a point source into state waters.~~

Domestic Sewage is domestic (sanitary) wastewater from residential sources including, but not limited to wastewater from kitchen, bath, and laundry facilities; or wastewater from the personal sanitary conveniences (toilets, showers, bathtubs, fountains, noncommercial sinks and similar structures) of commercial, industrial or institutional buildings, provided that the wastewater exhibits characteristics that are similar to those of wastewater from normal residential activities.

~~Domestic wastes or sanitary wastes means liquid wastes:~~

- ~~(1) — From the noncommercial preparation, cooking and handling of food; or~~
- ~~(2) — Containing human excrement and similar matter from the sanitary conveniences of dwellings, commercial buildings, industrial facilities and institutions.~~

~~Environmental~~ Protection Agency or EPA means the United States Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the Administrator or other duly authorized official of said Agency.

Existing Source is a source of discharge by an Industrial User, the construction of which commenced prior to the publication of the proposed Categorical Pretreatment Standard which is subsequently promulgated in accordance with Section 307 of the Clean Water Act, or as otherwise specified in the applicable Categorical Pretreatment Standard.

Grab sample means a sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes~~without consideration of time.~~

Gravity Grease Interceptor is a plumbing appurtenance or appliance that is installed in a sanitary drainage system to intercept FOG (fats, oil and grease) from a wastewater discharge and is designed for gravity separation considering calculated retention times and volumes for each facility. This is an in-ground interceptor that is located outside the facility.

Grease Trap is a device designed to retain grease from one to a maximum of four fixtures per International Plumbing Code. A Grease Trap is not appropriate for use on heated water (e.g. dishwasher) or in-line to a waste disposal unit (e.g., garbage disposal and garbage grinders). A Grease Trap is a small, indoor device. Grease Traps are not approved for installation in food service establishments that prepare food on site, or serve catered food and have a dishwasher or a garbage disposal.

~~Harmful contribution means an actual or threatened discharge or introduction of industrial wastes to the wastewater system which presents or may present an imminent or substantial endangerment to the health and welfare of persons, or to the environment; or which inhibits or interferes with the physical or lawful operation of the wastewater system; or which causes the city or the wastewater treatment plant to violate any~~

~~condition of its Montana Pollutant Discharge Elimination System permit; or which causes the city to expend effort and resources beyond that normally required.~~

Holding tank waste means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, recreational vehicles, septic tanks or septage haulers.

Indirect Discharge or Discharge is the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act (including holding tank waste discharged into the system).

Industrial means of or pertaining to industry, manufacturing, agriculture, commerce, trade, or business, as distinguished from domestic or residential.

~~*Industrial Discharge Permit* is a permit issued to an Industrial User that limits and/or prohibits the discharge of pollutants or flow to the POTW and establishes other Pretreatment Standards and Requirements document as set forth in Sections 26-606-26-607 and 26-609 and of this article Article and the applicable adopted rules and regulations which licenses and conditions the nature and amount of contribution of industrial wastes into the wastewater system.~~

~~*Industrial User is a source of Indirect Discharge.* means any person or source that introduces or discharges wastewater from industrial processes into the wastewater system, or any nondomestic user or source regulated under Section 307(b), (c), or (d) of the Clean Water Act.~~

Industrial (non-domestic) waste is the liquid or solid wastes from industrial manufacturing processes, trade or business activities producing non-domestic or non-residential sewage as distinct from domestic wastewater.

~~*Industrial wastes or wastewater* means all liquid or water-carried wastes other than domestic or sanitary wastes. The term includes, by way of example and not by limitation, the trade wastes produced by food processing and bottling plants, food manufacturing plant, slaughtering plants, tallow works, plating works, disposal services, industrial cleaning plants, fertilizer plants, car and truck washing operations, vehicle repair facilities, commercial laundries and cleaning establishments, cooling plants, industrial plants, factories, feedlots, and chemical treatment installations.~~

Instantaneous limit is the maximum or minimum concentration or measurement of a pollutant property allowed to be discharged at any time for any length of time. For pollutants, compliance is typically determined by use of a grab sample.

Interference is a discharge, which alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW treatment processes, or operations or its sludge processes, use or disposal; and

(b) Therefore, is a cause of violation of any requirement of the City's MPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued hereunder, or any more stringent state or local regulations: Section 405 of the Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resources Conservation and Recovery Act (RCRA); any State regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solids Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

~~Interference means the inhibition or disruption of the wastewater system treatment processes or operations which causes a violation of any requirement of the wastewater system's Montana Pollutant Discharge Elimination System Permit, or of the requirements of any agency with jurisdiction over discharges by the wastewater treatment plant into the receiving waters. The term also includes contamination of treatment plant sludge byproducts.~~

Local Limits mean any regulation containing pollution discharge limits promulgated by the City in accordance with 40 CFR Section 403.5(c) and (d), which are deemed to be Pretreatment Standards and contained in Section 26-604(c) of this Article.

~~Local limits means discharge limitations as established by the city.~~

Montana ~~P~~pollutant ~~D~~ischarge ~~E~~limination ~~S~~ystem (MPDES) permit is a permit issued pursuant to Section 402 of the Act (33 U.S.C. Section 1342), allowing discharge of pollutants from point sources into navigable waters of the United States or waters of the State ~~of Montana~~.

~~National categorical pretreatment standards or pretreatment standard means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Clean Water Act (33 U.S.C. Section 1317) which applies to a specific category of primary industrial users.~~

~~National prohibitive discharge standard or prohibitive discharge standard means any federal regulation developed under the authority of Section 307(b) of the Clean Water Act, including the General Pretreatment Regulations (40 CFR Section 403.5).~~

New ~~S~~source means

(a) Aany 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 Ppretreatment Sstandards under Section 307(c) of the Act

which will be applicable to such source if such Sstandards are thereafter promulgated in accordance with that section, provided that:

- (1~~a~~) The building, structure, facility or installation is constructed at a site at which no other source is located; or
- (2~~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
- (3~~e~~) 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.

(b) Construction on a site at which an existing source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (a)(2) or (a)(3) of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

(c) Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:

(1) Begun, or caused to begin as part of a continuous onsite construction program:

(i) Any placement, assembly, or installation of facilities or equipment;
or

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

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

Pass Through means a discharge which exits the WWTP into water of the United States ~~the receiving stream~~ 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~~ City's MPDES permit, including an increase in the magnitude or duration of a violation.

Person means any individual, partnership, co-partnership, firm, company, corporation, group, association, trust, estate, governmental entity, political subdivision, or any other legal entity, or their legal representatives, agents, or assigns. ~~The masculine gender shall include the feminine, and the singular shall include the plural where indicated by the context.~~

pH is the intensity of acid or base condition of the solution expressed as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in moles per liter of solution and reported as Standard Units (SU).

~~*Pollution* means the alteration of the chemical, physical, biological, or radiological integrity of water by human activity.~~

Pollutant means any dredged soil, solid waste, incinerator residue, filter backwash, sewage, garbage, septic waste, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded ~~hazardous~~ equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD₅, COD, toxicity, or odor) discharged into or with water.

~~*Pollution* means the alteration of the chemical, physical, biological, or radiological integrity of water by human activity.~~

Pretreatment ~~or treatment~~ 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 discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR Section 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR Section 403.6(e).

~~the alteration of the rate of their introduction into the wastewater system, or the alteration of the nature of pollutant properties in wastewater to a less harmful state, prior to or in lieu of discharging or otherwise introducing such pollutants into a wastewater system. The reduction or alteration can be achieved by physical, chemical or biological processes, process changes, or by other means, except as prohibited by 40 CFR Section 403.6(d).~~

Pretreatment Requirement means any substantive or procedural requirement related to Pretreatment, ~~other than a including national~~ Categorical Pretreatment Standards, imposed on an Industrial User.

Pretreatment Standard, National Pretreatment Standard, or Standard means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to Industrial Users. The term includes prohibitive discharge limits, local limits, and Best Management Practices that are or may be established by the City. In cases of differing standards or regulations, the most stringent standard shall apply.

Publicly Owned Treatment Works (POTW) means a treatment works as defined by Section 212 of the Act (33 U.S.C 1292), which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature and any sewers, pipes or other conveyances which convey wastewater to the treatment plant. The term also means the municipality having jurisdiction over the Indirect Discharges to and the discharges from the treatment works.

Rules and Regulations means all rules and regulations promulgated by the Administrator for administration and operation of the municipal water and wastewater utilities as provided for in Section 26-101 of the Billings, Montana City Code.

Septage means the mixed liquid and solid contents pumped from septic tanks used for receiving primarily segregated domestic wastes or wastes from sanitary conveniences.

Significant Industrial User (SIU): Except as provided in paragraphs (c) and (d) of this definition, a Significant Industrial User is:

(a) An Industrial User subject to Categorical Pretreatment Standards; or

(b) An Industrial User that:

(1) Discharges an average of twenty-five thousand gallons per day (25,000 gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);

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

(3) Is designated as such by the City on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.

(c) 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 upon a finding that the Industrial User never discharges more than one hundred gallons per day (100 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:

- (1) The Industrial User, prior to the City's finding, has consistently complied with all applicable Categorical Pretreatment Standards and Requirements;
 - (2) The Industrial User annually submits the certification statement as found in 40 CFR 403.12(g) together with any additional information necessary to support the certification statement; and
 - (3) The Industrial User never discharges any untreated concentrated wastewater.
- (d) Upon finding by the City that an Industrial User meeting the criteria in Section B of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or Requirement, the City may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with 40 CFR 403.8(f)(2), determine that such Industrial User is not a Significant Industrial User.

Significant industrial user is any user of the city's wastewater collection, treatment and disposal system who:

- ~~(a) Is subject to categorical standards as defined herein; or~~
- ~~(b) Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the WWS, excluding sanitary, noncontact cooling and boiler blowdown wastewater; or~~
- ~~(c) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the WWTP; or~~
- ~~(d) Is designated as such by the city on the basis that the industrial user has a potential for adversely affecting the WWS or for violating any pretreatment standard or requirement.~~

Significant violator means an industrial user who is in significant noncompliance by violating one or more of the following criteria:

- ~~(a) Chronic violations of wastewater discharge limits, defined as those in which sixty-six (66) percent or more of all of the measurements taken during a six-month period exceed, by any magnitude, the daily maximum limit or the average limit for the same pollutant parameter;~~
- ~~(b) Technical review criteria (TRC) violations, defined as those in which thirty-three (33) percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily~~

- ~~maximum limit or the average limit times the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease and 1.2 for all other pollutants except pH);~~
- ~~(c) — Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the administrator determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of city personnel or the general public;~~
 - ~~(d) — Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or the environment or has resulted in the city's exercise of its emergency authority specified herein to halt or prevent such a discharge;~~
 - ~~(e) — Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction or attaining final compliance;~~
 - ~~(f) — Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules;~~
 - ~~(g) — Failure to accurately report noncompliance; or~~
 - ~~(h) — Any other violation or group of violations which the administrator determines will adversely affect the operation or implementation of the local pretreatment program.~~

Slug ~~Dis~~charge means any discharge at a flow rate or concentration, which could cause a violation of the Specific Prohibitions in Section 26-604(b). A Slug Discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, or a discharge which exceeds the hydraulic or design of an Industrial Users treatment system or any part of the treatment unit including a discharge which has a reasonable potential to cause Interference or Pass Through or in any other way violate an applicable Pretreatment Standard or Requirement or an Industrial Discharge Permit issued by the City.

