

**CITY OF NILES  
ORDINANCE NO. 494**

**AMENDMENT TO THE CITY OF NILES CODE OF ORDINANCES**

*An ordinance to amend Article IV of the City of Niles Code of Ordinances to secure the health, safety, and general welfare of the residents and property owners of the City of Niles, Berrien County, Michigan, to advance the legitimate rational regulation of sewer use and industrial pretreatment programs.*

**THE CITY OF NILES, BERRIEN COUNTY, MICHIGAN ORDAINS:**

**SECTION 1. Amendment to the Niles City Code, Article IV, Section 90-108:** The Niles City Code, Article IV, Sec. 90-108, Definitions, shall be amended to revise the following definitions:

*Best management practice or BMP* means any practice, program, procedure, control, technique or measure (used singularly or in combination), that a user is required to adopt or implement to control, contain, treat, prevent, or reduce the discharge of wastewater, pollutants or other substances to the POTW, as determined necessary by the WWTP superintendent. BMPs include, but are not limited to: schedules of activities; pollution treatment practices or devices; prohibitions of practices; good housekeeping practices; pollution prevention, minimization and reduction measures; educational practices and programs; maintenance procedures; other management programs, practices or devices; treatment requirements; notice, reporting, and record-keeping requirements; and operating procedures and practices to control or contain site runoff, spillage or leaks, batch discharges, sludge or water disposal, or drainage from product and raw materials storage. BMPs may be structural, non-structural, or both. In determining what BMPs will be required of a user in a particular case, the WWTP superintendent may consider all relevant technological, economic, practical, and institutional considerations as determined relevant and appropriate by the manager, consistent with achieving and maintaining compliance with the requirements of this article and other applicable laws and regulations. BMPs may also be used in conjunction with or in place of effluent limits and categorical standards.

*Slug, slug load or slug discharge* means any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a non-customary batch discharge which has a reasonable potential to cause Interference or Pass Through, or in any other way violate POTW's regulations, Local Limits, or Permit conditions.

**SECTION 2. Amendment to the Niles City Code, Article IV, Section 90-113(2):** The Niles City Code, Article IV, Sec. 90-113(2), shall be amended to read as follows:

- (2) *Specific prohibitions.* No user shall discharge or contribute to the POTW, directly or indirectly, any of the pollutants, substances, or wastewater as provided by this subsection. This subsection sets forth the minimum requirements for a user's discharges to the POTW. Additional or more restrictive requirements may be required of particular users under a

wastewater discharge permit, or as otherwise authorized or required by this article or other applicable laws and regulations. These specific prohibitions shall be deemed Pretreatment Standards for the purpose of this article and the Act.

- a. Pollutants in concentrations that exceed the daily maximum or monthly average concentrations listed below in this subsection:

Parameter	Daily Maximum (mg/L)*	Monthly Average*
Arsenic	1,000 ug/L	—
Cadmium	690 ug/L	—
Chromium (T)	2,770 ug/L	—
Copper	3,380 ug/L	—
Cyanide (T)	290 ug/L	2.1 lb/day
Lead	690 ug/L	—
Molybdenum	1,600 ug/L	—
Nickel	3,980 ug/L	—
Selenium	2,100 ug/L	—
Silver	430 ug/L	—
Zinc	2,610 ug/L	—
Ammonia Nitrogen (NH <sub>3</sub> as N)	230 mg/L	—
BOD	1,100 mg/L <sup>2</sup>	—
COD	2,200 mg/L <sup>3</sup>	—
Phosphorous (T)	50 mg/L <sup>4</sup>	—
TSS	1,200 mg/L <sup>5</sup>	—

*Notes:*

T = Total

The listed daily maximum limits are the concentrations which may not be exceeded and at which enforcement begins. The surcharge threshold concentrations as specified in notes 1 through 5 below are the concentrations above which surcharges may be imposed. Discharges exceeding the surcharge thresholds, but which are less than the daily maximum and monthly average limits (and which do not violate any other applicable prohibitions, limitations or requirements), are not violations of this article, but are subject to surcharges as provided by this article. All exceedences of applicable discharge prohibitions and limitations and all instances of noncompliance with applicable discharge requirements constitute a violation of this article, subject to applicable fines, penalties and other enforcement actions. In no event shall the imposition of a surcharge for a discharge which does not meet the applicable prohibitions, limitations or requirements be construed as authorizing the illegal discharge or otherwise excuse a violation of this article. For some parameters, the discharge limit and the surcharge threshold concentrations are the same, and discharges in excess of the limit/threshold will subject the discharger to both enforcement action and imposition of applicable surcharges.

1. Any discharge of ammonia nitrogen in excess of 20.0 mg/L shall be subject to surcharge as provided by this article.
2. Any discharge of BOD in excess of 300 mg/L shall be subject to surcharge as provided by this article.
3. Any discharge of COD in excess of 1,000 mg/L shall be subject to surcharge as provided by this article.
4. Any discharge of phosphorous in excess of 20 mg/L shall be subject to surcharge as provided by this article.
5. Any discharge of TSS in excess of 350 mg/L shall be subject to surcharge as provided by this article.

\* Discharges which contain more than one pollutant which may contribute to fume toxicity shall be subject to more restrictive limitations, as determined necessary by the POTW. The more restrictive discharge limits will be calculated based on the additive fume toxicity of all compounds identified or reasonably expected to be present in the discharge, including, without limitation, the specific compounds, if any, listed in subsection (2)a.

