

## ARTICLE V. WASTEWATER DISPOSAL REGULATIONS

### DIVISION 1. USE OF STORM SEWERS

#### § 46-125 PURPOSE AND SCOPE.

(a) Purpose. The purpose of this division is to establish regulations for controlling the use of the City's storm sewer system and preventing pollution of the receiving surface waters.

(b) Scope. These regulations shall apply within the City. Any other municipality, drainage district or other political subdivision of the State connected to or sending storm water through the City's storm sewer system that has the power to enact ordinances shall adopt an ordinance that is approved by the City as being sufficiently similar to this article.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004)

#### § 46-126 DEFINITIONS.

For the purpose of this division, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CITY.** The City of Flint, Michigan, a municipal corporation.

**CITY ENFORCEMENT OFFICER.** The WPCM or any employee of the City designated by the WPCM to administer, implement, and enforce the provisions of this ordinance.

**CODE.** The Code of Ordinances of the City of Flint.

**DETRIMENT.** Any harm or damage, such as harm to human health or damage to property or the storm sewer system.

**DISCHARGE.** Any direct or indirect entry of storm water or pollutants into the City's storm sewer system, whether intentional or unintentional.

**NUISANCE.** Any condition that causes a public nuisance, including interference with the use or maintenance of the storm sewer system.

**PERSON.** Any individual, firm, municipality, company, association, society, corporation, partnership or group, including their officers and employees, who have responsibility for or actual involvement in the matters regulated by this division.

**POLLUTANT.** Any material, other than storm water, which is discharged to the storm sewer system or that is proposed for discharge to the storm sewer system. This term also includes properties of such materials such as pH and heat.

**SITE OF INDUSTRIAL ACTIVITY.** Any area or facility used for manufacturing, processing or raw material storage, as defined under 40 C.F.R. § 122.26(e)(14) of the regulations of the United States Environmental Protection Agency, as amended.

**STORM SEWER SYSTEM.** The system of conveyances used for collecting and transporting storm water owned by the City or those owned and operated by the Michigan Department of Transportation that are within the City, but not including any facilities intended to be used for collecting and transporting sanitary or other waste water.

**STORM WATER.** Any rainwater runoff or snow melt runoff.

**WATER POLLUTION CONTROL MANAGER (WPCM).** The Manager of the Water Pollution Control Facility or other person or persons designated by the WPCM or by the City Administrator to exercise control over the POTW. The WPCM shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the WPCM may be delegated by the WPCM or the City Administrator to a duly authorized City employee or other such designee.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004; Ord. 3733, passed 11-19-2008)

#### § 46-127 GENERAL PROHIBITION ON NON-STORM WATER DISCHARGES TO THE STORM SEWER SYSTEM.

Unless exempted from regulation under § 46-130 or authorized under § 46-131:

(a) Any discharge to the storm sewer system that is not composed entirely of storm water is prohibited and declared an illicit discharge; and

(b) Any connection to the storm sewer system conveying discharges to the system not comprised entirely of storm water is prohibited and declared an illicit connection.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004)

#### § 46-128 ILLICIT DISCHARGES AND CONNECTIONS.

No person may maintain, use or establish any direct or indirect discharge or illicit connection to the storm sewer system in violation of the prohibition established in § 46-127, or any other provision of this division. This prohibition applies to connections made in the past, regardless of whether made under a permit or other authorization, or whether permissible under the laws or practices applicable at the time the connection was made. The person directly or indirectly responsible for the illicit discharge and/or connection shall either immediately terminate the discharge and/or remove the connection or apply for an interim permit under this chapter.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004)

#### § 46-129 SPILLS AND DUMPING.

(a) Corrective action. Dumping or spillage of any sewage, waste materials or any other pollutants into the storm sewer system is prohibited. Examples of such prohibited dumping or spills include, but are not limited to, motor vehicle fluids, household hazardous wastes, grass clippings, leaf litter and animal wastes. (Leaf fall and raking leaves into gutters and streets shall not be considered dumping for purposes of this section.) In the case of a spill, the person directly or indirectly responsible for the spill shall take immediate action to contain and clean up the spill.

(b) Notification. As soon as any person has knowledge of a spill or other prohibited discharge to the storm sewer system, the person shall immediately notify the City. If the person is directly or indirectly responsible for the discharge, the person shall confirm the notice in writing to the WPCM within three calendar days. The confirmatory written notice shall include a detailed description of the spilled substance(s); the volume, location and duration of the spill; all planned and/or completed corrective actions, including actions taken to prevent future spills; and any other information specifically requested by the City.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004)

#### § 46-130 EXEMPTED DISCHARGES.

The following discharges are not subject to the general prohibition established in § 46-127, unless, on a case-specific basis, the WPCM determines that the discharges may cause detriment, create a nuisance or cause or contribute to a violation of State water quality standards in receiving surface water: discharges or flows from emergency firefighting activities, water line flushing and other contributions from potable water sources, landscape irrigation and lawn watering runoff, irrigation water, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to the storm sewer system, pumped groundwater (except for groundwater cleanups), runoff from foundation and footing drains, water from crawl space pumps, air conditioning condensations, springs, water from noncommercial car washing, flows from riparian habitats and wetlands, and residential swimming pool and other dechlorinated swimming pool discharges.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004)

#### § 46-131 PERMITS.

(a) Permit by rule. The following discharges to the City's storm sewer system are authorized if the requirements of this division are met. However, the WPCM may, in individual cases, require that the discharger obtain an individual use permit from the City if the WPCM determines that the discharge may cause detriment, create a nuisance or cause or contribute to a violation of water quality standards in the receiving surface water, as provided in subsection (c) below.

(1) Discharges of storm water from sites of industrial activity. Discharges of storm water associated with industrial activity from sites of industrial activity regulated under 40 C.F.R. § 122.26 to the storm sewer system are automatically authorized if the owner or operator is operating under and in compliance with an NPDES storm water permit issued by the Michigan Department of Environmental Quality or owner or operator has submitted a “no exposure” certification to the Department, and the owner or operator provides the WPCM with a copy of the NPDES permit or “no exposure” certification within 30 days of issuance or reissuance of the permit or completion of the certificate.

(2) Other discharges authorized by NPDES permits. Discharges to the storm sewer system for which the owner or operator of the discharge has obtained an NPDES permit are automatically authorized if the owner or operator is in compliance with the permit and the owner or operator of the discharge provides the WPCM with a copy of the NPDES permit within 30 days of issuance or reissuance of the permit.

(a) Individual permits. The WPCM may, in individual cases, require any discharger to the storm sewer system to obtain an individual use permit from the City, if the WPCM determines that the discharge may cause detriment, create a nuisance or cause or contribute to a violation of the State water quality standards in the receiving surface water. In cases where an individual use permit is required, the following requirements shall apply to the person directly or indirectly responsible for the discharge.

(1) Permit applications. Any person required to obtain an individual use permit shall submit an application to the City, on a form provided by the City, and supplemental documents, as needed, not more than 30 days after having been ordered to do so by the City. The City may require the applicant to submit the following types of information in the application: (i) needed names, addresses and telephone numbers; (ii) business and/or manufacturing activities engaged in; (iii) the type and amount of materials produced, used and/or stored which are, or may be, in the discharge; (iv) the actual or proposed rate, volume and timing of the discharge; (v) the amounts and types of materials known and expected to be in the discharge; (vi) existing or proposed procedures, equipment or systems used or intended to be used for controlling the quality, rate, volume or timing of the discharge; and (vii) any other information needed by the City to process the application. The application shall be signed and certified by the proprietor or manager who is directly in control of the business, institution or other entity that is directly or indirectly responsible for the discharge. The procedures in § 46-52, regarding confidential information, shall be applicable to information provided in the application.

(2) Permit requirements and conditions. Individual use permits may contain the following requirements and conditions: (i) restrictions on the rate, volume and timing of the discharge; (ii) restrictions on the amount of certain materials in the discharge, including specific limits for various pollutants; (iii) requirements for sampling and testing the discharge and submitting the test results; (iv) requirements for measuring and recording the rate, volume, and timing of the discharge and reporting the recorded data; (v) requirements for establishing, implementing, operating and maintaining procedures, equipment or systems for preventing spills of liquid materials, treating storm water or otherwise controlling the quality, rate, volume and timing of the discharge; (vi)

requirements for submitting technical and other reports; (vii) requirements for reporting and responding to violations of the permit and this division; (viii) various fees for administering the permit; and (ix) any other requirement or condition deemed necessary for properly administering and enforcing this division. The procedures in § 46-61, regarding informal conferences and judicial review, shall be applicable to the establishment of the permit.

(3) Permit duration. An individual use permit may extend for up to five years. A person holding an individual use permit shall submit an application for a new permit not less than 180 days prior to the expiration date of the existing permit.

(4) Permit modification. The WPCM may modify any individual use permit in order to: (i) ensure compliance by the City with applicable local, State and Federal laws; (ii) respond to changes at the permittee's facility that may or do affect the quality or quantity of its discharge to the storm sewer system; (iii) ensure compliance by the permittee with this division; and (iv) protect human safety, property, the storm sewer system and the quality of its receiving surface waters. The permittee shall be informed of any permit modification at least 30 days prior to the effective date of the modification, unless a shorter period of time is necessary to meet applicable law or to protect human health, property, the storm sewer system and/or the quality of its receiving surface waters.

(5) Compliance with permit. Any person regulated under an individual use permit shall comply with all of the provisions of the permit. A violation of the use permit is a violation of this division, subject to the penalty, damage and other enforcement provisions of this division.

(6) Permit revocation. The WPCM may revoke a use permit during its term or deny a use permit renewal if:

- a. The permittee has failed to comply with any condition of the use permit;
- b. The permittee fails, in the use permit application or during the permit issuance process, to disclose fully all relevant facts to the City, and/or the permittee misrepresents any relevant fact at any time to the City;
- c. The WPCM determines that the permitted discharge endangers human health or the environment or may damage the storm sewer system and the threat can be prevented or abated by revocation or denial of the use permit;
- d. The WPCM determines that the permitted discharge has the potential for, or actually is, causing or contributing to a violation of the City's NPDES permit for the storm sewer system and the actual or potential violation can be abated or prevented by revocation or denial of the use permit;
- e. A change in any condition that requires either a temporary or permanent reduction or elimination of the permittee's discharge to the storm sewer system;
- f. The permittee is in default, after having received written notice of such default, in the payment of fees or other amounts owed to the City under this division; or

g. The permittee is in violation of any provision of this division.

(7) Permit revocation or denial. Upon revocation or denial of its use permit, a user shall immediately terminate its discharge to the storm sewer system.

(8) Limitations of permit transfer. Individual use permits are issued to a specific person for a specific operation at a specific location and are not assignable to another person or transferable to any other location without prior written approval of the WPCM. The WPCM shall approve a use permit transfer and make the necessary minor modifications to the use permit to show the transferee as the permittee, if the transferor demonstrates to the City that the following conditions exist:

a. The transferor has not violated any provision of the permit or of this division during the six-month period preceding the date of the transfer;

b. As of the date of the transfer, there are no unpaid charges or fees due to the City from the transferor under this division;

c. The information presented the application for the permit filed by the transferor remains the same with respect to the discharge, facilities and activities of the transferee, except as to the identity of the discharger; and

d. The transferor provides written evidence to the WPCM that a copy of the permit has been provided to the transferee and that the transferee accepts responsibility for permit requirements.

(9) No transfer. If subsections (a) through (d) are not met, then no transfer shall occur and a new permit and permit application is required.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004)

#### § 46-132 INSPECTIONS AND MONITORING.

(a) Inspection and monitoring authority. In order to carry out the provisions of this division and the City's storm water pollution prevention plan, any City Enforcement Officer shall have the same inspection and monitoring authority and adhere to the same inspection procedures as that delineated in § 46-148 of the City Code. In addition, the WPCM may require the owner or operator of any discharge or connection to the storm sewer to install and maintain, at the owner's or operator's expense and in accordance with plans approved by the WPCM, a suitable structure to facilitate observation, sampling and measurement of the quantity, composition and concentrations of discharges to the storm sewer system by the City or the owner and operator of the discharge or connection.

(b) Self-monitoring. When necessary to carry out the provisions of this division and the City's storm water pollution prevention plan, the WPCM may require the owner or operator of any discharge or connection to the storm sewer system to observe, sample, and measure the quantity, composition and concentrations of the owner's or operator's discharge to the storm sewer system and submit the results of the monitoring to the

WPCM. This monitoring shall be at the owner's or operator's expense and shall be conducted at such times and frequencies as determined by the WPCM.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004)

#### § 46-133 POWERS OF THE WATER POLLUTION CONTROL MANAGER (WPCM).

The WPCM is hereby empowered to, either directly or through others:

- (a) Supervise the implementation of this division;
- (b) Take enforcement action against any persons violating this division, and, with the Chief Legal Officer, institute necessary judicial proceedings to prosecute violations of the division and compel prevention and abatement of violations of this division and nuisances arising therefrom;
- (c) Investigate violations of this division and reports of illicit discharges and connections;
- (d) Issue orders to monitor discharges or other orders requiring compliance with the division, including orders to immediately cease an illicit discharge or remove an illicit connection or to do so within a time certain;
- (e) Determine and assess civil penalties and civil fines for violations of this division or permits or orders issued under this division; and
- (f) Perform other actions necessary or advisable to assure compliance with the requirements of the division.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004)

#### § 46-134 ADMINISTRATIVE ORDERS AND ENFORCEMENT AUTHORITY.

(a) Issuance of orders. Whenever the WPCM has determined that any person has violated or may violate this division, the WPCM may issue an order to take actions or to refrain from actions as deemed appropriate by the WPCM under the circumstances.