~~pollutant, including oxygen-demanding pollutants (BOD, etc.), released in a discharge of such volume or strength as to cause interference in the WWS.~~

~~*Source* means any building, structure, facility, or installation from which there may be a discharge of pollutants.~~

Standard Industrial Classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, as amended.

State means the State of Montana.

Total Suspended Solids is the total suspended matter, expressed in milligrams per liter, that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering in accordance with procedures approved in 40 CFR Part 136, as amended.

Toxic pollutant includes, but is not limited to, any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Aadministrator of the EPA under the provisions of Section 307(a) of the Act or as otherwise listed in 40 CFR Part 122, Appendix D~~other applicable laws.~~

~~*User* means any person who discharges, causes, or permits the discharge or introduction of wastewater into the wastewater system.~~

Wastewater or sewage means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions ~~together with any groundwater, surface water and storm water that may be present,~~ whether treated or untreated, which ~~are~~ is discharged into or permitted to enter the POTW~~wastewater~~ system.

Wastewater treatment plant (WWTP) is that portion of the waste water system designed to provide treatment to wastewater.

~~*Wastewater system (WWS)* means wastewater treatment works as defined by Section 212 of the Act (33 U.S.C. Section 1292) which are owned by the city, or which are managed and operated by the city; includes any sewers that convey wastewater to the WWTP from within the WWTP service area, but excludes pipes, sewers, or other conveyances not directly or indirectly connected to the treatment facility. For the purposes of this article, WWS shall also include any sewers that convey wastewaters to the WWS from persons or sources outside the city who are, by contract or agreement with the city or connecting sanitation districts, users of the city's WWS.~~

Waters of the State means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

(Ord. No. 85-4663, § 2, 9-9-85; Ord. No. 06-5356, § 14, 1-9-06)

Sec. 26-603. - Abbreviations.

The following abbreviations shall have the designated meanings for the purposes of this ~~article~~ Article and the supplemental Rules and Regulations:

BMCC: Billings, Montana City Code.

BMP: Best Management Practice.

BOD₅: Biochemical Oxygen Demand.

CFR: Code of Federal Regulations.

~~*COD*: Chemical oxygen demand.~~

EPA: Environmental Protection Agency.

LEL: Lower Explosive Limit

mg/L: ~~m~~Milligrams per Liter.

MPDES: Montana Pollutant Discharge Elimination System.

POTW: Publicly Owned Treatment Works

SIC: Standard Industrial Classification.

SIU: Significant Industrial User

SNC: Significant Noncompliance

TSS: Total Suspended Solids

~~WWS: Wastewater system.~~

WWTP: Wastewater Ttreatment Plant.

U.S.C.: United States Code.

~~TSS: Total suspended solids.~~

(Ord. No. 85-4663, § 3, 9-9-85)

Sec. 26-604. — Prohibited Discharges and Limitations~~General discharge prohibitions.~~

~~(a) — Unlawful discharge. It shall be unlawful to discharge any industrial wastewater or polluted waters into any natural outlet within the City of Billings, or within any area under the jurisdiction of the city, except where suitable treatment has been provided, and except as authorized by the administrator in accordance with the provisions of this article.~~

~~(b) — Harmful contributions. No person or user shall introduce, discharge, or cause to be discharged into the municipal wastewater system or WWTP, any pollutant or wastewater which may cause interference with the operation or performance of the WWS, or which constitutes a harmful contribution to the WWS, or which may pass through the WWS so as to cause the WWS to violate terms of its MPDES permit or other applicable laws and regulations. These general prohibitions apply to all users of the WWS, whether or not the user is subject to national categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements, including specific pollutant limitations developed pursuant to section 26-606 of this article.~~

(a) General Prohibitions

An Industrial User may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference. These General Prohibitions and the Specific Prohibitions in paragraph (b) of this Section apply to each Industrial User introducing pollutants into a POTW whether or not the Industrial User is subject to other Pretreatment Standards or Requirements.

(b) The following Specific Prohibitions apply to the discharge of wastewater to the POTW from all industrial users:

(1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Celsius using the test methods specified in 40 CFR Section 261.21. The Administrator may require industrial users with the potential to discharge flammable, combustible or explosive

substances to install and maintain an approved combustible gas detection meter or explosion hazard meter. No two successive readings on an explosion hazard meter at the point of discharge shall be more than five percent (5%), nor any one reading more than ten percent (10%), of the Lower Explosive Limit (LEL) of the meter.

(2) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.5 or greater than 12.5.

(3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in the Interference.

(4) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.

(5) Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40 degrees Celsius (104°F) unless the EPA, upon request of the POTW, approves alternate temperature limits.

(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.

Any discharge containing a toxic, poisonous or infectious substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause worker health and safety problems or create any hazard in the receiving waters of the POTW.

(8) Any trucked or hauled pollutants, except as approved by the City in writing and discharged at the WWTP septage receiving station.

(9) Any water or waste containing free or floating oil and grease, or any discharge containing animal fat or grease by-product in excess of one hundred milligrams per liter (100 mg/L) except:

(i) A food service establishment that has installed and is properly operating and maintaining a grease interceptor and implementing required BMPs; or

- (ii) An Industrial User that is permitted as for trucked and hauled waste and discharges its waste at a discharge point specified by the City and in full compliance with its permit.
- (10) Removing wastes collected in a grease trap, grease/sand interceptor, waste collection tank or other treatment device and reintroducing any portion of the wastes back into the wastewater collection system either directly or indirectly.
- (11) Stormwater drainage from ground resulting in Infiltration and Inflow (I&I) through the Industrial User's service line(s) or surface, roof drains, catch basins, unroofed area drains (e.g. commercial car washing facilities) or any other source unless otherwise approved by the Administrator. Specifically prohibited is the connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or ground water to a building sewer or building drain which in turn is connected directly or indirectly to the City's wastewater collection system. No person shall connect or discharge water from underground drains, sump pump discharges, natural springs and seeps, water accumulated in excavation or grading or any other water associated with construction activities unless specifically authorized by the Administrator.
- (12) Any substance which may cause the POTW's effluent, sludge, or residue to be unsuitable for, or interfere with, the reclamation or reuse process.
- (13) A Slug Discharge as defined in Section 26-602.
- (14) Any substance which will cause the POTW to violate the MPDES permit or the receiving water quality standards.
- (15) Any pollutant discharged directly into a manhole or other opening in the POTW unless specifically authorized by the City or as otherwise permitted under this Article. Prohibited is the opening of a manhole or discharging into any opening in violation of this Article.
- (16) Liquid wastes from chemical toilets, and trailers, campers or other recreational vehicles which have been collected and/or held in tanks or other containers shall not be discharged into the POTW except at locations authorized by the City to collect such wastes.
- (17) No chemicals, materials, or substances, including but not limited to, paints, solvents, boiler or water treatment chemicals, sludges, chemicals, or wastes shall be stored in proximity to a floor drain or other sewer openings. Containers shall be clearly labeled and stored in a place where the chemicals, materials, substances or wastes, in case of leakage or rupture of the container, cannot enter the wastewater collection system. The storage of any

chemicals, materials, substances or wastes that leak or have potential to leak or discharge into the wastewater collection system which may create an explosion hazard or in any way have a deleterious effect to the POTW or constitute a nuisance or a hazard to POTW personnel, the general public, the environment, or the receiving stream shall be prohibited.

(18) Any water contaminated as a result of discharge from aboveground and/or underground gasoline, diesel fuels, fuel oil, kerosene, and jet fuel tanks, tank accessories, and/or pipelines without applying for and obtaining a permit prior to discharge.

(19) Any wastes containing detergents, surface-active agents, or other substances in concentrations which cause excessive foaming in the POTW or cause or contribute to Interference or Pass Through.

(20) Wastes that have been collected and/or held in a tank or other container and where such wastes fail to comply with any Pretreatment Standard.

(21) Any radioactive substance, the discharge of which, does not comply with limits established by the District or other regulations set forth by the Montana Department of Environmental Quality or that violates any applicable federal standards.

(22) Any water or waste which contains grease or oil or any other substances that will solidify or become discernibly viscous at temperatures between thirty-two degrees (32°) Fahrenheit (0° Celsius) and one hundred fifty degrees (150°) Fahrenheit (65.5° Celsius).

(23) Any garbage that has not been properly shredded.

(24) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction to the flow in sewers, or other Interference with the proper operation of the POTW.

(25) Any discharge containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the WWTP.

(26) Any noxious or malodorous gas or substance capable of creating a public nuisance.