- b. Pollutants in concentrations that exceed the instantaneous maximum, daily maximum or monthly average concentrations listed below in this subsection:

Parameter	Instantaneous Maximum Concentration	Daily Maximum	Monthly Average
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*Mercury.* The instantaneous maximum concentration, daily maximum and monthly average discharge limit for mercury is non-detect. Except as otherwise required by the WWTP superintendent, compliance with this limit shall be determined as follows:

A compliance limit of "non-detect" shall be used for instantaneous maximum concentration, daily maximum and monthly average. Any discharge of mercury at or above the quantification level of 0.2 ug/l using U.S. EPA Method 245.1 (or at or above other quantification levels, discharge limits, or criteria applicable under alternative test methods) is an exceedence of the local limit and a specific violation of this article.

Mercury sampling procedures, preservation and handling, and analytical protocol for compliance monitoring of a user's discharge shall be in accordance with U.S. EPA Method 245.1, unless the WWTP superintendent requires U.S. EPA Method 1631 (or other appropriate method). The quantification level shall be 0.2 ug/l for Method 245.1 and 0.5 ng/l for Method 1631, unless higher levels are determined appropriate by the WWTP superintendent because of sample matrix interference.

- c. Any liquid, solid, gas or other pollutant (including, but not limited to, gasoline, benzene, naphtha, fuel or fuel oil) which by reason of its nature or quantity is sufficient either alone or by interaction with other substances to create a fire or explosion hazard or be injurious in any other way to persons, the POTW, or to the operation of the sewerage system, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140° Fahrenheit or 60° Celsius using test methods specified in 40 CFR 261.21.
- d. Pollutants that may cause corrosive structural damage to the POTW, or that due to their corrosive properties are capable of causing injury to persons or city personnel or harm to fish, animals or the environment. Discharges that have a pH lower than 6.0 or greater than 9.5 shall not be discharged.
- e. Any solid, insoluble or viscous substance in concentrations or quantities which may cause obstruction to the flow in the POTW, may create an encumbrance to the POTW operations, or which otherwise may result in interference, including, but not limited to, grease, animal entrails or tissues, bones, hair, hides or fleshings, whole blood, feathers, ashes, cinders, sand, cement, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, strings, fibers, spent grains, spent hops, wastepaper, wood, plastics, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes or tumbling and deburring stones.
- f. Pollutants, including, without limitation, oxygen demanding pollutants (BOD, etc.), released at a flow rate and/or pollutant concentration that may cause pass through or interference with the POTW or constitute a slug load.
- g. Wastewater (or vapor) having a temperature that will inhibit biological activity in the POTW resulting in interference, or heat in such quantities that the temperature at the POTW treatment plant exceeds 104° Fahrenheit (40° C). No discharge to the POTW shall have a temperature less than 32° Fahrenheit (0° C) or greater than 150° Fahrenheit (65.7° C).

- h. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
- i. Food-based fats, oils or grease in excess of 300 mg/L; or petroleum-based fats, oils or grease in excess of 50 mg/L.
- j. Pollutants that result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems. This prohibition includes, but is not limited to, wastewaters which contain liquids, solids or gases that cause gases, vapors or fumes from the discharge to exceed ten percent of the immediately dangerous to life and health (IDLH) concentration. Discharges which contain more than one pollutant which may contribute to fume toxicity shall be subject to more restrictive limitations, as determined necessary by the POTW. The more restrictive discharge limits shall be calculated based on the additive fume toxicity of all compounds identified or reasonably expected to be present in the discharge.
- k. Trucked or hauled pollutants are prohibited, except:
  - 1. Trucked or hauled sanitary sewage disposed of in accordance with the following requirements:
    - i. Sanitary sewage may be disposed of only at the location specified by the POTW, and only by a hauler who is duly licensed by the state to perform such work. No waste in violation of the general or specific prohibitions of this article shall be permitted. Sanitary sewage of unusual strengths or characteristics shall not be accepted for disposal at POTW if the superintendent or his/her designee determines that to do so could be harmful to POTW. Variations in the concentrations or qualities of trucked or hauled pollutants may be allowed if determined by the superintendent or his/her designee not to be harmful.
    - ii. No person shall unload sanitary sewage from hauling vehicles or otherwise directly into the treatment plant, with or without pretreatment, unless the person proposing to unload such waste has first applied for and received a permit from the superintendent or his/her designee in accordance with department rules and regulations pertaining thereto. A discharger of hauled-in wastewater shall be subject to conditions, surcharges, fees or rates as established by the department. The discharger will supply the address of the location pumped. The superintendent may revoke sanitary dump station privileges at any time if department rules and regulations are not followed, or to achieve the purposes of this article, or as otherwise determined necessary by the superintendent.

2. Trucked or hauled contaminated groundwater or landfill leachate disposed of in accordance with all of the requirements specified in subsection k.1. above for sanitary sewage. The discharge of any trucked or hauled contaminated groundwater or landfill leachate determined by the department to have a reasonable potential to adversely affect the operation of the POTW, to result in pass through or interference, or to violate any pretreatment standard or requirement is prohibited.
- l. Solvent extractibles, including, without limitation, oil, grease, wax, or fat, whether emulsified or not, in excess of applicable local limits; or other substances that may solidify or become viscous (with a viscosity of 110 percent of water) at temperatures between 32° Fahrenheit and 150° Fahrenheit in amounts that may cause obstruction to the flow in sewers or other interference with the operation of the POTW.
  - m. Noxious or malodorous liquids, gases, or solids that either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
  - n. Wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or to exceed the limitation set forth in a categorical pretreatment standard.
  - o. Any substance that may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation, reuse or disposal, or otherwise interfere with the reclamation, reuse, or disposal process. In no case shall a substance discharged to the POTW cause the POTW to be in non-compliance with sludge use or disposal criteria, guidelines or regulations developed under section 405 of the Act; under the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as RCRA, and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA); the Clean Air Act; the Toxic Substances Control Act; the Marine Protection, Research, and Sanctuaries Act; or any more stringent state or local regulations, as applicable.
  - p. Soluble substances in a concentration that may increase the viscosity to greater than ten percent over the viscosity of the water or in amounts that will cause obstruction to the flow in the POTW resulting in interference.
  - q. Any medical or infectious wastes, as defined by the Michigan Department of Environmental Quality.

