ORDINANCE NO 2432

AN ORDINANCE OF THE CITY OF TERRELL TEXAS, REPEALING ORDINANCE 1922, PROVIDING REGULATIONS FOR THE DISPOSAL OF SEWAGE AND THE USE OF PUBLIC SEWERS; REGULATING THE DISCHARGE OF INDUSTRIAL WASTES INTO THE SANITARY SEWER OF THE CITY; REGULATING SEWER AND MISCELLANEOUS DISCHARGES; PROVIDING FOR A PERMIT SYSTEM WITH DENIAL, SUSPENSION, REVOCATION AND AN APPEALS PROCESS; PROVIDING A PENALTY CLAUSE, A REPEALING CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

INDUSTRIAL WASTE ORDINANCE

WHEREAS, the City of Terrell provides facilities for the collection and treatment of wastewater, the treatment of wastewater in appropriate treatment facilities, including contracting for the administration of the industrial pretreatment program, to promote the health, safety and convenience of its citizens and for the safeguarding of water resources common to all; and

WHEREAS, the City must operate its facilities in compliance with the Federal Water Pollution Control Act, U.S. Environmental Protection Agency regulations, Texas Commission on Environmental Quality regulations, and other federal, state and local laws; and

WHEREAS, protection of the quality of the effluent and proper operation of wastewater collection and treatment facilities may require either the exclusion, pretreatment, or controlled discharge at the point of origin of certain types and/or quantities of industrial wastes; and

WHEREAS, it is the obligation of the producers of industrial waste to defray the costs of the wastewater treatment services required of and provided by the City in an equitable manner and, insofar as it is practicable in proportion to benefits derived;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL TEXAS THAT:

SECTION A.

Ordinance No. 1922 of the City of Terrell, Texas, is hereby repealed.

SECTION 1: DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of the terms and phrases used in this Ordinance shall be as follows:

ACT - The Federal Water Pollution Control Act, Public Law No. 92-500, also known as the Clean Water Act (CWA), as amended, 33 U.S.C. 1251 *et seq.*

ADMINISTRATOR - The EPA Region VI Regional Administrator.

APPROVAL AUTHORITY - The Director in a National Pollutant Discharge Elimination System (NPDES) delegated state with an approved State pretreatment program, *i.e.*, the Executive Director of the Texas Commission on Environmental Quality (TCEQ) or its successor agencies.

AUTHORIZED REPRESENTATIVE OF THE USER –

A) If the user is a corporation:

1) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
2) The manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding twenty-five (25) million dollars (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

B) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

C) If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

D) The individuals described in paragraphs A) through C), above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

BI-MONTHLY – Once every other month.

BI-WEEKLY – Once every other week.

BOD (Biochemical Oxygen Demand) - The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five (5) days at twenty (20) degrees Celsius (20°C), expressed as a concentration in mg/L. The laboratory determination shall be made in accordance with the procedures set forth in 40 C.F.R. Part 136.

BUILDING DRAIN - That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys to the building sewer, which begins three (3) feet outside the inner face of the building wall.

BUILDING SEWER - The extension from the building drain to the sewer lateral at the property line or other lawful place of disposal (also called house lateral or house connection).

BYPASS - Means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.

CATEGORICAL PRETREATMENT STANDARD OR CATEGORICAL STANDARD - Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which apply to a specific category of Industrial Users and which appear in 40 C.F.R. Chapter I, Subchapter N, Parts 405-471.

CITY - The City of Terrell, Texas, the City Council of Terrell, the City Manager of Terrell, and/or any other person authorized by the City Council to represent the City.

COD (Chemical Oxygen Demand) - The measure of oxygen consuming capacity of inorganic and organic matter present in water or wastewater. It is expressed as a concentration in mg/L as the amount of oxygen consumed from a chemical oxidant in a specific test. It does not differentiate between stable and unstable organic matter and thus does not necessarily correlate with BOD.

COMPOSITE SAMPLE – A sample composed of two or more discrete samples. The aggregate sample will reflect the average water quality covering the compositing or sample period.

CONTROL AUTHORITY – For purposes of this Ordinance, the City of Terrell pursuant to a pretreatment program that has been approved by the Approval Authority. An authorized agent of

the City may administer certain aspects of the approved pretreatment program, according to the Multijurisdictional Pretreatment Agreement.

CONTROL MANHOLE - A manhole giving access to a building sewer point before the building sewer discharges into the public sewer.

DAILY DISCHARGE - The discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents a calendar day for purposes of sampling.

DAILY MAXIMUM - The highest allowable "daily discharge" during a calendar month.

DISPOSAL - The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or semi-solid waste (*i.e.*, grease trap waste, grit trap wastes, and/or septage) into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including, but not limited to, groundwaters.

DOMESTIC SEWAGE - The water-borne wastes normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories and institutions, free of storm water and industrial wastes.

ENVIRONMENTAL OFFICER - The Director of Utilities of the City or his/her duly authorized representative, which may be any entity with which the City has contracted for operation of the POTW or a treatment plant and/or with which the City has entered into a multijurisdictional, or interjurisdictional, agreement providing for wastewater service and/or a pretreatment program, or a particular officer or employee thereof.

EPA (Environmental Protection Agency) - The U.S. Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the Administrator or other duly authorized officials of EPA.

EXISTING SOURCE - Any source or discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act (33 U.S.C. § 1317).

FACILITY OR ACTIVITY - Means an NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

FLOW-PROPORTIONED COMPOSITE SAMPLE - Shall mean a sample collected either as a constant sample volume at time intervals proportional to stream flow, or collected by increasing the volume of each aliquot as the flow increases while maintaining a constant time interval between the aliquots.

GARBAGE - Animal and vegetable wastes and residue from preparation, cooking, and dispensing of food; and from handling, processing, storage, and sale of food products and produce.

GRAB SAMPLE - An individual sample which is taken from a wastestream without regard to the flow in the wastestream and collected over a period of time not exceeding fifteen (15) minutes.

GREASE TRAP - A water-tight receptacle designed and constructed to intercept and prevent the passage of greasy, fatty liquid, semi-liquid, and/or solid wastes into the sanitary sewer system to which the receptacle is directly or indirectly connected.

GREASE TRAP WASTE - Any greasy, fatty liquid, semi-liquid, and/or solid wastes removed by a grease trap.

GRIT/SAND TRAP - A water-tight receptacle designed and constructed to intercept and prevent the passage of sand, grit and other heavy solids into the sanitary sewer system to which the receptacle is directly or indirectly connected.

GRIT TRAP WASTE - Any sand, grit and/or other heavy solids removed from a grit trap.

HAZARDOUS WASTE - Any substance which, if disposed of otherwise than by discharge into the POTW, would be identified as a hazardous waste under 40 C.F.R. Part 261.

HOLDING TANK WASTE - Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

INDIRECT DISCHARGE or DISCHARGE - The introduction of pollutants into the POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act (33 U.S.C. § 1317).

INDUSTRIAL USER (or USER) - Any source of indirect discharge.

INDUSTRIAL USER WASTEWATER DISCHARGE PERMIT (or PERMIT) - A Permit required of an Industrial User to discharge waste into any sewer system under the jurisdiction of the City.

INDUSTRIAL USER WASTEWATER SURCHARGE - The additional charge made on those persons or industries who discharge industrial wastes into the sewer system which are amenable to treatment by the POTW treatment processes, but which exceed either the BOD or TSS concentrations of "Normal Domestic Sewage."

INDUSTRIAL WASTE - The water-borne solids, liquids, or gaseous wastes resulting from and discharged, permitted to flow or escaping from any industrial, manufacturing or food processing operation or process, or from the development of any natural resources, or any mixture of these with water or domestic sewage as distinct from "Normal Domestic Sewage."

INSTANTANEOUS MAXIMUM ALLOWABLE DISCHARGE LIMIT – The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

INTERFERENCE - A discharge which, either alone or in conjunction with a discharge or discharges from other sources, both:

A) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

B) is the cause of a violation of any requirement of the applicable TPDES permit issued for operation of the POTW (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal by the POTW in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or Local regulations): Section 405 of the Act (33 U.S.C. § 1345); the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State requirements 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.