(b) Types of orders. The following orders may be issued by the WPCM:

- (1) Immediate cease and desist. An order to immediately cease and desist any illicit discharge or remove an illicit connection. Such order shall be final and in effect upon issuance;
- (2) Order to cease and desist within a time certain. The WPCM may issue an order to cease and desist an illicit discharge or remove an illicit connection by a certain time and date. The order may also contain such other conditions as deemed appropriate by the WPCM;

(3) Order to perform. The WPCM may also issue an order to persons subject to this division to require such persons to perform any action required of it under this division or to comply with this division, including, but not limited to, the following:

- a. Submit samples;
- b. Construct a monitoring structure and/or install sampling or monitoring equipment;
- c. Submit reports;
- d. Allow access for inspection, sampling, tests, monitoring and investigations;
- e. Install, operate and maintain treatment equipment;
- f. Reduce or eliminate a discharge or pollutants in a discharge or a characteristic of a discharge;
- g. Payment of storm sewer use fees;
- h. Develop and implement procedures, construct structures or install equipment for preventing and appropriately responding to accidental discharges;
- i. Control, recover or mitigate the effects of materials accidentally or intentionally discharged to the storm sewer system or which could potentially be discharged to the storm sewer system (i.e., sills on pavement or the ground); and
- j. Conduct investigations or studies (i.e., environmental monitoring, environmental risk assessments, hydro-geological studies and the like) to determine the effects or risks associated with actual, potential or past discharges; the actual or possible route(s) of entry of actual or suspected discharges (i.e., through underground pipes or by infiltration); the extent of environmental contamination which is or which may be causing a discharge; or any other purpose as the WPCM may determine; and to submit reports documenting the findings of such investigations or studies.

(c) Content of orders. Any order issued by the WPCM shall generally state the facts and basis for its issuance, and the action or withholding of action ordered as well as the time within which such action or withholding of action shall be taken. No such order shall be deemed insufficient, however, for inconsequential errors and omissions in the facts and bases for the order. If any person subject to an order deems the content of the order to contain insufficient information, the person may ask the WPCM for additional information. Multiple orders may be issued simultaneously, separately or in combination as a single order by the WPCM with respect to a single person.

(d) Consent orders. A person and the City may enter into an order by consent and such order is enforceable by the City in the same manner as any other order.

(e) Disconnection. The City may physically remove an illicit connection if a person violates any provision of an order, including an immediate cease and desist order.

(f) Notices of violation.



(1) Issuance of notice of violation. The WPCM may issue a notice of violation with or without an order against any person deemed to be in violation of this division or a permit issued under the division.

(2) Service. The notice of violation and/or the order shall be served upon the user either by personal delivery or by first class mail addressed to the person, except that an immediate cease and desist order may be written or oral, and may also be served by telephone.

(3) Content of notice of violation. The notice of violation shall specify the following:

a. Date of issuance;

b. If known by the City, the date(s), time(s) and place(s) of violation, the nature of the violation, the substances discharged, and the volume of the discharge, where applicable;

c. Reference to the pertinent section of this division, permit or other law or regulation under which the violation is charged;

d. Reference to the pertinent law establishing penalties for the violation;

e. Potential penalties and fines; and

f. The right of an alleged violator to present to the WPCM written explanations, information or other materials in answer to the notice of violation, including any defenses.

(4) Notice to municipality. Any notice of violation issued pursuant to this section upon any person within the corporate limits of any contract municipality shall be served upon the municipality in the manner provided in § 46-134(f)(2), and the municipality shall be given notice, also in the manner provided in § 46-134(f)(2), of all informal conferences conducted pursuant to the notice of violation and the municipality may participate as an amicus curiae.

(g) Informal conference and judicial review.

(1) Informal conference. A person subject to an order, notice of violation or permit decision that deems itself aggrieved by the order or notice or permit decision may request an informal conference with the WPCM. Such request shall be in writing and submitted within 20 calendar days after the permit decision or receipt of the order or notice of violation. This section does not apply to municipal civil infraction citations and/or municipal civil infraction notices as defined in Chapter 1, § 1-12 of the ordinances of the City of Flint. The purposes of the informal conference shall be to discuss the matter and try to reach a settlement of the matter agreeable to the person and the City. The WPCM may participate in the conference or appoint a designee to participate. Neither the WPCM nor his or her designee shall be required to reach a conclusion or provide a decision as a result of the conference. A person is not required to request an informal conference before seeking judicial review.

(2) Judicial review. Appeals may be taken from any order or notice of violation to a court of competent jurisdiction within 28 calendar days of such action as provided by law

by the person subject to the order or notice. No stay of the order or notice shall apply unless the stay is ordered by the court.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004; Ord. 3734, passed 11-19-2008)

#### § 46-135 PENALTIES, FINES AND REMEDIES.

(a) Civil judicial relief. At the request of the WPCM, the Chief Legal Officer may institute proceedings in a court of competent jurisdiction for the abatement of any nuisance, and to seek relief for violations of this division, or permit or order issued under this division. The Chief Legal Officer may seek, and the court may impose, temporary or permanent injunctive relief, damages, civil penalties under § 46-135(b), costs and such other relief as the court may order.

(b) Civil penalties. In an action brought by the City against a person for violation of this division, or permit or order issued under this division, a court of competent jurisdiction may impose a civil penalty of up to \$5,000.00 per day per violation. In calculating the amount of the penalty, the court shall consider the frequency of the violation by the person, the impact on human health and the environment of the violation, the economic benefit to the person gained by the violation, the magnitude and duration of the violation, the compliance history of the person, and other factors deemed appropriate by the court.

(c) Municipal civil infraction; civil fine. Violations of this division shall constitute a municipal civil infraction, and the WPCM and City Enforcement Officers are authorized persons and authorized local officials to issue municipal civil infractions citations ("citations") or municipal civil infraction notices to persons in violation of this division, except for violations punishable under § 46-137. A citation shall be a written complaint or notice to appear in the 68th District Court at the time and date specified. A citation may be issued for any violation of this division or permit or order issued under the division except for violations punishable under § 46-137. The civil fine for any violation of this division or permit or order issued under this division shall be up to \$5,000.00 per violation per day. In calculating the amount of the municipal civil infraction fine, the WPCM, City Enforcement Officer or the court shall consider the frequency of the violation by the person, environmental and human health impact of the violation, the economic benefit to the person gained by the violation, the magnitude and duration of the violation, the compliance history of the person, and other factors deemed appropriate by the court, the WPCM or the City Enforcement Officer, as applicable. The provisions of Chapter 1, §§ 1-12 through 1-19 shall apply to municipal civil infraction citations and municipal civil infraction notices issued under this division.

(d) Cumulative remedies. The imposition of a single civil penalty, civil fine or criminal fine upon a person for violation of this division or permit or order issued under the division shall not preclude the imposition by the City or a court of competent jurisdiction of a combination of any or all of such sanctions and remedies or additional sanctions and remedies with respect to the same violation except as provided in § 46-135(c).

Prosecutions of a criminal action against a person shall not be dependent upon or held in abeyance during any civil proceeding regarding the person.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004; Ord. 3734, passed 11-19-2008)

#### § 46-136 VIOLATION CONSTITUTES A PUBLIC NUISANCE.

Violations of this division, or a permit or order issued under this division, are declared to constitute a public nuisance.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004)

#### § 46-137 CRIMINAL VIOLATIONS.

(a) Any person who willfully or intentionally violates any provision of this division, or permit or order issued under this division, shall be subject to criminal prosecution as a misdemeanor offense, and, upon conviction, shall, upon conviction, be guilty of a misdemeanor, punishable as provided by § 1-7. Each day of violation is a separate offense.

(b) Any user who knowingly makes any false statements, representations or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this division, or a use permit or an order, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this division shall, upon conviction, be guilty of a misdemeanor punishable as provided in § 1-7. Each day of violation is a separate offense.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004)

#### § 46-138 STORM WATER MANAGEMENT PROGRAM FUNDING AND FEES.

(a) Funding. The cost of implementing this division and the City's storm water management program shall be funded from the city water pollution control fund, as established in § 46-73.

(b) Cost reimbursement and fees. The WPCM is empowered to recover all costs of implementing, administering and enforcing this division to the greatest extent practicable from persons regulated under individual use permits and persons found in violation of this division.

(1) Annual fees. The WPCM may assess an annual storm sewer use fee of \$200.00 for each connection to the storm sewer system to persons permitted to discharge to the storm sewer system under § 46-131.

(2) Use permit fees. Persons regulated under individual use permits, pursuant to § 46-131(c), shall pay a use permit application or re-application fee of \$100.00, a use permit renewal fee of \$100.00, and a use permit transfer fee (in the event of a transfer of the use permit) of \$100.00 to the City. In addition to these fees, persons shall reimburse the City for any and all other expenses the City incurs arising from: (i) processing incomplete, incorrect or otherwise unacceptable use permit applications; (ii) establishing case-specific restrictions on discharges to the storm sewer system; (iii) sampling and analyzing discharges to the storm sewer system and inspecting permittee's facilities; (iv) enforcing use permits; (v) producing and mailing copies of use permits; and (vi) other activities in connection with issuing, administering, enforcing and transferring use permits.

(3) Other fees. The WPCM may establish other fees by use permit or order, as required for recovering the cost of implementing, administering and enforcing this division.

(Ord. 3489, passed 2-25-2002; Ord. 3630, passed 12-13-2004)

#### § 46-139 VANDALISM AND TRESPASS.

Any person who violates the following subsections shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in § 1-7 of the City Code. The notice provisions of § 46-134(f) shall not apply to this section.

(a) Vandalism. No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the storm sewer system.

(b) Trespass. No person shall partially or fully enter or otherwise access any structure, appurtenance, or equipment which is a part of the storm sewer system, except as specifically authorized and controlled by the WPCM.

(Ord. 3630, passed 12-13-2004)

#### § 46-140 SEVERABILITY.

If any provision, paragraph, word or section of this division is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words and sections shall not be affected and shall continue in full force and effect.

(Ord. 3630, passed 12-13-2004)

#### § 46-141 CONFLICT.

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this division are hereby superseded by this division.

(Ord. 3630, passed 12-13-2004)

## DIVISION 2. USE OF THE PUBLICLY OWNED TREATMENT WORKS

### § 46-142 PURPOSE AND SCOPE.

(a) Purpose. The purpose of this division is to establish standards, rules and regulations with respect to the use of the POTW; to provide for certain rates and charges for use of the system and to prevent pollution of the environment.

(b) Scope. This division shall apply to the City of Flint. Any other municipality, drainage district or other political subdivision of the State that discharges into the POTW which has the power to enact ordinances shall adopt an ordinance which is substantially similar to this division and which is approved by the City as being sufficiently similar. This division provides for the regulation of discharges into the POTW through the issuance of use permits to significant non-domestic users, through monitoring and enforcement activities, and through required discharger reporting.

(Ord. 3630, passed 12-13-2004)

### § 46-143 DEFINITIONS.

For the purposes of this division, the following words and phrases shall have the meanings described in this section, unless the context in which they are used specifically indicates otherwise.

ACT. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq., and all rules promulgated thereunder.

BEST MANAGEMENT PRACTICES (BMPs). Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to implement the prohibitions listed in 40 C.F.R., Chapter I, Subchapter N, Part 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, any of which may enter the POTW.

BIOCHEMICAL OXYGEN DEMAND (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter and biologically oxidizable inorganic matter under standard laboratory procedures for five days, at 20°C, expressed in milligrams per liter concentration, using an approved method for BOD in Standard Methods for the Examination of Water and Wastewater, current edition.

BYPASS. The intentional diversion of waste streams away from any portion of a user's treatment facility needed for compliance with pretreatment standards to a point of discharge.

**CATEGORICAL PRETREATMENT STANDARDS (CPS).** National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories will be established as separate regulations under the appropriate subpart of 40 CFR chapter I, subchapter N. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this ordinance.

**C.F.R.** The Code of Federal Regulations.

**CITY.** The City of Flint, Michigan, a municipal corporation.

**CITY ENFORCEMENT OFFICER.** The WPCM or any employee of the City designated by the WPCM to administer, implement, and enforce the provisions of this ordinance.

**CODE.** The Code of Ordinances of the City of Flint.

**COLLECTION SYSTEM.** All of the sanitary sewers, lift stations, pumps and other equipment of the City and of a municipality, drainage district or other political subdivision of the State which has a contract with the City for discharge to the POTW treatment plant which are primarily installed to receive wastewater and pollutants directly from users for transmission to the POTW treatment plant.

**CONSTRUCTION.** Any placement, assembly or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where the equipment will be used, including preparation work at such premises, if the equipment will in any way actually or potentially affect the quality or quantity of discharges or the measurement or analysis of a discharge.

**COOLING WATER.** The water discharged from any use in which the only pollutant added is heat, shall be considered non-contact cooling water. Water discharged from any use in which heat and other pollutants have been added, shall be considered as contact cooling water.

**CPS.** Categorical Pretreatment Standards.

**DAILY MAXIMUM.** The arithmetic average of all effluent samples for a pollutant collected during a calendar day.

**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.

**DISCHARGE.** The introduction (including infiltration) of pollutants into the POTW which is either intentional or unintentional.

**EGLE.** Michigan Department of Environment, Great Lakes, and Energy or its successor.

**FLASHPOINT.** The minimum temperature at which vapor combustion will spread away from its source of ignition.

**GRAB SAMPLE.** A sample which is taken from a discharge with no regard to the flow which is collected over a period of time not exceeding 15 minutes.

**GROUNDWATER.** Water which is pumped or otherwise captured from the ground and which is not used in a process. Mere treatment of GROUNDWATER is not used in a process.

**HEXANE-EXTRACTABLE MATERIAL.** Any material, such as fat, oil or grease, which is recoverable from wastewater by extraction with N-Hexane, using EPA Test Method 1664, Revision A, and as defined therein; Resources and Environmental Protection Act, Act 451 of 1994, as amended; or the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

**HAZARDOUS SUBSTANCE.** Any substance as defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended, or the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

**INSTANTANEOUS CONCENTRATION.** The concentration in any grab sample.

**INTERFERENCE.** A discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the NPDES permit for the POTW, the Act or State act (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or any more stringent State or local regulations): Section 405 of the Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research, and Sanctuaries Act.

**MAXIMUM ALLOWABLE INDUSTRIAL LOADING.** The daily maximum mass of a pollutant, in pounds per day, which may be allowed by the City to be discharged to the POTW by the aggregate of all non-domestic users.

