

**BOROUGH OF NORTH EAST**  
**PRETREATMENT ORDINANCE**  
**ORDINANCE NUMBER 884**

Borough of North East  
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**NORTH EAST PRETREATMENT ORDINANCE**

**ORDINANCE NO. \_\_\_\_\_  
OF THE BOROUGH OF NORTH EAST, PENNSYLVANIA**

AN ORDINANCE SETTING FORTH THE REQUIREMENTS FOR USERS OF AND DISCHARGERS INTO THE BOROUGH'S PUBLICLY OWNED SEWAGE TREATMENT WORKS ("POTW") AND ENABLING THE BOROUGH TO COMPLY WITH ALL APPLICABLE FEDERAL AND STATE LAWS, REGULATIONS AND PERMITS, INCLUDING WITHOUT LIMITATION, THE FEDERAL CLEAN WATER ACT (33 U.S.C. § 1251 *et seq.*), THE U.S. ENVIRONMENTAL PROTECTION AGENCY ("USEPA") GENERAL PRETREATMENT REGULATIONS (40 C.F.R. Part 403), THE PENNSYLVANIA CLEAN STREAMS LAW, (35 P.S. § 691.1 *et seq.*), THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION ("PADEP") STANDARDS FOR DISCHARGERS OF INDUSTRIAL WASTES TO POTWS (25 Pa. Code § 97.91 *et seq.*), AND THE BOROUGH'S NPDES PERMIT NO. PA 0023043 RELATING TO THE BOROUGH'S POTW.

WHEREAS, the USEPA has determined that the Borough of North East must develop, submit to USEPA for approval, and implement a federally-approved pretreatment program relating to its POTW; and

WHEREAS, the USEPA-required pretreatment program must include, *inter alia*, the enactment of enforceable legal authority such as a municipal pretreatment ordinance to implement the program;

NOW, THEREFORE, the Borough of North East hereby enacts and adopts the following Ordinance:

## **SECTION 1 - GENERAL PROVISIONS**

### **1.1 Purpose and Policy**

This Ordinance sets forth uniform requirements for users of the Publicly Owned Treatment Works for the Borough of North East and enables the Borough to comply with all applicable State and Federal laws, regulations, and permits, including without limitation, the Federal Clean Water Act (33 United States Code § 1251 *et seq.*), the USEPA General Pretreatment Regulations (40 Code of Federal Regulations Part 403), the Pennsylvania Clean Streams Law (35 P.S. § 691.1 *et seq.*), the PADEP Standards for Dischargers of Industrial Wastes to POTWs (25 Pa. Code § 97.91 *et seq.*), and the Borough's NPDES Permit No. PA 0023043. The objectives of this Ordinance are:

- A. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;
- B. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;
- C. To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
- D. To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;
- E. To provide for charges and fees for the implementation of the Borough's pretreatment program relating to the Publicly Owned Treatment Works; and
- F. To enable the Borough to comply with its National Pollutant Discharge Elimination System permit (NPDES Permit No. 0023043) conditions, sludge use and disposal requirements, and any other Federal or State laws and/or regulations to which the Publicly Owned Treatment Works is subject.

This Ordinance shall apply to all users of the Publicly Owned Treatment Works. The Ordinance authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires

user reporting; and provides for the setting of charges and fees for the equitable distribution of costs relating to the implementation of the pretreatment program established herein.

## **1.2 Administration**

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

## **1.3 Abbreviations**

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

BMP	-	Best Management Practice
BMR	-	Baseline Monitoring Report
BOD	-	Biochemical Oxygen Demand (5-day)
Borough	-	Borough of North East, Erie County, Pennsylvania
CFR	-	Code of Federal Regulations
CIU	-	Categorical Industrial User
COD	-	Chemical Oxygen Demand
DEP or PADEP	-	Pa. Department of Environmental Protection
EPA or USEPA	-	U.S. Environmental Protection Agency
gpd	-	gallons per day
IU	-	Industrial User
mg/l	-	milligrams per liter
NPDES	-	National Pollutant Discharge Elimination System

NSCIU	-	Non-Significant Categorical Industrial user
POTW	-	Publicly Owned Treatment Works
RCRA	-	Resource Conservation and Recovery Act
SIC	-	Standard Industrial Classification
SIU	-	Significant Industrial user
SNC	-	Significant Noncompliance
Township	-	Township of North East, Erie County, Pennsylvania
TSS	-	Total Suspended Solids
U.S.C.	-	United States Code

#### 1.4 Definitions

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

- A. Act or "the Act." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. ' 1251 *et seq.*
- B. Approval Authority. The Regional Administrator of EPA Region III.
- C. Authorized or Duly Authorized Representative of the User.

(1) If the User is a corporation:

- (a) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
- (b) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental

compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- (2) If the User is a partnership, or sole proprietorship: by a general partner or proprietor, respectively.
- (3) If the User is a Federal, State, or Local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
- (4) The individuals described in Paragraphs (1) through (3), above, may designate a Duly Authorized Representative if:
  - (a) The authorization is made in writing by the individual described in Paragraph (1) through (3);
  - (b) The authorization specifies either an individual or a position responsible for the overall operation of the facility from which the Industrial Discharge originates, or having overall responsibility for environmental matters for the company; and
  - (c) The written authorization is submitted to the Coordinator.
- (5) If an authorization under Paragraph (4), above, 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 Paragraph (4), above, must be submitted to the Coordinator prior to or together with any reports to be signed by an authorized representative.

(40 CFR § 403.12(1)).

- D. Best Management Practices. The term Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Part 2 of the Ordinance and 40 CFR § 403.5(a)(1) and (b). BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. A BMP should include the following elements, to the extent applicable: (1) there should be specific notice to those users to which the BMP applies and what is required; (2) there should be specifications or criteria that any required

control equipment must meet; (3) there should be specific requirements for or prohibitions on certain practices, activities and/or discharges to ensure that use of the BMP is protective; (4) there should be operation & maintenance requirements specified; (5) there should be timeframes directing when BMPs must be implemented; (6) there should be compliance certification, reporting and recordkeeping requirements; (7) there should be a provision allowing the Borough to reopen or revoke the BMP conditions, including allowing the addition of numerical limits; and (8) such other requirements as the Borough determines, (40 CFR § 403.3(e)).

- E. Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g., mg/l).
- F. Borough. The Borough of North East, Erie County, Pennsylvania.
- G. Borough Sewer Commissioner or Sewer Commissioner. The person designated by the Borough as such Commissioner, and who is charged with certain duties and responsibilities by Borough Council and under this Ordinance, or a duly authorized representative thereof.
- H. Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N.
- I. Composite Sample. A sample formed by mixing discrete samples or aliquots.
- J. Coordinator or Pretreatment Coordinator. The person designated by the Borough to supervise the pretreatment program for the POTW, and who is charged with certain duties and responsibilities by this Ordinance, or a duly authorized representative.
- K. Daily Maximum. The arithmetic average of all effluent samples for a pollutant collected during a calendar day.
- L. Daily Maximum Limit. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.
- M. Department of Environmental Protection or DEP or PADEP. The Pennsylvania Department of Environmental Protection or, where appropriate, the Regional

Water Quality Program Manager, or other duly authorized official of such department.