LIQUID WASTE - Water-borne solids, liquids, and gaseous substances derived from a grease trap, grit trap, chemical/portable toilet and/or septic tanks and described as grease trap waste, grit trap waste or septage.

MEDICAL WASTE – Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

MILLIGRAMS PER LITER (mg/L) - A weight to volume ratio; the milligrams per liter value multiplied by the factor 8.34 is equivalent to pounds per million gallons of water.

MONTHLY AVERAGE - The highest allowable average of "daily discharge(s)" over a calendar month, calculated as the sum of all "daily discharge(s)" measured during a calendar month divided by the number of "daily discharge(s)" measured during that month.

NATIONAL PRETREATMENT STANDARD, PRETREATMENT STANDARD, OR STANDARD – Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Clean Water Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 40 C.F.R. § 403.5.

NEW SOURCE –

A) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act (33 U.S.C. § 1317), which will be applicable to such source if such Standards are thereafter promulgated in accordance with that Section, provided that:

1) The building, structure, facility, or installation is constructed at a site at which no other source is located; or

2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

3) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent factors, such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, will be considered.

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

C) Construction of a New Source as defined has commenced if the owner or operator has:

1) Begun, or caused to begin, as part of a continuous on-site construction program:

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

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;

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

NONCONTACT COOLING WATER - Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

NORMAL DOMESTIC SEWAGE - The "normal" sewage for the City, for which the average concentration of TSS is not more than 250 mg/L and BOD is no more than 250 mg/L. Industrial Wastes and storm water are excluded from this term.

OVERLOAD - The imposition of organic or hydraulic loading on a treatment facility in excess of its engineered or design capacity.

OWNER - Any person who owns a facility or any portion of a facility.

PASS THROUGH - A discharge which exits the POTW into waters of the United States in quantities or concentration which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the applicable TPDES permit issued for the operation of the POTW (including an increase in the magnitude or duration of a violation).

POTW (Publicly Owned Treatment Works) - A treatment works as defined by Section 212 of the Clean Water Act (33 U.S.C. § 1292), which is owned by a State or municipality (*i.e.*, the City or other governmental entity such as NTMWD). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes lift stations, sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in Section 502(4) of the Clean Water Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works (*i.e.*, the City or other governmental entity such as NTMWD). For the purpose of this Ordinance, the term shall also include sewers that convey wastewaters to the POTW from persons outside the City who are, by contract or agreement with the City of Terrell, users of Terrell's POTW.

POTW TREATMENT PLANT – That portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

PPB (Parts per Billion) – A weight to weight ratio; that parts per billion value multiplied by the factor 8.345 shall be equal to pounds per billion gallons of water.

PPM (Parts Per Million) - A weight to weight ratio; the parts per million value multiplied by the factor 8.345 shall be equivalent to pounds per million gallons of water.

PERSON - Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents or assigns.

pH – A measure of the acidity or alkalinity of a solution, expressed in standard units. The logarithm (base 10) of the reciprocal of the hydrogen ion concentration.

POLLUTANT - Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or

discarded equipment, rock, sand, and cellar dirt; industrial, municipal, and agricultural waste; and the characteristics of wastewater (such as pH, temperature, suspended solids, turbidity, color, BOD, COD, toxicity, and odor).

PRETREATMENT (or TREATMENT) - The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, or process changes, or by other means, except by diluting the concentration of pollutants (as prohibited by 40 C.F.R. § 403.6(d)), unless allowed by an applicable pretreatment standard. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 C.F.R. § 403.6(e).

PRETREATMENT REQUIREMENTS Any substantive or procedural requirement related to pretreatment imposed on an Industrial User, other than a pretreatment standard.

PROHIBITED DISCHARGE STANDARDS (or PROHIBITED DISCHARGES) - Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 5 of this Ordinance.

PRIORITY POLLUTANT - A pollutant found in Table II or Table III of 40 C.F.R. Part 122, Appendix D.

PROPERLY SHREDDED GARBAGE - The wastes from the preparation, cooking and dispensing of foods that have been shredded to such a degree that all particles shall be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (0.5) inch in any dimension.

RESPONSIBLE CORPORATE OFFICER - Shall mean:

A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

B) The manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding twenty-five (25) million dollars (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

SANITARY SEWER - A public sewer that conveys domestic sewage or industrial wastes or a combination of both, and into which storm, surface, groundwaters and other unpolluted waters are not intentionally passed.

SEPTAGE or SEPTIC TANK WASTE - Any sewage from holding tanks such as vessels, portable toilets, chemical toilets, campers, trailers, or septic tanks.

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

SEWAGE - Human excrement and gray water (household showers, dishwashing operations, etc.).

SEWAGE SERVICE CHARGE - The charge made on all Users of the public sewer system whose wastes do not exceed in strength the concentration values established as representative of Normal Domestic Sewage.

SEWER - A pipe or conduit for carrying sanitary sewage.

SHALL AND MAY – The term "shall" describes mandatory actions, and the term "may" describe permissive (*i.e.*, discretionary) actions.

SIC (Standard Industrial Classification) - A classification pursuant to the *Standard Industrial Classification Manual* issued by the Executive Office of the President, Office of Management and Budget, 1972, or the latest edition.

SIGNIFICANT INDUSTRIAL USER (SIU)

A) Except as provided in part B) the term shall mean:

1) An Industrial User subject to Categorical Pretreatment Standards; or

2) Any other Industrial User that:

a) discharges an average of 25,000 gallons per day (gpd) or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blowdown wastewater);

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

c) is designated as such by the Environmental Officer on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirements (in accordance with 40 C.F.R. § 403.8(f)(6)).

B) Upon finding that an Industrial User meeting the criteria in part A) 2) has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirements, the Environmental Officer may at any time, on his/her own initiative or in response to a petition received from an Industrial User, and in accordance with 40 C.F.R. § 403.8(f)(6), determine that such Industrial User is not a Significant Industrial User.

SLUG DISCHARGE or SLUG LOAD - Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, and/or a discharge which violates any Prohibited Discharge Standard in Section 5 of this Ordinance, and/or could significantly disrupt the POTW and/or threaten human health and safety, and/or could potentially result in violations of the applicable TPDES permit issued for the operation of the POTW or sludge requirements.

SPILL - The accidental or intentional loss or unauthorized discharge of any waste or raw material.

STORM SEWER (or STORM DRAIN) - A sewer which carries storm and surface waters and drainage but excludes sewage and polluted industrial wastes.

STORM WATER - Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

SURCHARGE - The charge in addition to the sewage service charge which is made on those persons whose wastes are greater in strength than the concentration values established as representative of "Normal Domestic Sewage."

SUSPENDED SOLIDS - Solids that either float on the surface of, or are in suspension of water, sewage, or other liquids, and which are removable by laboratory filtration device. Quantitative determination of "total suspended solids" or "TSS" shall be made in accordance with procedures set forth in 40 C.F.R. Part 136.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) - The Texas Commission on Environmental Quality, or an agent thereof, or where appropriate, the Executive Director of TCEQ, or other duly authorized official of said agency, or its successor agencies.

TIME COMPOSITE SAMPLE - Shall mean a sample composed of discrete sample aliquots collected in a single reservoir at constant time intervals irrespective of flow.

TOXIC POLLUTANT (or TOXIC SUBSTANCE) - Any substance whether gaseous, liquid or solid which, when discharged to the POTW in sufficient concentrations, as determined by the Environmental Officer, may be hazardous to sewer maintenance and personnel, tend to interfere with any wastewater treatment process, or to constitute a hazard to human beings or animals, or to inhibit aquatic life, or to create a hazard to recreation in the receiving waters of the effluent from a wastewater treatment plant; or any pollutant or combination of pollutants listed as toxic in regulations promulgated by the EPA under the provision of the Clean Water Act Section 307(a) (33 U.S.C. § 1317) or other acts.

TRAP - A device designed to skim, settle, or otherwise remove oil, grease, sand, flammable wastes or other harmful substances.

TREATMENT PLANT (or WASTEWATER TREATMENT PLANT or WWTP) - That portion, or those portions, of the POTW which is designed to provide treatment of domestic sewage and industrial waste.

WASTE - Rejected, unutilized, or superfluous substances in liquid, gaseous or solid form resulting from domestic, agricultural, or industrial activities.