**MDEQ.** The Michigan Department of Environmental Quality or its successor Michigan Department of Environment, Great Lakes, and Energy (EGLE).

**MG/L.** Milligrams per liter.

**NEW SOURCE.**

(1) Any building, structure, facility or installation from which there is or may be a discharge, 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 the 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;

b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge 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 processes are substantially independent, the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

(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)a. or (1)b. but otherwise alters, replaces or adds to existing process or production equipment.

(3) Construction of a new source has commenced if the owner or operator has: Begun, or caused to begin, as part of a continuous on-site construction program:

a. Any placement, assembly or installation of facilities or equipment;

b. 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

c. 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; contracts which can be terminated or modified without substantial loss; and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this subsection.

**NON-DOMESTIC USER.** A user that discharges pollutants other than, or in addition to, sanitary sewage, but not including a user that is a municipality, drainage district or other political subdivision of the State that only discharges from its own collection system to the City's collection system.

**NPDES PERMIT.** A permit issued pursuant to the National Pollutant Discharge Elimination System to regulate the discharge of wastewater into the surface waters of the State.

**PASS-THROUGH.** A discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, cause a violation of any requirement of the Act or State act.

**PERSON.** Any individual, firm, municipality, company, association, society, corporation, partnership or group, including their officers and employees who have responsibility for or actual involvement in the matters regulated by this division.



pH. The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions in moles per liter of solution.

POLLUTANT. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

POLLUTION. A condition created by the presence of harmful or objectionable material in the water.

POLLUTION PREVENTION. The reduction or elimination of pollutants at their source by modifying production processes, promoting the use of alternative substances, implementing conservation techniques, and reusing materials rather than putting them into wastewater or allowing them to be discharged to the POTW.

POTW. Publicly owned treatment works, as defined by Section 212 of the Act, which are owned by the City and the collection system. The term also means the City or its authorized representative. This term includes any devices, processes and systems used by or for the City in the storage, treatment, recycling or reclamation of wastewater or sludge from the treatment works or the collection system.

POTW TREATMENT PLANT. The POTW exclusive of the collection system.

PRACTICABLE MINIMUM. The lowest level to which a pollutant can be reduced in practice through the use of reasonable and cost-effective control measures.

PREMISES. A lot or parcel of land, generally, or each lot or parcel of land, or building, having any connection, direct or indirect, to the POTW, as the context of the word within this division dictates.

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 discharging or otherwise introducing such pollutants into the POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process change or by other means, except for the use of dilution, unless expressly authorized by an applicable pretreatment standard or requirement.

SANITARY SEWAGE. Wastewater or pollutants from toilet, kitchen, laundry, bathing or other facilities, all of which are used for household purposes or for non-commercial purposes at a commercial location.

SEVERE PROPERTY DAMAGE. Substantial physical damage to property, damage to the treatment facilities of a user which causes them to become all or partially 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.

SEWER. A pipe or conduit for carrying wastewater, storm water, surface runoff or groundwater.

SIGNIFICANT NON-DOMESTIC USER. Any non-domestic user of the POTW that:

(1) Has a monthly average discharge to the POTW of 25,000 gallons or more per day, excluding sanitary sewage, non-contact cooling water, and blowdown from heating or air conditioning systems;

(2) Discharges or has a reasonable potential to discharge any toxic pollutant as defined pursuant to Section 307 of the Act, unless the actual or potential effect on the POTW is determined by the WPCM to be insignificant

(3) Is found by the WPCM to have a reasonable potential for adversely affecting the POTW, or for violating any limit, discharge prohibition, pretreatment standard or requirement;

(4) Is subject to a CPS; or

(5) Discharges wastewater, other than sanitary sewage, non-contact cooling water, and blowdown from heating or air conditioning systems, which makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW.

SLUDGE. Solids or other residue, either of which are separated from wastewater and generated by any treatment process, or solids or other residue directly separated from a production process.

SLUG DISCHARGE. A discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge.

SOURCE. Any building, structure, facility, vehicle or installation from which there is or may be a discharge to the POTW.

STATE ACT. Part 31 Water Resources Protection of the Michigan Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended, and all rules promulgated thereunder.

TOTAL SUSPENDED SOLIDS (TSS). Solids that either float on the surface of, or are in suspension in, wastewater and which can be recovered by standard laboratory filtering, using an approved method for TSS in Standard Methods for the Examination of Water and Wastewater, current edition.

UPSET. An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards or other limits applicable to the user 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.

U.S. EPA. The United States Environmental Protection Agency or its successor.

USER. A person who discharges into the POTW and a municipality or drainage district whose collection system discharges into the POTW.

WASTEWATER. Water discharged to the POTW by a user which may or may not contain other pollutants. This term does not include storm water, surface runoff, or non-contaminated groundwater and non-contact cooling water.

WATER POLLUTION CONTROL MANAGER (WPCM). The Manager of the Water Pollution Control Facility or other person or persons designated by the WPCM or by the City Administrator to exercise control over the POTW. The WPCM shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the WPCM may be delegated by the WPCM or the City Administrator to a duly authorized City employee or other such designee.

(Ord. 3630, passed 12-13-2004; Ord. 3735, passed 11-19-2008)

#### § 46-144 MANAGEMENT, STANDARDS, RULES AND REGULATIONS.

(a) Management of the POTW. The POTW shall be and remain under the management, supervision and control of the City. The City may employ a WPCM to administer the facility and may employ such others as the City deems advisable to carry out the management and operation of the POTW. The City may make such rules, orders or regulations as deemed advisable and necessary to assure the management and operation of the POTW, including the establishment of local limits by rule and established by the WPCM and the establishment of special alternative limits for a user by action of the WPCM.

(b) Standards, rules and regulations. The standards, rules and regulations established in or pursuant to this division are for the preservation of and furtherance of the public health, safety and welfare, and to fulfill the obligations of the City with respect to State and Federal law and all rules and regulations adopted pursuant thereto.

(Ord. 3630, passed 12-13-2004)

#### § 46-145 CONNECTION WITH POTW REQUIRED.

(a) Where the collection system of the POTW is within 300 feet of the nearest point of a premises, no privy, septic tank or other private means of sewage or excreta disposal shall be maintained or used on the premises so located and all sanitary sewage originating on the premises shall be disposed of via a connection with the collection system of the POTW.

(b) Where the collection system of the POTW is located more than 300 feet from the nearest point of a premises, sewage or excreta disposal on the premises shall not be regulated under this division.

(Ord. 3630, passed 12-13-2004)

§ 46-146 DISCHARGE PROHIBITIONS AND LIMITS.

(a) Discharge prohibitions. The provisions in this section are intended to:

(1) Prohibit the discharge to the POTW of wastewater which may cause pass-through or interference or which could have detrimental effects on the physical structures or operating personnel of the POTW, or on the general public or the environment; and

(2) Restrict the discharge to the POTW of storm water, groundwater and non-contact cooling water.

(b) Prohibited discharges. No user shall discharge, cause to be discharged, or allow to be discharged into the POTW any of the following:

(1) Pollutants which may or do create a fire or explosion hazard in the POTW, including, but not limited to, pollutants or wastewater with a closed cup flashpoint of less than 140°F (60°C), as determined by a Pensky-Martens closed cup tester, using the test method specified in ATSM Standard D-93-79 or D-93-80k (incorporated by reference, see 40 C.F.R. § 260.21) or a Setaflash closed cup tester, using the test method specified in ATSM Standard D-3278-78 (incorporated by reference, see 40 C.F.R. § 260.21), and pollutants which exceed 10% of the lower explosive limit (LEL) at any operation or maintenance of the point within the POTW;

(2) Pollutants which result in the presence of toxic gases, vapors or fumes within the POTW, in a quantity that may cause acute or chronic health and safety problems for workers or exceed any applicable occupational health or safety standard;

(3) Pollutants which may or do cause corrosive or abrasive structural damage to the POTW;

(4) Solid or viscous pollutants in amounts which may or do obstruct flow or cause interference in the POTW;

(5) Wastewater having an instantaneous pH less than 6.0 or greater than 10.5;

(6) Any pollutant, including oxygen- demanding pollutants, released in a discharge at a flow rate and/or pollutant concentration which may or do cause interference in the POTW;

(7) Pollutants which may or do cause:

a. Restriction of hydraulic capacity of structures in the POTW;

b. Unsafe conditions to personnel in the operation, inspection or maintenance of the POTW or unsafe conditions to the general public, with respect to the collection system;

c. Exceptional or unreasonably burdensome effort, attention or expense in the operation or maintenance of the POTW; or

d. Heat in amounts which will inhibit biological activity in the POTW, resulting in interference, but in no case heat such that the temperature at the discharge to the

collection system exceeds 150°F (66°C) or the influent at the POTW treatment plant exceeds 104°F (40°C);

(8) Pollutants which may or do cause pass-through or interference;

(9) Any pollutants which exceed, for that user, the limitations set forth in a categorical pretreatment standard, as adjusted under the combined wastestream formula in Michigan Rule R 323.2311(7), which may be expressed as concentration limits, mass limits, or both, as provided in Michigan Rule R 323.2311(5). A categorical pretreatment standard shall be adjusted if 40 C.F.R. § 403.15 applies and the criteria of 40 C.F.R. § 403.15(b) and (c) are met (net/gross calculation);

(10) Any liquids, gases or solids which either singly or by interaction with other substances may or do create a public nuisance;

(11) Any pollutant introducing colors not removed in the POTW treatment process, such as but not limited to, dye wastes and vegetable tanning solutions;

(12) Any unpolluted water, non-contact cooling water, storm water, groundwater or surface water, unless the WPCM gives written permission to the user for the discharge of such waters based on available hydraulic capacity and potential impacts on the POTW treatment capability. The scope and duration of the discharge of the waters shall be determined at the sole discretion of the WPCM;

(13) Any radioactive wastes in harmful quantities as such quantities are defined by applicable State and Federal regulations;

(14) Any grease or other pollutants that will become solid or viscous at a temperature of 140°F (60°C) or below after being discharged into the POTW;

(15) Hazardous substances that were not listed or disclosed in the user's application for a use permit that:

a. May or do cause or contribute to a violation of State or Federal water quality standards in the receiving waters to which the POTW discharges; or

b. Result in or contribute to a liability of the City under Part 201 of the Michigan Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended, or the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (CERCLA). Nothing in this subsection determines the percentage share or allocation share amount of a user's Part 201 or CERCLA liability.

(16) Hazardous substances in quantities exceeding the numerical limit in a user's use permit which:

a. May or do cause or contribute to a violation of State or Federal water quality standards in the receiving waters to which the POTW discharges; or

b. Result in or contribute to a liability of the City under Part 201 of the Michigan Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended, or the

Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (CERCLA). Nothing in this subsection determines the percentage share or allocation share amount of a user's Part 201 or CERCLA liability.

(17) Sludge, unless the WPCM has determined that it is amenable to treatment by the POTW and does not otherwise violate any discharge prohibition; or

(18) Any new or used petroleum oil or grease, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that may or do cause interference or pass-through.

(c) Concentration limits for specific pollutants.

(1) Pollutant concentration limits. Discharges made by non-domestic users having concentrations of specific pollutants greater than the pollutant concentration limits described in Table 46-146(c) in the appendix at the end of this chapter are prohibited, except as regulated under subsection (d) of this section.

(2) Measurement of pollutant concentrations.

a. The instantaneous concentration limit for a specific pollutant shall apply to the instantaneous concentration of the pollutant measured by sampling in accordance with § 46-149(a)(3)a.

b. The daily concentration limit for a specific pollutant shall apply to the daily concentration of the pollutant measured by sampling in accordance with § 46-149(a)(3)b.

(d) Special arrangements. The WPCM may establish a special arrangement between the City and a user in a use permit or an order that allows discharges to the POTW that are otherwise prohibited by this section. A special arrangement shall not cause the City to violate any NPDES permit provisions. The special arrangement may include special alternative limits (SALs) that are greater or less than the discharge limits in subsection (c) of this section. A special arrangement may also include requirements for best management practices (BMPs) in addition to, but not in lieu of, any discharge limit. BMPs shall be established in a use permit if the user is a significant non-domestic user. The decision to establish a special arrangement shall be made at the sole discretion of the WPCM. The special arrangement may be terminated or modified at will at any time by the City. A special arrangement shall not create any vested rights or property rights in the user. A special arrangement shall create no rights to discharge to the POTW that the user would not have had in the absence of a special arrangement. Provisions relating to termination or modification of a special arrangement may be more fully set forth in the special arrangement document. As a condition precedent to the entry into a special arrangement, the City shall require the user to sign an acknowledgment and acceptance of the provisions of this subsection. Any special arrangement may contain provisions for the user to pay a compensatory charge to the City. A special arrangement shall not allow a discharge that exceeds a categorical pretreatment standard unless a removal credit or a fundamentally different factor variance applies to allow the user to exceed the otherwise applicable categorical pretreatment standard. In such case, the special arrangement shall not allow a

discharge that exceeds the limit allowed by the removal credit or variance. A violation of the terms of a special arrangement, including any SAL, BMPs or special pretreatment requirements, shall be a violation of this division.

(1) Procedures for establishing special alternative limits. In determining a SAL, the WPCM shall allocate a share of the maximum allowable industrial loading for the pollutant of concern as set forth in subsection (2) of this subsection (d) among one or more non-domestic users in amounts and on terms and conditions deemed appropriate by the WPCM.

(2) Maximum allowable industrial loadings. The total mass of a pollutant of concern used by or allocated to all non-domestic users, including mass allocated by the WPCM in establishing SALs for the pollutant, shall not exceed in the aggregate for all non-domestic users the maximum allowable industrial loadings described in Table 46-146(d)(2) in the appendix at the end of this chapter.

(3) SALs are not allowed for PFAS compounds.