- r. Any pollutant that results in excess foaming during the treatment process. Excess foaming is any foam that, in the opinion of the WWTP superintendent, may interfere with the treatment process.
- s. Any unpolluted water, non-contact cooling water, stormwater, surface water, groundwater, roof runoff or subsurface drainage (except to a storm sewer or a combined sewer as authorized by this article and other applicable laws and regulations and subject to the prior approval of the WWTP superintendent).
- t. Any substance that will cause the POTW to violate its NPDES permit, the receiving water quality standards, or associated local, state or federal laws, rules or regulations.
- u. Wastewater with objectionable color or light absorbency characteristics that interfere with treatment processes or analytical determinations, including, without limitation, dye wastes and vegetable tanning solutions.
- v. Wastewater containing any radioactive wastes or isotopes of a half-life or concentration that may exceed limits established by applicable state or federal laws, rules or regulations.
- w. Any contaminated groundwater or landfill leachate determined by the POTW to have a reasonable potential to adversely affect the operation of the POTW, to result in pass through or interference, or to violate any pretreatment standard or requirement.
- x. Total BTEX in excess of ten ug/L; and any single constituent of BTEX (benzene, toluene, ethylbenzene, or xylene) in excess of five ug/L.
- y. Any hazardous waste as defined by this article.
- z. Any garbage or other solid material that has not been properly shredded. Garbage or solid materials having a specific gravity greater than 1.2 or a cross-section dimension of ½ or greater, or which are sufficient in quantity to cause pass through or interference to the POTW shall be deemed improperly shredded.
- aa. Any wastewater which contains suspended solids of such character, quantity or concentration that special attention is required, or additional expense incurred, to process such materials at the POTW.
- bb. Any substance which exerts or causes a high concentration of inert suspended solids, including, but not limited to, lime slurries, diatomaceous earth and lime residues.
- cc. Any substance which exerts or causes a high concentration of dissolved solids, including, but not limited to, sodium chloride.

- dd. Any substance which causes or exerts a COD that increases operational expenses and treatment problems.
- ee. Any substance which causes a high chlorine demand, including, but not limited to, nitrite, cyanide, thiocyanate, sulfite and thiosulfate.
- ff. Any wastewater which exceeds applicable categorical pretreatment standards, requirements or limits prescribed by local, state or federal laws, rules or regulations.
- gg. Any compatible or incompatible pollutant in excess of the allowed limits as determined by applicable local, state or federal laws, rules or regulations.
- hh. Any sludge, precipitate or waste resulting from any industrial or commercial treatment or pretreatment of any person's wastewater or air pollutants.
- ii. Residue (total on evaporation) in an amount that will cause obstruction to the flow in the POTW resulting in interference.
- jj. Any wastewater containing polychlorinated biphenyls (PCBs).
- kk. Any pollutant, substance, or wastewater that, either directly or indirectly, and either singly or by interaction with other pollutants:
  - 1. Creates a chemical reaction with any materials of construction to impair the strength or durability of sewer structures;
  - 2. Causes a mechanical action that will damage or destroy sewer structures;
  - 3. Impedes or restricts the hydraulic capacity of the POTW;
  - 4. Interferes with normal inspection or maintenance of sewer structures;
  - 5. Places unusual demands upon the wastewater treatment equipment or processes by biological, chemical or physical means; or
  - 6. Causes a hazard to human life or creates a public nuisance.

**SECTION 3. Amendment to the Niles City Code, Article IV, Section 90-113:** The Niles City Code, Article IV, Sec. 90-113, shall be amended to add a new and additional subsection (4) which shall read as follows:

- (4) *Best management practices.* The POTW may develop BMPs to implement the general discharge prohibitions under subsection (1) and the specific discharge prohibitions under



subsection (2). Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this article and the Act.

**SECTION 4. Amendment to the Niles City Code, Article IV, Section 90-122:** The Niles City Code, Article IV, Sec. 90-122, shall be amended to read as follows:

**Sec. 90-122. - Permit application requirements.**

All industrial users shall submit the information required by this section on the wastewater discharge permit application form supplied by the department (or attached thereto) in units and terms as determined necessary by the department to adequately evaluate the application, accompanied by payment of a permit application review fee. A separate application and supporting documentation shall be submitted for each separate location for which a wastewater discharge permit is required.

- (1) The name, address, and location of facility from which discharge will be made, including the names of the owner(s) and operator(s) of the facility.
- (2) Corporate or individual name, federal employer identification number, address and telephone number of the applicant.
- (3) Whether the user is a corporation, partnership, proprietorship, or other type of entity, and the name of the person(s) responsible for discharges by the user.
- (4) Name and title of the local authorized representative of the industrial user who will have the authority to bind the applicant financially and legally, and who is authorized by the applicant as its agent to accept service of legal process, and the address and telephone number of such representative.
- (5) The standard industrial classification (SIC) numbers of all processes at the location for which application is made, according to the Standard Industrial Classification Manual, as amended.
- (6) Actual or proposed wastewater constituents and characteristics for each parameter listed in the permit application, including, but not limited to, any pollutants that are limited or regulated by any federal, state, or local standards or requirements. The information provided for such parameters shall include all of the following:
  - a. Pollutants having numeric or narrative limitations as provided by this article.
  - b. Pollutants limited by national categorical pretreatment standards regulations for similar industries.
  - c. For each parameter, the expected or experienced maximum and average concentrations during a one-year period shall be provided.