WASTEWATER - The liquid and water-carried industrial or domestic wastes from residential dwellings, commercial buildings, industrial and/or manufacturing facilities, and institutions, whether treated or untreated, which are contributed into or permitted to enter the POTW.

WATERCOURSE - A channel in which a flow of water occurs, either continuously or intermittently.

SECTION 2: ABBREVIATIONS

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

BOD – Biochemical Oxygen Demand

C.F.R. – Code of Federal Regulations

COD – Chemical Oxygen Demand

CWA – Clean Water Act

EPA – U.S. Environmental Protection Agency

gpd – Gallons per day

mg/L – Milligrams per liter

NPDES – National Pollutant Discharge Elimination System

NTMWD – North Texas Municipal Water District

POTW – Publicly Owned Treatment Works

Ppb – Parts per billion

ppm – Parts per million

RCRA – Resource Conservation and Recovery Act

SIC – Standard Industrial Classification

SIU – Significant Industrial User

SWDA – Solid Waste Disposal Act

TAC – Texas Administrative Code

TPDES – Texas Pollutant Discharge Elimination System

TCEQ – Texas Commission on Environmental Quality

TSS – Total Suspended Solids

U.S.C. – United States Code

WWTP – Wastewater Treatment Plant

SECTION 3: PURPOSE AND POLICY

This Ordinance sets forth uniform requirements for users of the POTW for the City of Terrell and enables the City of Terrell to comply with all applicable State and Federal laws, including the Clean Water Act (33 U.S.C. § 1251 *et seq.*) and the General Pretreatment Regulations for Existing Sources of Pollution (40 C.F.R. Part 403). The objectives of this Ordinance are:

A) To prevent the introduction of pollutants into the POTW that will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge;

B) To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into receiving waters, or otherwise be incompatible with the POTW;

C) To protect both the POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

D) To promote the reuse and recycling of industrial wastewater and sludge from the POTW;

E) To provide for fees for the equitable distribution of cost of operation, maintenance, and improvement of the POTW; and

F) To enable the Control Authority to comply with the applicable TPDES permit issued for the operation of the POTW, sludge use and disposal requirements, and any other Federal or State laws to which the POTW is subject.

This ordinance shall apply to all users of the POTW. This Ordinance authorizes the issuance of Industrial User Wastewater Discharge Permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established.

SECTION 4: ADMINISTRATION

Except as otherwise provided herein, the Environmental Officer shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the Environmental Officer may be delegated by the Environmental Officer to his/her duly authorized representative, which may be any entity with which the City has contracted for operation of the POTW or a treatment plant and/or with which the City has entered into a multijurisdictional, or interjurisdictional, agreement providing for wastewater service, or a particular officer or employee thereof.

SECTION 5: PROHIBITED DISCHARGES

A) No person may introduce or cause to be introduced into the POTW any pollutant(s) or wastewater which may cause pass through or interference. Also prohibited are any substances that have an adverse effect on the environment, may endanger life, health or property, or constitute a public nuisance. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.

B) Substances specifically prohibited from being discharged into the POTW are as follows:

1) Any liquids, solids or gases, including but not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, perchlorates, bromates, carbides, hydrides, sulfides or any other substances which are a fire or other hazard to the system, which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fires, explosions, or be injurious in any other way to the facilities or operation of the POTW.

2) Any substance which creates a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (140°F) or sixty degrees Centigrade (60°C) using the test methods specified in 40 C.F.R. § 261.21.

3) Any wastewater having a pH less than five point zero (5.0) Standard Units (SU), greater than ten point five (10.5) SU, or any wastewater having any other corrosive property capable of causing damage, including structural damage, or hazard to the POTW, equipment, or any person.

4) Any wastewater containing pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and/or safety problems.

5) Any liquid or vapor, including wastewater, having a temperature higher than 150 degrees Fahrenheit (150°F) or sixty-five degrees Centigrade (65°C); or exhibiting heat in amounts which will inhibit biological activity in a POTW causing an interference; or, in any case, exhibiting heat in such quantities that the temperature at the introduction into the POTW exceeds 40 degrees Centigrade (40°C) or 104 degrees Fahrenheit (104°F)).

6) Any pollutant(s), including oxygen demanding pollutants (BOD, COD, etc.) and total dissolved solids, released in a Discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause Pass Through or Interference at the POTW or which will cause the POTW to be in non-compliance with any Federal or State sludge use or disposal criteria, guidelines, or regulations.

7) Any free or emulsified fats, waxes, greases or oils containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees Fahrenheit (32°-150°F) (0°-65°C); or any combination of free or emulsified fats, waxes, greases or oils, if, in the opinion of the Environmental Officer, it appears probable that such wastes:

   a) can deposit grease or oil in the sanitary sewers in such a manner as to clog the sewers;

b) can overload skimming and grease handling equipment;

c) are not amenable to bacterial action and will therefore pass through to the receiving water without being affected by normal sewage treatment processes; or

d) can have deleterious effects on the treatment process due to excessive quantities.

8) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

9) Solid, liquid, or viscous substances in amounts which may cause obstruction to the flow in sanitary sewers or other interference with the proper operation of the wastewater treatment facilities such as, but not limited to: ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, whole blood, paunch manure, hair and fleshings, entrails, lime slurry, lime residues, slops, chemical residues, paint residues, bulk solids or waste paper.

10) Any noxious or malodorous liquids, gases, solids, or other wastewater, which either singly or by interaction with other substances are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sanitary sewers for maintenance or repair.

11) Wastewater containing COD in concentrations which are not amenable to treatment, or any other substance which is determined by the Environmental Officer to not be amenable to treatment by the POTW.

12) Any trucked or hauled pollutants, including hauled wastewater, except at discharge points designated by the Environmental Officer and at such times as are established by the Environmental Officer.

13) Pollutant(s) which causes:

a) high hydrogen sulfide content; or

b) unusual taste or odor-producing substances.

14) Wastewater which imparts color that cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the POTW's effluent thereby violating the applicable TPDES permit issued for the operation of the POTW.

15) Storm water, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, unless specifically authorized by the Environmental Officer.

16) Sludges, screening, or other residues from industrial activities.

17) Medical wastes, except as specifically authorized by the Environmental Officer in an Industrial User Wastewater Discharge Permit.

18) Wastewater causing, alone or in conjunction with other sources, the POTW's effluent to fail a toxicity test.

19) Any garbage that has not been properly ground or shredded by suitable garbage grinders to such a degree that all particles shall be carried freely under the flow conditions normally prevailing in public sewers.

C) In cases where, in the opinion of the Environmental Officer, the character of the sewage from any manufacturer or industrial plant building or other premises is such that it will damage the system, or cannot be treated satisfactorily in the system, the Environmental Officer shall have the right to require such User to dispose of such waste otherwise and prevent it from entering the POTW.

D) Unusual flow and concentration of any of the above shall be pretreated to a concentration acceptable to the City, if such wastes can:

1) cause damage to the POTW;

2) impair processes;

3) incur treatment cost exceeding those of normal sewage;

4) render the water unfit for stream disposal or industrial use;

5) create a public nuisance.

SECTION 6: LOCAL LIMITS

A) It shall be unlawful to discharge into the POTW, any metals, chemicals or toxic substances in excess of the following limits:

1) Uniform Concentration Limits

The following heavy metals and toxic materials in the form of compounds or elements in solution or suspension in concentrations exceeding the milligrams per liter (mg/L) daily maximum limit:

Pollutant	**Daily Maximum Local Limit (mg/L)**
Aluminum (Total)	57.74
Arsenic (Total)	0.88
Cadmium (Total)	0.77
Chromium (Total)	5.00
Copper (Total)	0.33
Lead (Total)	3.67
Mercury (Total)	0.04
Nickel (Total)	6.79
Zinc (Total)	2.79
Cyanide (Total)	0.77
Total Suspended Solids	8,084

2) Industrial contributory flow or mass allocation pollutant limitations

The following pollutants will be allocated to industrial users on a case by case basis not to exceed the maximum allowable industrial loading (MAIL) established in the approved pretreatment program.