(e) Local initiative limits. The WPCM may impose limits on a user for pollutants not specifically listed in Table 46-146(c) in the appendix at the end of this chapter, which may be in a use permit or in an order. In determining a local initiative limit (LIL), the WPCM shall consider available data on acceptable POTW pollutant loading based on POTW design, treatability of the pollutant, the potential for pass-through or interference, current POTW pollutant loading, the properties of the pollutant, and other relevant factors deemed appropriate by the WPCM. The WPCM may also establish generally applicable LILs by rulemaking. A generally applicable LIL may be established and shall be enforceable as a discharge prohibition, provided the WPCM first publishes notice of the proposed LILs in the newspaper in the City with the largest circulation, provides written notice to users who are known to the WPCM to discharge a significant mass or concentration of the pollutant, and provides for an opportunity to interested persons to submit written comments. If significant public comments are received, the WPCM shall hold a public hearing to take additional oral and written comments. After these procedures are completed, the WPCM shall publish the final enforceable LILs in the same newspaper along with the effective date of the LILs.

(f) Categorical pretreatment standards. A user shall comply with all categorical pretreatment standards and any other pretreatment requirements established under §§ 307(b), 307(c) or 402(b)(8) of the Act that are applicable to that user, as adjusted under the combined wastestream formula in Michigan Rule R 323.2311(7). If a categorical pretreatment standard and another limit contained in this division or in an applicable State of Michigan pretreatment requirement regulate the same pollutant, then the more restrictive of them shall apply. If a user requests that a removal credit be applicable to that user, then the user shall pay all costs associated with supporting, obtaining, and administering the removal credit so that the City incurs no costs. It shall be at the sole discretion of the City whether or not a removal credit shall be established and how a removal credit shall be allocated.

(g) Trucked wastes. No wastes or wastewater shall be discharged by any user or person into the POTW from a vehicle which transported the waste or wastewater to the point of

discharge. The preceding sentence does not prohibit a user from trucking wastes or wastewater to the user's treatment facility.

(h) Future conditions. Future conditions imposed on the City by government agencies with proper jurisdiction may require subsequent amendment of this chapter by the City. Where Federal- or State-promulgated pretreatment standards require limits on parameters not covered in this chapter or limits more stringent than those specified in the chapter, the State or Federal limits shall have precedence and take effect with respect to the applicable user on the later of their promulgation date or the date specified for compliance with such standards.

(i) Reserved right of revision. The City reserves the right to establish by ordinance, rule, order or use permit more stringent limitations or requirements on discharges to the POTW.

(Ord. 3630, passed 12-13-2004; Ord. 3736, passed 11-19-2008)

#### § 46-147 DILUTION.

No user shall increase the use of potable or process water or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment before discharge to the POTW to achieve compliance with the standards set forth in this division, except upon prior written approval from the WPCM. Such approval shall be granted at the sole discretion of the WPCM and consistent with Federal and State law.

(Ord. 3630, passed 12-13-2004; Ord. 3737, passed 11-19-2008)

#### § 46-148 INSPECTIONS.

(a) Authority of inspectors. Authorized representatives of the City exhibiting proper credentials and identification shall be permitted at all reasonable times, and at any time in an emergency, to enter any user's property and the property of contract municipalities without delay for the purposes of inspection, observation, measurement, sampling and testing in connection with the administration and enforcement of this division.

(b) Safety rules of user. While on the property of the user, the authorized representative of the City shall observe all reasonable safety rules applicable to the premises established by the user that are communicated by the user to the City representative at the time of entry and during the visit, if practicable. The authorized representative of the City is not required to observe such safety rules in an emergency. The user shall advise the City representative of health and safety hazards and precautionary measures necessary to protect the health and safety of the City representative while on the user's premises. The WPCM may order any user to provide written information regarding such health and safety hazards and precautionary measures. If required by the user, the City representative intending to enter a user's property shall be provided with an escort by the user to accompany the City representative while on the user's property. The user shall provide the escort within a reasonable time after arrival at the user's property. In the event of an



emergency, or if the user does not provide an escort within a reasonable time the City representative is not required to wait for such an escort before proceeding with the entry and other activities on the user's property. If the City representative proceeds without such an escort on the basis of an emergency or on the basis that the user did not provide an escort within a reasonable time under the circumstances, then the City shall provide the user with a written explanation of the situation.

(c) Other inspection. Inspection by State or Federal representatives pursuant to law shall not relieve a user from inspection by City representatives, and inspection by City representatives shall not relieve any user from compliance with lawful inspection by State and Federal representatives.

(Ord. 3630, passed 12-13-2004)

#### § 46-149 SAMPLING, ANALYSES AND TESTS.

(a) Wastewater sampling and analyses.

(1) The prohibitions and restrictions in § 46-146, or as set forth in a SAL or LIL (which may be in a use permit), shall apply at the point where wastewater and pollutants are discharged into the POTW. Required pretreatment and sampling for analysis of parameters specified in a use permit, discharge limit, CPS or any discharge prohibition, limitation or standard shall be effected before such point is reached.

(2) All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or any other report shall be performed in accordance with the techniques approved for wastewater prescribed in 40 CFR 136, unless otherwise specified as in the specific prohibition of item 2.1 B.1. or in an applicable categorical pretreatment standard. Until one or more methods are promulgated by the USEPA for the analysis of PFAS in wastewater in 40 CFR Part 136, analyses may be performed using EPA Method 1633 or another method of analysis that achieves required quantification levels. Once the USEPA promulgates one or more methods for the analysis of PFAS in wastewater, only promulgated methods may be used for aqueous analysis for compliance determination with Part 31 of the NREPA. The approved analytical method used to analyze for a pollutant must also be able to demonstrate compliance with the applicable limit. The WPCM may waive the preceding analytical requirements for the purposes of characterizing new or changed wastestreams prior to those wastestreams being discharged into the POTW.

(3) All required wastewater samples must be representative of the user's discharge at time of sampling. Access to wastewater monitoring and flow measurement facilities shall be kept safe for POTW sampling and inspection personnel. Those facilities shall be properly operated, kept clean, secure from tampering, 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. All samples shall be collected at a time and in a manner that ensures they are

representative of the wastewater discharged when the user's normal operations are occurring, except when required by the City to be collected at another time or in another manner.

- a. Sampling to measure the instantaneous concentration shall be done by collecting one grab sample.
- b. Except as indicated in item c. of this subsection, sampling to measure the daily concentration shall be done by collecting a 24-hour, flow-proportional composite sample. The WPCM may authorize the use of time-proportional composite sampling or a grab samples to be used in lieu of the flow-proportional composite sample if the user can demonstrate that this will provide a representative sample of the effluent being discharged. Where such authorization has been granted, the decision to allow the alternative sampling shall be documented in the industrial user's file for its facility. In addition, grab samples may be required to show compliance with instantaneous discharge limits.
- c. Samples for Per- and Polyfluorinated Substances (PFAS), hexane-extractable material (HEM), temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds (VOCs) must be obtained using approved grab sampling techniques
- d. For sampling required in support of baseline monitoring and 90-day compliance reports, a minimum of four (4) grab samples must be used for Per- and Polyfluorinated Substances (PFAS), hexane-extractable material (HEM), temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds (VOCs) for facilities for which historical sampling data do not exist; for facilities for which historical data are available, the Control Authority shall require the number of grab samples necessary to assess and assure compliance by the Industrial Users with applicable pretreatment standards and requirements.

(b) Significant non-domestic user sampling and analyses. Unless otherwise modified by a use permit, the following shall apply.

(1) Subject to events beyond the control of the user, significant non-domestic users shall, at their expense, sample their discharge by flow-proportioned composite sampling. Samples must be obtained periodically each day, whenever the significant non-domestic user is discharging. The flow-proportioned composite sampler shall be programmed to collect a representative sample for the discharge period. Dilution is prohibited (see § 46-147). The significant non-domestic user shall submit a written description of the specific sampling method, sampling equipment, and sampling location to the WPCM and obtain the approval of the WPCM. Alternately, at the discretion of the WPCM, users may provide a tour of sampling locations and a demonstration of sampling equipment and specific sampling methods to City Enforcement Officer in order to obtain approval. For significant non-domestic users with a new source, this approval shall be obtained prior to commencement

of the discharge. Significant non-domestic users discharging as of the effective date of this section shall make application within 90 days of the effective date.

(2) The City may direct a significant non-domestic user to not perform self-monitoring, in which case the City may obtain samples of that user's discharge for analysis using composite time-proportioned or flow-proportioned sampling (except for parameters required to be collected by a grab sample) or may contract with an independent firm for such sampling. Samples may be obtained by the City each day, whenever the user is discharging. The flow-proportioned composite sampler shall be programmed to collect a representative sample for the discharge period. Dilution is prohibited (see § 46-147). The significant non-domestic user shall pay a fee to the City to fully reimburse the City for such sampling and analysis, including administrative and overhead costs. If the City contracts with an independent firm for the sampling, the significant non-domestic user shall fully reimburse the City for amounts paid by the City to the firm.

(3) Samples shall be analyzed at the sole cost of the significant non-domestic user. If a significant non-domestic user does its own sampling or causes its samples to be taken, then the user shall submit the samples to a laboratory (which may be the significant non-domestic user's own laboratory) approved by the City for analysis. If the City does not approve the user's chosen laboratory, the City shall provide the user with a written explanation why the City did not approve the laboratory. If the significant non-domestic user utilizes its own laboratory, that significant non-domestic user shall send samples to an independent laboratory as a quality control check. If a significant non-domestic user does its own sampling or analysis, the City may also take and have analyzed daily composites or grabs at the sole cost of the significant non-domestic user, in which case the City shall provide a written explanation within a reasonable time to the user why the City is performing such sampling. If the City takes the samples, the City, at its discretion, may analyze the samples in its own laboratory or contract with an independent laboratory for the analysis.

(4) The date when a sample is taken, start time, stop time, sample type, sample location, sampler programming information, persons involved in the sampling, and any other data specified in advance by the WPCM, shall be recorded by the significant non-domestic user if the significant non-domestic user is self-monitoring.

(5) Flow measurements shall be taken to record the daily discharge volume. On each sample date, flow measurements shall be taken to record the daily discharge volume unless that is not feasible. In this case, flow estimates based on water meter readings may be used if a user demonstrates to the WPCM that a representative estimate will be obtained.

(6) All analytical results for the month shall be submitted to the City by the twenty-eighth (28<sup>th</sup>) day of the following month if the significant non-domestic user does self-monitoring. The City shall provide copies of analytical results to the significant non-domestic user if the City performs the monitoring. If a significant non-domestic user monitors any pollutant more frequently than required by the City, using the procedures prescribed in subsection (a) of this section, the results of the monitoring shall be included

in the next surveillance report or other monitoring report submitted to the City by that significant non-domestic user.

(7) The City shall be provided with splits of any sample taken by a significant non-domestic user if the City requests a split sample. A significant non-domestic user shall be provided with splits of any sample taken by the City if the significant non-domestic user requests a split sample at the time of collection if possible.

(8) The significant non-domestic user (which is performing self-monitoring) or the City (if the significant non-domestic user is not performing self-monitoring) shall contract with an independent company to maintain, repair and calibrate the sampling and flow measurement equipment and instruments used to monitor that significant non-domestic user. Such maintenance, repair and calibration shall be performed as necessary so that monitoring data is accurate and representative, but in no event less frequently than twice in a calendar year at reasonable intervals. The City, in any event, may inspect and test a significant non-domestic user's flow meters at reasonable times or at any time in the case of an emergency.

(c) Other users. The WPCM may require any other user to install a suitable control structure and necessary measuring and sampling devices to facilitate the observation, sampling and measurement of the quantity, composition and concentrations of discharges to the POTW. Such structure and devices shall be constructed and installed at the user's expense in accordance with plans submitted to the WPCM and shall be maintained by the user as safe and accessible during all reasonable times and to provide accurate and representative monitoring data. If the user fails to install such a structure and devices, or maintain them, the City may do so at the expense of the user.

(d) Removal of samples and data. The WPCM or the WPCM's authorized representative shall have the right to remove samples of wastewater and pollutants discharged into the POTW and to make copies of other data and materials concerning the same. Upon the written request of such user, split samples will be provided.

(e) Authority to require submission of samples. The WPCM may require any user to submit one or more representative samples of the wastewater discharged, or which the user proposes to discharge, into the POTW.

(f) Failure to permit access or removal of samples and other data. In the event a user refuses to permit access at reasonable times, or at any time in the event of an emergency, to an authorized City representative or to permit the representative to obtain, take and remove samples and make copies of other data pursuant to this section, the City may take any or all of the following actions:

- (1) Order the termination of the discharge of wastewater to the POTW;
- (2) Order the user to permit access within a time certain; or
- (3) Issue a citation for a violation of this chapter.

(g) New installation of pretreatment facilities.

(1) Notices. The user or its authorized agent shall notify the WPCM in writing, at least 180 days before the installation of new pretreatment facilities, of the date it intends to commence operation thereof. A new pretreatment facility shall not be placed in regular operation until tests have been conducted by the user to establish that the discharges will be in compliance with this division.

(2) Tests by users. A representative of the City shall be permitted to witness the tests upon prior written request. The cost of the tests shall be paid by the user of the facilities.

(Ord. 3630, passed 12-13-2004)

#### § 46-150 REPORTING AND NOTICES.

(a) Registration required. All non-domestic users shall register with the WPCM by submitting registration forms provided by the City which shall include information about the identity, location and telephone number of the user; business and manufacturing activities engaged in by the user; and the type and amount of materials produced, used or stored which are, or which may be, discharged to the POTW by the user. In addition, the WPCM, by written order, may require any non-domestic user to provide information in a questionnaire provided by the City, from time to time, to obtain additional or current information needed for surveying and evaluating non-domestic users, implementing pollutant minimization programs, and conducting other actions to administer this division.

(b) Surveillance report required. The WPCM, by written order, may require any non-domestic user to submit periodic reports on forms provided by the City which shall include information on the quality and quantity of wastewater and pollutants discharged into the POTW. The report shall include the volume of wastewater and concentration of pollutants, and be related to pretreatment standards as shall be required by the WPCM. The names of all person(s) responsible for operating and maintaining any pretreatment equipment, pretreatment processes, or responsible for wastewater management at the user's facilities shall be listed in the report with a brief description of each person's duties. The WPCM may also require additional information from such users as to materials or substances which may be discharged to the POTW.