- N. Environmental Protection Agency or EPA or USEPA. The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Protection Division Director, or other duly authorized official of such agency.
- O. Existing Source. Any source of discharge that is not a "New Source."
- P. Flow-Proportional Composite Sample. A composite sample in which each individual sample or aliquot is collected after the passage of a defined volume of discharge.
- Q. Grab Sample. A sample which is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes or as reasonably determined by the Coordinator.
- R. Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.
- S. Instantaneous Maximum Allowable Discharge Limit. The maximum concentration or mass loading limit of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.
- T. Interference. A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the Borough's NPDES permit, of the Federal Clean Water Act, the Federal Clean Air Act, the Pennsylvania Clean Streams Law, the Pennsylvania Air Pollution Control Act, or the regulations applicable to any of the foregoing, or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.
- U. Mass Loading Limit. The pounds per day (or other specified interval) of a particular pollutant allowed to be discharged to the POTW at any time.

V. Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

W. New Source.

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

- (ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - (b) Entered into a binding contractual obligation for the purchase of facilities or equipment 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.
- X. Noncontact Cooling Water. Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- Y. Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the Borough's NPDES permit, including an increase in the magnitude or duration of a violation.
- Z. Person. Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, limited liability company, limited liability partnership, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.
- AA. pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.
- BB. Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, BOD, COD, toxicity, or odor).
- CC. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by

process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

- DD. Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.
- EE. Pretreatment Standards or Standards. Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.
- FF. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 2.1 of this Ordinance.
- GG. Publicly Owned Treatment Works or POTW. A "treatment works," as defined by Section 212 of the Act (33 U.S.C. §1292) which is owned and/or operated by the Borough. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.
- HH. Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
- II. Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).
- JJ. Significant Industrial User.
  - (1) A Significant Industrial User is:
    - (a) A user subject to categorical pretreatment standards; or
    - (b) A user that:
      - (i) Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);
      - (ii) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
      - (iii) Is designated as such by the Borough on the basis that it has a reasonable potential for adversely affecting the POTW's

operation or for violating any pretreatment standard or requirement.

- (2) Upon a finding that a user meeting the criteria in Subsection (1)(b), above, has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Borough may at any time, on its own initiative or in response to a petition received from a user, and in accordance with the procedures in 40 CFR § 403.8(f)(6), determine that such user should not be considered a Significant Industrial User.
- (3) The Borough may determine that an Industrial User subject to categorical Pretreatment Standards is a Non-Significant Categorical Industrial User ("NSCIU") and should not be considered a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:
  - (a) The Industrial user, prior to the Borough's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
  - (b) The Industrial User annually submits the certification statement required by Section 2.2(M) of the Ordinance, together with any additional information necessary to support the certification statement; and
  - (c) The Industrial User never discharges any untreated concentrated wastewater. (40 CFR § 403.3(v)(2)(i)-(iii)).

Where the Borough has determined that an Industrial User meets the criteria for classification as a Non-Significant Categorical Industrial User, the Borough shall evaluate, at least once per year, whether an Industrial User continues to meet the criteria in § 403.3(v)(2). (40 CFR § 403.8(f)(2)(v)(B)).

KK. Slug Discharge 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, which has a reasonable potential to cause Interference or Pass-Through, or in any other way violate the POTW's regulations, Local Limits or Permit Conditions.

- LL. Slug Load or Slug. Any discharge of a nonroutine episodic nature, or at a flow rate or concentration which could cause a violation of the prohibited discharge standards in Section 2.1 of this Ordinance.
- MM. Standard Industrial Classification (SIC) Code. A classification pursuant to the *Standard Industrial Classification Manual* issued by the United States Office of Management and Budget.
- NN. Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.
- OO. Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.
- PP. Township. The Township of North East, Erie County, Pennsylvania.
- QQ. User or Industrial User. A source of indirect discharge.
- RR. Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
- SS. Wastewater Treatment Plant or Treatment Plant. Those portions of the POTW which are designed to provide treatment of municipal sewage and industrial waste.

## **SECTION 2 - GENERAL SEWER USE REQUIREMENTS**

### **2.1 Prohibited Discharge Standards**

- A. General Prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.
- B. Specific Prohibitions. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
  - (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR § 261.21;

- (2) Wastewater having a pH less than 5.0 or more than 12.5, or as more stringently designated by the Coordinator for the purpose of protecting the POTW or otherwise causing corrosive structural damage to the POTW or equipment;
- (3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than three-fourths inch (3/4") in any dimension;
- (4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
- (5) Wastewater having a temperature greater than 150°F (65°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C);
- (6) Petroleum oil, nonbiodegradable 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 flammable, explosive, toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
- (8) Trucked or hauled pollutants, except at discharge points designated by the Coordinator in accordance with Section 3.4 of this Ordinance;
- (9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
- (10) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations;
- (11) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water, and unpolluted wastewater, unless specifically authorized by the Coordinator;
- (12) Sludges, screenings, or other residues from the pretreatment of industrial wastes;

- (13) Medical wastes, except as specifically authorized by the Coordinator in a wastewater discharge permit;
- (14) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;
- (15) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;
- (16) Fats, waxes, oils, or greases of animal or vegetable origin in concentrations greater than one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between 32°F and 150°F (0°C and 65°C);
- (17) Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than five percent (5%) or any single reading over ten percent (10%) of the Lower Explosive Limit of the meter.

Pollutants, substances, or wastewater prohibited by Section 2.1 shall not be processed, handled, stored, or disposed of in such a manner that they could be discharged to the POTW.

## **2.2 National Categorical Pretreatment Standards**

The federal categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, are hereby incorporated by reference. No user shall introduce or cause to be introduced into the POTW any pollutants, substances or wastewater in violation of any federal categorical pretreatment standard applicable to such user.

- A. Expansion of Limits. Where a categorical Pretreatment Standard is expressed only in terms of either mass or the concentration of a pollutant in wastewater, the Borough may impose equivalent concentration or mass limits in accordance with Section 2.2(F) and 2.2(I). When the limits in a categorical pretreatment Standard is expressed only in terms of mass of pollutant per unit of production, the Borough may convert the limits to equivalent limitations expressed either as mass of pollutant developed per day or effluent concentration for purpose of calculating effluent limitations applicable to individual Industrial Users. (40 CFR § 403.6(c)(2)).

- B. Combined Wastestream. When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, the Borough shall impose an alternate limit in accordance with 40 CFR § 403.6(e).
- C. Variance. Pursuant to 40 CFR § 403.13, the USEPA may grant an Industrial User subject to a categorical Pretreatment Standard a variance from that categorical Pretreatment Standard. If USEPA has granted an Industrial User such a variance, the Borough shall treat that variance as the categorical Pretreatment Standard applicable to that Industrial User.
- D. Net Gross Adjustment. A User subject to a categorical Pretreatment Standard may obtain a net/gross adjustment to the categorical Pretreatment Standard in accordance with the following provisions:
- (1) Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this Section. Any Industrial User wishing to obtain credit for intake pollutants must make application to the Coordinator. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of Section 2.2(D)(2) are met.
  - (2) Criteria.
    - a. Either (i) The applicable categorical Pretreatment Standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis; or (ii) The Industrial User demonstrates that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.
    - b. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.
    - c. Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be

necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this Section.