(c) *Prohibited discharges.* In addition to the prohibited waters or wastes described above, a user shall not introduce or discharge the following substances into the WWS:

- ~~(1) — Any wastewater containing toxic pollutants in sufficient quantity to exceed the limitation set forth in a national categorical pretreatment standard.~~
 - ~~(2) — Any substance which may cause the WWS's treatment plant effluent or any other products such as residues, sludges, or scums to be unsuitable for reclamation or reuse.~~
 - ~~(d) — *Discharge relative to sludge use or use disposal.* No person or user shall discharge a pollutant into the WWS which may cause the WWS or its management agency to be in noncompliance with any sludge use or disposal laws, or regulations, including Section 405 of the Clean Water Act, the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or any state criteria applicable to sludge management.~~
 - ~~(e) — *Excessive discharge.* Except where expressly authorized to do so by an applicable categorical pretreatment standard, no significant industrial user shall increase the use of process water or dilute industrial wastewater with tap water, unpolluted water, sanitary sewage, or any other liquid dilutants as a partial or complete substitute for adequate pretreatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, or with any other pollutant-specific limitation developed by the city or state.~~
- ~~(Ord. No. 85-4663, § 4, 9-9-85)~~

~~Sec. 26-605. — Accidental discharges; protection; notice.~~

- ~~(a) — *Protection facilities and plan.* Each significant industrial user shall provide adequate protection against sludge discharges, accidental discharge or slug discharge of the prohibited waters or wastes described in section 26-604 of this article, or other substances regulated by this article. Facilities to prevent accidental discharge and slug discharge of prohibited waters or wastes shall be provided and maintained at the user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection, unless already provided, shall be submitted to the city for review and shall be approved by the city before construction of the accidental discharge or slug discharge prevention facility. All significant industrial users shall submit such a plan within ninety (90) days after passage of this article [Ordinance Number 85-4663, adopted September 9, 1985] or after being permitted as a significant industrial user, whichever is later. No significant industrial user who commences contribution to the WWS after the effective date of this article [Ordinance Number 85-4663, adopted September 9, 1985] and applicable adopted rules and regulations shall be permitted to introduce pollutants into the system until accidental discharge and slug discharge procedures and facilities have been approved by the city. Review and approval of such plans and operating procedures shall not relieve the significant industrial user from any responsibility to pretreat as necessary to meet the industrial pretreatment requirements of this article. The city may periodically review and evaluate the adequacy of and need for improvements to existing facilities and procedures.~~

~~(b) — Notice of accidental or slug discharge. In the case of an accidental discharge or slug discharge, it is the responsibility of any industrial user to immediately telephone and notify the city of the incident. The notification shall include the location of discharge, type of waste or wastes, concentration, volume, duration, time of episode, and corrective actions undertaken.~~

~~(1) — Within five (5) days following an accidental discharge or slug discharge, the industrial user shall submit to the city a detailed written report describing the cause of the discharge and the measures taken or planned by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the WWS, fish kills, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, civil penalties, or other liability which may be imposed by this article or other applicable law.~~

~~(2) — A sign shall be permanently posted on the industrial user's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge or slug discharge. The industrial user shall insure that all employees who may cause such an accidental discharge or slug discharge to occur are advised of the emergency notification procedure.~~

~~(Ord. No. 85-4663, § 5, 9-9-85; Ord. No. 91-4886, § 3, 9-9-91)~~

~~Sec. 26-606. — Specific pollutant limitations.~~

~~(a) — No person shall discharge into the WWS any wastewater containing pollutants generally prohibited by section 26-604 of this article and specifically prohibited herein, pollutants in excess of specific pollutant limitations as contained in any industrial discharge permit, or limitations imposed by national categorical pretreatment standards or local limits.~~

~~(b) — No user shall discharge or cause to be discharged any of the following described pollutants into the WWS:~~

~~_(1) — Any liquid or vapor having a temperature higher than the lesser of (a) one hundred forty (140) degrees Fahrenheit or (b) that which, alone or in combination with other discharges, causes the influent at the WWTP to exceed one hundred four (104) degrees Fahrenheit;~~

~~_(2) — Any discharge containing more than one hundred parts per million, by weight, of fat, oil or grease;~~

~~_(3) — Any gasoline, benzene, naphtha, fuel oil or other pollutants which create a fire or explosion hazard in the WWS, including, but not limited to, wastestreams with a closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit or sixty (60) degrees Centigrade using the test methods specified in 40 CFR 261.21.~~

~~_(4) — Any garbage that has not been properly shredded;~~

~~_(5) — Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous~~

substance capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the WWS;

- (6) — Any discharge having a pH lower than 5.5 or higher than 9.0, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the WWS;
- (7) — Any discharge containing a toxic, poisonous or infectious substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, pollutants which result in the presence of toxic gases, vapors, or fumes within the WWS in a quantity that may cause worker health and safety problems or create any hazard in the receiving waters of the WWS;
- (8) — Any discharge containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the WWTP;
- (9) — Any noxious or malodorous gas or substance capable of creating a public nuisance;
- (10) — Any pollutant, including oxygen-demanding pollutants (BOD, etc.), released in a discharge of such volume or strength as to cause interference in the WWS;
- (11) — Any petroleum oil, solvents, nonbiodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through;
- (12) — Any trucked or hauled pollutants, except for septage or trucked waste specifically approved by the city, both of which are to be discharged at the septage receiving station at the WWTP.

- (c) It shall be unlawful for any Significant Industrial User to discharge, deposit, cause, or allow to be discharged any waste or wastewater which No user shall discharge or cause to be discharged any of the following pollutants into the WWS exceeds the following limits at levels in excess of those noted:

<u>Pollutant</u>	<u>Daily Maximum Discharge Limit ⁽¹⁾</u>	<u>Units</u>
<u>Arsenic</u>	<u>2.51.33</u>	<u>#/day</u>
<u>Cadmium</u>	<u>13.90.03</u>	<u>mg/l</u>
<u>Chromium</u>	<u>35.327.25</u>	<u>mg/l</u>
<u>Chromium VI</u>	<u>3.39</u>	<u>mg/l</u>
<u>Copper</u>	<u>2.05.18</u>	<u>mg/l</u>
<u>Cyanide</u>	<u>2.60.66</u>	<u>mg/l</u>
<u>Lead</u>	<u>2.21.04</u>	<u>mg/l</u>
<u>Mercury</u>	<u>0.150.0057</u>	<u>mg/l</u>
<u>Nickel</u>	<u>26.88.87</u>	<u>mg/l</u>
<u>Selenium</u>	<u>0.03.87</u>	<u>#/day</u>
<u>Silver</u>	<u>1.11.80</u>	<u>mg/l</u>
<u>Zinc</u>	<u>1.124.87</u>	<u>mg/l</u>

<u>BTEX</u>	<u>0.75</u>	<u>mg/l</u>
<u>Methylene Chloride</u>	<u>0.80</u>	<u>mg/l</u>
<u>Tetrachloroethene</u>	<u>1.6</u>	<u>mg/l</u>

Arsenic 2.5 mg/l	Mercury 0.15 mg/l
Cadmium 13.9 mg/l	Nickel 26.8 mg/l
Chromium 35.3 mg/l	Selenium 0.0 mg/l
Copper 2.0 mg/l	Silver 1.1 mg/l
Cyanide 2.6 mg/l	Zinc 1.1 mg/l
Lead 2.2 mg/l	

⁽¹⁾ All pollutants shown in the Table are total.

- (d) Dilution is prohibited as a substitute for treatment and shall be a violation of this Article. Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a Discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The City may impose mass limitations on industrial users which are using dilution to meet applicable Pretreatment Standards or Requirements or in other cases where the imposition of mass limitations is appropriate.
- (e) All industrial users subject to a Categorical Pretreatment Standard shall comply with all requirements of such Standard, and shall also comply with any limitations contained in this Article. Where the same pollutant is limited by more than one Pretreatment Standard, the limitations which are more stringent shall prevail. Compliance with Categorical Pretreatment Standards shall be the timeframe specified in the applicable Categorical Pretreatment Standard.
- (f) The City may establish more stringent pollutant limits, additional site-specific pollutant limits, Best Management Practices, or additional Pretreatment Requirements when, in the judgment of the City, such limitations are necessary to implement the provisions of this Article.
- (g) Promulgation of Standards.
- (1) Upon the promulgation of the federal Categorical Pretreatment Standard for a particular industrial subcategory, the federal Standard, if more stringent than limitations imposed by this Article for sources in that subcategory, shall immediately supersede the limitations imposed by this Article as required by the applicable Categorical Pretreatment Standard.

- (2) State requirements and limitations on discharges shall apply in any case where they are more stringent than federal Pretreatment Standards and Requirements or those in this Article.

~~(Ord. No. 85-4663, § 6, 9-9-85; Ord. No. 91-4886, § 4, 9-9-91; Ord. No. 92-4906, § 2, 7-27-92; Ord. No. 97-5022, § 7, 5-27-97)~~

Sec. 26-605. – Pretreatment and Monitoring Facilities

- (a) Treatment Required: An Industrial User shall provide necessary wastewater treatment at the Industrial User's expense as required to comply with this Article and shall achieve compliance with all Pretreatment Standards and Requirements within the time limitations specified by the EPA, the State, or the City, whichever is more stringent. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the Administrator for review and shall be acceptable before discharge from the facility. The review of such plans and operating procedures will in no way relieve the Industrial User from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the City under the provisions of this Article.
- (b) Wastewater Discharge Control: The City may require an Industrial User to restrict discharge during peak flow periods, designate that certain wastewater be discharged only into specified 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 demonstrate the Industrial User's compliance with the requirements of this Article.
- (c) Flow Equalization: The City may require any Industrial User discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An Industrial Discharge Permit may be issued solely for flow equalization.
- (d) Monitoring Facilities: The City may require an Industrial User to install at the Industrial User's expense, suitable monitoring facilities, instrumentation or equipment that allows for the representative sampling and accurate observation of wastewater discharges. Whether constructed on public or private property, the monitoring facilities shall be constructed in accordance with the City's requirements and all applicable construction standards and specifications. Monitoring equipment and structures shall be maintained in proper working order and kept safe and accessible at all times to City personnel. The monitoring equipment shall be located and maintained on the Industrial User's premises outside of the building unless otherwise approved by the City. When such a location would be impractical, the City may allow such facility to be constructed in the public street or easement area, with the approval of the agency having

- jurisdiction over such street or easement, and located so that it will not be obstructed by public utilities, landscaping or parked vehicles.
- (e) Multitenant Buildings: When more than one Industrial User is able to discharge into a common service line, the City may require installation of separate monitoring equipment for each Industrial User.
 - (f) Flow, pH, LEL and other appropriate meters and instrumentation: If the City determines that an Industrial User needs to measure and report wastewater flow, discharge process wastewaters necessitating continuous pH measurement or discharge wastewater that may contain flammable substances may be required to install and maintain, at the Industrial User's expense, approved meters, structures and equipment.
 - (g) Unless approved by the Administrator in writing, no Industrial User shall cover any manhole, sewer cleanout, or other openings in the wastewater collection system with earth, paving, or otherwise render it inaccessible.

Sec. 26-606. – Industrial Discharge Permits

(a) Permits Required.

All Significant Industrial Users proposing to connect to, or discharge into, any part of the wastewater system shall apply for and obtain an Industrial Discharge Permit prior and remit payment for all fees required by Rule 24.7 of the Rules and Regulations to commencing discharge to the POTW. A separate permit may be required for each Industrial User, building or complex of buildings. Such Significant Industrial Users shall immediately contact the City and obtain an Industrial Discharge Permit.

(b) New Industrial Users: Applying for an Industrial Discharge Permit.

Any Industrial User required to obtain an Industrial Discharge Permit who proposes to begin or recommence discharging into the POTW must apply for and obtain such permit prior to the beginning or recommencing of such discharge. The Industrial User shall file a permit application on forms provided by the City containing the information specified in Section 26-606(f) below. The completed application for the Industrial Discharge Permit must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

(c) Existing Industrial Users: Applying for an Industrial Discharge Permit Re-issuance.