(1) Mandatory surveillance report. The WPCM shall notify forthwith each significant non-domestic user that it is required to file surveillance reports.

(2) Initial surveillance report. Each user that has been notified of its obligation to file surveillance reports shall file an initial report within 60 days from the date the notice is served upon the user.

(3) Periodic surveillance reports. Users will be notified by the WPCM of the periodic schedule on which to file their surveillance reports. Submission may be required daily, weekly, monthly, quarterly, semi-annually, annually, or any combination of such schedules.

(4) All surveillance reports shall be submitted on or before the 28th day of the month following the month in which discharge monitoring was performed.

(c) Notice of significant non-domestic user status. All users shall promptly notify the City at least 180 days in advance of a discharge which may convert the user into a significant non-domestic user. Where a change in discharge may convert the user into a significant non-domestic user, such user shall promptly submit an application for a use permit to the City within 10 days after submitting the notice.

(d) Annual significant non-domestic user report. Each significant non-domestic user shall submit, on a form provided by the City, an annual significant non-domestic user report. The report shall provide updated information about the user's manufacturing and business activities, materials used or stored, materials which are or may be discharged to the POTW, pretreatment systems, slug discharge control plans and procedures (if required), and any other information required under § 46-151(c) in an application for a use permit. Each significant non-domestic user shall submit the annual significant non-domestic user report by the 15th day of February of each year for the preceding calendar year (January through December), unless exempted from this requirement, in the use permit or other writing, by the WPCM.

(e) Notice of discharge exceedances. All users shall orally report to the City water pollution control facility within 24 hours of becoming aware of any discharges, whether intentional or accidental, which are known or reasonably suspected by the user to violate any prohibition or exceed any limit established in this division, in a use permit, in a special agreement, in a CPS, or in any other applicable law or regulation. The user shall, if the exceedance was based on an analyzed sample, re-sample and analyze the discharge and submit the results to the City as soon as possible, but no later than 30 days after becoming aware of the discharge. Such oral notice shall be given in advance whenever possible and shall contain information regarding the volume, duration, constituents, cause, loading and concentrations, actions taken or to be taken to prevent future exceedances, and such other available information as may be necessary to determine what impact the discharge may have on the POTW. The user shall provide a written follow-up notice within five (5) days of the oral notice that contains the same information provided orally and all other relevant information.

(f) Posting of use permit and notice of exceedance information. All non-domestic users and any user that uses or stores substances which potentially could be discharged to the POTW in concentrations which exceed any discharge prohibition in § 46-146 shall post a clearly legible set of instructions in the area where the user manages wastewater so that the report and notice requirements of this section are made known and are available to the user's employees. Such users shall also post the user's use permit along with these instructions if the user holds a use permit. Such users shall instruct their employees who have wastewater responsibilities on the reporting and notice requirements of this section.

(g) Slug discharges. The WPCM may, by written notice to a user, require that the user prepare and implement a slug discharge control plan. If a user has a use permit, the slug discharge control plan requirement shall be included in it. Such plan shall be submitted to the WPCM for approval as specified in the written notice. At least once every two years the City shall evaluate significant non-domestic users that do not have a slug discharge control

plan to determine whether or not the City will require a plan from such significant non-domestic users. The plan shall contain at least the following:

- (1) Description of discharge practices including non-routine batch discharges;
  - (2) A description of stored materials;
  - (3) Procedures for immediately notifying the WPCM of slug discharges, including any discharge that would violate a prohibition under § 46-146 with procedures for follow-up written notification within five (5) days; and
  - (4) Procedures to prevent adverse impacts from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and measures and equipment for emergency response.
- (h) Notification regarding wastes which are otherwise hazardous.

(1) Any user that discharges to the POTW any substance which, if disposed of other than by discharge to the POTW, would be a hazardous waste under 40 C.F.R. Pt. 261 or under the rules promulgated under the Michigan Hazardous Waste Management Act, Part 111 of the Natural Resources and Environmental Protection Act ("Michigan Rules") shall notify the WPCM, the U.S. EPA Region V Waste Management Division Director, and the Chief of the Waste Management Division of the Michigan Department of Environmental Quality of such discharge. The notice shall be given 180 days after the discharge first occurs. The notice shall be in writing and shall include the name of the hazardous waste set forth in 40 C.F.R. Pt. 261 or the Michigan Rules, the hazardous waste number, and the type of discharge (continuous, batch or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notice shall also contain the following information to the extent the information is known and readily available to the user:

- a. An identification of the hazardous constituents contained in the wastes;
- b. An estimation of the mass and concentration of the constituents in the discharge during that calendar month; and
- c. An estimation of the mass of constituents expected to be discharged during the following 12 months.

(2) Notification under this subsection must be submitted for each hazardous substance discharged, but is not required for pollutants already reported under self-monitoring by users under categorical pretreatment standards (CPS) reporting requirements. A user is exempt from notification under this subsection during a calendar month in which the user discharges no more than 15 kilograms of hazardous wastes unless the wastes are acute hazardous wastes as specified in 40 C.F.R. § 261.30(d) and § 261.33(e). Where a new regulation first defines a substance as a hazardous waste, notification under this subsection shall be given within 90 days of the effective date of such regulation. In any notice submitted under this subsection, the user shall certify that it has a program in place to

reduce the volume and toxicity of hazardous wastes generated to the degree the user has determined to be economically practical.

(i) Reports by the WPCM regarding users affected by CPS. The WPCM shall notify all users whom the WPCM knows might be subject to CPS of that fact.

(j) Reports by users regarding CPS. Within 180 days after the effective date of a CPS or 180 days after the final administrative decision made upon a category determination submission under 40 C.F.R. § 403.6(a)(4), whichever is later, existing users subject to such CPS which currently discharge or are scheduled to discharge into the POTW shall submit reports to the WPCM required by Michigan Rule R 323.2310, as amended. At least 90 days prior to commencement of discharge, new sources and non-domestic users that become subject to a CPS subsequent to the promulgation of an applicable CPS shall submit the reports to the WPCM required by Michigan Rule R 323.2310, as amended, along with a description of the method of pretreatment the user intends to use. Within 90 days following the date for final compliance with applicable CPS or, in the case of a new source, following commencement of the discharge into the POTW, any user subject to CPS shall submit the reports to the WPCM required by Michigan Rule R 323.2310, as amended. In addition, any user subject to CPS, after the compliance date of such CPS, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit the periodic reports to the WPCM required by Michigan Rule R 323.2310, as amended.

(k) Radioactive materials notice. Users whose discharge contains or could contain radioactive materials shall notify the WPCM of that fact as soon as possible after becoming aware of it.

(l) Reports by user of slug or problem discharges. A non-domestic user shall immediately notify the City after obtaining knowledge that such user has discharged or will discharge wastewater which could cause interference or pass-through in the POTW or which is a slug discharge. Such notice shall be oral and shall be followed by a written notice within five (5) days. The written notice shall describe measures which the user will take to prevent such discharges.

(m) Reports by users not subject to CPS. Significant non-domestic users that are not subject to CPS shall submit a written report to the City twice per year on dates specified in the user permit. Each semi-annual report shall be submitted on or before the 28th day of the month following the month in which semi-annual discharge monitoring was performed. More frequent reporting may be required by the City in a use permit. If required to be submitted more frequently, the date by which the report is required to be submitted shall not be more than 28 days following the end of the reporting period stipulated in the use permit. The report shall contain a description of the nature and concentration of the pollutants in the discharge and the volume of the discharge based on sampling and analyses for pollutants performed at a frequency specified by the City. In cases where a user is required by a special arrangement with the City established under § 46-146(d) to implement best management practices, the user shall submit documentation to determine the compliance status of the user. Sampling and analytical techniques shall be those described in Michigan Rule R 323.2310(7). The City may elect to perform the sampling and



analyses in lieu of the significant non-domestic user, at the sole cost of the significant non-domestic user. If the City collects all of the information for the reports, the significant non-domestic user shall not be required to prepare and submit the report under this subsection.

(n) Notice of changed discharge. A non-domestic user shall notify the City at least 180 days in advance of any anticipated substantial change in the volume of or in the type or amount of pollutants in its discharge to the POTW. The notice shall be in writing. For purposes of this notice, a substantial change in the discharge to the POTW includes, but is not limited to:

(1) The initial discharge of any unpolluted water, non-contact cooling water, storm water, surface water, or groundwater, including any groundwater purged for remedial action and groundwater that infiltrates into the POTW;

(2) An increase or decrease in volume of 20% or more;

(3) The discharge of pollutants not previously disclosed to the City;

(4) A change in the amount or type of listed or characteristic hazardous waste discharged for which the non-domestic user has submitted a notification to the City under subsection (h) of this section;

(5) An increase in the amount of any pollutants discharged which may result in a violation of § 46-146 or of any order or use permit applicable to the non-domestic user; or

(6) Any changes at the user's facility affecting potential for a slug discharge.

(o) Signature and certification for reports.

(1) The person signing the reports, notices, questionnaires and registration in this section shall make the following certification in the report:

"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 fines and imprisonment for knowing violations."

(2) Before any person signing any report, notice, or registration may submit the same to the City, the user shall inform the City in writing and with particularity how the individual meets the criteria for persons who are eligible to do so under Michigan Rule R 323.2310(11).

(p) Maintenance of records. Any user subject to the discharge monitoring or reporting requirements in this division, including reports under Michigan Rule R 323.2310, as amended, shall maintain copies of all reports, information records and all other information pertaining to those reports and to discharge monitoring or best management

practices. Such reports, records and information shall be retained by such user, and by the City if such documents have been submitted to the City, for at least three (3) years. This period shall be extended during the course of any unresolved litigation regarding the user or the POTW pretreatment program or when requested by the WPCM, the State Director or U.S. EPA. All users who have records regarding their generation, treatment, storage or disposal of hazardous waste or solid waste shall maintain the records for such period and make them available to the City for inspection and copying, subject to the provisions of § 46-152. The terms "hazardous waste" and "solid waste" shall have the same definition as provided in the Michigan Hazardous Waste Management Act, as amended, and rules promulgated thereunder.

(q) Date of Receipt of Reports - Written reports will be deemed to have been submitted on the date postmarked.

(r) Format of Reports - Unless otherwise specified, all reports shall be submitted as certified hardcopies.

(Ord. 3630, passed 12-13-2004; Ord. 3738, passed 11-19-2008)

#### § 46-151 USE PERMITS.

(a) Use permit required. All significant non- domestic users, and any other user requested by the WPCM, must have a use permit to discharge to the POTW.

(1) With respect to discharge limits, discharge prohibitions, sampling and analyses, a user with a use permit prior to the effective date of these amendments shall be regulated by the terms of that use permit until the earlier of:

- a. The issuance of a use permit under this amended chapter;
- b. The modification by the City of the use permit after the effective date of this amended chapter; or
- c. Twelve months after the effective date of these amendments.

(2) After the occurrence of the earlier of those events, the provisions of this amended chapter fully apply to discharge limits, discharge prohibitions, sampling and analyses with respect to that user.

(b) Use permit application required. Applications for use permits shall be submitted to the City as follows.

(1) Any person or user who will in the future become a significant non-domestic user shall submit an application at least 180 days before the date that person or user expects to become a significant non-domestic user.

(2) Any existing significant non-domestic user with a user permit prior to the effective date of this amended chapter shall submit an application not more than 180 days after the effective date of this amended chapter.

(3) Additionally, after having been directed to apply for a use permit by the WPCM, a user shall submit an application for a use permit as follows.

a. Any user suspected by the WPCM of being a significant non-domestic user shall submit an application not more than 30 days after having been ordered to do so by the WPCM.

b. Any user who has been ordered by the WPCM to obtain a use permit shall submit an application not more than 30 days after having been ordered to do so by the WPCM.

(4) The WPCM may extend the period allowed herein for submitting an application for a use permit, provided that the applicant demonstrates to the satisfaction of the WPCM that more time will be required for completing the application, due to extraordinary circumstances. The WPCM may authorize a user to discharge to the POTW while the user's permit application is pending under terms and conditions specified in the authorization.

(c) Use permit application contents.

(1) A use permit application shall consist of the following:

a. Name, address and location of the user;

b. The type of business entity of the user, whether a corporation, partnership, sole proprietorship or other form of business organization;

c. The name of the person(s) responsible for discharges by the user;

d. Standard industrial classification (SIC) number according to the Standard Industrial Manual, Bureau of the Budget, 1972, as amended;

e. Discharge pollutants and characteristics including, but not limited to, toxic pollutants as determined by bona fide chemical and biological analyses. Sampling and analyses shall be performed in accordance with procedures established by the U.S. Environmental Protection Agency and contained in 40 C.F.R. Part 136, as amended, or procedures approved by the WPCM if no Part 136 procedure exists for the pollutant;

f. Time and duration of discharges;

g. Average daily and instantaneous peak discharge flow rates in gallons per day, including daily, monthly and seasonal variations, if any (all flows shall be measured unless other verifiable techniques are approved by the WPCM);

h. Site plans, floor plans, mechanical and plumbing plans, process flow diagrams, and details to show all sewers, sewer connections, inspection manholes, sampling chambers and any other equipment directly or indirectly related to a user's actual or potential discharge (information on such other equipment need only be submitted by the user as a supplement to the use permit application and only if requested by the City);

i. Information regarding activities, facilities and plant processes on the premises indicating all materials which are or may be discharged to the POTW intentionally or unintentionally;

j. Nature and concentration of any pollutants in the discharge limited by this division, together with a statement regarding whether or not compliance is being achieved with this division on a consistent basis and, if not, whether additional operation and maintenance activities and/or additional pretreatment is required for the user to comply with this division;

k. Each product produced by type, amount, process or processes, and rate of production, and any and all information regarding the composition, characteristics and properties of each product as needed by the City for determining the potential impact of any discharge of a product to the POTW, provided by the user in either Material Safety Data Sheets or other manner approved by the City;

l. Type and amount of raw materials utilized (average and maximum per day or other relevant time period) and any and all information regarding the composition, characteristics and properties of the raw materials as needed by the City for determining the potential impact of any discharge of a raw material to the POTW, provided by the user in either Material Safety Data Sheets or other manner approved by the City;

m. A list of all other environmental permits and a copy of each such permit held by the user applicable to the site to which the use permit applies if the permitted process, equipment or activity involves any liquid waste or wastewater;

n. The signature and certification of the person described in § 46-150(o); and

o. Such other information as the WPCM may request pertaining to possible discharges to the POTW.