- d. Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The [City] may waive this requirement if it finds that no environmental degradation will result.
- E. BMPS. To the extent provided by a categorical pretreatment standard, the Borough may allow the use of Best Management Practices as an alternative means of complying with, or in place of, the applicable categorical pretreatment standard. (70 FR 60147).
- F. Conversion from Mass Limits. The Borough may convert the mass limits of the categorical Pretreatment Standards at 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Industrial Users under the following condition. When converting such limits to concentration limits, the Borough must use the concentrations listed in the applicable Subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by Section 2.7 of this Ordinance. (40 CFR § 403.6(c)(6)).
- G. Removal Credits. The Borough may grant removal credits to Industrial Users subject to a categorical Pretreatment Standard in accordance with 40 CFR § 403.7. (40 CFR § 403.7(a)(2)).
- H. Waiver of Monitoring. The Borough may authorize the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:
  - (1) The Borough may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater;
  - (2) The monitoring waiver is valid only for the duration of the effective period of the Permit or other equivalent individual control mechanism, but in no case longer than five (5) years. The Industrial User must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism;

- (3) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes;
- (4) The request for monitoring waiver must be signed in accordance with Section 2.2(M) and include the certification statement in 40 CFR § 403.6(a)(2)(ii);
- (5) Non-detectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis;
- (6) Any grant of the monitoring waiver by the Borough shall be included as a condition in the Industrial User's control mechanism. The reasons supporting the waiver and any information submitted by the Industrial User in its request for the waiver shall be maintained by the Borough for three (3) years after expiration of the waiver;
- (7) Upon approval of the monitoring waiver and revision of the Industrial User's control mechanism by the Borough, the Industrial User must certify on each report with the statement, below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User;

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR \_\_\_ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of \_\_\_ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under 40 CFR § 403.12(e)(1).

- (8) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the Industrial User's operations, the Industrial User must immediately: Comply with the monitoring requirements of 40 CFR § 403.12(e)(1) or other more frequent monitoring requirements imposed by the Borough; and notify the Coordinator; and
- (9) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

(40 CFR § 403.12(e)(2)).

I. Conversion of Concentration Limits. When the limits in a categorical Pretreatment Standard are expressed only in terms of pollutant concentrations, an Industrial User may request that the Borough convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Borough. The Borough may establish equivalent mass limits only if the Industrial User meets all the following conditions in Section 2.2(I)(1)(a) through Section 2.2(I)(1)(e), below.

- (1) To be eligible for equivalent mass limits, the Industrial User must:
  - (a) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;
  - (b) Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;
  - (c) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams. based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and long-term average production rate must be representative of current operating conditions.
  - (d) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and
  - (e) Have consistently complied with all applicable categorical Pretreatment Standards during the period prior to the Industrial user's request for equivalent mass limits.
- (2) An Industrial User subject to equivalent mass limits must:
  - (a) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
  - (b) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;
  - (c) Continue to record the facility's production rates and notify the Coordinator whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in Section 2.2(I)(1)(c), above. Upon notification of a revised

production rate, the Borough must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

- (d) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to Section 2.2(I)(1)(a), above, so long as it discharges under an equivalent mass limit.
- (3) If the Borough chooses to establish equivalent mass limits:
- (a) It must calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average Standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor;
  - (b) Upon notification of a revised production rate, it must reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and
  - (c) It may retain the same equivalent mass limit in subsequent control mechanism terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to Section 2.6 of this Ordinance. The Industrial User must also be in compliance with § 403.17 (regarding the prohibition of bypass).
- (4) The Borough may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants which cannot appropriately be expressed as mass.

(40 CFR § 403.6(c)(5)).

- J. Equivalent Limitations. Once included in its permit, the Industrial User must comply with the equivalent limitations developed in Section 2.2 in lieu of the promulgated categorical Standards from which the equivalent limitations were derived. (40 CFR § 403.6(c)(7)).
- K. Use of Production or Flow Figures. Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum Monthly Average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow

figure shall be used in calculating both the average and the maximum equivalent limitation. (40 CFR § 403.6(c)(8)).

L. Production Changes. Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the Coordinator within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Coordinator of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long-term average production rate. (40 CFR § 403.6(c)(9)).

M. Annual Certification by Non-Significant Categorical Industrial Users. A facility determined to be a Non-Significant Categorical Industrial User pursuant to Section 1.4(JJ) must annually submit the following certification statement, signed by an Authorized or Duly Authorized Representative of the User. This certification must accompany any report required by the Borough:

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

(a) The facility described as \_\_\_\_\_ [ facility name] met the definition of a non-significant categorical Industrial User as described in § 403.3(v)(2); (b) the facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information: \_\_\_\_\_

(40 CFR § 403.12(q)).

## 2.3 State Pretreatment Standards

[Reserved]

## 2.4 Local Limits

The Borough may establish by Ordinance, Resolution, individual wastewater discharge permits, or otherwise, and review from time to time, Local Limits regulating the discharge of

specific pollutants by users, which local limits may be more stringent than those set forth in subsections 2.1, 2.2, and/or 2.3, above.

- (A) Local limits may be established for any substance which is discharged or is likely to be discharged to the POTW sewer system.
- (B) Local limits may limit concentration, mass, or a combination of the two.
- (C) Local limits may be established as deemed necessary by the POTW to prevent interference, pass through, sludge contamination, violations of the Borough's NPDES Permit, or otherwise to protect the POTW, human health and the environment.
- (D) Local limits may be included in individual wastewater discharge permits or otherwise applied to users as deemed appropriate by the Borough.
- (E) The Borough may develop Best Management Practices (BMPs), by ordinance, in individual wastewater discharge permits or general permits to implement Local Limits and the requirements of Section 2.1 of this Ordinance (40 CFR § 403.5(c)(4)).
- (F) Any discharge by a user of any pollutant in excess of any applicable local limit constitutes a violation of this Ordinance.

## **2.5 Borough's Right of Revision**

The Borough reserves the right to establish, by ordinance, resolution, individual wastewater discharge permits, or otherwise, more stringent standards or requirements on discharges to the POTW.

## **2.6 Dilution**

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

## 2.7 Special Agreements and Waivers

A. Waiver of Requirements other than the Federal and State Minimum: No provision of this Ordinance shall be construed as prohibiting or preventing any special agreement or arrangement between the Borough and any user whereby compatible industrial wastewater discharges of unusual strength or character may be accepted by the Borough for treatment, or whereby the Borough may otherwise waive or adjust requirements herein, subject to any Borough-imposed special conditions and Borough-imposed capital and usage charges to the user. However, in no instance shall a waiver or adjustment be granted by the Borough which would result in a violation of any applicable minimum Federal or State pretreatment requirement or standard (e.g., National Categorical Pretreatment Standards).

B. Waiver or Adjustment of Local Limits: the Borough specifically reserves the right to grant a waiver or adjustment to any user for any specific local limit developed pursuant to Section 2.4, above, when it can be demonstrated by the user to the satisfaction of the Borough that such waiver or adjustment will not result in interference, pass through, a violation of the Borough's NPDES Permit or a violation of this Ordinance.

In no case shall any such waiver or adjustment of local limits allow a user to discharge any pollutant which, in combination with other users' discharges, would reasonably be expected to exceed the mass loadings determined by the Borough as acceptable to the POTW based upon considerations of, among other things, interference, pass through, and sludge contamination. The Borough may consider other factors (e.g., effect of the discharge on the POTW's treatment; future expansion; whether compliance with the limit would result in a removal cost wholly out of proportion to the environmental benefits achieved) as it deems appropriate. In no event shall any special agreement allow the actual total industrial loadings as allocated by individual wastewater discharge permits to exceed the maximum allowable headworks loadings for the POTW as approved by the USEPA as part of the Borough's approved pretreatment program, if applicable.