An Industrial User with an expiring Industrial Discharge Permit shall apply for a new permit by submitting a complete permit application at least ninety (90) days

prior to the expiration of the Industrial User's existing permit. The Industrial User shall file a permit application on forms provided by the City containing the information specified in Section 26-606(f) below. An Industrial User with an existing permit that has filed a complete and timely application may continue to discharge as approved in writing by the City through an administrative extension of the existing permit if the delay in permit issuance is not due to any act or failure to act on the Industrial User's part.

(d) Other Industrial Users.

The City may require other Non-Significant Industrial Users to apply for and obtain wastewater discharge permits or similar control mechanisms necessary to carry out the purposes of this Article. The City may issue a zero discharge permit to prohibit the discharge of some or all non-domestic process wastewater from an Industrial User.

(e) Enforceability.

Any violation of the terms and conditions of an Industrial Discharge Permit, failure to apply for a permit as required, or discharging without a required permit shall be deemed a violation of this Article and subjects the Industrial User to enforcement by the City. Obtaining an Industrial Discharge Permit does not relieve a permittee of its obligation to comply with all State and federal Pretreatment Standards or Requirements.

(f) Permit Application Contents.

In support of the application, the Industrial User shall submit, in units and terms appropriate for evaluation, the following information:

(1) Name of business, address of the facility, location of the discharge if different from facility address, and contact information of the Authorized Representative of the Industrial User.

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

(3) Description of Operations.

(i) A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production);

(ii) The Standard Industrial Classification(s) of the operation(s) carried out by such Industrial User;

- (iii) A schematic process diagram, which indicates all process tanks, process lines, treatment systems, drains, and points of discharge to the POTW from the regulated process;
 - (iv) Types of wastes generated;
 - (v) 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;
 - (vi) A list of hazardous waste(s) generated and a description of the storage area and procedures for the wastes;
 - (vii) Number of employees; and
 - (viii) Hours of operation, and proposed or actual hours of operation.
- (4) Time and duration of discharges including the date the industrial user first began discharge or plans to discharge to the POTW.
- (5) The location for sampling the wastewater discharges from the Industrial User.
- (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 Section 403.6(e). For New Sources and new permittees not currently discharging, an estimate of flows may be used for meeting the requirements of the Baseline Monitoring Report required in Section 26-611(a).
- (7) Measurement of Pollutants.
 - (i) The Pretreatment Standards applicable to each regulated process;
 - (ii) The results of sampling and analysis identifying the nature and concentration, and/or mass of regulated pollutants in the discharge from each regulated process where required by the Standard or by the City;
 - (iii) Instantaneous, daily maximum and long-term average concentrations, or mass, where required, shall be reported;
 - (iv) The sample shall be representative of daily operations and shall be collected in accordance with procedures set out in Section 26-610. Where the Standard requires compliance with a BMP or pollution

prevention alternative, the Industrial User shall submit documentation as required by the City or the applicable Standards to determine compliance with the Standard; and

- (v) Analyses must be performed in accordance with procedures set out in Section 26-610(c).
- (8) A list of hazardous waste(s) generated and a description of the storage area and procedures for the wastes.
- (9) Slug Discharge Control Plan for Significant Industrial Users and other industrial users as described in Section 26-602 shall be submitted as required by the City.
- (10) Compliance Schedule. If additional pretreatment and/or Operation and Maintenance (O&M) will be required to meet the Pretreatment Standards, the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.

The following conditions shall apply to this schedule:

- (i) The schedule shall contain increments of progress 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 Industrial User to meet the applicable Pretreatment Standards (e.g. hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.). No such increment shall exceed nine (9) months.
- (ii) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Administrator including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the Administrator.
- (11) Certification. A statement, reviewed by an Authorized Representative of the Industrial User and certified to 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 for the Industrial User to meet the Pretreatment Standards and Requirements.

(12) Signatory Certification. All Industrial Discharge Permit applications and certification statements must be signed by an Authorized Representative of the Industrial User and contain the applicable certification statement(s) in Section 26-611(h).

(13) Any other information as may be deemed by the Administrator to be necessary to evaluate the permit application.

(g) Industrial Discharge Permit Issuance.

(1) Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period of less than five (5) years at the City's discretion or may be stated to expire on a specific date.

(2) Where the City is establishing enforceable permit specific Pretreatment Standards or Requirements, the permit shall be noticed for public comment for thirty (30) days in a newspaper of general circulation that provides meaningful public notice. The City shall consider all comments that are received prior to issuing the permit.

(3) The City shall issue an Industrial Discharge Permit to the applicant if the City finds that all of the following conditions are met:

(i) The applicant has provided a timely and complete permit application to the City;

(ii) The proposed discharge by the applicant is in compliance with the limitations established in this Article;

(iii) The proposed operation and discharge of the applicant would permit the normal and efficient operation of the POTW; and

(iv) The proposed discharge by the applicant would not result in a violation by the City of the terms and conditions of its MPDES Permit or cause Pass Through or Interference.

(4) If the City finds that the condition set out in Subsection (3)(ii) of this Section is not met, the City may, at their discretion, issue an Industrial Discharge Permit to the applicant if the conditions set out in subsections (3)(i), (3)(iii) and (3)(iv) of this Section have been met and if the applicant submits, and the City approves, a compliance schedule setting out the measures to be taken by the applicant and the dates that such measures will be implemented

to assure compliance with applicable Pretreatment Standards. At no time shall a discharge be allowed to cause a violation of any General or Specific Prohibition established in Section 26-604 nor shall the final compliance date for a Categorical Pretreatment Standard be extended.

- (5) Any person, including the Industrial User, may petition the City to reconsider the terms of an Industrial Discharge Permit within thirty (30) days of the permit issuance. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal. In its petition, the appealing party must indicate the permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit. The effectiveness of the Industrial Discharge Permit shall not be stayed pending the appeal. If the City does not act on such appeal within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider, not to issue an Industrial Discharge Permit, or not to modify a permit, shall be considered final administrative action for purposes of judicial review.
- (h) Transferability. Industrial Discharge Permits are issued to a specific Industrial User for a specific operation. An Industrial Discharge Permit shall not be reassigned or transferred or sold to a new owner, new Industrial User, different premises, or a new or changed operation without the prior written approval of the City. Any succeeding owner shall comply with the terms and conditions of the existing permit until a new permit is issued. The Permittee shall notify the City at least fourteen (14) days prior to any change of ownership.
- (i) Industrial Discharge Permit Conditions
- Industrial Discharge Permits shall be expressly subject to all provisions of this Article and all other applicable regulations, user charges and fees established by the City. Permits may contain the following:
- (1) A statement that indicates the permit's issuance date, expiration date and effective date;
 - (2) A statement on permit transferability;
 - (3) The unit charge or schedule of user charges and fees for the wastewater to be discharged into a public sewer;
 - (4) Limits on the average and/or maximum wastewater constituents and characteristics including, but not limited to, effluent limits, including Best Management Practices, based upon applicable Pretreatment Standards;
 - (5) Limits on average and maximum rate and time of discharge or requirements for flow;

- (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- (7) Self-monitoring, sampling, reporting, notification and record-keeping requirements including, but not limited to, identification of the pollutants to be monitored, sampling location, sampling frequency and sample type, based on federal, state and local law;
- (8) Best Management Practices (BMPs) to control specific pollutants as necessary to meet the objectives of this Article;
- (9) Compliance Schedules;
- (10) Requirements for notification of the City of any new introduction of wastewater constituents or any significant change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system;
- (11) Requirements to control and report any slug discharges and notify the City immediately of any changes at its facility affecting potential for a Spill or Slug Discharge and to notify the POTW immediately in the event of a slug, spill or accidental discharge to the POTW;
- (12) Statements of applicable administrative, civil and criminal penalties for the violation of Pretreatment Standards and Requirements, the permit, this Article, and any applicable compliance schedule;
- (13) Requirements to reapply for a new permit prior to expiration of the existing permit;
- (14) Additional monitoring to be reported;
- (15) 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;
- (16) Closure requirements for permitted facilities undergoing partial or complete closure activities to ensure closure activities are completed and wastes have been properly disposed and remaining access to sanitary and storm sewers are protected;
- (17) Other conditions as deemed appropriate by the City to ensure compliance with all applicable [Pretreatment Standards and Requirements](#).

(j) Industrial Discharge Permit Modification

The City may modify an Industrial 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 Industrial User's operation, processes, or wastewater volume or character since the time of the Industrial Discharge Permit issuance;
- (3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- (4) Information indicating that the permitted discharge poses a threat to the POTW, City personnel or the receiving waters;
- (5) Violation of any terms or conditions of the Industrial Discharge Permit;
- (6) Misrepresentations or failure to fully disclose all relevant facts in the Industrial Discharge Permit application or in any required reporting;
- (7) To reflect a transfer of the facility ownership and/or operation to a new owner/operator;
- (8) To correct typographical or other errors in the Industrial Discharge Permit;
or
- (9) Upon request of the Permittee, provided such request does not result in a violation of any applicable Pretreatment Standards or Requirements or this Article. The filing of a request by the Permittee for a permit modification does not stay any permit condition.

(k) Industrial Discharge Permit Revocation

A violation of the conditions of a permit, this Article or of applicable State and federal regulations may be reason for revocation of such permit by the City. Upon revocation of the permit, any wastewater discharge from the affected Industrial User shall be considered prohibited and in violation of this Article. Grounds for revocation of a permit include, but are not limited to, the following:

- (1) Failure of an Industrial User to accurately disclose or report the wastewater constituents and characteristics of any discharge;

- (2) Failure of the Industrial User to report significant changes in operations or wastewater constituents and characteristics as required;
- (3) Denial of access to the Industrial User's premises for the purpose of inspection or monitoring;
- (4) Falsification of records, reports or monitoring results;
- (5) Tampering with monitoring equipment;
- (6) Misrepresentation or failure to fully disclose all relevant facts in the Industrial Discharge Permit application;
- (7) Failure to pay fines or penalties;
- (8) Failure to pay sewer charges, surcharges, or pretreatment programs fees;
- (9) Failure to meet compliance schedules;
- (10) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
- (11) Failure to provide required reports, including but not limited to, a wastewater survey, baseline monitoring report, 90-day compliance report, permit application, self-monitoring report or other permit required reports or notifications within the timeframe required by the City.

Sec. 26-607. Recordkeeping

- (a) All Industrial Users shall retain, and make available for inspection and copying, all records, reports, monitoring or other data, applications, permits and all other information and documentation required by this Article including documentation associated with Best Management Practices.
- (b) Industrial users shall retain such records and shall keep such records available for inspection for at least three (3) years. This recordkeeping period shall be extended automatically for the duration of any litigation concerning the Industrial User's compliance with any provision of this Article, or when the Industrial User has been specifically and expressly notified of a longer records retention period by the Administrator.
- (c) Written reports will be deemed to have been submitted on the date postmarked. For reports which are hand delivered, the date of receipt of the report shall govern.