(2) In the case of new sources, the applicant shall supply estimated expected information to the extent actual data is not available. New sources who will be significant non-domestic users shall submit a complete permit application at least 90 days before the commencement of its discharge to the POTW.

(d) Use permit issuance. The WPCM shall evaluate the application and data furnished by the user and may require additional information from the user to complete the application. The WPCM shall determine whether the applicant is a significant non-domestic user. If not, the WPCM shall so notify the applicant. For a significant non-domestic user, the WPCM shall issue or deny a use permit based on and subject to the terms and conditions provided in this division and other applicable law. The WPCM may, but is not required to, provide the user with a draft of the use permit prior to taking action to issue or deny a use permit to give the user an opportunity to provide the City with comments on the draft use permit. The WPCM shall issue or deny a use permit within six months after receipt of a complete application from the user. If the WPCM denies a use permit, the denial shall be in writing and shall specify reasons for the denial. The WPCM may issue an individual use permit to any specific significant non-domestic user, or the WPCM may establish a general use permit

for any specific group of significant non-domestic users or other users, if deemed appropriate, where allowed under current State and Federal law. If the WPCM determines that the user is not a significant non-domestic user, the WPCM may still require a use permit or that the user be subject to the terms of a general use permit.

(e) Use permit term. A use permit shall be issued for a term not to exceed five years. The WPCM may issue the use permit for a shorter period. A permittee shall apply for reissuance of a use permit by submitting a complete application at least 180 days before the expiration of the existing use permit. If application for renewal is timely submitted, the existing use permit shall continue until final action is taken by the WPCM on the application for renewal. Otherwise, the existing use permit shall expire on its stated expiration date and the permittee shall cease its discharge.

(f) Use permit modifications.

(1) The WPCM shall have the right to modify any use permit issued hereunder in order to:

- a. Assure compliance by the POTW with applicable laws and the POTW NPDES permit;
- b. Account for changes in discharges by the user;
- c. Account for new information concerning the pollutants discharged by the user;
- d. Reflect changes in Federal or State laws and regulations or in City ordinances;
- e. Accommodate operational changes at the POTW that, as determined by the WPCM, require revision of the use permit;
- f. Modify or terminate any special arrangement contained in a use permit; or
- g. Assure compliance by the user with this division and other applicable laws.

(2) The user shall be informed of any modifications in the use permit at least 30 days prior to the effective date of the modification, unless a shorter time is necessary to meet applicable law or to protect human health, the environment or the POTW.

(g) Use permit conditions. Use permits may specify the following but shall contain all items required by Michigan Rule R 323.2306(a)(III):

- (1) Schedule of fees and charges;
- (2) Discharge limits and best management practices;
- (3) Limits on average volume and maximum volume and time of discharge and/or requirements for flow regulation and equalization;
- (4) Requirements for installation and maintenance of inspection and sampling facilities;

(5) Requirements for installation and operation of discharge flow monitors and sampling devices;

(6) Requirements for preparing and implementing a slug discharge plan;

(7) Requirements for preparing and implementing a pretreatment plan;

(8) Special arrangements and conditions as the WPCM may require under particular circumstances for a given discharge, including self-monitoring sampling locations, frequency of sampling; number, types and standards for tests; reporting, notification and recordkeeping; parameters required to be sampled and analyzed; and other provisions regarding sampling;

(9) Compliance schedules;

(10) Requirements for submission of special technical reports or discharge reports where different from those prescribed by this division;

(11) Requirements for notification to the City of a discharge which exceeds a limit in the use permit or significant changes in the discharge;

(12) Statement of duration of permit, not to exceed five years;

(13) Statement of non-transferability and non-assignability of permit;

(14) Statement of applicable civil and criminal penalties for violation of discharge limitations, pretreatment requirements and compliance schedules; and

(15) Other terms, statements or conditions, as determined by the WPCM, that are necessary to assure compliance with this division and other applicable laws.

(h) Use permit revocation.

(1) The WPCM may revoke a use permit during its term or deny a use permit renewal if:

a. The permittee has failed to comply with any condition of the use permit;

b. The permittee fails, in the use permit application or during the use permit issuance process, to disclose fully all relevant facts to the City, or the permittee misrepresents any relevant fact at any time to the City;

c. The WPCM determines that the permitted discharge endangers human health, the environment or the POTW, and the threat can only be abated by revocation or denial of the use permit;

d. A change in any condition that requires either a temporary or permanent reduction or elimination of the discharge;

e. The permittee is in default, after having received written notice of such default, in the payment of fees or other amounts owed to the City related to wastewater matters; or

f. Noncompliance by the permittee with any provision of this division.

(2) Upon revocation or denial of its use permit, a user shall immediately terminate its discharge to the POTW.

(i) Compliance with use permit. A user shall comply with all of the provisions of its use permit. A violation of any provision of a use permit is a violation of this division, subject to the penalty, damage, compensatory charge and other enforcement provisions of this division.

(j) Limitations of use permit transfer. Use permits are issued to a specific user for a specific operation at a specific location and are not assignable to another user or transferable to any other location without prior written approval of the WPCM.

(1) The WPCM shall approve a use permit transfer and make the necessary minor modifications to the use permit to show the transferee as the permittee, if the transferor demonstrates to the City the following conditions exist:

a. The transferor has not violated any provision on the use permit or of this division during the six-month period preceding the date of the transfer;

b. As of the date of the transfer, there are no unpaid charges or fees due to the City from the transferor related to use of the POTW;

c. The application for the use permit filed by the transferor remains the same with respect to the discharge, facilities and activities of the transferee, except as to the identity of the discharger; and

d. The transferor provides written evidence to the WPCM that a copy of the use permit has been provided to the transferee.

(2) If these conditions are not met, then no transfer shall occur and a new use permit is required.

(Ord. 3630, passed 12-13-2004; Ord. 3738, passed 11-19-2008)

#### § 46-152 CONFIDENTIAL INFORMATION.

The following confidentiality provisions shall apply.

(a) All information and data submitted to the City relating to matters regulated in this division are presumed not to be confidential.

(b) Information submitted pursuant to this division which the user deems confidential shall be clearly marked on each page as to the portion or portions considered confidential and accompanied by a written explanation why the user considers the information confidential. Simply marking a page "confidential" imposes no obligation on the City to keep the information confidential.

(c) Information furnished to the City on the volume or characteristics of wastewater or pollutants discharged or proposed to be discharged into the POTW shall be available to the public or other governmental agency without restriction. Information that discloses trade secrets or secret processes and is clearly marked as such, shall not be made available for inspection by the public. Such information shall be made available to governmental agencies, on written request, for uses related to this chapter, the National Pollutant Discharge Elimination System (NPDES) permit and the pretreatment programs. However, all such information shall be available for use by the State, any State agency or the City in judicial review or any other enforcement proceedings involving the user furnishing the information. The City shall notify any user, who has requested and is entitled to confidentiality, when the City has sent such confidential information to another governmental agency.

(d) Where a user has mass-based limits as allowed by certain CPS on a production basis, the production data necessary to determine compliance must also be provided by the user to the City and be available to the public. Where application of the combined waste stream formula is necessary to apply categorical pretreatment standards to a user, the flow measurements and other data used in the calculation must be provided by the user to the City and be available to the public.

(f) Observations made by City inspectors are subject to the confidentiality provisions of this section, if the user specifies in writing to the City the observations made by the City inspector for which the user seeks confidentiality.

(g) If a member of the public requests information which the user has marked "confidential" and for which the user has submitted a written explanation concerning its confidentiality, the City shall notify the user of the request and of the City's intention to release or not to release the information to the requestor.

(Ord. 3630, passed 12-13-2004)

#### § 46-153 PRETREATMENT.

(a) Pretreatment plan. The WPCM may require, by an order or a use permit, any user to prepare and implement a pretreatment plan. The plan shall be for complying with § 46-146 through the reduction of the amount of pollutants, elimination of pollutants or alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into the POTW. The reduction, elimination or alteration may be obtained by physical, chemical or biological wastewater treatment processes, process changes (such as pollution prevention) or by means other than treatment or process changes (such as BMPs), except for the use of dilution, unless expressly authorized by an applicable pretreatment standard or requirement.

(1) Pretreatment plan approval. The pretreatment plan shall be submitted to the WPCM for approval within the period specified in the order or use permit and before implementation of the plan. The plan shall be prepared in accordance with good



engineering practices and include any and all measures necessary for controlling the amount or nature of wastewater pollutants, discharge monitoring, periodic reporting, and other actions and procedures required by the WPCM. The pretreatment plan shall be certified by a Professional Engineer registered in the State of Michigan. In evaluating the plan, the WPCM may consider the significance of potential pollutant sources, the economic and technical feasibility of identifying, detecting, quantifying and controlling them, the practicable minimum and other relevant criteria.

(2) Enforcement held in abeyance. The WPCM may withhold enforcement action regarding a discharge of PCB, PFAS, or mercury if a user is responsibly preparing or implementing a pretreatment plan for reaching a practicable minimum and its discharge is not causing or contributing to interference or pass-through. Such a decision shall be made at the sole discretion of the WPCM.

(3) Compliance schedule. Where applicable and appropriate, the pretreatment plan shall include a compliance schedule, which shall consist of one or more actions, including timetables for an action or a sequence of actions leading to compliance with a pretreatment standard or other limitation, prohibition or standard. The following steps or phases shall be included in the compliance schedule, where applicable and appropriate:

- a. Retention of a qualified consultant;
- b. Completion of any engineering or scientific investigations or surveys deemed necessary;
- c. Preparation and submission of a preliminary plan to achieve pretreatment;
- d. Preparation of plans and specifications, working drawings, or other engineering or architectural documents that may be necessary to effect pretreatment;
- e. Establishment of a date to let any contract necessary for any construction;
- f. Establishment of completion dates for any construction necessary;
- g. Establishment of a date to accomplish the pretreatment pursuant to the order or use permit; and
- h. Establishment of separate timetables for a phase or unit in the event a phase or unit of construction or implementation may be effected independently of another phase or unit.

(4) Amendment. The order or use permit shall be subject to amendment or revocation by the City, provided that notice of such action is served upon the user in the same manner as in the original order or use permit and subject to the same procedure for review and appeal.

(b) Categorical pretreatment standards (CPS).

(1) Inclusion in standard. If a CPS is promulgated for a subcategory under which a user believes itself to be included, the user or the WPCM may request from the MDEQ within 60

days after the promulgation date a written determination of whether the user does or does not fall within that particular subcategory. Such request shall be made and reviewed in accordance with the procedures set forth in Michigan Rule R 323.2311, as amended. If an existing user adds or changes a process or operation that may be included in a subcategory, the user shall request the certification before commencing to discharge from the added or changed process or operation. A new source shall request the determination before commencing to discharge. If the City requests the determination, then the City shall notify the affected user of the submission and the user may provide written comments to the MDEQ within 30 days after notification is sent.

(2) Compliance date. A user to which a promulgated CPS applies shall achieve compliance with such standard in accordance with and within the time period provided for in Michigan Rule R 323.2311, as amended.

(Ord. 3630, passed 12-13-2004; Ord. 3740, passed 11-19-2008)

#### § 46-154 SPILL PREVENTION/ REMEDIATION REQUIRED.

(a) Each user or person that uses or stores liquid material at its facilities shall, at its expense:

(1) Provide a storage or use area at its facilities which is capable of containing the liquid material so that liquid material cannot escape therefrom by gravity through private sewers, underground percolation and infiltration, or otherwise into the POTW in an amount which would result in a prohibited discharge to the POTW; and

(2) Establish and follow procedures for preventing, managing and remediating accidental spills, leaks or escapes of liquids.

(b) The WPCM may order the user or person to:

(1) Conduct an investigation to determine if any known or suspected spill, leak or escape of liquid materials is being discharged, or has the potential for being discharged, to the POTW and to submit a written report on the findings of the investigation to the City, including all analytical and hydrogeological data; and

(2) Take interim measures for immediate or emergency containment and remediation, for preventing, reducing, abating or mitigating the effect(s) of a discharge of liquid material to the POTW.

(c) A significant non-domestic user shall submit to the WPCM a written description of its containment facilities and procedures within 30 days after being requested to do so by the WPCM.

(Ord. 3630, passed 12-13-2004)

#### § 46-155 INTERCEPTORS AND SEPARATORS.

An interceptor or separator for removing floating or suspended hexane-extractable material or other viscous or dense substances or articles from wastewater, by physical separation, prior to discharging the wastewater into the POTW shall be installed, used and maintained in accordance with Michigan Rule R 408.30701, as amended.

(Ord. 3630, passed 12-13-2004; Ord. 3739, passed 11-19-2008)

#### § 46-156 COMPENSATORY CHARGES.

(a) Compensatory charges. The City may assess one or more compensatory charges to recover any additional expense to the City resulting from providing service to any user responsible for any of the following:

(1) Violating any limit or discharge prohibition established by § 46-146 where no order or use permit has been issued to that user; or

(2) Violating the limits or discharge prohibitions contained in an order, SAL or use permit applicable to that user.

(b) Applicability of compensatory charges. Any user shall be liable for one or more compensatory charge to reimburse the POTW for any costs, damages or expenses (direct or indirect) that the City may incur or that may be imposed on the City in handling, treating and responding to an unlawful discharge where the exceedance of the limits contained in this division, an order, SAL or user permit causes or contributes to the costs, damages or expenses.

(c) Amount of compensatory charges. The WPCM shall calculate the amount of the compensatory charges to be assessed against the user.