The Borough may require a user requesting such special agreement waiving or adjusting any such local limit to submit supporting documentation indicating why the user cannot reasonably expect to meet the local limits, setting forth an expeditious schedule for obtaining compliance with such local limits, and such other information as the Borough may require. In granting a special agreement the Borough may impose time limitations upon any less-stringent requirements and a compliance schedule for achieving full compliance. In granting any special agreement, the Borough may impose any other special conditions deemed necessary or appropriate by the Borough.

If granting a special agreement under this section would result in increased costs to the Borough (e.g., capital, operations and maintenance, treatment, and/or sludge disposal costs), the Borough may condition the special agreement upon the agreement of the user to pay such costs, and to provide security adequate in the Borough's judgment to assure payment of such costs.

## **SECTION 3 - PRETREATMENT OF WASTEWATER**

### **3.1 Pretreatment Facilities**

Users shall provide wastewater treatment as necessary to comply with this Ordinance and shall achieve compliance with all applicable federal categorical pretreatment standards, state industrial waste discharge standards, local limits, and the prohibitions set out in Section 2.1 of this Ordinance within the time limitations specified by EPA, the DEP, or the Borough, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Borough for review, and shall be acceptable to the Borough before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the Borough under the provisions of this Ordinance.

### **3.2 Additional Pretreatment Measures**

- A. Whenever deemed necessary, the Borough may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this Ordinance.
- B. The Borough may require any person 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 individual discharge permit may be issued solely for flow equalization.

- C. Grease, oil, and/or sand interceptors i.e., traps shall be provided when, in the opinion of the Borough, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the Borough and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.
- D. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

### **3.3 Accidental Discharge/Slug Control Plans**

- A. Each user shall provide protection from any discharge, including, but not limited to, accidental discharges, discharges of nonroutine, episodic nature, a noncustomary batch discharge, or a slug load or slug, of prohibited wastewater, materials, or other substances regulated by this Ordinance, or that may cause potential problems for the POTW. Facilities to prevent such discharges shall be provided and maintained at the user's own cost and expense.
- B. The Coordinator may require any Significant Industrial User to develop, submit for approval, and implement an accidental discharge/slug control plan. Alternatively, the Coordinator may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:
  - (1) Description of discharge practices, including nonroutine batch discharges;
  - (2) Description of stored chemicals;
  - (3) Procedures for immediately notifying the POTW of any accidental or slug discharge, as required by Section 6.6 of this Ordinance and providing written notification within five (5) days; and
  - (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, flow equalization measures and/or facilities, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

### **3.4 Hauled Wastewater**

- A. Septic tank waste may be introduced into the POTW only at locations as may be designated by the Coordinator, and at such times as may be established by the Coordinator; provided, however, that nothing herein shall require the Borough or the POTW to accept any hauled or septic tank waste at any time from any source. Such waste shall not violate Section 2 of this Ordinance or any other requirements established by the Borough. The Coordinator may require septic tank waste haulers to obtain individual wastewater discharge permits.
- B. The Coordinator shall require haulers of any industrial waste to obtain individual wastewater discharge permits. The Coordinator may require generators of hauled industrial waste to obtain wastewater discharge permits. The Coordinator also may prohibit the disposal of hauled septic and/or industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this Ordinance.
- C. Industrial waste haulers may discharge loads only at locations designated by the Coordinator. No load may be discharged without prior consent of the Coordinator. The Coordinator may collect samples of each hauled load to ensure compliance with applicable limits and standards. The Coordinator may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- D. Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

## **SECTION 4 - WASTEWATER DISCHARGE PERMIT APPLICATION**

### **4.1 Wastewater Analysis**

When requested by the Borough, a user must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request, or within such other time frame as may be requested by the Borough. The Coordinator is authorized to prepare a form for this purpose and may periodically require users to update this information.

## **4.2 Wastewater Discharge Permit Requirement**

- A. No Significant Industrial User shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Borough, except that a Significant Industrial User that has filed a timely application pursuant to Section 4.3 of this Ordinance may continue to discharge for the time period specified therein.
- B. The Borough may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of this Ordinance.
- C. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this Ordinance and subjects the wastewater discharge permittee to the sanctions set forth in Parts 9 through 12 of this Ordinance and any other applicable sanctions under Federal and State law. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State pretreatment standards or requirements or with any other requirements of Federal, State, and local law.

## **4.3 Wastewater Discharge Permitting: Existing Connections**

Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this Ordinance and who wishes to continue such discharges in the future, shall, within thirty (30) days after such date, apply to the Coordinator for a wastewater discharge permit in accordance with Section 4.5 of this Ordinance, and shall not cause or allow discharges to the POTW to continue after ninety (90) days of the effective date of this Ordinance except in accordance with a wastewater discharge permit issued by the Coordinator.

## **4.4 Wastewater Discharge Permitting: New Connections**

Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit, in accordance with Section 4.5 of this Ordinance, must be filed at least thirty (30) days prior to the date upon which any discharge will begin or recommence.

#### **4.5 Wastewater Discharge Permit Application Contents**

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

- A. All information required by Section 6.1(B) of this Ordinance;
- B. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
- C. Evaluation of the potential for slug discharges;
- D. Number and type of employees, hours of operation, and proposed or actual hours of operation;
- E. Each product produced by type, amount, process or processes, and rate of production;
- F. Type and amount of raw materials processed (average and maximum per day);
- G. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
- H. Time and duration of discharges;
- I. Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on Section 2.2H; and
- J. Any other information as may be deemed necessary by the Coordinator to evaluate the wastewater discharge permit application.

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

#### **4.6 Application Signatories and Certification**

All wastewater discharge permit applications and user reports must be signed by an Authorized or Duly Authorized Representative of the user and contain the following certification statement:

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

#### **4.7 Wastewater Discharge Permit Decisions**

The Coordinator will evaluate the data furnished by the user and may require additional information. Within sixty (60) days of receipt of a complete wastewater discharge permit application, the Coordinator will determine whether or not to issue a wastewater discharge permit. The Coordinator may deny any application for a wastewater discharge permit.

### **SECTION 5 - WASTEWATER DISCHARGE PERMIT ISSUANCE PROCESS**

#### **5.1 Wastewater Discharge Permit Duration**

A wastewater discharge permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the Coordinator. Each wastewater discharge permit will indicate a specific date upon which it will expire.

#### **5.2 Wastewater Discharge Permit Contents**

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

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

A. Wastewater discharge permits must contain:

- (1) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;
- (2) A statement that the wastewater discharge permit is nontransferable without prior notification to the Borough in accordance with Section 5.5 of this Ordinance, and provisions for furnishing the new owner or operator or user with a copy of the existing wastewater discharge permit;
- (3) Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;
- (4) Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law;
- (5) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law;
- (6) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 2.2(H);
- (7) Requirements to control Slug Discharge, if determined by the Coordinator to be necessary; and
- (8) Any grant of the monitoring waiver by the Borough must be included as a condition in the User's permit.

B. Wastewater discharge permits may contain, but need not be limited to, the following conditions:

- (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- (2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to

reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

- (3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;
- (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
- (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- (7) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit; and
- (8) Other conditions as deemed appropriate by the Coordinator to ensure compliance with this Ordinance, and all applicable State and Federal laws, rules, and regulations.