Pollutant
Selenium (Total)
Silver (Total)
Ammonia (Total)
Biochemical Oxygen Demand

Limits for these pollutants will be calculated using either the industrial contributory flow or mass allocation methods. The specific limitations will be established in the individual user discharge permits.

3) The Control Authority may set limits on a permit by permit basis for any other parameter that would pose a threat to water quality, health and safety, or the POTW or the discharge of which would otherwise result in violation of Section 5 of this Ordinance, including but not limited to, priority pollutants found in the POTW influent at a concentration at or above 0.1 mg/L or Numerical Aquatic Life Criteria as defined by TCEQ.

4) Any radioactive wastes or isotopes without prior written permission from the Environmental Officer.

B) The above limits apply at the point where the wastewater is discharged to the POTW. The Environmental Officer may impose mass limitations in addition to, or in place of, the concentration-based limitations above.

C) The Control Authority may use a grab sample(s) to determine noncompliance with pretreatment standards.

D) Dilution is prohibited as a substitute for treatment. Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Environmental Officer may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.

SECTION 7: FEDERAL CATEGORICAL PRETREATMENT STANDARDS

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

A) Upon the promulgation of a Categorical Pretreatment Standard for a particular industrial category or subcategory, the Categorical Pretreatment Standard, if more stringent than specific local limits imposed under this Ordinance for Industrial Users subject to that Categorical Standard, shall supersede the local limits imposed under this Ordinance.

B) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Environmental Officer may impose equivalent concentration or mass limits in accordance with 40 C.F.R. § 403.6(c).

C) Where Industrial Users combine wastestreams with wastewaters other than those generated by the regulated process prior to treatment, compliance with an applicable Categorical Pretreatment Standard will be determined either prior to combining the wastestreams or following treatment of the combined wastestream (by applying the Combined Wastestream formula found in 40 C.F.R. § 403.6(e)).

D) A User may obtain a variance from a Categorical Pretreatment Standard if the Industrial User can prove, pursuant to the procedural and substantive provisions in 40 C.F.R. § 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the Categorical Pretreatment Standard.

E) An Industrial User may obtain a net gross adjustment to a Categorical Pretreatment Standard in accordance with 40 C.F.R. § 403.15.

SECTION 8: CITY'S RIGHT OF REVISION

The Environmental Officer reserves the right to establish, by ordinance or in Industrial User Wastewater Discharge Permits, more stringent standards or requirements on discharges to the POTW.

SECTION 9: DISCHARGES REQUIRING TRAPS

A) Discharges requiring a trap include any non-residential establishment discharging:

1) Grease or water containing grease;

2) Oil;

3) Sand;

4) Flammable wastes, or;

5) Other harmful substances.

B) Any person responsible for discharges requiring a trap shall at their own expense and as required by the Environmental Officer:

1) Provide equipment and facilities of a type and capacity approved by the Environmental Officer.

2) Locate the trap in a manner that provides ready and easy accessibility for cleaning and inspection.

5) Maintain the trap in effective and operating condition.

6) Maintain all records related to the maintenance and operation of the trap.

7) Provide and maintain a sampling port that allows for representative oil and grease sampling to be collected as approved by the environmental officer.

8) Shall provide disposal receipts and/or trip ticket for maintenance of trap on a monthly basis.

9) Nothing in this section shall be construed to limit the authority of or relieve the owner of responsibility to abide by the grease ordinance.

10) Comply with the City of Terrell Ordinance

SECTION 10: COMPLIANCE WITH OTHER AUTHORITIES

A) Compliance with Federal Authority. Industrial Users within the jurisdiction of this Ordinance shall comply with all Federal General Pretreatment Regulations and with those Categorical Pretreatment Standards applicable to each as specified in 40 C.F.R. Chapter I, Subchapter N, Parts 405-471.

B) Compliance with State Authority. Industrial Users within the jurisdiction of this Ordinance shall comply with applicable sections of Chapter 26 of the Texas Water Code.

SECTION 11: INDUSTRIAL USER WASTEWATER DISCHARGE PERMIT REQUIREMENTS

A) All nondomestic Users shall notify the Environmental Officer of the nature and characteristics of their wastewater prior to commencing their discharge. The Environmental Officer is authorized to prepare a form for this purpose. All nondomestic Users must complete the Industrial User Wastewater Discharge Permit Application, the Industrial Waste Survey, and/or other forms as identified by the Environmental Officer. If a nondomestic User fails to complete any form identified as required by the Environmental Offer, the nondomestic user will be in violation of this Ordinance. The Environmental Officer may periodically require Industrial Users to update this information.

B) It shall be unlawful for Significant Industrial Users to discharge wastewater, whether directly or indirectly, into the POTW without first obtaining an Industrial User Wastewater Discharge Permit from the Control Authority. Any violation of the terms and conditions of an Industrial User Wastewater Discharge Permit shall be deemed a violation of this Ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections 21, 37, and 38 of this Ordinance. Obtaining an Industrial User Wastewater Discharge Permit does not relieve a permittee of its obligation to obtain any other permits required by Federal, State, or local law.

C) The Environmental Officer may require that other Industrial Users, including liquid waste haulers, obtain Industrial User Wastewater Discharge Permits as necessary to carry out the purposes of this article. The Environmental Officer also may prohibit the disposal of hauled pollutants, including hauled wastewater. The discharge of hauled pollutants, including hauled wastewater, is subject to all other requirements of this Ordinance.

1) Industrial waste haulers, including haulers of wastewater, may discharge loads only at locations designed by the Environmental Officer.

2) No load may be discharged without prior consent of the Environmental Officer.

3) The Environmental Officer may collect samples of each hauled load to ensure compliance with applicable standards.

4) The Environmental Officer may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

5) Industrial waste haulers, including haulers of wastewater, must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

D) All existing Significant Industrial Users connected to or contributing to the POTW shall obtain an Industrial User Wastewater Discharge Permit within one hundred eighty (180) days after the effective date of this Ordinance. The application must be submitted to the Environmental Officer within ninety (90) days after the effective date of this Ordinance.

E) New Connections: Any Significant Industrial User proposing to begin or recommence discharging nondomestic wastes into the POTW must obtain an Industrial User Wastewater Discharge Permit prior to beginning or recommencing such discharge. An application form must be filed by the SIU at least ninety (90) days prior to commencement of discharge. Categorical SIUs must provide an application form and a supplemental Baseline Monitoring Report, the two of which are to contain the information required by 40 C.F.R. § 403.12, as set out in Section 12.

F) The Environmental Officer may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its TPDES permit.

G) Reapplication: Once permitted, the Industrial User has the duty to reapply if the permittee wishes to continue an activity regulated by the permit after the expiration date of the Industrial User Wastewater Discharge Permit. The Industrial User must submit an application for a new permit at least ninety (90) days before the expiration of the permit. The application form may be obtained from the Environmental Officer.

SECTION 12: INDUSTRIAL USER WASTEWATER DISCHARGE PERMIT APPLICATION AND BASELINE MONITORING REPORT

A) All Significant Industrial Users required to obtain an Industrial User Wastewater Discharge Permit shall complete and file with the Environmental Officer, an application upon a form provided by the Control Authority. The Control Authority may charge a permit application fee, which if charged, shall accompany the application.

B) The Environmental Officer shall issue an Industrial User Wastewater Discharge Permit if he/she determines that pretreatment facilities are adequate for efficient treatment and that discharged wastes will comply with all applicable Pretreatment Standards and Requirements, including those imposed by this Ordinance. Incomplete or inaccurate applications will not be processed and will be returned to the Industrial User for revision.

C) Within one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard, or one hundred eighty (180) days after the final administrative decision made upon a category determination under 40 C.F.R. § 403.6(a)(4), whichever is later, existing Industrial Users subject to such Categorical Pretreatment Standards and currently discharging to or scheduled to discharge to the POTW shall be required to submit to the Environmental Officer an Industrial User Wastewater Discharge Permit Application and a Baseline Monitoring Report, the two of which shall contain the information identified in paragraphs 1) through 6), below. At least ninety (90) days prior to commencement of discharge, New Sources, and sources that become subject to Categorical Standards subsequent to the promulgation of an applicable Categorical Standard, shall submit to the Environmental Officer a report which contains the information listed in paragraphs 1) through 5), below. New Sources shall also be required to include this report information on the method of pretreatment the source intends to use to meet applicable Categorical Standards. New Sources shall give estimates to the information requested in paragraphs 4) and 5).