(d) Criteria for assessing compensatory charges. The amount of compensatory charges shall be based upon the following minimum criteria:

(1) The volume of the discharge;

(2) The length of time the discharge occurred;

(3) The composition of the discharge;

(4) The nature, extent and degree of success the POTW may achieve in minimizing or mitigating the effect of the discharge;

(5) The toxicity, degradability, treatability and dispersal characteristics of the discharges;

(6) Costs incurred by the City to treat the discharges, including operation and maintenance, capital costs, replacement costs, sampling and analytical costs, sludge handling and disposal costs, and administrative costs;

(7) Costs incurred by the City in investigating the user's violation and enforcing this division or an order or use permit applicable to the user;

(8) Fines and penalties imposed on the City. The compensatory charges may also include the City's costs of defense (including actual attorney fees, consultant fees, and sampling and analytical fees) of actions brought or threatened to be brought against the City by the State or Federal government or third parties;

(9) Any damages to the POTW or damages imposed upon the City by the State or Federal government or third parties; and

(10) Such other factors as the WPCM deems appropriate under the circumstances.  
(Ord. 3630, passed 12-13-2004)

#### § 46-157 FEES.

(a) Reimbursement to the City. Users shall reimburse the City for its costs arising from implementing, administering and enforcing this division, as follows.

(1) Use permit fees. Users shall pay a use permit application or reapplication fee, a use permit renewal fee, and a use permit transfer fee (in the event of a transfer of the use permit). Fees shall be established from time to time by resolution of the City Council and kept on file by the City Clerk. In addition to these fees, users shall reimburse the City for any and all other expenses the City incurs arising from:

- a. Processing incomplete, incorrect or otherwise unacceptable use permit applications;
- b. Establishing special alternative limits or special arrangements, or local initiative limits;
- c. Sampling and analyzing discharges to the POTW and inspecting users;
- d. Enforcing use permits;
- e. Producing and mailing copies of use permits;
- f. Auditing and evaluating user self-monitoring data; and
- g. Other activities in connection with issuing, administering, enforcing and transferring use permits.

(2) Other fees. The WPCM may establish other fees by use permit or order, as required for recovering the cost of implementing, administering and enforcing this division.

(b) Publication of generally applicable fees. Before imposing generally applicable fees, the City shall publish a notice describing the fees in the newspaper with the largest circulation in the City. The City shall not be required to publish any notice regarding fees for which the amount is determined for a specific user based on case-specific facts or

regarding the use permit application or renewal application fee, use permit issuance fee, use permit renewal fee, or the use permit transfer fee as set forth in subsection (a) of this section.

(Ord. 3630, passed 12-13-2004)

#### § 46-158 POWERS OF THE WATER POLLUTION CONTROL MANAGER.

The WPCM is hereby empowered to, either directly or through others:

- (a) Supervise the implementation of this division;
- (b) Establish and promulgate concentration limits and maximum allowable industrial loadings for specific pollutants, as listed in Tables 46-146(c) and 46-146(d)(2) in the appendix at the end of this chapter, according to the rule-making procedure of Section 1-801 of the City Charter;
- (c) Institute actions against all users violating this division, including judicial proceedings to enjoin, abate and prosecute violations of this division;
- (d) Review pretreatment plans;
- (e) Make inspections and tests of existing and newly installed, constructed, reconstructed or altered pretreatment equipment to ensure compliance with the provisions of this division;
- (f) Investigate complaints of violations of this division; make inspections and observations of discharges; and record the investigations, complaints, inspections and observations;
- (g) Issue orders requiring compliance with this division;
- (h) Determine and assess civil administrative penalties for violations of this division;
- (i) Determine compensatory charges;
- (j) Recommend to the Chief Legal Officer of the City the institution of judicial proceedings to compel compliance with the provisions of this division or any determination or order which may be promulgated or issued pursuant to this division;
- (k) Deny permits for discharges that do not meet the requirements of this chapter or that would cause the City to violate its NPDES permit; and set conditions on new, increased or changed discharges to the POTW; and
- (l) Perform other actions necessary or advisable for the management and operation of the POTW and the enforcement of this division and other applicable laws and regulations.

(Ord. 3630, passed 12-13-2004; Ord. 3637, passed 3-28-2005)

## § 46-159 ORDERS.

(a) Issuance of orders. Whenever the WPCM determines that any user has violated or is in danger of violating this division or other applicable laws or regulations which the City is authorized to enforce, the WPCM may order the user to take action or refrain from certain actions as appropriate under the circumstances.

(b) Types of orders. The following orders may be issued by the WPCM:

(1) Immediate cease and desist. An order to immediately cease and desist from discharging any wastewater or pollutant which presents or may present imminent or substantial endangerment to the health or welfare of persons or the environment or which could cause interference or pass-through. The order shall be final and in effect upon issuance;

(2) Cease discharge within a time certain. The WPCM may issue an order to cease discharge by a certain time and date. The order may also contain such conditions as deemed appropriate by the WPCM. Non-payment of use permit fees and noncompliance with any term of a use permit are examples of sufficient cause for an order to cease discharge within a time certain; and

(3) Order to perform. An order requiring a user subject to this division to perform any required action required or to comply with any provision of this division, including, but not limited to, the following:

- a. Submit samples;
- b. Install sampling or monitoring equipment;
- c. Submit reports;
- d. Allow access for inspection, sampling, tests, monitoring and investigations;
- e. Install, operate and maintain pretreatment equipment;
- f. Reduce or eliminate a discharge or pollutants in a discharge or a characteristic of a discharge;
- g. Pay use permit fees; or
- h. Pay a compensatory charge.

(c) Content of orders. Any order issued by the WPCM shall generally state the factual basis and reasons for its issuance, the required action, and the time within which the action shall be taken. No such order shall be deemed insufficient for inconsequential errors and omissions in the facts or reasons for the order. If any user deems the information in the order insufficient, it may request additional information. Multiple orders may be issued simultaneously, separately, or in combination as a single order by the WPCM with respect to a single user.

(d) Consent orders. A user and the City may enter into an order by consent and such order is enforceable by the City in the same manner as any other order.

(e) Disconnection. The WPCM may physically disconnect a user from the POTW if the user violates any provision of an order, including an immediate cease and desist order.

(Ord. 3630, passed 12-13-2004)

#### § 46-160 NOTICES OF VIOLATION.

(a) Issuance of notice of violation. The WPCM may issue a notice of violation with or without an order against any user deemed to be in violation or in danger of violating this division, a permit, or other applicable laws or regulations which the City is authorized to enforce.

(b) Service. The notice of violation or the order shall be served upon the user either by personal delivery, first class mail addressed to the user, electronic mail, telecopy, telephone or other means, including orally. If service is made orally, by telephone or by electronic mail, a follow-up hardcopy notice shall be sent by the WPCM.

(c) Content of notice of violation. The notice of violation shall contain the following information:

(1) Date of issuance;

(2) Date(s), time(s) and place(s) of the violation; the nature of the violation; the substances discharged; and the volume of the discharge, to the extent that such information is known and applicable;

(3) Reference to the pertinent section of this division, permit or other law or regulation under which the violation is charged;

(4) Reference to the pertinent law establishing penalties for the violation;

(5) Potential penalties, fines and compensatory charges; and

(6) The right of the alleged violator to present to the WPCM written explanations, defenses, information or other materials in answer to the notice of violation.

(d) Notice to municipality. Any notice of violation issued pursuant to this section upon any user within the corporate limits of any contract municipality shall be served upon the municipality in the manner provided in subsection (b) of this section, and the municipality shall be given notice, also in the manner provided in subsection (b) of this section, of all informal conferences conducted pursuant to the notice of violation and the municipality may participate as an amicus curiae.

(Ord. 3630, passed 12-13-2004)

#### § 46-161 INFORMAL CONFERENCE.

(a) Informal conference. An informal conference with the City Water Pollution Control Manager (WPCM) may be requested in writing within 20 days by any user aggrieved by a notice of violation, order, compensatory charge, action on or regarding a use permit by the City, or inaction by the City for more than 60 days, after the user makes a written request regarding a matter on which the City is authorized to take action under this division ("60-day inaction"). This section does not apply to municipal civil infraction citations and municipal civil infraction notices as defined in Chapter 1, § 1-12, of the ordinances of the City of Flint. The request for an informal conference shall be submitted to the WPCM. The purpose of the informal conference is to reach a settlement agreeable to the user and the City. The informal conference shall be held within 20 days after the user submits the written request for the informal conference to the WPCM. The WPCM may participate in the conference or appoint a designee to participate. Neither the WPCM nor his or her designee shall be required to reach a conclusion or provide a decision as a result of the conference. A user is not required to request or participate in an informal conference before seeking judicial review. Other persons from the City and representatives of the user may attend and participate in the informal conference.

(b) Cease and desist order. If an immediate cease and desist order is the subject of a request for an informal conference, the informal conference shall be held as soon as possible, but not later than 20 days after the request is submitted.

(Ord. 3630, passed 12-13-2004; Ord. 3741, passed 11-19-2008)

#### § 46-162 APPEAL BOARD.

(a) Members. The City Wastewater Appeals Board (CWAB) shall consist of the Chief Legal Officer, the City Risk Manager and the WPCM. If there is a vacancy in any of these three offices, the City Administrator shall appoint an employee of the department or functional group where the vacancy occurred to serve as the CWAB member on a temporary basis until the vacancy is filled. If possible, the temporary appointee shall complete any pending appeals that arise during the duration of the temporary appointment. The Chief Legal Officer may designate an Assistant City Attorney to sit on the CWAB. If the City changes the title or function of the foregoing positions, then the CWAB will have as members the three City employees with functions most closely related to those positions. Each of those three members shall have one vote in any matter decided by the CWAB.

(b) Special expert members. At the request of a user or on its own initiative, the CWAB may retain a person with expertise in the general subject matter of the user's appeal ("special expert member") to provide advice to the CWAB. The special expert member shall have no vote in the proceedings. If the special expert member is requested by the user, the user may suggest one or more persons to serve as a special expert member and shall describe their qualifications, but the CWAB shall have sole discretion in choosing the special expert member. All costs, fees and expenses associated with choosing, selecting and



retaining a special expert member requested by the user shall be paid by the user. The CWAB may require the user to pay these costs in advance. The City shall bear the cost of any special expert member retained on the initiative of the CWAB. The CWAB, at its discretion, may agree to share any percentage of the cost of retaining a special expert member. No person shall serve as a special expert member who has, within the preceding five years, been an employee of the user or the City, unless agreed to by both the user and the City.

(c) Appeals.

(1) A user may appeal to the CWAB any notice of violation, order, compensatory charge, action on or regarding a use permit by the City, or 60-day inaction (but not a municipal civil infraction notice as defined in Chapter 1, § 1-12 of the ordinances of the City of Flint) by filing a written request with the WPCM within 20 days after the later of:

a. Ten days after the completion of the informal conference; or

b. The date the notice of violation, order, notice of compensatory charge, action on or regarding a use permit by the City is served upon the user or upon the occurrence of the 60-day inaction.

(2) The written request shall describe the matter appealed, a summary of the user's position, a copy of the notice or other document from the City upon which the appeal is based, and any request by the user for a special expert member. No appeal may be taken to the CWAB of any action or decision which is specified in this division as being within the sole discretion of the WPCM, as stated in §§ 46-146(b)(12); 46-146(d); 46-146(f); 46-147; and 46-162(b).

(3) The WPCM shall promptly forward the written request for appeal to the Chief Legal Officer who shall notify the other members of the CWAB. The CWAB may reject any written request for appeal which is not timely and does not conform to the requirements of this section. Upon receipt of a timely and conforming written request for appeal, the CWAB shall set a time for the City and the user to appear before the CWAB to present evidence and arguments in support of their positions. The user and the City may present witnesses and documentary evidence to the CWAB. Witnesses shall be sworn and shall be subject to cross-examination. The proceedings of the CWAB shall be recorded. The rules of evidence of the courts of the State of Michigan shall not be strictly applied by the CWAB but shall be a guide for the CWAB in determining which evidence to admit or exclude and what weight to give the evidence admitted. On receipt of a request for an appeal, the CWAB shall establish a timetable for the proceedings and shall promptly render a written decision stating its findings of fact and conclusions supporting its decision.

(d) Costs. If the user requests a transcript of the proceedings, the user shall pay the cost of preparing the transcript and shall provide a copy to the City. The user and the City shall pay their own costs of the CWAB proceeding, including but not limited to attorney fees, expert witnesses (except that the costs for special expert members shall be paid as set forth in subsection (a) of this section), other witnesses, documents and tests. The user requesting the appeal to the CWAB shall pay a fee as established from time to time by

resolution of the City Council and kept on file by the City Clerk. If the CWAB finds that the user filed a frivolous appeal, or in bad faith, which has no reasonable basis in fact or law, the CWAB may assess the user for all of the costs of the CWAB and the City in connection with the appeal and the user shall pay the same within 30 days.

(e) Representatives of parties. The parties may be represented by attorneys in all proceedings before the CWAB.

(Ord. 3630, passed 12-13-2004; Ord. 3741, passed 11-19-2008)

#### § 46-163 JUDICIAL REVIEW.

Appeal from a final decision of the CWAB shall be to a court of law. Judicial review shall be limited to the record from the CWAB proceedings, unless the court allows additional material. The decision of the CWAB shall be upheld if it is supported by substantial evidence and is not contrary to law. The user shall be required to exhaust all administrative remedies available under § 46-162 before seeking judicial review.

(Ord. 3630, passed 12-13-2004)

#### § 46-164 STAYS.

(a) If a user makes a timely request for an informal conference under § 46-161 or for an appeal to the CWAB under § 46-162, the order, compensatory charge, or action on or regarding a use permit, which is the subject of a request for an informal conference or appeal to the CWAB, shall be stayed until a final determination is reached.

(b) The following shall not be stayed, except by order of a court of law:

(1) An immediate cease and desist order;

(2) An order or action on or regarding a user permit that involves an emergency situation, a threat to public health or safety, a threat to proper operation of the POTW, interference or a threat to the environment; or

(3) Any action within the discretion of the WPCM as stated in §§ 46-146(b)(12); 46-146(d); 46-146(f); 46-147; and 46-162(b).