### **5.3 Wastewater Discharge Permit Appeals**

The Coordinator shall provide public notice of the issuance, reissuance, modification, transfer, suspension, revocation, or denial of any of the foregoing, with respect to any individual of a wastewater discharge permit. Any person including the user, may administratively petition the Borough Sewer Commissioner to reconsider such a wastewater discharge permit determination within thirty (30) days of notice thereof.

- A. Failure to submit to the Sewer Commissioner a written timely administrative petition for reconsideration shall be deemed to be a waiver of the administrative appeal.
- B. In its petition, the appealing party must indicate the wastewater discharge permit determination provisions objected to, the reasons for this objection, and the alternative conditions or provisions, if any, it seeks to place in the wastewater discharge permit.

- C. The effectiveness of the wastewater discharge permit determination shall not be stayed pending the appeal.
- D. If the Sewer Commissioner fails to act within sixty (60) days, the administrative petition for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit determination as referenced above, shall be considered final administrative actions for purposes of subsequent judicial review.
- E. Aggrieved parties seeking judicial review of any final administrative wastewater discharge permit decision (including without limitation any permit issuance, modification, transfer, suspension, revocation, or denial of any of the foregoing) by the Sewer Commissioner must appeal such action within thirty (30) days to the Court of Common Pleas of Erie County, Pennsylvania.
- F. Any action of the Borough for which review has been otherwise available hereunder shall not be subject to administrative or judicial review in any civil or criminal proceedings for enforcement.

#### **5.4 Wastewater Discharge Permit Modification**

The Coordinator, unilaterally or upon application, may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- A. To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;
- B. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- D. Information indicating that the permitted discharge poses a threat to the Borough's POTW, Borough personnel, or the receiving waters;
- E. Violation of any terms or conditions of the wastewater discharge permit;
- F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

- G. Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR § 403.13;
- H. To correct typographical or other errors in the wastewater discharge permit; or
- I. To reflect a transfer of the facility ownership or operation to a new owner or operator or user. Modification for this purpose may not be allowed unless the permit is transferable as provided in Section 5.5 of this Ordinance.

### **5.5 Wastewater Discharge Permit Transfer**

Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least thirty (30) days advance notice to the Coordinator and the Coordinator approves the wastewater discharge permit transfer. The notice to the Coordinator must include a written certification by the new owner or operator or user which:

- A. States that the new owner and/or operator and/or user has no immediate intent to change the facility's operations and processes;
- B. Identifies the specific date on which the transfer is to occur; and
- C. Assumes and acknowledges full responsibility and liability for complying with the existing wastewater discharge permit.

Failure to provide advance notice of a transfer and to obtain prior approval of such transfer renders the wastewater discharge permit void as of the date of facility transfer.

### **5.6 Wastewater Discharge Permit Revocation**

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

- A. Failure to notify the Coordinator of significant changes to the wastewater prior to the changed discharge;
- B. Failure to provide prior notification to the Coordinator of changed conditions pursuant to Section 6.5 of this Ordinance;

- C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- D. Falsifying self-monitoring reports or otherwise creating, maintaining and/or providing inaccurate or false information, data, documents, and/or reports with respect to the user's discharge or any other information or documentation required to be maintained or provided under this Ordinance, the user's permit, wastewater discharge, or applicable Federal and State pretreatment laws and regulations;
- E. Tampering with monitoring equipment;
- F. Refusing to allow the Coordinator timely access to the facility premises and records;
- G. Failure to meet effluent limitations;
- H. Failure to pay fines and/or penalties;
- I. Failure to pay sewer charges;
- J. Failure to meet compliance schedules;
- K. Failure to complete a wastewater survey or the wastewater discharge permit application;
- L. Failure to provide advance notice of the transfer of business ownership of a permitted facility;
- M. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this Ordinance; or
- N. Failure to provide any or all documents and information as may be requested by the Borough.

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

## **5.7 Wastewater Discharge Permit Reissuance**

A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with Section 4.5 of this Ordinance, a minimum of sixty (60) days prior to the expiration of the user's existing wastewater discharge permit.

## **5.8 Regulation of Waste Received from Other Jurisdictions**

- A. If another municipality, or user located within another municipality, contributes wastewater to the POTW, the Borough shall enter into an interjurisdiction agreement with the contributing municipality.
- B. Prior to entering into an agreement required by Paragraph A, above, the Borough shall request the following information from the contributing municipality:
  - (1) A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;
  - (2) An inventory of all users located within the contributing municipality that are discharging to the POTW; and
  - (3) Such other information as the Borough may deem necessary.
- C. An intermunicipal agreement, as required by Paragraph A, above, shall contain the following conditions:
  - (1) A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as this Ordinance and local limits which are at least as stringent as those set out in Section 2.4 of this Ordinance. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the Borough's ordinance or local limits;
  - (2) A requirement for the contributing municipality to submit a revised user inventory on at least an annual basis;
  - (3) A provision that the contributing municipality shall designate the Borough's employees and agents as representatives of the contributing municipality with the same authority as employees or agents of the contributing municipality for the purposes of administration, implementation, and enforcement of the pretreatment program; including

wastewater discharge permit issuance, inspection and sampling, and enforcement;

- (4) A requirement for the contributing municipality to provide the Coordinator with access to all information and documentation that the contributing municipality may obtain as part of its pretreatment activities;
- (5) Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;
- (6) Requirements for monitoring the contributing municipality's discharge;
- (7) A provision ensuring the Coordinator access to the facilities of users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the Coordinator; and
- (8) A provision specifying remedies available for breach of the terms of the intermunicipal agreement.

## **SECTION 6 - REPORTING REQUIREMENTS**

### **6.1 Baseline Monitoring Reports**

- A. Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR § 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the Coordinator a report which contains the information listed in Section 6.1(B), below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the Coordinator a report which contains the information listed in Section 6.1(B), below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged. The requirements of this Section 6.1(A) apply to all categorical Industrial Users, even if they have been designated as Non-Significant Categorical Industrial Users.
- B. Users described above shall submit the information set forth below:
  - (1) Identifying Information. The name and address of the facility, including the name of the operator and owner;

- (2) Environmental Permits. A list of any environmental control permits held by or for the facility;
- (3) Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes;
- (4) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR § 403.6(e);
- (5) Measurement of Pollutants:
  - (a) The categorical pretreatment standards applicable to each regulated process;
  - (b) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the Coordinator, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 6.10 of this Ordinance;
  - (c) Sampling must be performed in accordance with procedures set out in Section 6.11 of this Ordinance;
  - (d) In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Coordinator or the applicable Standards to determine compliance with the Standard, (40 CFR § 403.12(e)(1)); and
  - (e) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR § 403.6(e) to evaluate compliance with the

Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR § 403.6(e), this adjusted limit along with supporting data shall be submitted to the Coordinator.

- (6) Certification. A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements;
- (7) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 6.2 of this Ordinance; and
- (8) Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with Section 4.6 of this Ordinance.

## **6.2 Compliance Schedule Progress Reports**

The following conditions shall apply to the compliance schedule required by Section 6.1(B)(7) of this Ordinance:

- A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- B. No increment referred to above shall exceed nine (9) months;
- C. The user shall submit a progress report to the Coordinator, signed and certified in accordance with Section 4.6 of this Ordinance, no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason

for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

- D. In no event shall more than nine (9) months elapse between such progress reports to the Coordinator.