- d. For industries subject to national categorical pretreatment standards or requirements, the data required shall be separately shown for each categorical process wastestream.
  - e. Combined wastestreams proposed to be regulated by the combined wastestream formula shall be specified.
- (7) For purposes of information required by the application, sampling and analysis shall be performed in accordance with the following: Procedures established by EPA pursuant to section 304 (g) of the Act and as contained in 40 CFR 136, as amended. If 40 CFR 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with the procedures in EPA publication "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants," April 1977, and amendments or revisions thereto, or where appropriate and applicable, in accordance with any other sampling and analytic procedures approved by EPA.
- (8) A listing and description of the following: plant activities, plant facilities, and plant processes on the premises for which the permit is being applied for. Processes which are subject to national categorical pretreatment standards or requirements shall be so designated, and identification of which pollutants are associated with each process shall be stated.
- (9) A listing of raw materials and chemicals that are either used in the manufacturing process or could yield the pollutants referred to in this section. Any user claiming immunity from having to provide such information for reasons of national security shall furnish acceptable proof of such immunity.
- (10) A statement containing information on the spill containment and prevention of accidental/spill discharges program for each of the pollutants referred to in this section. The information provided shall include the following:
- a. The approximate average and maximum quantities of such substances kept on the premises in the form of the following: (a) Raw materials; (b) chemicals; and/or (c) wastes therefrom; and
  - b. The containment capacity for each of the above items.
- (11) The following requirements apply for purposes of the spill containment and prevention statement required by this subsection:
- a. For raw materials, chemical solutions or waste materials that do not contain any substance on the Critical Materials Register promulgated by the Michigan Department of Environmental Quality, only substances which are in a form which could readily be carried into the sewerage system and which constitute a concentration of five percent or greater on a dry weight basis in the raw material, chemical solution or waste material are required to be included in the statement.

Volumes of less than 55 gallons or the equivalent need not be included unless lesser quantities could cause interference or pass through to the sewerage system.

- b. For raw materials, chemical solutions or waste materials that contain any amount of any substance on the critical materials register promulgated by the Michigan Department of Environmental Quality, the statement shall include the name of the substance and the expected concentration so that the WWTP superintendent can determine whether or not it may constitute a threat to the POTW if a spill occurs.
- (12) The name and address of each laboratory performing analytical work for the industrial user submitting the application.
  - (13) A description of typical daily and weekly operating cycles for each process in terms of starting and ending times for each of the seven days of the week.
  - (14) Average and maximum 24-hour wastewater flow rates, including daily, monthly and seasonal variations, if any; and a list of each national categorical process wastestream flow rate and the cooling water, sanitary water and stormwater flow rates separately for each connection to the POTW, and list showing each combined wastestream.
  - (15) A drawing showing all sewer connections and sampling manholes by the size, location, elevation and points or places of discharges into the POTW.
  - (16) A flow schematic drawing showing which connections receive each national categorical process wastestream or other process wastestreams, and which connections receive stormwater, sanitary water or cooling water.
  - (17) A schematic drawing showing which sewers handle each combined wastestream.
  - (18) Each product produced by type, amount, process or processes and the rate of production as pertains to processes subject to production-based limits under national categorical standards or requirements shall be specified.
  - (19) Actual or proposed hours of operation of each pretreatment system for each production process.
  - (20) A description and schematic drawing showing each pretreatment facility, identifying whether each such facility is of the batch type or continuous process type.
  - (21) If other than city potable water is used, identification of the industrial user's source of intake water together with the types of usage and disposal method of each water source and the estimated wastewater volume from each source.
  - (22) A statement regarding whether the requirements of this article and the national categorical pretreatment standards and requirements are being met on a consistent basis; and if not, what additional operation and maintenance work and/or additional construction is required for the industrial user to comply with applicable standards and requirements.

- (23) A list of all environmental permits (and, if requested by the WWTP superintendent, a copy of any environmental permit) held by the user applicable to the premises for which the wastewater discharge permit is being sought.
- (24) Whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet all applicable federal, state and local pretreatment standards and requirements. If additional O&M or additional pretreatment will be required to meet the applicable standards and requirements, then the user shall indicate the shortest time schedule necessary to accomplish installation or adoption of the additional O&M and/or pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:
  - a. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (including, without limitation, hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, beginning operation, and conducting routine operation). No increment referred to above shall exceed nine months, nor shall the total compliance period exceed 18 months.
  - b. No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between submissions of the progress reports to the POTW.
- (25) Any other information determined necessary by the department to adequately evaluate the application. To the extent that actual data is not available for a new source, the applicant shall supply estimated or expected information.
- (26) All applications shall be signed and certified by an "authorized representative" of the user as defined by this article.