Sec. 26-608. Confidential Information.

- (a) All records, reports, data or other information supplied by any person or Industrial User as a result of any disclosure required by this Article or information and data from inspections shall be available for public inspection except as otherwise provided in this Section, 40 CFR Section 403.14 and the laws of the State of Montana.
- (b) These provisions shall not be applicable to any information designated as a trade secret by the person supplying such information. Materials designated as a trade secret may include, but shall not be limited to, processes, operations, style of work or apparatus or confidential commercial or statistical data. Any information and data submitted by the Industrial User which is desired to be considered a trade secret shall have the words, "Confidential Business Information," stamped on each page containing such information. The Industrial User must demonstrate to the satisfaction of the City that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the Industrial User.

Information designated as a trade secret pursuant to this Section shall remain confidential and shall not be subject to public inspection except as ordered by a district court judge or Supreme Court of the State of Montana. Such information shall be available only to officers, employees or authorized representatives of the City charged with implementing and enforcing the provisions of this Article and properly identified representatives of the U.S. Environmental Protection Agency and the Montana Department of Environmental Quality.

Effluent data from any Industrial User whether obtained by self-monitoring, monitoring by the City or monitoring by any state or federal agency, shall not be considered a trade secret or otherwise confidential. All such effluent data shall be available for public inspection.

Sec. 26-609 Reserved.

Sec. 26-610 Sample Collection and Analytical Methods

(a) Sample Collection.

Compliance determinations with respect to prohibitions and limitations in this Article may be made on the basis of either grab or composite samples of wastewater as specified by the City. Such samples shall be taken at a point or points which the City determines to be suitable for obtaining a representative sample of the discharge. Composite samples may be taken over a twenty-four (24) hour period, or over a longer or shorter time span, as determined by the City to meet specific circumstances.

(b) Sample Type.

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, and based on data that is representative of conditions occurring during the reporting period.

(1) Except as indicated in subparagraphs (2) and (3) below, the Industrial User must collect representative wastewater samples using twenty-four (24) hour flow proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is required by the City. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the permitted discharge.

(2) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composited samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with instantaneous local limits, including pH.

(3) For sampling required in support of Baseline Monitoring and 90-day Compliance reports required in Section 26-611, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical representative sampling data do not exist. Where historical data are available, the City may authorize a lower minimum. For the reports required by Section 26-611(a), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.

(c) Analytical Requirements.

All pollutant analysis, including sampling techniques, to be submitted as part of an Industrial Discharge Permit application, report, permit or other analyses required under this Article shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable Categorical Pretreatment Standard. If 40 CFR Part 136

does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the City or other parties approved by the EPA.

(d) Records shall include for all samples:

1. The date, exact place, method, and time of sampling and the name of the person(s) taking the samples;
 The date(s) analyses were performed;
3. Who performed each analysis;
4. The analytical techniques/methods used, including method detection limits and QA/QC sample results;
5. Calibration and maintenance records;
6. All chain-of-custody records; and
7. The results of each analysis.

Sec. 26-611. Reporting and Notification Requirements.

(a) Periodic Compliance Reports – All Significant Industrial Users.

- (1) Any Significant Industrial User or other Industrial User required by the City, subject to a federal, state, or City Pretreatment Standard or Requirement must submit reports, at a frequency determined by the City but no less than once per six (6) months, indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practices (BMPs) or pollution prevention alternatives, the Industrial User must submit documentation required by the City or the Pretreatment Standard necessary to determine compliance status of the Industrial User. All periodic compliance reports must be signed and certified in accordance with Section 26-611(h).
- (2) All wastewater samples must be representative of the Industrial 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 an Industrial User to keep its monitoring facility in good working order shall not be grounds for the Industrial User to claim that the sample results are unrepresentative of its discharge.

(3) If an Industrial User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the City, using the methods and procedures prescribed in Section 26-610, the results of this monitoring shall be included in the report.

(4) The sampling and analyses required for the reporting outlined above may be performed by the City in lieu of the permittee. Where the City itself makes arrangements with the Industrial User to collect all the information required for the report, the Industrial User will not be required to submit the report.

(b) Baseline Monitoring Reports (BMR) – Categorical Industrial Users.

(1) Within either one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard, or the final administrative decision on a category determination under 40 CFR Section 403.6(a)(4), whichever is later, existing industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the City a report which contains the information listed in paragraph (2) below. At least ninety (90) days prior to commencement of their discharge, New Sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable Categorical Pretreatment Standard, shall submit to the City a report which contains the information listed in paragraph (2) below. A New Source shall report the method of pretreatment it intends to use to meet applicable Pretreatment Standards. A New Source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged from regulated process streams and other non-process streams.

(2) Industrial users described above shall submit the information set forth below.

(i) All information required in Section 26-606(f).

(ii) Measurement of pollutants.

(A) The Industrial User shall take a minimum of one (1) representative sample to compile the data necessary to comply with the requirements of this paragraph.

(B) Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment

exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the Industrial User should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 Section CFR 403.6(e) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR Section 403.6(e) this adjusted limit along with supporting data shall be submitted to the City.

(C) Sampling and analysis shall be performed in accordance with Section 26-610.

(D) The City may allow the submission of a BMR which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

(E) The BMR shall indicate the time, date, and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(F) Signature and Report Certification. All baseline monitoring reports must be signed in accordance with Section 26-611(h) and signed by an Authorized Representative as defined in Section 26-602.

(c) 90-Day Compliance Reports – Categorical Industrial Users.

(1) New Sources: All New Sources subject to existing Categorical Pretreatment Standards shall submit a report to the City within ninety (90) days from the date of first discharge to the POTW demonstrating actual and continuing compliance with those Standards.

(2) Existing Sources: All Existing Sources required to comply with newly promulgated Categorical Pretreatment Standards shall submit a report to the City within ninety (90) days of the date on which compliance is required with those Standards demonstrating that actual and continuing compliance with such Standards has been achieved.

(3) Such 90-day Compliance Report shall contain at a minimum the information required in Section 26-606(f) subparagraphs (6), (7), (10), (11), (12), and (13).

(d) 24 Hour Notice and 30 Day Re-sampling.

If sampling performed by an Industrial User indicates a violation of this Article, the Industrial User shall notify the City within twenty-four (24) hours of becoming aware of the violation. The Industrial User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City within thirty (30) days after becoming aware of the violation. The Industrial User is not required to resample if the following occurs:

- (1) The City performs sampling at the Industrial User's facility at a frequency of at least once per month.
- (2) The City performs sampling at the Industrial User's facility between the time when the Industrial User performs its initial sampling and the time when the Industrial User receives the results of this sampling. It is the sole responsibility of the Industrial User to verify if the City has performed this sampling.

(e) Slug Discharge Control Plan.

- (1) Each Industrial User shall provide protection from accidental and slug discharges of pollutants regulated under this Article. Facilities to prevent the discharge of spills or slug loads shall be provided and maintained at the Industrial User's expense.
- (2) The City shall evaluate whether each Significant Industrial User needs a Slug Discharge Control Plan or other action to control spills and slug discharges. The City may require an Industrial User to develop, submit for approval, and implement a Slug Discharge Control Plan or take such other action that may be necessary to control spills and slug discharges.
- (3) A Slug Discharge Control Plan shall address, at a minimum, the following:
 - (i) Detailed plans (schematics) showing facility layout and plumbing representative of operating procedures;
 - (ii) Description of contents and volumes of any process tanks;
 - (iii) Description of discharge practices, including non-routine batch discharges;
 - (iv) Listing of stored chemicals, including location and volumes;

- (v) Procedures for immediately notifying the City of any spill or Slug Discharge. It is the responsibility of the Industrial User to comply with the reporting requirements in Section 26-611(f);
- (vi) 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; and
- (vii) Any other information as required by the City.

- (4) Notice to employees. A notice shall be permanently posted on the Industrial User's bulletin board or other prominent place advising employees who to call in the event of an accidental or slug discharge. Employers shall ensure that all employees who work in any area where an accidental or slug discharge may occur or originate are advised of the emergency notification procedures.

(f) Reports of Potential Problems – Slug and Spills.

- (1) In the case of any changes at its facility affecting potential for a Slug Discharge as defined in Section 26-602 or any actual discharge, including, but not limited to, spills, accidental discharges, discharges of a nonroutine, episodic nature, a non-customary batch discharge, or a discharge that may cause potential problems for the POTW, the Industrial User shall immediately telephone and notify the City of the incident. This notification shall include:
 - (i) Name of the facility
 - (ii) Location of the facility
 - (iii) Name of the caller
 - (iv) Date and time of discharge
 - (v) Date and time discharge was halted
 - (vi) Location of the discharge
 - (vii) Estimated volume of discharge
 - (viii) Estimated concentration of pollutants in discharge
 - (ix) Corrective actions taken to halt the discharge
 - (x) Method of disposal if applicable
- (2) Within five (5) working days following such discharge, the Industrial User shall, unless waived by the City, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by

the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the Industrial User of any fines, penalties, or other liability which may be imposed pursuant to this Article.

(g) Reports for Non-Significant Industrial Users.

If the City deems it necessary to assure compliance with provisions of this Article, any Industrial User of the POTW may be required to submit an Industrial Discharge Permit Application, questionnaire or other reports and notifications in a format and timeframe as specified by the City.

(h) Signatory Certification.

All reports and other submittals required to be submitted to the City shall include the following statement and signatory requirements.

1. The Authorized Representative of the Industrial User signing any application, questionnaire, any report or other information required to be submitted to the City must sign and attach the following certification statement with each such report or information submitted to the City.

"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 ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or the 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 a fine and imprisonment for knowing violations."

If the Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this Section and meeting the definition in Section 26-602 must be submitted to the City prior to or together with any reports to be signed by an Authorized Representative.

(i) Compliance Schedules.

Should any schedule of compliance be established in accordance with the requirements of this Article, the following conditions shall apply to such schedule:

- (1) The schedule shall contain increments of progress 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 Industrial User to meet the applicable Categorical Pretreatment Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);
 - (2) No increment referred to above shall exceed nine (9) months;
 - (3) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the City including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the City.
- (j) Change in Discharge or Operations.
- (1) Every permitted Industrial User shall file a notification with the City a minimum of fourteen (14) days prior to any planned significant change in operations or wastewater characteristics. A significant change shall be a change equal to or greater than twenty percent (20%) in the mass of a pollutant or volume of flow discharged to the POTW. In addition, this notification shall include changes to:

 - (i) Adding or removing processing, manufacturing or other production operations.
 - (ii) New pollutants used which may be discharged.
 - (iii) Changes in the listed or characteristic hazardous waste for which the Industrial User has submitted or is required to submit information to the City under this Article and Section 26-611(k).
 - (2) Known or anticipated facility closure. The Industrial User is required to notify the City at least thirty (30) days prior to facility shutdown or closure which might alter the character, nature, quality, or volume of its wastewater.
- (k) Notification of the Discharge of Hazardous Waste

1. Any Industrial User shall notify the City, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261. Such notification to the City shall be made within the appropriate time frames specified in Section 26-611, paragraphs (d), (f) and (j) within twenty-four (24) hours of becoming aware of the discharge, whichever is shorter.