(Ord. 3630, passed 12-13-2004)

#### § 46-165 CONTINUING VIOLATIONS.

Each day on which a violation of this division, a use permit, or an order occurs shall be a separate violation. Every violation of each section of this division shall be a separate violation.

(Ord. 3630, passed 12-13-2004)

§ 46-166 PENALTIES, FINES AND REMEDIES.

(a) Civil judicial relief. The WPCM, through the Chief Legal Officer, may pursue an action at law or in equity to enjoin, abate or prosecute any violation of this division, a use permit or an order. The WPCM may seek temporary or permanent injunctive relief, damages, compensatory charges, civil penalties under subsection (b) of this section, costs under §§ 46-157, 46-162(d), 46-166(e), 46-171, and 46-172; and such other relief as a court may order.

(b) Civil penalties. In an action brought by the City against a user for violation of this division, a use permit or an order, a court may impose a civil penalty of up to \$5,000.00 per day per violation. In calculating the amount of the penalty, the court shall consider the frequency of the violation; the impact on the POTW, human health and the environment; the magnitude and duration of the violation; the economic benefit to the user from the violation; the compliance history of the user; and other factors deemed appropriate by the court.

(c) Municipal civil infraction; civil fine. Violations of this division shall constitute a municipal civil infraction, and the WPCM and City Enforcement Officers are authorized persons and authorized local officials to issue a municipal civil infraction citation or a municipal civil infraction notice for any violation of this division, a use permit or an order, except for violations punishable under § 46-168. The municipal civil infraction civil fine for any violation of this division, a use permit or an order shall be up to \$5,000.00 per violation per day. In calculating the amount of the municipal civil infraction civil fine, the WPCM, the City Enforcement Officer or the court, as applicable, shall consider the frequency of violation by the user, the impact on the POTW and human health and the environment of the violation, the magnitude and duration of the violation, the economic benefit to the user gained by the violation, the compliance history of the user, and other factors deemed appropriate by the court, the WPCM or the City Enforcement Officer, as applicable. The provisions of Chapter 1, §§ 1-12 and 1-19 shall apply to municipal civil infraction citations and municipal civil infraction notices issued under this division.

(d) Cumulative remedies. The imposition of a single civil penalty, civil fine, criminal fine, order, damage or compensatory charge upon a user for a violation of this division, a use permit or an order shall not preclude the imposition by the City or a court of additional sanctions and remedies with respect to the same violation except that a user shall not have both a civil penalty under subsection (b) of this section and a civil fine under subsection (c) of this section imposed on it for the same violation. Prosecution of a criminal action against a user shall not be stayed pending the outcome of a civil action involving the same violation.

(e) Compensatory charges. In addition to prosecution and the imposition of penalties and fines for violations, a user violating this division, a use permit, or an order shall be subject to one or more compensatory charges in accordance with this division.

(Ord. 3630, passed 12-13-2004; Ord. 3637, passed 3-28-2005; Ord. 3742, passed 11-19-2008; Ord. 3776, passed 7-12-2010)

§ 46-167 VIOLATION CONSTITUTES A PUBLIC NUISANCE.

Violations of this division, a permit or an order are a public nuisance.

(Ord. 3630, passed 12-13-2004)

§ 46-168 CRIMINAL VIOLATIONS.

(a) Violations – generally. Any user who willfully or intentionally violates any provision of this division or any order or use permit issued hereunder shall, upon conviction, be guilty of a misdemeanor, punishable as provided in § 1-7 of the Code. Each day of violation is a separate offense.

(b) Falsifying information. Any user who knowingly makes any false statements, representations or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this division, or a use permit or an order, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this division shall, upon conviction, be guilty of a misdemeanor punishable as provided in § 1-7 of the Code. Each day of violation is a separate offense.

(Ord. 3630, passed 12-13-2004)

§ 46-169 AFFIRMATIVE DEFENSE.

A user shall have the affirmative defense described in Michigan Rule R 323.2303(3) to the extent it applies and only with respect to the violations referenced in the first sentence of Michigan Rule R 323.2303(3).

(Ord. 3630, passed 12-13-2004)

§ 46-170 VANDALISM AND TRESPASS.

Any person who violates the following subsections shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in § 1-7 of the Code. The notice provisions of § 46-160 shall not apply to this section.

(a) Vandalism. No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the POTW.

(b) Trespass. No person shall partially or fully enter or otherwise access any structure, appurtenance, or equipment which is a part of the POTW, except as specifically authorized by the WPCM.

(Ord. 3630, passed 12-13-2004)

#### § 46-171 LIEN FOR CHARGES AND FEES.

Any charge, fee, cost or other amount required to be paid under this division or under any ordinance or resolution of the City relating to use of the POTW which is not paid when due, shall be a lien upon the premises served by the POTW. The amount may be certified to the Tax Assessor collected in the same manner that other special assessments are collected under the Charter or by any other lawful means.

(Ord. 3630, passed 12-13-2004)

#### § 46-172 RECOVERY OF COSTS.

Any user violating any of the provisions of this division, or who discharges or causes a discharge producing a deposit or obstruction, or causes damage to or impairs the POTW or its operation (including management of sludge) or otherwise causes the City to incur additional or non-routine costs, shall be liable to the City for any expense, loss or costs of the damage caused by the violation or discharge.

(Ord. 3630, passed 12-13-2004)

#### § 46-173 PUBLICATION OF SIGNIFICANT VIOLATORS.

The City shall publish, once per year in the largest daily newspaper in the City, a public notice of users which, at any time during the previous 12 months, were in significant violation of Federal, State, or City pretreatment standards or requirements. For the purposes of this section, a user is in significant violation if its violation(s) meet one or more of the following criteria:

(a) Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all of the measurements taken for the same pollutant parameter during a six-month period exceed by any magnitude a numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 C.F.R., Chapter 1, Subchapter N, Part 403.3(l);

(b) Technical Review Criteria (TRC) violations, defined here as results in which 33% or more of all of the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 C.F.R., Chapter 1, Subchapter

N, Part 403.3(l) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, and fats, oil and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a pretreatment standard or requirement as defined by 40 C.F.R., Chapter 1, Subchapter N, Part 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the City determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of City personnel or the general public);

(d) Any discharge of a pollutant that has caused imminent danger to human health, welfare or to the environment, or has resulted in the City's exercise of its emergency authority to halt or prevent such discharge;

(e) Violation, by 90 days or more after the schedule date, of a compliance schedule milestone contained in a use permit or order, for starting construction, completing construction or attaining final compliance with pretreatment standards;

(f) Failure to provide required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules within 30 days after the due date;

(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 City determines will adversely affect the operation or implementation of the City's pretreatment program.

(Ord. 3630, passed 12-13-2004; Ord. 3743, passed 11-19-2008)

#### § 46-174 UPSETS.

(a) Upset liability. In the event of an upset, the upset shall be an affirmative defense for the user to an action against that user for fines, imprisonment or civil penalties provided for in this division, but the user shall not have an affirmative defense to an action for compensatory charges and damages based on an upset. In any proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof by a preponderance of the evidence.

(b) Conditions necessary for a demonstration of upset. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that all of the following apply:

(1) An upset occurred and the user can identify the cause(s) of the upset;

(2) At the time of the upset, the facility was being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and

(3) The user submitted the following information to the City within 24 hours of becoming aware of the upset (if this information was provided orally, a written submission shall be provided within five (5) days):

- a. A description of the 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 taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(c) User responsibility in case of upset. The user shall control production or all discharges to the extent necessary to maintain compliance with CPS and other applicable discharge limits upon reduction, loss, failure or abnormal condition of its process or treatment facility until the process and facility are 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 user's treatment facility is reduced, lost or fails.

(Ord. 3630, passed 12-13-2004)

#### § 46-175 BYPASS.

(a) Bypass notice. If a user knows in advance of the need for a bypass, it shall give notice to the City if possible, at least ten days before the date of the bypass, but in no case less than 24 hours.

(b) Notification of unanticipated bypass. A user shall give oral notice of an unanticipated bypass that exceeds applicable categorical pretreatment standards and other applicable discharge limits to the City within 24 hours from the time the user becomes aware of the bypass. A written submission shall also be provided to the City within five days of the time the user becomes aware of the bypass. The written submission shall contain:

- (1) A description of the bypass and its cause;
- (2) 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
- (3) The steps taken or planned to reduce, eliminate and prevent reoccurrence of the bypass.

(c) Waiver of report. The City may waive the written report if the oral report has been received within 24 hours.

(d) Prohibition of bypass. Bypass is prohibited, and the City may take enforcement action against a user for a bypass, unless:

- (1) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage; and,

(2) There were no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The user gave notice required under subsection (a) of this section.

(e) POTW approved bypass. The City may approve an anticipated bypass, after considering its adverse effects, if the City determines that it will meet the three conditions listed in subsection (d) of this section.

(Ord. 3630, passed 12-13-2004)

§ 46-176 CONFLICT WITH EXISTING ORDINANCES.

All existing ordinances or parts of ordinances in conflict herewith are hereby repealed.

(Ord. 3630, passed 12-13-2004)

§ 46-177 SAVING PROVISION.

The invalidity of any section, clause or provision in this division shall not affect the validity of any other part of this division which may be given effect without reliance upon any such invalid part or parts.

(Ord. 3630, passed 12-13-2004)

APPENDIX: TABLES

Tables

Table 46-146(c) Pollutant Concentration Limits

Table 46-146(d)(2) Maximum Allowable Industrial Loadings

TABLE 46-146(c)

POLLUTANT CONCENTRATION LIMITS

<b>Pollutant</b>	<b>Daily Concentration Limits</b>
Biochemical Oxygen Demand	1,196 mg/l
Total Hexane-Extractable Material	100 mg/l



Ammonia-Nitrogen	110 mg/l
Total Phosphorus	14 mg/l
Total Suspended Solids	570 mg/l
Total Arsenic	51 ug/l
Total Cadmium	44 ug/l
Total Chromium	1,273 ug/l
Total Copper	896 ug/l
Available Cyanide	3,300 ug/l
Total Lead	247 ug/l
Total Mercury	ND <sup>(1)</sup>
Total Nickel	543 ug/l
Total Silver	19 ug/l
Total Zinc	2,626 ug/l
Total PCB	ND <sup>(2)</sup>
Benzene	190 ug/l
Toluene	5,600 ug/l
Ethylbenzene	4,100 ug/l
Total Xylenes	6,800 ug/l
PFOS	12 ng/l

<sup>1</sup> Mercury sample collection, preservation, and handling procedures and analytical protocol for compliance monitoring shall be in accordance with US-EPA Method 245.1 or 245.2 or Method 1631, as determined by the WPCM. Whenever the quantification level is above the discharge limit, the discharge of mercury at or above the quantification level shall represent an exceedance of the limit. The quantification level under Methods 245.1 and 245.2 shall be 0.2 ug/L, unless a higher level is appropriate due to matrix interference. If the concentration of the discharge sample is less than the quantification level when Method 245.1 or 245.2 are applicable, the user shall be considered to be in compliance with the mercury limit for the period that the sample represents, provided that the user is also in full compliance with any mercury minimization requirements applicable to that user. However, the discharge of mercury at or above the quantification level shall represent a violation of §46-146(c). The quantification level under Method 1631 shall be 0.5 ng/L, unless a higher level is appropriate due to matrix interference. Justification for higher quantification levels shall be submitted to the WPCM within 30 days of such determination. This footnote does not authorize the discharge of mercury at levels which interfere with the POTW or which constitute a threat to public health, welfare, or the waters of the State.

<sup>2</sup> Total PCB shall be defined as the sum of the concentrations of Aroclors 1016, 1221, 1232, 1242, 1248, 1254, and 1260. In addition, any detected Aroclor-specific measurements shall be reported. Total PCB sample collection, preservation and handling procedures and analytical protocol for compliance monitoring shall be in accordance with USEPA Method 608. The quantification level shall not exceed 0.2 ug/L, unless a higher level is appropriate due to sample to matrix interference. Whenever the quantification level is less than or equal to the discharge

limit, the discharge limit shall apply directly; however, whenever the quantification level is above the discharge limit, the discharge of Total PCB at or above the quantification level shall represent an exceedance of the limit. If the concentration of the discharge sample is less than the quantification level, the user shall be considered to be in compliance with the Total PCB limit for the period that the sample represents, provided that the user is also in full compliance with any Total PCB minimization requirements applicable to that user. However, the discharge of total PCB at or above the quantification level shall represent a violation of §46-146(c). Any Aroclor analytical result which is less than the quantification level shall be considered as a zero in the summation of the Aroclor results for the sample. This footnote does not authorize the discharge of total PCB at levels which interfere with the POTW or which constitute a threat to public health, welfare or the waters of the State.

(Ord. \_\_\_\_, passed \_\_-\_\_-2024)

TABLE 46-146(d)(2)

MAXIMUM ALLOWABLE INDUSTRIAL LOADINGS

<b>Pollutant</b>	<b>Maximum Allowable Industrial Loading</b>
Biochemical Oxygen Demand	35,9000 Pounds/Day
Ammonia-Nitrogen	3,300 Pounds/Day
Total Phosphorus	418 Pounds/Day
Total Suspended Solids	17,100 Pounds/Day
Total Arsenic	1.53 Pounds/Day
Total Cadmium	1.31 Pounds/Day
Total Chromium	38.2 Pounds/Day
Total Copper	26.9 Pounds/Day
Available Cyanide	2.06 Pounds/Day

Total Lead	7.40 Pounds/Day
Total Nickel	16.3 Pounds/Day
Total Silver	0.559 Pounds/Day
Total Zinc	78.8 Pounds/Day
Benzene	8.95 Pounds/Day
Toluene	116 Pounds/Day
Ethylbenzene	6.71 Pounds/Day
Total Xylenes	12.9 Pounds/Day

(Ord. \_\_\_\_, passed \_\_-\_\_-2024)