**SECTION 5. Amendment to the Niles City Code, Article IV, Section 90-124:** The Niles City Code, Article IV, Sec. 90-124, shall be amended to read as follows:

**Sec. 90-124. - Permit conditions.**

- (a) Wastewater discharge permits shall be subject to all provisions of this article and all other applicable regulations, user charges, and fees established by the department. Further, wastewater discharge permits shall be deemed to contain all provisions, regulations and requirements of the article without setting them forth in full therein.
- (b) Permits shall at a minimum include all of the conditions required by MAC 323.2306(a)(iii). In addition, permits shall include any conditions determined reasonably

necessary by the WWTP superintendent to prevent pass through or interference, to protect the quality of the receiving waters, to protect worker health and safety, to facilitate POTW sludge management and disposal, to protect ambient air quality, to protect against damage to the POTW, or to otherwise achieve the objectives of this article, including, but not limited to, the following:

- (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
- (2) Limits on the average and/or maximum concentration, mass, or other measure of identified wastewater constituents or properties.
- (3) Effluent limits, including BMPs, based on applicable pretreatment standards.
- (4) Requirements for installation of pretreatment technology or construction of appropriate containment devices, or similar requirements designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
- (5) Development and implementation of spill control plans or other special conditions, including additional management practices necessary to adequately prevent accidental or unanticipated discharges.
- (6) Requirements for installation, maintenance, repair, calibration and operation of inspection and sampling facilities and discharge flow monitors.
- (7) Specifications for monitoring programs which shall include, but are not limited to, sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
- (8) Compliance schedules.
- (9) Requirements for submission of technical reports or discharge reports.
- (10) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the city and affording the city access to those records.
- (11) Requirements for notifying the department if self-monitoring indicates a violation as provided by section 90-139, and for repeat sampling and analysis as provided by section 90-152.
- (12) Requirements for notification of any new introductions of wastewater constituents or of any substantial change in the volume or character of the wastewater being introduced into the POTW, including listed or characteristic hazardous waste for which the user has submitted initial notification under MAC R 323.2310(15).
- (13) Requirements for the notification of any change in the manufacturing and/or pretreatment process used by the permittee.

- (14) Requirements for notification of accidental or slug discharges, or discharges that exceed a discharge prohibition. Slug discharges may be controlled by permit if determined by the POTW to be necessary.
- (15) Requirements for notification and need for prior approval from the WWTP superintendent for any proposed change in a sampling location.
- (16) A statement regarding limitations on transferability of the permit.
- (17) A statement of the duration of the permit.
- (18) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable pretreatment standards and requirements, including those that become effective during the term of the permit.
- (19) A statement of applicable civil and criminal penalties for violation of discharge limitations, pretreatment standards and requirements, and compliance schedules.
- (20) Requirements regarding development by a user of a pollutant reduction plan (e.g., for mercury or PCBs) or requirements regarding use of best management practices to reduce potential discharges of pollutants to the sewer or otherwise meet the purposes, policies and objectives of this article.
- (21) Other conditions as determined necessary by the department to ensure compliance with this article and other applicable laws, rules and regulations.

If the department determines that a user is discharging substances of a quality, in a quantity, or in a location that may cause problems to the POTW or the receiving stream, the department has the authority to develop and enforce effluent limits applicable to the user's discharge.

**SECTION 6. Amendment to the Niles City Code, Article IV, Section 90-136:** The Niles City Code, Article IV, Sec. 90-136, shall be amended to read as follows:

**Sec. 90-136. - Reports by industrial users regarding categorical pretreatment standards and requirements.**

- (a) *Baseline monitoring reports.* Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under 40 CFR § 403.6(a)(4), whichever is later, an existing industrial user subject to the categorical pretreatment standards and that currently discharges or is scheduled to discharge to the POTW shall submit a report to the department as required by 40 CFR § 403.12(b)(1) through (7). At least 90 days prior to commencement of discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical pretreatment standard shall submit the reports to the department as required by 40 CFR § 403.12(b)(1) through (5). Any changes to the information required to be submitted by an industrial user pursuant to 40 CFR § 403.12(b)(1) through (5) shall be submitted by the user to the department within 60 days of when the user becomes aware of the change.

- (b) *Reports on compliance with categorical pretreatment standard deadline.* Within 90 days following the date for final compliance with applicable categorical pretreatment standard or, in the case of a new source, following commencement of the discharge to the POTW, any industrial user subject to categorical pretreatment standards and requirements shall submit the reports to the department required by 40 CFR § 403.12(d).
- (c) *Periodic reports on continued compliance.* Any industrial user subject to a categorical pretreatment standard, after the compliance date of the categorical pretreatment standard, or, in the case of a new source, after commencement of the discharge into the public sewer or POTW, shall submit the periodic reports to the department required by 40 CFR § 403.12(e). These periodic reports shall be submitted at least once every six months (during the months of April and October unless alternate months are approved by the department), unless required more frequently by the applicable pretreatment standard, by the department, or by the state. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the WWTP superintendent. Where time-proportional composite sampling or grab sampling is authorized by the WWTP superintendent, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. The combined wastestream formula may be used for reporting purposes after the initial information has been furnished to the department, provided there has been no change to the elements composing the combined wastestream. The results of sampling of the discharge and analysis of pollutants appearing in the report shall be cross-referenced to the related flow and mass to determine compliance with national categorical pretreatment standards. Pretreatment standards that use BMPs or pollution prevention alternative, must submit documentation required to determine compliance.