1) Identifying Information: The User shall submit the name and address of the facility including the name of the operators and owners.

2) Permits: The User shall submit a list of any environmental control permits held by or for the facility.

3) Description of Operations: The User shall submit a brief description of the nature, average rate of production, and the Standard Industrial Classification of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram which indicates points of Discharge to the POTW from the regulated processes. The User shall submit a list of all chemicals utilized in its processes and appropriate Material Safety Data Sheets (MSDSs).

4) Flow Measurement: The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

a) Regulated process streams; and

b) Other streams as necessary to allow use of the Combined Wastestream formula of 40 C.F.R. § 403.6(e).

The Environmental Officer may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

5) Measurement of pollutants:

a) The User shall identify the Categorical Pretreatment Standards applicable to each regulated process.

b) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Categorical Pretreatment Standards or by the Environmental Officer) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations.

c) A minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds (VOCs). For all other pollutants, twenty-four (24) hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Environmental Officer may waive flow-proportional composite sampling for any Industrial User that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged.

d) The User shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this section.

e) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the User should measure the flows and concentrations necessary to allow use of the Combined Wastestream formula of 40 C.F.R. § 403.6(e) in order to evaluate compliance with the Categorical Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with

40 C.F.R. § 403.6(e), this adjusted limit along with supporting data shall be submitted to the Environmental Officer.

f) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 C.F.R. Part 136 and amendments thereto. Where 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures suggested by the Environmental Officer or other parties, approved by EPA.

g) The Environmental Officer may require the User to submit a pollutant scan of the wastewater discharge.

h) The Environmental Officer may allow the submission of a Baseline Monitoring Report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

i) The Baseline Monitoring Report shall indicate the time, date and place of sampling and methods of analysis, and the Industrial User shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW.

6) Certification: A statement, reviewed by an authorized representative of the Industrial User (as specified in Section 18), and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements.

7) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards and Requirements, the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard or Requirement. A compliance schedule pursuant to this Section must meet the requirements set out in Section 13 of this Ordinance.

8) Where the Industrial User's Categorical Pretreatment Standard has been modified by a removal allowance (40 C.F.R. § 403.7), the Combined Wastestream formula (40 C.F.R. § 403.6(e)), and/or a Fundamentally Different Factors variance (40

C.F.R. § 403.13) at the time the User submits the report required by this section, the information required by paragraphs 6) and 7) shall pertain to the modified limits.

9) If the Categorical Pretreatment Standard is modified by a removal allowance (40 C.F.R. § 403.7), the Combined Wastestream formula (40 C.F.R. § 403.6(e)), and/or a Fundamentally Different Factors variance (40 C.F.R. § 403.13) after the User submits the report required by this section, any necessary amendments to the information requested by paragraphs 6) and 7) of this section shall be submitted by the User to the Environmental Officer within sixty (60) days after the modified limit is approved.

SECTION 13: COMPLIANCE SCHEDULE PROGRESS REPORTS

The following conditions shall apply to the schedule required by Section 12, paragraph C) 7):

A) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable Pretreatment Standards (*e.g.*, hiring an engineer, completing plans, executing contract for major components, commencing construction, completing construction, etc.).

B) No increment referred to in Section 13, Paragraph A) shall exceed nine (9) months.

C) Not later than fourteen (14) days following each date in the compliance schedule and the final date for compliance, the Industrial User shall submit a progress report to the Environmental Officer including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the Environmental Officer.

SECTION 14: 90 DAY COMPLIANCE REPORT

Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards, or in the case of a New Source following the commencement of the introduction of wastewater into the POTW, any Industrial User subject to such Pretreatment Standards and Requirements shall submit to the Environmental Officer a report containing the information described in Section 12, Paragraphs C) 4), C) 5), and C) 6). For Industrial Users subject to equivalent mass or concentration limits established by the Environmental Officer in accordance with the procedures in 40 C.F.R. § 403.6(c), this report shall contain a reasonable

measure of the User's long term production rate. For all other Industrial Users subject to Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 18 of this Ordinance.

SECTION 15: PERIODIC REPORT ON CONTINUED COMPLIANCE

A) Any Significant Industrial Users subject to a Categorical Pretreatment Standard, after the compliance date of such Categorical Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Environmental Officer during the months of June and December, unless required more frequently in the Categorical Standard or by the Environmental Officer, TCEQ, or EPA, a report indicating the nature and concentration of pollutants in the discharge which are limited by such Categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in Section 12, Paragraph C) 4), except that the Environmental Officer may require more detailed reporting of flows. At the discretion of the Environmental Officer and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Environmental Officer may agree to alter the months during which the above reports are submitted. All periodic compliance reports must be signed and certified in accordance with Section 18 of this Ordinance.

B) Where the Environmental Officer has imposed mass limitations on an Industrial User as provided for by 40 C.F.R. § 403.6(d), the report required by paragraph A), above, shall indicate the mass of pollutants regulated by the applicable Categorical Pretreatment Standards in the Discharge for the Industrial User.

C) For Industrial Users subject to equivalent mass or concentration limits established by the Environmental Officer in accordance with the procedures in 40 C.F.R. § 403.6(c), the report required by paragraph A), above, shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to Categorical Pretreatment Standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by paragraph A), above, shall include the User's actual average production rate for the reporting period.

D) All wastewater samples must be representative of the Industrial User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an Industrial User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.

E) If an Industrial User subject to the reporting requirement of this section monitors any pollutant more frequently that required by the Environmental Officer, using the procedures prescribed in Section 16, Paragraph A) of this Ordinance, the results of this monitoring shall be included in this report.

SECTION 16: REPORTING REQUIREMENTS FOR SIGNIFICANT NONCATEGORICAL INDUSTRIAL USERS

A) Significant Noncategorical Industrial Users shall submit to the Environmental Officer at least once every six months (on dates specified by the Environmental Officer) a description of the nature, concentration, and flow of the pollutants required to be reported by the Environmental Officer. These reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 C.F.R. Part 136 and amendments thereto. Where 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Environmental Officer or other persons, approved by the EPA. This sampling and analysis may be performed by the Environmental Officer in lieu of the Significant Noncategorical Industrial User. Where the Environmental Officer collects all the information required for the report, the Noncategorical Significant Industrial User will not be required to submit the report.

B) All periodic compliance reports must be signed and certified in accordance with Section 18 of this Ordinance.

C) All wastewater samples must be representative of the Industrial User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an Industrial User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.

D) If an Industrial User subject to the reporting requirement of this section monitors any pollutant more frequently that required by the Environmental Officer, using the procedures prescribed in Section 16, Paragraph A) of this Ordinance, the results of this monitoring shall be included in this report.

SECTION 17: PERMIT CONDITIONS

A) Industrial User Wastewater Discharge Permits shall be expressly subject to all provisions of this Ordinance and all other applicable regulations, User charges, and fees established by the Control Authority. Industrial User Wastewater Discharge Permits shall include such conditions as are deemed reasonably necessary by the Environmental Officer to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW. Industrial User Wastewater Discharge Permits shall contain, but not be limited to, the following:

1) Statement of duration (in no case more than five years);

2) Statement of non-transferability without, at a minimum, thirty (30) day prior notification to the Environmental Officer and provision of a copy of the existing control mechanism to the new owner or operator;

3) Effluent limits based on applicable general pretreatment standards in 40 C.F.R. Part 403, Categorical Pretreatment Standards, Prohibited Discharge Standards, local limits, and State and local law;

4) Self-monitoring, sampling, reporting, notification and record-keeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards, Categorical Pretreatment Standards, Prohibited Discharge Standards, local limits, and State and local law;

5) Statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

B) Industrial User Wastewater Discharge Permits may contain other conditions as deemed appropriate by the Environmental Officer to ensure compliance with this Ordinance, and State and Federal laws, rules, and regulations. Such other conditions could include:

1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.

2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.

3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges.

4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.

5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW.

6) Requirements for installation and maintenance of inspection and sampling facilities and equipment.