### **6.3 Reports on Compliance with Categorical Pretreatment Standard Deadline**

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the Coordinator a report containing the information described in Section 6.1(B)(4-6) of this Ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR § 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 4.6 of this Ordinance.

### **6.4 Periodic Compliance Reports**

- A. All Significant Industrial Users shall, at a frequency determined by the Coordinator but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Coordinator or the Pretreatment Standard necessary to determine the compliance status of the User. All periodic compliance reports must be signed and certified in accordance with Section 4.6 of this Ordinance. (40 CFR § 403.12(e)(1)).
- B. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be

grounds for the user to claim that sample results are unrepresentative of its discharge.

- C. If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the Coordinator, using the procedures prescribed in Section 6.11 of this Ordinance, the results of this monitoring shall be included in the report.
- D. The Coordinator may reduce the requirement in Section 6.4(A), above, to a requirement to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by the Coordinator, where the User subject to a categorical pretreatment standard meets all of the following conditions:
  - (1) The User's total categorical wastewater flow does not exceed any of the following:
    - (a) 0.01 percent of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the User discharges in batches;
    - (b) 0.01 percent of the design dry weather organic treatment capacity of the POTW; and
    - (c) 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical Pretreatment Standard for which approved local limits were developed by a POTW.
  - (2) The User has not been in significant noncompliance, as defined in Part 9 of this Ordinance, for any time in the past two years;
  - (3) The User does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this User would result in data that are not representative of conditions occurring during the reporting period pursuant to Paragraph B of this section;
  - (4) The User must notify the Coordinator immediately of any changes at its facility causing it to no longer meet conditions of Section 6.4(D)(1) or (2), above. Upon notification, the Industrial user must immediately begin complying with the minimum reporting in Section 6.1(A), above; and

- (5) The Borough must retain documentation to support the Coordinator's determination that a specific User qualifies for reduced reporting requirements under this section for a period of three (3) years after the expiration of the term of the control mechanism.

(40 CFR § 403.12(e)(3)).

- E. The Borough may sample and analyze user discharges in lieu of and/or in addition to requiring users to conduct the sampling and analysis as set forth above.
- F. Individual wastewater discharge permits as issued by the Borough may require more frequent monitoring and compliance reporting than the above.

## **6.5 Reports of Changed Conditions**

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

- A. The Coordinator may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 4.5 of this Ordinance.
- B. The Coordinator may issue a wastewater discharge permit under Section 4.7 of this Ordinance or modify an existing wastewater discharge permit under Section 5.4 of this Ordinance in response to changed conditions or anticipated changed conditions.
- C. For purposes of this requirement, significant changes include, but are not limited to, flow increases over the daily flow measurements reported by the user in its baseline monitoring report of twenty percent (20%) or greater, and the discharge of any previously unreported pollutants.

## **6.6 Reports of Potential Problems**

- A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load or slug, that may cause potential problems for the POTW, the user shall immediately (and in no event more than within 24 hours thereof) telephone and notify the Coordinator of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and the corrective actions taken by the user.

- B. Within five (5) days following such discharge, the user shall submit a detailed written report, signed and certified in accordance with Section 4.6 of this Ordinance, describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this Ordinance or any other applicable law.
- C. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in Paragraph A, above. Users shall ensure that all of their employees, who may cause, contribute to, or witness the occurrence of such a discharge, are advised of the emergency notification procedures.
- D. Significant Industrial Users are required to notify the Coordinator immediately of any changes at its facility affecting potential for a Slug Load. (40 CFR § 403.8(f)(2)(vi)). Such notice shall be signed and certified in accordance with Section 4.7 of this Ordinance.

## **6.7 Reports from Unpermitted Users**

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the Coordinator as the Coordinator may require. Such reports shall be signed and certified by the User in accordance with Section 4.6 of the Ordinance.

## **6.8 Notice of Violation/Repeat Sampling and Reporting**

If sampling performed by a user indicates a violation, the user must notify the Coordinator within twenty-four (24) hours and in writing within 5 days of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Coordinator within thirty (30) days after becoming aware of the violation. The user is not required to resample if the Coordinator monitors at the user's facility at least once a month, or if the Coordinator samples between the user's initial sampling and when the user receives the results of this sampling, or if the Coordinator has performed the sampling and analysis in lieu of the Industrial User.

## 6.9 Notification of the Discharge of Hazardous Waste

- A. Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and the State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 6.5 of this Ordinance. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of Sections 6.1, 6.3, and 6.4 of this Ordinance.
- B. Dischargers are exempt from the requirements of subsection A, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR § 261.30(d) and § 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR § 261.30(d) and § 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.
- C. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the Coordinator, the EPA Regional Waste Management Waste Division Director, and the State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- D. In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

- E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Ordinance, a permit issued thereunder, and/or any applicable Federal or State law.
- F. No hazardous waste shall be discharged to the POTW by any user unless specifically approved by the Coordinator.

## **6.10 Analytical Requirements**

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

## **6.11 Sample Collection**

- A. Except as indicated in Sections B and C, below, the User must collect wastewater samples using 24-hour flow -proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Coordinator. Where time-proportional composite sampling or grab sampling is authorized by the Coordinator, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Coordinator, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.
- B. Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- C. For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 6.1 and 6.3 of this Ordinance [40 CFR § 403.12(b) and (d)], a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical

sampling data are available, the Coordinator may authorize a lower minimum. For the reports required by Section 6.4 of the Ordinance (40 CFR §§ 403.12(e) and 403.12(h)), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.

- D. In addition, the Borough expressly reserves the right to construct, install, operate and/or maintain off-site sampling and flow monitoring stations with respect to any user. In the event of discrepancies, the data collected from the Borough's off-site station shall take precedence over the data collected from the user's on-site station.

### **6.12 Timing**

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

### **6.13 Record Keeping**

Users subject to the reporting requirements of this Ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with Best Management Practices established under Section 2.2(E) and/or 2.4(E) of the Ordinance. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least five (5) years. This period shall be automatically extended for the duration of any litigation concerning the user or the Borough, or where the user has been specifically notified of a longer retention period by the Coordinator.

## **SECTION 7 - COMPLIANCE MONITORING**

### **7.1 Right of Entry: Inspection and Sampling**

The Coordinator or its designees shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this Ordinance and any wastewater discharge permit or order issued hereunder. Users shall allow the Coordinator ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- A. Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Coordinator will be permitted to enter without delay for the purposes of performing specific responsibilities.
- B. The Coordinator shall have the right to set up on or off the user's property, and/or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations and discharge.
- C. The Coordinator may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated semi-annually or otherwise as required by the Coordinator to ensure their accuracy.
- D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Coordinator and shall not be replaced. The costs of clearing such access shall be born by the user.
- E. Unreasonable delays in allowing the Coordinator access to the user's premises shall be a violation of this Ordinance.

### **7.2 Search Warrants**

If the Coordinator has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and

sampling program of the Borough designed to verify compliance with this Ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Coordinator may seek issuance of a search warrant from the District Justice and/or the Court of Common Pleas of Erie County.

## **SECTION 8 - CONFIDENTIAL INFORMATION**

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

## **SECTION 9 - PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE**

The Borough shall publish annually, in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the Borough, a list of Industrial Users which, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any Industrial User which violates Sections 9(C), (D) or (H), below) and shall mean:

- A. Chronic violations of wastewater Discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken for the same pollutant parameter during a six- (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, incorporated or established under Section 2 of this Ordinance;
- B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements taken for the same pollutant parameter during a six- (6) -month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, incorporated or established under Section 2 of this Ordinance, multiplied by 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 Standard or Requirement incorporated or established under Section 2 of this Ordinance (daily maximum, long-term average, instantaneous limit, 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 POTW personnel or the general public;
- D. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the Coordinator's exercise of its emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide, within (45) days after the due date, required reports, such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

- G. Failure to accurately report noncompliance; or
- H. Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment program.