**SECTION 7. Amendment to the Niles City Code, Article IV, Section 90-137:** The Niles City Code, Article IV, Sec. 90-137, shall be amended to read as follows:

**Sec. 90-137. - Reports required for industrial users not subject to categorical pretreatment standards.**

All industrial users not subject to categorical pretreatment standards shall submit to the department periodic reports providing information regarding the quality and quantity of wastewater and pollutants discharged into the POTW (including, without limitation, information regarding the nature, concentration (or mass), and flow of the discharge). These reports shall be based on sampling and analysis performed in the period covered by the report in accordance with the sampling, analysis and monitoring requirements provided by division 8 of this article. For significant industrial users, the reports shall be submitted at least once every six months for the preceding six months (during the months of April and October unless alternate months are specified by the department), unless required more frequently by the department. If required by the department for industrial users other than significant industrial users, the reports shall be submitted at least once every 12 months for the preceding 12 months (during the month of October unless an alternate month is specified by the department), unless required more

frequently by the department. The reports for all industrial users shall be submitted on forms provided by (or in a format required by) the department, and shall include, without limitation, the volume of wastewater; the concentration of pollutants; the names of all person(s) responsible for operating and maintaining any pretreatment equipment, pretreatment processes, or responsible for wastewater management at the user's facilities, with a brief description of each person's duties; information regarding materials or substances that may cause interference or pass through; and any other information deemed necessary by the department to assess and assure compliance with applicable discharge requirements or to safeguard the operation of the POTW. In instances where local limits require compliance with BMPs or pollution prevention alternative, users must submit documentation required by the POTW to determine compliance.

**SECTION 8. Amendment to the Niles City Code, Article IV, Section 90-140:** The Niles City Code, Article IV, Sec. 90-140, shall be amended to read as follows:

**Sec. 90-140. - Notice by user of changed discharge or change in user status.**

- (a) An industrial user shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in its discharge, or of any facility expansion, production increase, or process modifications, or any change in user status that could result in a substantial change in the volume or character of pollutants in its discharge or that could affect the potential for slug discharges.
- (b) For purposes of this section, "promptly" means as soon as reasonably possible, but in no event less than 60 days before the change.
- (c) For purposes of this section, "substantial change" includes, without limitation, the following: (1) the discharge of any amount of a pollutant not identified in the user's permit application or in the permit issued; (2) an increase in concentration (or degree) of any pollutant that exceeds ten percent of the concentration (or degree) for the pollutant as indicated in any report required under section 90-136 or 90-137; (3) an increase in discharge volume that exceeds ten percent of the volume as indicated in any report required under section 90-136 or 90-137; (4) any increase in the amount of any hazardous wastes discharged, including, without limitation, the hazardous wastes for which the industrial user has submitted initial notification under section 90-141; (5) the discharge of any ground waters purged for a removal or remedial action; (6) the discharge of any pollutants that are present in the discharge due to infiltration; or (7) a change in discharge that may convert an industrial user into a significant industrial user.
- (d) In determining whether to accept any changed discharge, or, if so, under what conditions, the department shall evaluate the changed discharge pursuant to the general and specific discharge prohibitions under section 90-113 and other applicable provisions of this article. The user may be required to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application.
- (e) No user shall implement the planned changed conditions until and unless the WWTP superintendent or his/her designee has responded to the user's notice.



- (f) This section shall not be construed to authorize a discharge that exceeds a discharge prohibition or limitation provided by this article or a permit.

**SECTION 9. Amendment to the Niles City Code, Article IV, Section 90-147:** The Niles City Code, Article IV, Sec. 90-147, shall be amended to read as follows:

**Sec. 90-147. - Sampling and analytical techniques and procedures.**

All sampling, measurements, tests, and analyses of the characteristics of discharges to the POTW shall be performed in accordance with the procedures approved by the U.S. EPA contained in 40 CFR part 136. If, as determined by the WWTP superintendent, the sampling and analytical techniques contained in 40 CFR part 136 are not available, do not apply to the discharge or pollutants in question, are not appropriate under the circumstances for application to the discharge or pollutants in question, or where one or more alternate techniques are available under 40 CFR part 136, sampling and analysis shall be performed using validated sampling and analytical methods and procedures approved or required by the WWTP superintendent. If any user monitors any regulated pollutants more frequently than required, using procedures described in Sec. 90-147, the results of this monitoring should be included in the reports as required by Sec. 90-136 and 90-137.

**SECTION 10. Amendment to the Niles City Code, Article IV, Section 90-149:** The Niles City Code, Article IV, Sec. 90-149, shall be amended to read as follows:

**Sec. 90-149. - Sample types.**

Where representative samples are required to be taken, a user shall take a minimum of four grab samples for pH, cyanide, phenols (T), residual chlorine, oil and grease, sulfide, and volatile organics (and any other parameters designated by the WWTP superintendent), unless a lesser or greater number of grab samples is approved or required in advance by the WWTP superintendent. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques. The WWTP superintendent may waive flow-proportional composite sampling for any user that demonstrates to the satisfaction of the WWTP superintendent that flow-proportional sampling is infeasible. If flow-proportional sampling is waived, samples may instead be obtained through time-proportional composite sampling techniques, or through a minimum of four grab samples, if the user demonstrates to the satisfaction of the superintendent that this will provide a representative sample of the effluent being discharged. The WWTP superintendent may allow a user to utilize alternative sampling methods not using the 24-hour composite flow-proportional, provided that the alternative sampling is representative of discharge and the decision by the WWTP superintendent to allow the alternative sampling methods is documented in the user's file.

**SECTION 11. Amendment to the Niles City Code, Article IV, Section 90-153:** The Niles City Code, Article IV, Sec. 90-153, shall be amended to read as follows:

**Sec. 90-153. - Sampling and analyses performed by POTW.**

- (a) The sampling and analysis required by this article may be performed by the POTW instead of the user, as determined necessary by the WWTP superintendent for purposes of

this article. The POTW shall provide the user with copies of analytical results prepared by the POTW. If the results of any sampling and analysis performed by the POTW instead of the user show that a pretreatment standard has been violated, the POTW shall provide the user with copies of the analytical results within ten days after the results are available. If the POTW discovers a violation of a pretreatment standard when performing the required sampling and analysis for a user, the POTW may repeat sampling and analysis within 30 days after discovering said violation, unless the WWTP superintendent requires the user to perform the repeat sampling and analysis.