7) A statement that compliance with the Industrial User Wastewater Discharge Permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the Industrial User Wastewater Discharge Permit.

8) Other conditions as deemed appropriate by the Environmental Officer to ensure compliance with this Ordinance, and State and Federal laws, rules, and regulations.

SECTION 18: SIGNATORY REQUIREMENTS FOR INDUSTRIAL USER REPORTS

A) The reports required under Sections 12, 13, 14, 15, and 16 shall include the certification statement below:

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

and shall be signed as follows:

1) By a responsible corporate officer, if the Industrial User submitting the reports is a corporation.

2) By a general partner or proprietor if the Industrial User submitting the reports is a partnership or sole proprietorship, respectively.

3) The principal executive officer or environmental manager having responsibility for the overall operation of the discharging facility if the Industrial User submitting the reports is a Federal, State, or local governmental entity, or their agents.

4) By a duly authorized representative of the individual designated in paragraph 1), 2), or 3) of this section if:

   a) The authorization is made in writing by the individual described in paragraph 1), 2), or 3);

   b) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility for environmental matters for the company; and

   c) The written authorization is submitted to the Environmental Officer.

5) If an authorization under paragraph 4) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph 4) of this section must be submitted to the Environmental Officer prior to or together with any reports to be signed by an authorized representative.

B) The reports and other documents required to be submitted or maintained under this Ordinance shall be subject to:

1) The provisions of 18 U.S.C. § 1001 relating to fraud and false statements;

2) The provisions of sections 309(c)(4) of the Clean Water Act, as amended, governing false statements, representations or certification; and

3) The provisions of section 309(c)(6) regarding responsible corporate officers.

SECTION 19: PERMIT ISSUANCE PROCESS

A) Permit Duration: Industrial User Wastewater Discharge Permits shall be issued for a specified period, not to exceed five (5) years. A permit may be issued for a period less than five (5) years, at the discretion of the Environmental Officer.

B) Permit Appeals: Any interested person, including the Industrial User, may petition to appeal the terms of a permit, or the denial of a permit, to the Environmental Appeals Committee (as established by Section 22 of this Ordinance), within thirty (30) days of the final permit decision.

1) Failure to submit to a timely petition for review shall be deemed to be a waiver of the administrative appeal.

2) In its petition, the appealing party must indicate the permit provisions objected to, the reasons for these objections, and the alternative condition, if any, it seeks to be placed in the permit. Any reasons advanced against a permit denial shall be fully explained.

3) The effectiveness of the permit shall not be stayed pending a reconsideration by the Committee, unless the Environmental Officer expressly so states. If, after considering the petition and any arguments put forth by the Environmental Officer, the Committee determines that reconsideration is proper, it shall remand the permit, or permit application, back to the Environmental Officer for reconsideration. Those permit provisions being reconsidered by the Environmental Officer on remand shall be stayed pending reissuance, unless the Committee expressly states to the contrary.

4) An Environmental Appeals Committee decision not to reconsider a final permit, or the denial of a permit, shall be considered final administrative action for purposes of judicial review.

5) If the Environmental Appeals Committee fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied.

6) Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a complaint with the State District Court.

C) Permit Action and Modification: The Environmental Officer has the power to deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by an Industrial User where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate the applicable TPDES permit issued for the operation of the POTW. The Environmental Officer may modify the Industrial User Wastewater Discharge Permit for good cause including but not limited to, the following:

1) To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements.

2) To address material or substantial alterations or additions to the Industrial User's operation processes, or discharge volume or character which were not considered in drafting the effective permit.

3) A change in any condition in either the Industrial User or the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge.

4) Information indicating that the permitted discharge poses a threat to the POTW, POTW personnel, or the receiving waters.

5) Violation of any terms or conditions of the permit.

6) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting.

7) Revision of or a grant of variance from Categorical Standards pursuant to 40 C.F.R. § 403.13.

8) To correct typographical or other errors in the permit.

9) To reflect transfer of the facility ownership and/or operation to a new owner or operator.

10) Upon request of the permittee, provided such request does not create a violation of any applicable Pretreatment Standards or Requirements, or other laws, rules, or regulations. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

D) Permit Transfer: Industrial User Wastewater Discharge Permits may be reassigned or transferred to a new owner and/or operator with prior approval of the Environmental Officer, provided:

1) The permittee must give at least thirty (30) days advance notice to the Environmental Officer.

2) The permittee must provide a copy of the existing permit to the new owner or operator.

3) The notice must include a written certification by the new owner or operator which:

a) States that the new owner or operator has no immediate intent to change the facility's operations and processes;

b) Identifies that the permittee has provided a copy of the existing permit to the new owner or operator;

c) Identifies the specific date on which the transfer is to occur; and

d) Acknowledges full responsibility for complying with the existing permit.

4) Failure to provide advance notice of a transfer renders the Industrial User Wastewater Discharge Permit void as of the date of facility transfer.

E) Permit Termination: Industrial User Wastewater Discharge Permits may be terminated for good cause, including but not limited to, the following reasons:

1) Falsifying self-monitoring reports.

2) Tampering with monitoring equipment.

3) Refusing to allow proper inspecting authorities timely access to the facility premises and records.

4) Failure to meet effluent limitations.

5) Failure to pay fines.

6) Failure to pay sewer charges.

7) Failure to meet compliance schedules.

8) Failure to notify the Environmental Officer of significant changes to the wastewater prior to the changed discharge.

9) Failure to provide prior notification to the Environmental Officer of changed conditions pursuant to Section 28, Paragraph C) of this Ordinance.

10) Misrepresentation or failure to fully disclose all relevant facts in the Industrial User Wastewater Discharge Permit Application.

11) Failure to complete a wastewater survey or the Industrial User Wastewater Discharge Permit Application.

12) Failure to provide advance notice of the transfer of business ownership of a permitted facility.

13) Violation of any pretreatment standard or requirement, or any terms of the Industrial User Wastewater Discharge Permit or this Ordinance.

A User will be notified of any proposed permit termination and offered an opportunity to show cause under Section 21, Paragraph H) of this Ordinance why the proposed termination should not occur.

Industrial User Wastewater Discharge Permits shall be voidable upon cessation of operations or transfer of business ownership. All Industrial User Wastewater Discharge Permits issued to a particular User are void upon the issuance of a new permit to that User.

F) Permit Reissuance: The User shall apply for permit reissuance by submitting a complete Industrial User Wastewater Discharge Permit Application Form a minimum of ninety (90) days prior to the expiration of the User's existing permit.

G) Continuation of Expired Permits: An expired permit will continue to be effective and enforceable until the permit is reissued if:

1) The Industrial User has submitted a complete Industrial User Wastewater Discharge Permit Application Form at least ninety (90) days prior to the expiration date of the User's permit.

2) The failure to reissue the permit, prior to expiration of the previous permit, is not due to any act or failure to act on the part of the Industrial User.

SECTION 20: GENERAL REPORTING AND RECORD-KEEPING REQUIREMENTS

A) If sampling performed by an Industrial User indicates a violation, the User shall notify the Environmental Officer within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Environmental Officer within thirty (30) days after becoming aware of the violation.

B) If an Industrial User subject to the reporting requirements of Section 15 or Section 16 monitors any pollutant more frequently than required by this Ordinance or by the Environmental Officer, using the procedures as prescribed in 40 C.F.R. § 403.12(g)(4), the results of this monitoring shall be included in the report.

C) Any Industrial User subject to the reporting requirements established in this Ordinance or the Industrial User Wastewater Discharge Permit shall retain for a minimum of three (3) years any records of monitoring activities and results (whether or not such monitoring activities are required by this Ordinance or the Industrial User Wastewater Discharge Permit) and shall make available for inspection and copying by the EPA, TCEQ, or the

Environmental Officer. This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or the Control Authority, when requested by the State or the Federal government, or when specifically notified of a longer retention period by the Environmental Officer. For all samples, such records shall include but not be limited to:

1) The date, exact location, method, and time of sampling and the names of the person or persons taking the samples;

2) The date analyses were performed;

3) Who performed the analyses;

4) The analytical techniques/methods used; and

5) The results of such analyses.

6) The outfall number(s) for which samples were taken.

7) The sampler's name, affiliation, and signature.