(40 CFR § 403.8(f)(2)(viii)).

## **SECTION 10 - ADMINISTRATIVE ENFORCEMENT REMEDIES**

### **10.1 Notice of Violation**

When the Coordinator finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Coordinator may serve upon that user a written Notice of Violation. Within thirty (30) days of the receipt of such Notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Coordinator. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Coordinator to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

### **10.2 Consent Orders**

The Borough may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 10.4 and 10.5 of this Ordinance and shall be judicially enforceable.

### **10.3 Show Cause Hearing**

The Coordinator may order a user which has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Sewer Commissioner and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

### **10.4 Compliance Orders**

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

## **10.5 Cease and Desist Orders**

When the Coordinator finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Coordinator may issue an order to the user directing it to cease and desist all such violations and directing the user to:

- A. Immediately comply with all requirements; and
- B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

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

## **10.6 Administrative Civil Penalties**

- A. When the Borough finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Borough may assess a civil penalty against such user in an amount not to exceed \$25,000 per day for each violation. Each violation for each separate day shall constitute a separate and distinct offense. In the case of monthly or other long term average discharge limits, civil penalties may be assessed for each day during the period of violation.
- B. The procedures for assessing and appealing such administrative civil penalties, and the relevant factors to be considered in assessing such penalties, shall be as set forth in the Borough of North East Civil Penalty Assessment Policy attached hereto as Appendix A and incorporated herein by reference.
- C. In addition to the civil penalties provided herein, the Borough may recover interest, damages, reasonable attorney's fees, expert witness fees, administrative or Show Clause proceedings costs and/or court costs, court reporter fees and other administrative enforcement, proceedings, and/or litigation expenses against the person or user found to be in violation of this Ordinance.

- D. Assessment of an administrative civil penalty hereunder shall not be a bar against, or a prerequisite for, taking any other action against the user.

## **10.7 Emergency Suspensions**

The Coordinator may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary in the opinion of the Coordinator to stop an actual or threatened discharge which presents or causes, or may present or cause, an imminent or substantial endangerment to the health or welfare of persons, which threatens or causes interference or pass through or sludge contamination with respect to the POTW, which threatens or causes the POTW to violate any term or condition of its NPDES permit, or which presents or causes, or may present or cause, an endangerment to the environment.

- A. Any person or user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Coordinator may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Coordinator may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Coordinator that the period of endangerment has passed, unless the termination proceedings in Section 10.8 of this Ordinance are initiated against the user.
- B. A user that is responsible, in whole or in part, for any discharge presenting such endangerment shall submit a detailed written statement, signed and certified in accordance with Section 4.6 of this Ordinance, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Coordinator within five (5) days thereof.

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

## **10.8 Termination of Discharge**

In addition to the provisions in Section 5.6 of this Ordinance, any user who violates the following conditions may be subject to discharge termination:

- A. Violation of wastewater discharge permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
- E. Violation of the pretreatment standards incorporated or established under Section 2 of this Ordinance.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 10.3 of this Ordinance why the proposed action should not be taken. Exercise of this option by the Coordinator shall not be a bar to, or a prerequisite for, taking any other action against the user.

## **SECTION 11 - JUDICIAL ENFORCEMENT REMEDIES**

### **11.1 Injunctive Relief**

When the Coordinator finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Coordinator may seek the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this Ordinance on activities of the user. The Coordinator may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental abatement, remediation, and/or corrective action. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

## **11.2 Judicially-Imposed Civil Penalties**

- A. A user who has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the Borough for a maximum civil penalty of \$25,000 per day per violation. Each violation for each separate day shall constitute a separate and distinct offense under this subsection. In the case of a monthly or other long-term average discharge limit, penalties may accrue for each day during the period of the violation.
- B. In addition to the civil penalties provided herein, the Borough may recover interest, damages, reasonable attorney's fees, expert witness fees, administrative or Show Clause proceedings costs and/or court costs, court reporter fees and other administrative enforcement, proceedings, and/or litigation expenses against the person or user found to be in violation of this Ordinance.
- C. In determining the amount of the civil penalty liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factors as justice requires, expressly including the factors set forth in the Borough of North East Civil Penalty Assessment Policy attached hereto as Appendix A.
- D. Filing a suit for judicially-imposed civil penalties hereunder shall not be a bar against, or a prerequisite for, taking any other action against a user.

## **11.3 Criminal Prosecution**

- A. A user who willfully or negligently violates any provision of this Ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a criminal offense, punishable by a fine of not more than \$300 per violation, per day, or imprisonment for not more than ninety (90) days, or both.
- B. A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a criminal offense and be subject to a penalty of not more than \$300, or be subject to imprisonment for not more than ninety (90) days, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

- C. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Ordinance, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Ordinance shall, upon conviction, be guilty of a criminal offense, punishable by a fine of not more than \$300 per violation, per day, or imprisonment for not more than ninety (90) days, or both.

#### **11.4 Remedies Nonexclusive**

The remedies provided for in this Ordinance are not exclusive. The Coordinator may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the Borough's enforcement response plan. However, the Coordinator may take other action against any user when the circumstances warrant. Further, the Coordinator is empowered to take more than one enforcement action against any noncompliant user.

### **SECTION 12 - SUPPLEMENTAL ENFORCEMENT ACTION**

#### **12.1 Performance Bonds**

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

#### **12.2 Liability Insurance**

The Coordinator may decline to issue or reissue a wastewater discharge permit to any user, including without limitation any user who has failed to comply with any provision of this Ordinance, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

### **12.3 Water Supply Severance**

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

### **12.4 Public Nuisances**

A violation of any provision of this Ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the Coordinator. Any person(s) creating a public nuisance shall be subject to the provisions of applicable law governing such nuisances, including reimbursing the Borough for any costs incurred in removing, abating, or remedying said nuisance.

## **SECTION 13 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS**

### **13.1 Upset**

- A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of Section 13.1(C), below, are met.
- C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (1) An upset occurred and the user can identify the cause(s) of the upset;

- (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - (3) The user has submitted the following information to the Coordinator within twenty-four (24) hours of becoming aware of the upset. If this information is initially provided orally, a written submission must be provided within five (5) days of becoming aware of such upset:
    - (a) A description of the indirect discharge and cause of noncompliance;
    - (b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
    - (c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- F. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

### **13.2 Prohibited Discharge Standards**

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in subsection 2.1(A) of this Ordinance or the specific prohibitions in subsections 2.1(B)(9) through (18) of this Ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

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

### 13.3 Bypass

- A. For the purposes of this section:
  - (1) "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility; and
  - (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of Sections 13.3(C) and (D), below.
- C. Bypass Notification.
  - (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the Coordinator, at least ten (10) days before the date of the bypass, if possible.
  - (2) A user shall submit oral notice to the Coordinator of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.
- D. Bypass.