- (b) If the POTW performs the required sampling and analysis for a user, the user shall pay a sampling fee to the POTW to fully reimburse the city for the sampling, including administrative and overhead costs. The POTW may contract with an independent firm to perform the sampling and analysis and the user shall fully reimburse the city for amounts paid by the POTW to the independent firm.

**SECTION 12. Amendment to the Niles City Code, Article IV, Section 90-165:** The Niles City Code, Article IV, Sec. 90-165, shall be amended to read as follows:

**Sec. 90-165. - Slug control plan.**

- (a) Each significant industrial user shall prepare and implement an individualized slug control plan. Existing significant industrial users shall submit a slug control plan to the POTW for approval within 90 days of the effective date of this article. New sources that are significant industrial users shall submit a slug control plan to the POTW for approval before beginning to discharge. Upon written notice from the POTW, industrial users that are not significant industrial users may also be required to prepare and implement a slug control plan, and the plan shall be submitted to the POTW for approval as specified in the notice. All slug control plans shall contain at least the following elements:
  - (1) A description of discharge practices, including non-routine batch discharges;
  - (2) A description of stored chemicals;
  - (3) The procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate any discharge prohibition, limitation or requirement under this article, and procedures for follow-up written notification within five days of the discharge;
  - (4) The procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and measures and equipment for emergency response.
- (b) If a user has submitted to the POTW plans or documents pursuant to other requirements of local, state or federal laws and regulations which meet all applicable requirements of

subsection (a), the POTW may in its discretion determine that the user has satisfied the slug plan submission requirements of this section.

(c) Additional requirements to control sludge discharge include:

- (1) The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements.
- (2) The submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports in § 403.12.

**SECTION 13. Amendment to the Niles City Code, Article IV, Section 90-173:** The Niles City Code, Article IV, Sec. 90-173, shall be amended to read as follows:

**Sec. 90-173. - Maintenance of records.**

All industrial users shall retain and preserve records, including, without limitation, all books, documents, memoranda, reports, correspondence and similar materials, related to matters regulated by this article as provided by the minimum requirements of this section or as provided by a permit or order issued pursuant to this article.

- (1) *Discharge records.* An industrial user shall retain, preserve, and make available to the POTW for inspection and copying, for the period specified in subsection (3), all records related to matters regulated by this article, including, without limitation, all documents, memoranda, correspondence and similar materials; copies of all required reports and notifications; all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; copies of results of all sampling, monitoring, measurements and analyses; and records of all data used to complete the application for a permit. Any industrial user subject to the sampling, monitoring, analysis, or reporting requirements of this article shall maintain copies of all records and information pertaining to those requirements or resulting from any monitoring activities (whether or not such monitoring activities are required by this article). For all samples, the records shall include, at a minimum, the information required to be recorded by section 90-152 of this article.
- (2) *Hazardous or solid waste.* An industrial user shall retain and preserve all records regarding its generation, treatment, storage, or disposal of hazardous waste or solid waste for the period specified in subsection (c) and shall make them available to the POTW for inspection and copying, subject to the provisions in this article regarding confidential information. (The terms "hazardous waste" and "solid waste" shall have the same definition as provided in the state hazardous waste management act, part 111 of Act 451 of the Public Acts of Michigan of 1994, MCLA §§ 324.11101 et seq., as amended, and the rules promulgated under that Act.)

- (3) *Retention period.* Users subject to the reporting requirements of this article (or of any permit or order issued pursuant to this article) shall retain the records specified in subsections (1) and (2), as well as any records associated with BMPs, for a period of at least three years from (a) the date the record was created or (b) the date the record was first used or relied upon by the user, whichever is later. The three-year retention period shall be extended during any administrative or judicial action, enforcement proceeding or litigation regarding matters regulated by this article (or regarding discharges of the POTW under its NPDES permit), until all such actions, proceedings, or activities have concluded and all periods of limitation with respect to any and all appeals have expired. The three-year retention period may also be extended at any time at the request of the department, the Michigan Department of Environmental Quality, or the U.S. EPA.

**SECTION 14. Amendment to the Niles City Code, Article IV, Section 90-175.11:** The Niles City Code, Article IV, Sec. 90-175.11, shall be amended to read as follows:

**Sec. 90-175.11. - Publication of users in significant noncompliance.**

The POTW shall publish once per year in the largest daily newspaper in the city, a list of users that, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment standards or requirements. For the purposes of this section, a user shall be considered to be in significant noncompliance if its violations meet one or more of the following criteria:

- (1) Chronic violation of discharge limits, defined as results of analyses in which 66 percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit, the average limit or the numeric pretreatment standard including instantaneous limits, for the same pollutant parameter;
- (2) Technical review criteria (TRC) violations, defined as results of analyses in which 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, the average limit, or the numeric pretreatment standard including instantaneous limits, times 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 effluent limit (instantaneous maximum concentration, daily maximum, or longer-term average or narrative standard) that the POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of department personnel or the general public);
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment, and has resulted in the POTW's exercise of its emergency authority to halt or prevent the discharge;
- (5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a permit or enforcement order, for starting construction, completing construction, or attaining final compliance;

- (6) Failure to provide any required reports within 30 days after the due date;
- (7) Failure to accurately report noncompliance; or
- (8) Any other violation or group of violations, which may include a violation of BMPs, that the WWTP superintendent determines will adversely affect the POTW or the operation or implementation of the city's pretreatment program.