8) Type of sample(s) collected.

9) Number of parts or sample intervals of the sample(s).

10) How the sample(s) was collected (*i.e.*, automatic sampler, in person, etc.).

11) Sample container – size and material.

12) Field date – Who measured it, date, and time.

13) Sampling date and time – Beginning date, ending date, beginning time, and ending time.

14) Chain of custody information (including affiliation of each individual in chain of custody).

15) Certification statement as set out in the City's Industrial Waste Ordinance.

16) Authorized signature as required by City's Industrial Waste Ordinance.

SECTION 21: ADMINISTRATIVE ENFORCEMENT REMEDIES

A) Telephone Call or E-mail Communication. After discovery of an Industrial User violation, the Environmental Officer may inform the noncompliant User by telephone or by e-mail communication concerning the violation committed by the User. If by telephone, the Environmental Officer will speak to the authorized User contact and explain the violation along with the possible enforcement action against the User if the violation continues to occur. The Environmental Officer will gather the following information:

1) why the violation occurred;

2) whether the problem has been corrected;

3) whether the violation could occur again; and

4) when the problem has been or will be corrected.

The information received from the contact concerning the violation will be documented along with time and date of call in the Violation Summary file. Such telephone call may be utilized to provide verbal notification of minor violations. If communication is by e-mail and the Industrial User does not provide the above information in a timely manner, the Environmental Officer will follow-up via telephone. Use of the telephone call or e-mail communication does not limit the Environmental Officer's ability to take any other action authorized by this Plan.

B) Notification of Violation. When the Environmental Officer finds that a User has violated, or continues to violate, any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, the Environmental Officer may serve upon that User a written Notice of Violation. Within fifteen (15) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the User to the Environmental Officer. If the User denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the Environmental Officer within fifteen (15) days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Environmental Officer to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

C) Consent Orders. The Environmental Officer may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such documents may include specific action to be taken by the User to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to paragraphs D) and E) of this Section and shall be judicially enforceable.

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

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

F) Cease and Desist Orders. When the Environmental Officer finds that a User has violated, or continues to violate, any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, or that the User's past violations are likely to recur, the Environmental Officer may issue an order to the User directing it to cease and desist all such violations and directing the User to:

1) Immediately comply with all requirements; and

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

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

G) Emergency Suspensions. The Environmental Officer may immediately suspend a User's discharge, after any reasonable notice to the User that is practical under the circumstances, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Environmental Officer may also immediately suspend a User's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

1) Any User notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a User's failure to immediately comply voluntarily with the suspension order, the Environmental Officer may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Environmental Officer may allow the User to recommence its discharge when the User has demonstrated to the satisfaction of the Environmental Officer that the period of endangerment has passed, unless the termination proceedings in Paragraph H) of this Section are initiated against the User.

2) A User that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Environmental Officer prior to the date of any show cause or termination hearing under Paragraph D) or H) of this Section.

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

H) Termination of Discharge. In addition to the provisions in Section 19, Paragraph E) of this Ordinance, any User who violates the following conditions is subject to discharge termination:

1) Violation of Industrial User Wastewater Discharge Permit conditions;

2) Failure to accurately report the wastewater constituents and characteristics of its discharge;

3) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

4) Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring, or sampling; or

5) Violation of Pretreatment Standards.

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

I) Administrative Fines.

1) When the Environmental Officer finds that a User has violated, or continues to violate, any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, the Environmental Officer may fine such User in an amount not to exceed $5,000.00. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

2) Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of ten percent (10%) of the unpaid balance, and interest shall accrue thereafter at a rate of ten percent (10%) per month. A lien against the User's property will be sought for unpaid charges, fines, and penalties.

3) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the User.

J) Appeals from Administrative Enforcement Actions. Any Industrial User subject to any order issued, any administrative fine imposed, or any enforcement action taken by the Environmental Officer pursuant to his/her authority in this Section 21, may appeal the order, action, or fine by filing a written notice of appeal with the Environmental Officer. (The Environmental Officer may provide forms for this purpose.) Such notice of appeal shall be filed within fifteen (15) days of notice of the order, action, or fine.

SECTION 22: ENVIRONMENTAL APPEALS COMMITTEE

A) An Environmental Appeals Committee is hereby established, and authorized to hear and decide appeals from any decision, fine, or order issued or any other enforcement action taken by the Environmental Officer pursuant to this Ordinance. The Committee shall be composed of the City Manager, or Assistant City Manager, the Mayor, and the City Attorney, or any of their designated representatives.

B) The Committee may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering its powers herein.

C) Upon the hearing of an appeal from an order issued, enforcement action taken, or fine imposed by the Environmental Officer, the Committee shall determine if there is a preponderance of evidence to support the Environmental Officer's determination, fine, action, and/or order. The decision of the Committee shall be in writing and contain findings of fact. If the Committee determines that there is a preponderance of evidence to support the determination, fine, action, and/or order of the Environmental Officer, the Committee shall, in addition to its decision, issue an order:

1) requiring discontinuance of the violation or condition;

2) requiring compliance with any requirement to correct or prevent any condition or violation;

3) suspending or revoking any Industrial User Wastewater Discharge Permit issued under this Ordinance; and/or

4) imposing the proper fine.

In any decision issued by the Committee, the order shall specify the time in which the compliance with the order must be taken. A copy of the order shall be delivered to the appellant or person to whom the order is directed in person or sent to him/her by registered or certified mail (return receipt requested).

D) Upon the hearing of an appeal from a permit issuance, modification, or denial by the Environmental Officer, the Committee shall determine if there is a preponderance of evidence to support the Environmental Officer's permitting decision. The decision of the Committee shall be in writing. If the Committee determines that there is a preponderance of evidence to support the permitting decision of the Environmental Officer, the Committee shall affirm his/her decision. If the Committee determines that there is not a preponderance of evidence to support the permitting decision of the Environmental Officer, the Committee shall remand the permit, or permit application, back to the Environmental Officer for reconsideration. A copy of the decision of the Committee upon the permitting appeal shall be delivered to the appellant in person or sent to him/her by registered or certified mail. An Environmental Appeals Committee decision not to reconsider a final permit, or denial of a permit, shall be considered final administrative action for purposes of judicial review.

SECTION 23: DETERMINING THE CHARACTER AND CONCENTRATION OF WASTEWATER

A) The wastewater discharged or deposited into the POTW shall be subject to periodic inspection and sampling as often as may be deemed necessary by the Environmental Officer. Sampling shall be conducted according to 40 C.F.R. Part 136 and amendments thereto or with any other test procedures approved by the EPA.

B) The examination and analysis of the characteristics of waters and wastes shall be:

1) Performed in accordance with procedures established by the EPA pursuant to section 304(h) of the Act (33 U.S.C. § 1314) and contained in 40 C.F.R. Part 136 and amendments thereto or with any other test procedures approved by the EPA. Sampling shall be performed in accordance with the techniques approved by the EPA. Where 40 C.F.R. Part 136 does not include sampling or analytical techniques for the pollutants in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the Environmental Officer or other parties, approved by the EPA.

2) Determined from suitable samples taken at the control manhole provided or other control points authorized by the Environmental Officer provided at the expense of the industry.

C) The Environmental Officer may select an independent firm or laboratory to perform sampling and laboratory analyses.

D) The determination of the character and concentration of industrial wastewater shall be made by the Environmental Officer at such times and on such schedules as he/she may establish.

E) The Environmental Officer may require any Industrial User to compensate the Control Authority, as appropriate, for the costs of sampling, analyses of the discharges, and any additional administrative fees provided in Section 24, below.

SECTION 24: USER FEES

A) Each Significant Industrial User for which the Control Authority has reporting requirements under the applicable TPDES permit issued for the operation of the POTW shall, if the Environmental Officer so demands, compensate the Control Authority, as appropriate, for the cost of sampling, laboratory analyses and administration required to monitor wastewater discharges. The Environmental Officer shall determine the number of samples and frequency of sampling necessary to maintain surveillance of discharges.

B) Each Industrial User for which the Environmental Officer takes samples and/or runs laboratory analyses to monitor wastewater discharges shall compensate the Control Authority, as appropriate, if the Environmental Officer so demands, for the cost of such sampling and laboratory analyses.