Such notification must include:

- a. The name of the hazardous waste as set forth at 40 CFR Part 261;
- b. The EPA hazardous waste number;
- c. The type of discharge (continuous, batch, or other);
- d. An identification of the hazardous constituents contained in the wastes;
- e. An estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month;
- f. An estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months;
- g. Certification that the Industrial User 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; and
- h. Signatory certification as required by Section 26-611(h).

Any Industrial User shall notify the EPA Regional Waste Management Division Manager, and state hazardous waste authorities, in writing, of the discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261 and meets the reporting criteria specified at 40 CFR 403.12(p). Notification to the State and EPA is the responsibility of the Industrial User and shall be made as required under 40 CFR Section 403.12(p). The Industrial User shall copy the City on all notifications made to the State and EPA.

3. In the case of any new regulation under Section 3001 of the Resource Conservation and Recovery Act (RCRA) identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the Industrial User must notify the City, the EPA Regional Waste Management Waste Division Director, and state

hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

4. This provision does not create a right to discharge any substance not otherwise allowed to be discharged by this Chapter, a permit issued hereunder, or any applicable federal or state law.

(l) Requests for Information

- (1) A permittee shall furnish to the City, within the timeframe set by the Administrator, any information which the City may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating an industrial discharge permit, or to determine compliance with the Industrial discharge permit or this Article. A permittee shall also, upon request, provide to the City, within the timeframe required by the Administrator, copies of any records that are required by the Industrial discharge permit or this Article.
- (2) When requested by the City, any Industrial User shall submit information to the Administrator regarding industrial processes, nature and characteristics of wastes and wastewaters generated at the industrial facility, method of disposal of wastes, or other information required by the Administrator to meet the responsibilities under this Article, State law, and 40 CFR Part 403. Failure to provide information within the timeframe specified shall be a violation of this Article.

Sec. 26-612. Right of Entry.

- (a) Whenever it shall be necessary for the purposes of this Article, the City may enter upon any Industrial User's facility, property, or premises subject to this Article for the purposes of:
 - (1) Performing all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by an Industrial User. Compliance monitoring and inspection shall be conducted at a frequency as determined by the City and may be announced or unannounced;
 - (2) Examining and copying any records required to be kept under the provisions of this Article or of any other local, state or federal regulation;
 - (3) The City may use a camera to photograph any areas of the facility as deemed necessary for carrying out the duties of the industrial pretreatment program

including, but not limited to, documentation of the industrial user's compliance status and for reinforcement of required written reports. The industrial user shall be allowed to review copies of photographs for confidentiality claims.

- (4) Inspecting any monitoring equipment or method, pretreatment system equipment and/or operation;
 - (5) Sampling any discharge of wastewater into POTW; and/or
 - (6) Inspecting any production, manufacturing, fabricating or storage area where pollutants, regulated under this Article, could originate, be stored, or be discharged to the POTW.
- (b) The occupant of such property or premises shall render all proper assistance in such activities. Where an Industrial User has security measures in place which require proper identification and clearance before entry into its premises, the Industrial User shall make necessary arrangements with its security personnel so that authorized representatives of the City will be permitted to enter without delay to perform their specified functions.
- (c) The Administrator is entitled to enter all private properties through which the City or any connecting jurisdiction holds an easement.
- (d) Failure to allow entry or unreasonable delays: In the event the Administrator is refused admission or unreasonably delayed is a violation and may result in enforcement action as allowed for under this Article including revocation of the Industrial Discharge Permit.
- (e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the Industrial User at the written or verbal request of the Administrator and shall not be replaced. The costs of clearing such access shall be borne by the User.
- (f) If the Administrator 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 Article, 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 Article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the Administrator may seek issuance of a search warrant from a Court of competent jurisdiction.

~~Sec. 26-607. Pretreatment program administration.~~

~~A. — *Industrial discharge permits.* No significant industrial user shall discharge wastewater to the WWS without having a valid industrial discharge permit issued by the city and without having paid all fees required by Rule 24.7 of the rules and regulations. No users' discharge shall violate any pretreatment requirements or conditions contained therein. Significant industrial users shall apply for permit renewal at least ninety (90) days prior to the permit expiration date specified therein.~~

~~B. — *Compliance reports.*~~

~~(1) — Within ninety (90) days following the date for final compliance with applicable pretreatment standards or requirements, or in the case of a new source, following commencement of the introduction of wastewater into the WWS, any significant industrial user subject to federal, state or city pretreatment standards and requirements shall submit to the city a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by such standards and requirements and all other information required by the administrator and the rules and regulations as adopted by the department.~~

~~(2) — All significant industrial users shall submit to the city at least once every six (6) months, on dates specified by the city, a description of the nature, concentration, and flow of the pollutants as well as any other information required to be reported by the city.~~

~~C. — *Categorical pretreatment standards.* Within six (6) months after the promulgation of a national categorical pretreatment standard the industrial discharge permit of users subject to such standards shall be revised to require compliance by the prescribed compliance date. In addition, any significant industrial user with an existing industrial discharge permit shall submit to the city within one hundred eighty (180) days after promulgation of an applicable national categorical pretreatment standard a baseline report and any information required by 40 CFR Section 403.12 of the Federal General Pretreatment Regulations as amended. New sources shall submit a baseline report and required information ninety (90) days prior to commencement of discharge. New sources shall comply with all applicable categorical pretreatment standards in the shortest feasible time, but in no case more than ninety (90) days, following commencement of discharge.~~

~~D. — *Self-monitoring.*~~

~~(1) — All industrial discharge permit holders shall monitor, sample, maintain records and submit reports in conformance with the permit. Reports shall include all permit conditions specified therein and as required in this section. Sampling techniques shall be in conformance with applicable portions of 40 CFR 403.12. The reports required in this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. If any pollutant is monitored more frequently than required by the permit conditions, the results of this monitoring shall be included in the report. If~~

~~sampling indicates a violation, the significant industrial user shall notify the city within twenty four (24) hours of becoming aware of the violation. The significant industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the city within thirty (30) days after becoming aware of the violation.~~

- ~~(2) — The reports required herein shall include the following certification statement:~~

~~"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."~~

~~The reports shall be signed:~~

- ~~(a) — By a responsible corporate officer if the significant industrial user submitting the reports is a corporation. For the purpose of this section, a responsible corporate officer means (1) a president, secretary, treasurer or 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 (2) the manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000.00) (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;~~
- ~~(b) — By a general partner or proprietor if the significant industrial user submitting the reports is a partnership or sole proprietorship respectively;~~
- ~~(c) — By a duly authorized representative of the individual designated in paragraphs (a) and (b) of this section if (1) the authorization is made in writing by the individual described in paragraphs (a) and (b); (2) the authorization specifies either an individual or a position have responsibility for the overall operation of the facility from which the discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and (3) the written authorization is submitted to the administrator.~~

~~The reports submitted under this section shall be subject to:~~

- ~~(a) The provisions of 18 U.S.C. Section 1001 relating to fraud and false statements; and~~
- ~~(b) The provisions of Sections 309(c)(4) of the Act, as amended, governing false statements, representation or certification.~~

~~E. *Notification of changed discharge.* All industrial users shall promptly notify the city (1) of all discharges that could cause problems, including slug discharges; and (2) in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under paragraph F. of this section.~~

~~F. *Notification of hazardous materials.*~~

- ~~(1) Industrial users shall notify the city, the EPA Regional Waste Management Division director, and State hazardous waste authorities in writing of any discharge into the WWS of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch or other). If the industrial user discharges more than one hundred (100) kilograms of such waste per calendar month to the WWS, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place by February 19, 1991 or in the case of users who commence discharging after August 23, 1990, within one hundred eighty (180) days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of paragraph D. above.~~
- ~~(2) Dischargers are exempt from the requirements of paragraph (1) of this section during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30 and 261.33. Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or any quantity of acute hazardous wastes, requires a one time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.~~

- ~~(3) — In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the city, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.~~
- ~~(4) — In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.~~

~~G. — *Monitoring facilities.*~~

- ~~(1) — Each significant industrial user shall provide, calibrate, and operate at its expense sufficient monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and internal drainage systems. Records shall be maintained documenting the calibration of all monitoring instruments. The monitoring facilities, including control manholes and continuous flow recorders, shall normally be situated on the user's premises. If such a location would be impractical or cause undue hardship on the significant industrial user as determined by the city, the administrator may allow the facility to be constructed in a public right-of-way provided all other applicable city ordinances and regulations governing such a construction have been met.~~
- ~~(2) — A sampling manhole or facility shall have sufficient room for accurate sampling and preparation of samples for analysis. The facility shall be maintained at all times in a safe and proper operating condition at the expense of the significant industrial user.~~
- ~~(3) — Whether constructed on public or private property, any sampling and monitoring facilities shall be built in accordance with city requirements and all applicable local construction standards and specification. Construction shall be completed within ninety (90) days following receipt of a written order by the administrator to install the facility.~~

~~H. — *Inspection and sampling.* The city may inspect the facilities of any industrial user to determine whether the purpose of this article, the applicable rules and regulations, and all applicable requirements are being met. Owners, employees or occupants of premises where wastewater is discharged shall allow city representatives or agents ready access at all reasonable times to all parts of the premises where wastewater is created or discharged, including industrial process area, for the purposes of inspection, sampling, records examination and copying, or performance evaluation. Industrial users shall supply all information requested by the city during inspections or otherwise. The city may set up on the industrial user's property such devices as are necessary to conduct sampling inspection, compliance monitoring and/or metering operations. Where an industrial user has security measures in force which require proper identification and clearance before entry into the industrial user's premises, the industrial user shall make~~

~~necessary arrangements with the security guards so that upon presentation of suitable identification, personnel authorized by the city or from the state or EPA will be permitted to enter without delay for the purpose of performing their specific responsibilities under this article.~~

~~I. *Pretreatment.* Significant industrial users shall provide whatever wastewater pretreatment is required, in the opinion of the administrator, to comply with this article and shall comply with all national categorical pretreatment standards within the time limitations as specified by the Federal Pretreatment Regulations, this article and applicable rules and regulations. Any facilities required to pretreat wastewater to a level of quality acceptable to the city shall be provided, operated, and maintained at the significant industrial user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review, and must be approved by the city before construction of the facilities. The review or approval of such plans and operating procedures shall in no way relieve a significant industrial user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this article. Any subsequent change in the pretreatment facilities or method of operation shall be reported to and approved by the city prior to such change. Pretreatment facilities shall be satisfactorily and effectively maintained and continuously operated whenever wastewater is discharged to the WWS.~~

~~J. *Compliance schedules.* All industrial users shall comply with compliance schedules contained in any permits, notices or orders issued by the city.~~

~~(Ord. No. 85-4663, § 7, 9-9-85; Ord. No. 91-4886, § 5, 9-9-91; Ord. No. 92-4906, § 4, 7-27-92)~~

Sec. 26-61308. - Fees.