**SECTION 15. Amendment to the Niles City Code, Article IV, Section 90-175.12:** The Niles City Code, Article IV, Sec. 90-175.12, shall be amended to read as follows:

**Sec. 90-175.12. - Municipal civil infractions.**

- (a) *Violation; municipal civil infraction.* Except as provided by section 90-175.13, and notwithstanding any other provision of the city's laws, ordinances and regulations to the contrary, a person who violates any provision of this article (including, without limitation, any notice, order, permit, decision or determination promulgated, issued or made by the POTW under this article) is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$1,000.00 per day for each infraction and not more than \$10,000.00 per day for each infraction, plus costs and other sanctions.
- (b) *Repeat offenses; increased fines.* Increased fines may be imposed for repeat offenses. As used in this section, "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision of this article (i) committed by a person within any 90-day period and (ii) for which the person admits responsibility or is determined to be responsible. The increased fine for a repeat offense under this article shall be as follows:
  - (1) The fine for any offense that is a first repeat offense shall be not less than \$2,500.00, plus costs.
  - (2) The fine for any offense that is a second repeat offense or any subsequent repeat offense shall be not less than \$5,000.00, plus costs.
- (c) *Amount of fines.* Subject to the minimum fine amounts specified in subsections (a) and (b), the following factors shall be considered by the court in determining the amount of a municipal civil infraction fine following the issuance of a municipal civil infraction citation for a violation of this article: the type, nature, severity, frequency, duration, preventability, potential and actual effect, and economic benefit to the violator (such as delayed or avoided costs or competitive advantage) of a violation; the violator's recalcitrance or efforts to comply; the economic impacts of the fine on the violator; and such other matters as justice may require. A violator shall bear the burden of demonstrating the presence and degree of any mitigating factors to be considered in determining the amount of a fine. However, mitigating factors shall not be considered unless it is determined that the violator has made all good faith efforts to correct and terminate all violations.

- (d) *Authorized city official.* Notwithstanding any other provision of the city's laws, ordinances and regulations to the contrary, the following persons are designated as the authorized city officials to issue municipal civil infraction citations for violations of this article: the WWTP superintendent, any other department representative designated by the manager, and any police officer.
- (e) *Other requirements and procedures.* Except as otherwise provided by this section, the requirements and procedures for commencing municipal civil infraction actions; issuance and service of municipal civil infraction citations; determination and collection of court-ordered fines, costs and expenses; appearances and payment of fines and costs; failure to answer, appear or pay fines; disposition of fines, costs and expenses paid; and other matters regarding municipal civil infractions shall be as set forth in sections 1-7 and 2-172 through 2-174 of the Niles City Code and Act No. 236 of the Public Acts of 1961, as amended.

**SECTION 16. Amendment to the Niles City Code, Article IV, Section 90-175.15:** The Niles City Code, Article IV, Sec. 90-175.15, shall be amended to read as follows:

**Sec. 90-175.15. - Number of violations.**

The number of violations resulting from a user's noncompliance with applicable discharge prohibitions or effluent limitations shall be determined as follows:

- (1) Applicable concentration limitations and mass (or loading) limitations shall be treated as separate limitations, and a user may be liable and penalized separately for exceeding any of those limitations for a single pollutant or sampling parameter.
- (2) Each violation of a daily maximum limit for a single pollutant or sampling parameter shall constitute a single violation for each day on which the violation occurs or continues.
- (3) Each violation of an instantaneous maximum limit for a single pollutant or sampling parameter shall constitute a single violation for each such exceedence, and there may be multiple violations for each day on which such a violation occurs or continues.
- (4) Each violation of a monthly average limit for a single pollutant or sampling parameter shall constitute a single violation for the month during which the violation occurred, but fines shall be accrued for each day of the month during which the violation occurred, regardless of the number of days on which samples were actually taken. (For example, in a month with 31 days, a violation of the monthly average limit for that month constitutes a single violation but fines will be assessed as if for 31 violations for each pollutant parameter for which the monthly average limit was exceeded during the month.)
- (5) If a wastewater discharge permit regulates more than one outfall, each outfall shall be considered separately in computing the number of violations as provided by this section.

**SECTION 17. Repeal:** Any and all ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

**SECTION 18. Severability:** The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

**SECTION 19. Effective Date:** This Ordinance shall become effective upon publication of a notice in a newspaper circulated in the City, stating the date of the enactment and the effective date of the ordinance, a brief notice as to the subject matter of this ordinance, and such other facts as the City Clerk shall deem pertinent and that a copy of the ordinance is available for public use and inspection at the office of the City Clerk.

At a regular meeting of the City Council held on the 9<sup>th</sup> \ day of March, 2020, it was moved by Council Member Weimer and supported by Council Member Nelson that this Ordinance No. 494 be adopted. Motion Carried.

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Nick Shelton, Mayor

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Linda Casperson, City Clerk

I, Linda Casperson, City Clerk of the City of Niles, hereby certify this to be a true and complete copy of Ordinance No. 494, duly adopted at a regular meeting of the City Council held on the 9<sup>th</sup> day of March, 2020.

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Linda Casperson, City Clerk

1<sup>st</sup> Reading: February 24, 2020  
2<sup>nd</sup> Reading and Enactment: March 9, 2020  
Published: March 12, 2020  
Effective Date: April 1, 2020