- (1) Bypass is prohibited, and the Coordinator may take an enforcement action against a user for a bypass, unless:
  - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (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 preventive maintenance; and
  - (c) The user submitted notices as required under Section 13.3(C), above.
- (2) The Coordinator may approve an anticipated bypass, after considering its adverse effects, if the Coordinator determines that it will meet the three conditions listed in Section 13.3(D)(1), above.

#### **SECTION 14 - PRETREATMENT CHARGES AND FEES**

The Borough may adopt reasonable fees for reimbursement of costs of setting up, operating, and implementing the Borough's Pretreatment Program which may include:

- A. Fees for wastewater discharge permit applications including the costs of processing such applications;
- B. Fees for monitoring, inspection, and surveillance procedures including the costs of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users;
- C. Fees for reviewing and responding to accidental discharge procedures and construction;
- D. Fees for filing appeals; and
- E. Other fees as the Borough may deem necessary to carry out the requirements contained herein.

These charges and fees relate solely to the matters covered by this Ordinance and are separate from all other fees, fines, and penalties chargeable by the Borough.

**SECTION 15 - SEVERABILITY AND EFFECT**

- A. If any provision of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.
- B. This Ordinance shall supersede the provisions of any prior Borough Ordinances solely to the extent that the provisions of such prior Ordinances are specifically contrary to or inconsistent with the provisions herein. All other terms and provisions of such prior Ordinances which are not specifically contrary to or inconsistent with the provisions herein remain in full force and effect.

**SECTION 16 - EFFECTIVE DATE**

This Ordinance shall become effective thirty (30) days after its enactment by the Borough of North East.

ENACTED INTO AN ORDINANCE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.

\_\_\_\_\_  
President of Borough Council

Attest:

\_\_\_\_\_  
Borough Secretary

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Mayor

APPENDIX A  
BOROUGH OF NORTH EAST  
CIVIL PENALTY ASSESSMENT POLICY

Introduction:

Pursuant to the provisions of the Publicly Owned Treatment Works Penalty Law of the Commonwealth of Pennsylvania, 35 P.S. 752.1 et seq., and consistent with the Pretreatment Ordinance of the Borough of North East, the Council of the Borough of North East adopts and issues this policy for the assessment of civil penalties for violations of the Borough of North East's Pretreatment Ordinance.

Purpose:

The United States Environmental Protection Agency has determined that the Borough must develop, submit to USEPA for approval, and implement a federally-approved pretreatment program. This program, under the provisions of the Federal Clean Water Act, is a regulatory system by which the Borough monitors and controls the quantity and quality of discharges to its sewage collection system from Industrial Users (as defined by the Borough Pretreatment Ordinance). A key to the success of this program is timely and meaningful enforcement of federal and local pretreatment regulations governing the discharge of industrial waste into the Borough's sewage collection system.

It is the purpose of this policy to establish procedures by which the Borough may assess administrative civil penalties in a manner consistent with the Publicly Owned Treatment Works Penalty Law. This enforcement capability is necessary to maintain compliance with the Federal Clean Water Act as well as to enhance the effectiveness of the pretreatment program.

Nothing in this policy is to be construed as precluding any other action or remedy available, in equity or at law, legal entity, or governmental entity.

Procedure for Assessing Civil Penalties:

Violations of the Pretreatment Ordinance are discovered through a variety of mechanisms. These include Industrial Users' self-monitoring compliance reports; Borough sampling; Borough field inspections; reports from other governmental agencies; and reports from employees or citizens. When a violation has occurred, the category of violations shall be determined from the Borough's Enforcement Response Plan. When the Borough determines that a civil penalty is warranted, an investigation is initiated to determine the appropriate level of penalty. The purpose of the investigation is to evaluate the factors used to determine the amount of the civil penalty. The factors to be evaluated are the damage to the air, water, land or other natural resources of the Commonwealth and their uses; costs of restoration and abatement; savings resulting to the user in consequence of the violation; history of past violations; deterrence of future violations; and other relevant factors, as well as the civil penalties factors to be considered as set forth in the Federal Clean Water Act and the Pennsylvania Clean Streams

Law. The results of the investigation shall be documented and the appropriate penalty determined in accordance with the foregoing factors.

Once the Borough has prepared a recommended penalty assessment, a Show Cause Order is prepared by the Coordinator. The Show Cause Order shall contain the name and address of the user committing the violation; the specific violation or violations for which the penalty is sought with a brief description of the circumstances surrounding the violation or violations sufficient to provide notice to the user; an explanation of the factors selected to determine the penalty; the penalty proposed; and any other enforcement actions to be taken in addition to the penalty.

The Show Cause Order and attachments shall be submitted to the Borough Sewer Commissioner. If the Show Cause Order facially states a violation, the Sewer Commissioner shall sign the Show Cause Order and direct the user to appear before him or her for a Show Cause Hearing on a date no sooner than fifteen (15) days from the issuance of the Show Cause Order. The Sewer Commissioner shall direct that the Show Cause Order be served upon the user. Upon service of the Show Cause Order, the Sewer Commissioner shall advise the user that: the user has the right to be represented by counsel; a court reporter will be present to record the Show Cause Hearing; the user is entitled to present witnesses and offer evidence on its own behalf; the user will have the right to cross examine any witness of the Borough; and any testimony presented at the Show Cause Hearing will be under oath or affirmation.

The Sewer Commissioner shall preside over the Show Cause Hearing. At the Show Cause Hearing the Coordinator shall present all testimony and evidence in support of the proposed Order. The user, with the assistance of its own counsel, shall have the opportunity to defend its actions and to challenge the assessment of the penalty or other enforcement action. At the conclusion of the Show Cause Hearing, the Sewer Commissioner shall direct the Coordinator and the Industrial User, with the assistance of their respective counsels, to prepare proposed findings and orders. After consideration and review of the proposed findings and orders submitted, the Sewer Commissioner shall prepare a final order which is supported by findings of fact. This final order may be appealed to the Common Pleas Court of Erie County within thirty (30) days of its issuance pursuant to 42 Pa. C.S.A. Section 933 and Section 5571(b).

Appealing a penalty or negotiating a compliance agreement shall not relieve a user of a duty to mitigate and/or correct any violation of any federal, state or local pretreatment regulation or requirement. Penalties shall continue to accrue for existing or new violations during the negotiation or appeal process until the issues involved with such violations are resolved.

#### Consent Penalties:

In addition to the unilateral penalty assessment just described, the Coordinator may negotiate consent penalties in lieu of assessments.

### Procedure for Obtaining Consent Penalties:

In addition to the unilateral penalty assessment just described, the Coordinator may negotiate consent penalties in lieu of assessments.

The procedures established herein for discovery and classifying violations as well as determining the appropriate penalties shall be used for obtaining consent penalties. In addition to the information required to be included in the Show Cause Order, the Coordinator shall also include a brief description of the circumstances which justify a negotiated penalty. Negotiated penalties may be less than guideline penalties with justification, but the initial penalties sought must take into account the relevant and applicable penalties factors. As with assessed penalties, proposed consent penalties must be reviewed and approved by the Sewer Commissioner.

Factors to be considered in determining whether to seek a consent penalty include without limitation the nature and severity of the violation, compliance history, recalcitrance of the user, undue economic distress caused by assessment of the penalty according to the factors, and the negative impact which the penalty would have upon the user's ability to achieve compliance. Consent penalties shall be incorporated into binding and enforceable compliance agreements negotiated to achieve timely and effective correction of the violation. All compliance agreements shall stipulate further penalties for breach of any terms of the agreement.