(a) *Purpose.* The purpose of this section is to provide for the payment to the ~~city~~ City by ~~significant~~ industrial users of the ~~WWS~~ POTW of all costs incurred in the implementation and administration of the industrial pretreatment program. The applicable charges and fees shall be set forth in a schedule adopted by the City ~~Ce~~council.

(b) *Charges and fees.* The ~~Administrator Ceouncil~~ Administrator may adopt additional charges and fees relating to the matters covered by this ~~article~~ Article, including fees for:

- (1) Processing Industrial discharge permit applications.
- (2) Reimbursement of costs of ~~setting up and~~ operating the industrial pretreatment program.
- (3) Measuring, monitoring, inspection and surveillance procedures, sampling, testing, and analyzing ~~significant~~ industrial user wastewater.
- (4) Reviewing and approving accidental discharge procedures and facilities.

- (5) Fees as the ~~city~~ City may deem necessary to carry out the requirements contained herein.
- (6) Fees to cover the added cost of handling or treating any wastes not covered by existing or regular monthly sewer service charges.

(Ord. No. 85-4663, § 8, 9-9-85)

~~Sec. 26-609. Confidential information.~~

- ~~(a) Information and data regarding a significant industrial user obtained from reports, questionnaires, permit application, permits and monitoring programs and from inspections shall be available to the public or governmental agencies without restriction, unless the significant user specifically requests and is able to demonstrate to the satisfaction of the administrator that the release of such information would divulge information entitled to protection as a trade secret of the significant industrial user. In such case restricted information shall not be made available to the public, but shall nevertheless be made available to other governmental agencies for purposes related to water pollution control, including judicial review of enforcement of the provisions of this article.~~
- ~~(b) Wastewater constituents and characteristics will not be recognized as confidential information.~~
- ~~(c) Information accepted by the administrator as confidential shall not be transmitted to the general public by the city unless, upon application by an interested party, a District Court orders that the information be released.~~

~~(Ord. No. 85-4663, § 9, 9-9-85; Ord. No. 91-4886, § 7, 9-9-91)~~

~~Sec. 26-61410. -- Compliance and enforcement~~Actions for violation; enforcement.

(a) Enforcement Response Plan.

The City may adopt policies and procedures as set forth in the City's Enforcement Response Plan for carrying out the provisions of this Article, provided that such policies and procedures are not in conflict with this Article or any applicable state or federal law or regulation.

(b) Publication of Industrial Users in Significant Noncompliance.

The City shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Significant Industrial Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. In addition, any Industrial User found to be in Significant Noncompliance with (3), (4) or (8) shall also be published in the newspaper. The following criteria shall be used to define Significant Noncompliance:

- (1) Chronic violations of wastewater discharge limits, defined as those in which sixty-six (66) percent or more of all of the measurements taken during a six-month period exceed, by any magnitude, a numeric Pretreatment Standard or Requirement, including instantaneous limits.;
 - (2) Technical Review Criteria (TRC) violations, defined as those in which thirty-three (33) percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease and 1.2 for all other pollutants except pH);
 - (3) Any other violation of a Pretreatment Standard or Requirement (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the Administrator determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of City personnel or the general public;
 - (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or the environment or has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge;
 - (5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction or attaining final compliance;
 - (6) Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules;
 - (7) Failure to accurately report noncompliance; or
 - (8) Any other violation or group of violations which may include a violation of Best Management Practices, which the Administrator determines may adversely affect the operation or implementation of the local pretreatment program.
- (a) ~~*Notice to violators.* Any person found to be violating the provisions of this article shall be served by the city with written notice stating the nature of the violation and action needed for its satisfactory correction. The offender shall immediately take action to permanently cease all violations as directed by the city. The issuance of a correction notice does not constitute a defense to a criminal charge which is concurrently or subsequently filed for the same violation.~~
- (c) Administrative Enforcement Actions.
- (1) Notice of Violation (NOV).
- When the City finds that an Industrial User has violated, or continues to violate, any provision of this Article, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or

Requirement, the City may serve upon the Industrial User a written Notice of Violation. Within five (5) working days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction of prevention thereof, to include specific required actions, shall be submitted by the Industrial User to the City. Submission of such a plan in no way relieves the Industrial 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 City to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

(2) Suspension of Service.

Endangerment to Health or Welfare of the Community: The City, through other than a formal notice to the affected Industrial User, may immediately and effectively halt or prevent any discharge of pollutants into any natural waterway, surface drainage within the City, any area under jurisdiction of the City, the POTW of the City or any wastewater system tributary thereto, by any means available to them, including physical disconnection from the wastewater system, whenever it reasonably appears that such discharge presents an imminent endangerment to the health or welfare of the community.

Endangerment to Environment or Treatment Works: The City, after written notice to the industrial user may halt or prevent any discharge of pollutants into any natural waterway, surface drainage within the City, any area under jurisdiction of the City, the POTW, wastewater system tributary thereto, by any means available to them, including physical disconnection from the wastewater system, whenever such discharge presents or may present an endangerment to the environment or threatens to interfere with the operation of the POTW.

Any person notified of a suspension of the wastewater treatment service and/or the Industrial Discharge Permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the City shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to individuals or the environment. The City may reinstate the Industrial Discharge Permit and/or the wastewater treatment service upon proof of the elimination of the non-complying discharge.

A detailed written statement submitted by the Industrial User describing the causes of the harmful contribution and the measure taken to prevent any future occurrence shall be provided to the City within five (5) days of

the date of occurrence. Suspension of Service shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User.

~~(b) — *Harmful contributions or interference with the wastewater system.*~~

- ~~(1) — The administrator may cancel a significant industrial user's permission to discharge wastewaters into the WWS, reject such wastewater, may cease wastewater treatment service, and/or suspend a significant industrial user's industrial discharge permit when such suspension is necessary, in the opinion of the administrator, to stop or preclude a harmful contribution to the WWS or a discharge which interferes with or has a deleterious effect upon the WWS.~~
- ~~(2) — Any significant industrial user notified of a suspension or cancellation of wastewater treatment service and/or the industrial discharge permit shall immediately stop or eliminate the contribution or discharge. In the event of a failure by such significant industrial user to comply voluntarily with the suspension order, the administrator shall take such steps as are deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the WWS system, danger to individuals or harm to the receiving water. The administrator may reinstate the industrial discharge permit and/or the wastewater treatment service only upon proof of compliance with the suspension order, including payment of any fees or penalties. A detailed written statement submitted by the significant industrial user describing the causes of the harmful contribution and the measures actually taken to prevent any future occurrence shall be submitted to the city within five (5) business days from the date of occurrence.~~

(3) Administrative Compliance Order.

When the City finds that an Industrial User has violated, or continues to violate, any provision of this Article, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may issue an order to the Industrial User responsible for the discharge directing that the Industrial User come into compliance within a specific time. If the Industrial 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 POTW. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the Industrial 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 Industrial User.

(4) Consent Order.

The City may enter into a Consent Order, assurances of compliance, or other similar documents establishing an agreement with any Industrial User responsible for noncompliance. Such documents shall include specific actions to be taken by the Industrial User to correct the noncompliance within a time period specified by the document. A consent order may include penalties, supplemental environmental projects, or other conditions and requirements as agreed to by the City and the Industrial User.

(5) Show Cause Hearing.

(i) The City may order any Industrial User who causes or allows an unauthorized discharge to enter the POTW to show cause before the Administrator why the proposed enforcement action should not be taken. A notice shall be served on the Industrial User specifying the time and place of a hearing to be held by the Administrator regarding the violation, the reasons why the proposed action is to be taken, and directing the Industrial User to show cause before the Administrator why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or be sent by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.

(ii) The Administrator may conduct the hearing and take the evidence, or may designate one or more persons to conduct the hearing and to take the following actions:

(A) Issue subpoenas requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings. The Administrator or the Industrial User may petition the Municipal Court to enforce any subpoena issued pursuant to this Section through the Court's contempt powers.

(B) Receive evidence from both the Industrial User and the Administrator on any relevant issue involved in such hearings, provided however, that the Montana Rules of Evidence shall not apply strictly to such evidence.

(C) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the administrator for final action thereon.

(iii) At any hearing held pursuant to this Article, testimony taken must be under oath and recorded. The transcript of testimony will be made available to any member of the public and any party to the hearing upon payment of reasonable charges for the preparation thereof. The hearing may be suspended or continued from time to time in the discretion of the presiding officer, provided that all evidence is received and the hearing is closed within sixty (60) days after it is commenced.

(iv) After the Administrator has reviewed the evidence, they may issue an order of findings and take an action or no action as necessary and appropriate.

(6) Cease and Desist Order

(i) When the Administrator finds that an industrial user is violating this Article, an Industrial Discharge Permit, any order issued hereunder, or any other Pretreatment Standard or Requirement, or that the industrial user's past compliance history indicates that violations are likely to recur, the Administrator may issue an order to the user directing it to cease and desist all such violations and directing the industrial user to:

(A) Immediately comply with all requirements;

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

(ii) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

(7) Administrative Fines.

(i) When the City finds that an Industrial User has violated, or continues to violate, any provision of this Article, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may fine such Industrial User in an amount not to exceed one thousand dollar (\$1,000) per day per violation. 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 may be assessed for each day during the period of violation. Issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the Industrial User.

~~(c) — *Revocation of permit/termination of service.* Any significant industrial user who violates the following conditions of this article, the city's rules or regulations or applicable state and federal laws is subject to permit revocation or service termination, or both, in accordance with the procedures set forth in said rules and regulations or this section:~~

- ~~(1) — Failure to factually report wastewater constituents and characteristics or permit violations.~~
- ~~(2) — Failure to report significant changes in operations or wastewater constituents and characteristics.~~
- ~~(3) — Refusal or physical obstruction of reasonable access to the user's premises for the purposes of inspection, monitoring, review of records concerning wastewater or any purpose listed under section 26-607(G).~~
- ~~(4) — Violation of conditions of the industrial discharge permit.~~
- ~~(5) — Failure to obtain or maintain a valid industrial discharge permit.~~
- ~~(6) — Failure to file required reports or give notices.~~
- ~~(7) — Failure to comply with a city order or compliance schedule.~~
- ~~(8) — Failure to provide for protection against spills, slug discharges or accidental discharges.~~
- ~~(9) — Use of excessive discharge per section 26-604(e).~~
- ~~(10) — Failure to properly sample discharge with intent to deceive.~~
- ~~(11) — Failure to pay the applicable charges and fees.~~

(d) Judicial Enforcement Remedies.

(1) Injunctive Relief.

When the City finds that an Industrial User has violated, or continues to violate, any provision of this Article, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may petition the Billings Municipal Court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the Industrial Discharge Permit, order, or other requirement imposed by this Article on activities of an Industrial User. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the Industrial 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 an Industrial User.

(2) Civil Penalties.

- (i) An Industrial User who has violated, or continues to violate, any provision of this Article, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement shall be liable to the City for a maximum civil penalty not to exceed one thousand dollars (\$1,000) per day per violation. In the case of a monthly or other long-term average discharge limit, penalties may accrue for each day during the period of violation.
- (ii) The City 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.
- (iii) In determining the amount of civil liability, the City 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 Industrial User's violation, corrective actions by the Industrial User, the compliance history of the Industrial User, and any other factor as justice requires.
- (iv) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User.

(3) Civil/Administrative Fine Pass Through.

In the event that an Industrial User discharges such pollutants which cause the City to violate any condition of its MPDES permit and the City is fined by the EPA or the State for such violation, then such Industrial User shall be fully liable for the total amount of the fine assessed against the City by the EPA and/or the State.

(4) Criminal prosecution

- (i) Any Industrial User who violates or fails to comply with any provision of this Article or with any orders, rules, regulations, permits and permit conditions issued hereunder, shall, upon conviction, be guilty of a misdemeanor. The penalty for such misdemeanor shall be a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months, or both.

(ii) Any Industrial User who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan or other document filed or required to be maintained pursuant to this Article, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this Article, shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six (6) months, or both.

(iii) The City may refer violations that warrant criminal prosecution to the U.S. Attorney General's Office, State Attorney General or USEPA Criminal Investigation Division or other appropriate agency. Such referral shall not preclude the City from taking a parallel administrative or civil enforcement action.

(e) Cost Recovery

In any judicial action, the City may recover reasonable attorney fees, court costs, deposition and delivery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation if the City prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this Article or the Rules and Regulations shall become liable to the City for any expense, loss, or damage to the City or to the POTW occasioned by such violation including, but not limited to, investigative/monitoring expenses, fines, penalties, cleaning, repair or replacement work caused by and in connection with the violation. In addition, upon proof of willful or intentional meter bypassing, meter tampering, or unauthorized metering, the City shall be entitled to recover as damages three (3) times the amount of actual damages.

~~(df) Remedies Nonexclusive. The remedies provided for in this Article are not exclusive of any other remedies that the City may have under the provisions of Montana law. If any person violates any order of the administrator or otherwise fails to comply with any provisions of this article or rules and regulations or the orders, rules, regulations and permits issued hereunder, or discharges sewage, industrial wastes or other wastes, into the WWS or into state waters contrary to the provisions of this article, federal or state pretreatment requirements, or contrary to any order of the city, or to the extent that the discharge constitutes a harmful contribution, the city may commence an action in a court of record for appropriate legal and equitable relief. In such action, the city may recover from the defendant reasonable attorney fees, court costs, deposition and delivery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation if the city prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of~~

~~this article or rules and regulations shall become liable to the city for any expense, loss, or damage to the city or to the WWS occasioned by such violation including, but not limited to, investigative/monitoring expenses, fines, penalties, cleaning, repair or replacement work caused by and in connection with the violation. In addition, upon proof of willful or intentional meter bypassing, meter tampering, or unauthorized metering, the city shall be entitled to recover as damages three (3) times the amount of actual damages.~~

~~(e) — *Misdemeanor.* Any person who violates or fails to comply with any provision of this article or with any orders, rules, regulations, permits and permit conditions issued hereunder, shall be guilty of a misdemeanor. The penalty for such misdemeanor shall be a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months, or both. Each day in which any such violation occurs or persists shall be deemed a separate and distinct offense.~~

~~(f) — *Penalty for false statement and tampering.* Any person who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan or other document filed or required to be maintained pursuant to this article, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this article, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six (6) months, or both.~~

~~(g) — *Civil penalty.* Any person who violates or fails to comply with any provision of this article or with any orders, rules, regulations, permits or permit conditions issued hereunder shall forfeit and pay to the city a civil penalty of one thousand dollars (\$1,000.00) per violation. Each day in which any violation occurs or persists shall be deemed a separate and distinct violation. Said civil penalty, if not immediately paid, is enforceable by petition to a court of competent jurisdiction. In addition to the civil penalty contained herein, violators shall be liable to the city for any expense, loss or damage to the city or to the WWS including, but not limited to, investigative/monitoring expenses, fines, penalties, loss or damage, cleaning, repair or replacement work caused by and in connection with the violation. The city shall bill the violator for such expenses. Refusal to pay the assessed costs shall constitute a separate and distinct violation.~~

~~(h) — *Remedies cumulative.* The remedies provided for in state and federal law, this section and this article, including but not limited to, criminal prosecution, recovery of costs, administrative fines, and treble damages, shall be cumulative. One or all of the penalties, sanctions, fines and remedies may be imposed at the discretion of the city.~~

~~(Ord. No. 85-4663, § 10, 9-9-85; Ord. No. 91-4886, § 6, 9-9-91; Ord. No. 92-4906, § 5, 7-27-92; Ord. No. 97-5022, § 8, 5-27-97; Ord. No. 06-5356, § 15, 1-9-06)~~

Sec. 26-61511. - Pretreatment authority outside of city City.

In order to achieve and maintain compliance with the Clean Water Act, federal pretreatment requirements, ~~S~~state regulations, sewage grant conditions and ~~MPDES~~WWTP discharge permit requirements, the City of Billings, as manager/operator shall have the authority to implement and enforce the pretreatment program of the WWS, ~~must possess and demonstrate a clear legal right to require compliance with pretreatment requirements by any significant industrial user of the WWS against any industrial user within and located~~ outside of the ~~city~~ City's territorial jurisdiction who discharges directly or indirectly to the POTW or any collection system connected to the City POTW.

To that end, all governmental sewage connectors, ~~municipalities and including~~ sanitation districts, shall be required to ~~legally~~ adopt a regulatory pretreatment program either

- (a) ~~Is consistent with and as stringent with this Articles and the Rules and Regulations; parallel to this article and rules and regulations;~~ or
- (b) ~~incorporates by reference~~ the provisions of this ~~article~~ Article and ~~the R~~rules and ~~R~~regulations and specifically delegates authority to implement and enforce the pretreatment program to the City and requiring significant industrial users to comply with the city pretreatment program.

~~The e~~Connectors, municipalities, sanitation including districts, shall also be required to approve necessary revisions to existing sewer service agreements or joint agreements granting the ~~city~~ City the right to administer and physically enforce the connector's pretreatment program on behalf of and as agent for the connector district. ~~Such supplemental or indirect regulatory authority accorded to the city shall only be used where direct contractual relationships with significant industrial users through the industrial discharge permit program prove insufficient to ensure compliance with the pretreatment program.~~

(Ord. No. 85-4663, § 11, 9-9-85)

Sec. 26-616. Affirmative Defenses to Discharge Violations.

(a) Upset.

- (1) For the purposes of this Article, upset means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- (2) An upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of paragraph (3) below are met.

- (3) An Industrial User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
- (i) An upset occurred and the Industrial User can identify the cause(s) of the upset;
 - (ii) 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
 - (iii) The Industrial User has submitted the following information to the City within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
 - (A) A description of the Indirect Discharge and cause of noncompliance;
 - (B) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - (C) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (4) In any enforcement proceeding, the Industrial User seeking to establish the occurrence of an upset shall have burden of proof.
- (5) Industrial users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.
- (6) Industrial users shall control (decrease) production of all discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.
- (b) Prohibited Discharge Standards.
- An Industrial User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the specific prohibitions in any action brought against it alleging a violation of the Specific Prohibitions in Section 26-604(b) paragraphs (3), (4), (5), (6) or (7) where the user demonstrates that:

- (1) 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
- (2) The Industrial User had accurately disclosed the concentration of the pollutant(s) causing the Pass Through or Interference in applications, reports, or other required documents as required; and either:
 - (i) A local limit designed to prevent Pass Through and/or Interference, as the case may be was developed for each pollutant in the Industrial User's discharge that caused Pass Through or Interference, and the Industrial User was in compliance with each such local limit directly prior to and during the Pass Through or Interference; or
 - (ii) If a local limit designed to prevent Pass Through and/or Interference, as the case may be, has not been developed for the pollutant(s) that caused the Pass Through or Interference, the Industrial User's discharge directly prior to and during the Pass Through or Interference did not change substantially in nature or constituents from the User's prior discharge activity when the POTW was regularly in compliance with the POTW's MPDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.

(c) Bypass

- (1) For purposes of this Subsection:
 - (i) Bypass means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.
 - (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (2) Bypass not violating applicable Pretreatment Standards or Requirements. An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (3) and (4) of this Section

but are reportable under Section 26-611(a), (d), (f), (j) and (k), as appropriate.

(3) Notice.

- (i) If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Director, if possible, at least ten (10) days before the date of the bypass.
- (ii) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Administrator within twenty four (24) hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the Industrial 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 Administrator may waive the written report on a case-by-case basis if the oral report has been received within twenty four (24) hours.

(4) Prohibition of Bypass.

- (i) Bypass is prohibited, and the Administrator may take enforcement action against an Industrial User for a bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (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 back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (C) The Industrial User submitted notices as required under paragraph (3) of this Section.
- (ii) The Administrator may approve an anticipated bypass, after considering its adverse effects, if the Administrator determines that

it will meet the three (3) conditions listed in paragraph (4)(i) of this Section.

Sec. 26-6127. - Severability; R~~r~~epealer; E~~e~~ffective D~~e~~ate.

(a) *Severability*. If any part or parts of this ~~article~~ Article are held by any court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of said ~~article~~ Article.

(b) *Repealer*. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

(c) *Effective date*. That this ~~article~~ Article [Ordinance Number 85-4663] shall be effective from and after final passage and as provided by law.

(Ord. No. 85-4663, § 12, 9-9-85)