C) The Control Authority ity may adopt other reasonable fees for reimbursement of its costs of setting up and operating the pretreatment program which may include:

1) Fees for Industrial User Wastewater Discharge Permit applications, including the cost of processing such applications;

2) Other fees to recoup costs of monitoring, inspection, and surveillance procedures, including the cost of collection and analyzing a User's discharge, and reviewing monitoring reports submitted by Industrial Users;

3) Fees to recoup the costs of responding to discharges by Users in violation of this Ordinance and/or to recoup monetary fines and/or penalties imposed on the Control Authority for violations of the applicable TPDES permit issued for the operation of the POTW attributable to pass through or interference caused by an Industrial User;

4) Fees for reviewing and responding to accidental discharge procedures and construction;

5) Fees for reviewing appeals; and

6) Other fees as the Control Authority may deem necessary to carry out the requirements of this Ordinance. These fees relate solely to the matters covered by this Ordinance and are separate from all other fees, fines, and penalties chargeable by the Control Authority.

D) All fees required under this Ordinance shall be invoiced, upon the Environmental Officer's request, to the contributing industry or commercial firm by the Control Authority and shall be payable as indicated on the invoice.

SECTION 25: INDUSTRIAL WASTEWATER SURCHARGE

A) A surcharge may be applied in addition to the monthly sewer service charge for the discharge of wastewater with concentrations of either BOD or TSS concentrations exceeding that of "Normal Domestic Sewage," to cover the additional costs of treating such wastewater. Such a charge is collected by the City.

B) The surcharge shall be calculated as follows:

$$C = [B(Bu-250) + S(Su-250)] \times F \times V$$

Where:

C	=	surcharge to the User in dollars
B	=	unit cost factor for treating one unit of BOD (per 1,000 gallons)
Bu	=	the tested BOD of the discharge
S	=	unit cost factor for treating one unit of TSS (per 1,000 gallons)
Su	=	the tested TSS of the discharge
F	=	a factor of 8.34 to convert mg/L to pounds/ gallon
V	=	monthly billing volume (discharge) in ~~thousand~~ million gallons
250	=	average domestic BOD and TSS (250 mg/L)

C) If the concentration of BOD or TSS in the discharge is less than the normal strength for that category above specified, there shall be no surcharge for that category, nor shall there be credit given to the total surcharge if the concentration of either BOD or TSS is less than the normal concentration.

D) All BOD and TSS values used in determining the surcharge shall be re-evaluated and adjusted to reflect any changes in wastewater characteristics as sampling results indicate necessary.

SECTION 26: INSPECTION AND SAMPLING

A) The Environmental Officer, as well as other authorized representatives of the Control Authority, EPA, TCEQ, and the Texas Department of Health, or any successor agencies bearing proper credentials and identification, shall be permitted to enter the premises of any Industrial User at any reasonable time for the purpose of inspection, observation, measurement, sampling, examination and copying of records, sampling and testing of any wastewater discharged into the POTW, as well as of any wastewater prior to treatment or discharge, and inspection of any pretreatment facilities.

B) The Environmental Officer shall carry out all inspection and monitoring procedures necessary to determine compliance with applicable Pretreatment Standards and Requirements.

C) The Environmental Officer shall have the right to set up on the Industrial User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the Industrial User's operations.

D) The Environmental Officer may require the Industrial User to install monitoring equipment as necessary. The User's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the Industrial User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated to ensure their accuracy.

E) Anyone acting under this authority shall observe the established rules and regulations concerning safety, internal security, and fire protection.

F) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the Industrial User at the written or verbal request of the Environmental Officer and shall not be replaced. The costs of clearing such access shall be born by the User.

G) Any denial of access or unreasonable delay in allowing the Environmental Officer access to a User's premises shall be a violation of this Ordinance.

H) Search Warrants. If the Environmental Officer has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the Control Authority designed to verify compliance with this Ordinance or any Industrial User Wastewater Discharge Permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Environmental Officer may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 27: CONTROL MANHOLE

A) When necessary to monitor wastewater discharged into the POTW, the Environmental Officer may require an Industrial User to provide and install, at its own expense, a suitable control manhole in an easily accessible location on the premises from which the waste is discharged in order to adequately sample and measure such wastewater. Installation of meters, equipment and accessories as deemed necessary by the Environmental Officer may also be required.

B) A required control manhole shall be:

1) near the outlet of each building lateral, sewer, drain, pipe, or channel, which connects with the wastewater system;

2) designed and constructed to prevent infiltration by ground or surface water;

3) located to provide ample room in or near the facility to allow accurate sampling and preparation of samples for analyses; and

4) maintained by the User at all times in safe and proper operating condition.

C) Before beginning construction of a control manhole, the User shall submit plans to the Environmental Officer for review and approval to insure compliance with this section. Plans must include any meters or other equipment required to be installed.

SECTION 28: PRETREATMENT REQUIRED

A) Industrial Users shall provide necessary wastewater treatment as required to comply with all Pretreatment Standards and Requirements, including Categorical Pretreatment Standards, local limits, and the prohibitions set out in Sections 5 and 6 of this Ordinance, with the time limitations specified by EPA, TCEQ, or the Environmental Officer, whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to the Control Authority shall be provided, operated, and maintained at the User's expense. The Environmental Officer may require the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements.

B) Before beginning construction of pretreatment facilities, the User shall submit detailed plans and operating procedures for the facility to the Environmental Officer for review and approval. The review and approval of such plans and procedures will in no way relieve the User from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the Environmental Officer and the Control Authority under the provisions of this Ordinance.

C) All Industrial Users shall promptly notify the Environmental Officer in advance of any change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under 40 C.F.R. § 403.12(p). The Environmental Officer may require the Industrial User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of an Industrial User Wastewater Discharge Permit Application Form.

D) All records relating to compliance with Pretreatment Standards and Requirements shall be made available to the Environmental Officer and to other authorized officials of the Control Authority, TCEQ, or EPA upon request.

E) The determination of the character and concentration of industrial wastewater shall be made by the Environmental Officer at such times and on such schedules as he/she may establish.

SECTION 29: NOTICE OF SIGNIFICANT NONCOMPLIANCE

A) The Environmental Officer shall publish annually a list of Industrial Users in significant noncompliance with applicable Pretreatment Standards or other Pretreatment Requirements during the previous twelve (12) months. The notification shall also summarize any enforcement actions taken against the Users during the same period. Said list shall be published in the largest daily newspaper published in the City.

B) For purpose of this section; an Industrial User is in significant noncompliance if its violation(s) meets one or more of the following criteria:

1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six (6) month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

2) Technical Review Criteria (TRC) violations, defined here as those which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH).

3) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority (*i.e.*, the Environmental Officer) determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

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

5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

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

7) Failure to accurately report noncompliance; or

8) Any other violation or group of violations which the Control Authority (*i.e.*, the Environmental Officer) determines will adversely affect the operation or implementation of the local pretreatment program.

SECTION 30: BYPASS

A) Bypass not violating applicable Pretreatment Standards or Requirements. An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs B) and C), below.

B) Notice.

1) If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Environmental Officer, if possible at least ten (10) days before the date of the bypass.

2) An Industrial User shall submit oral notice of an unanticipated bypass to the Environmental Officer within twenty-four (24) hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Environmental Officer may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

C) Prohibition of Bypass.

1) Bypass is prohibited, and the Environmental Officer may take enforcement action against an Industrial User for a bypass, unless:

a) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;

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

c) The Industrial User submitted notices as required under Paragraph B) of this Section.

2) The Environmental Officer may approve an anticipated bypass, after considering its adverse effects, if the Environmental Officer determines that it will meet the three conditions in Paragraph C) 1) of this Section.

SECTION 31: SLUG CONTROL PLAN

A) Each Industrial User shall provide protection from Slug Discharges, as defined in Section 1 of this Ordinance. The Environmental Officer may require the Industrial User to develop and implement a accidental discharge/slug control plan. The plan shall contain, at a minimum, the following elements:

1) Description of discharge practices, including non-routine batch discharges;

2) Description of stored chemicals;

3) Procedures for immediately notifying NMTWD and the City of accidental or slug discharges, including any discharge that would violate a prohibition under 40 C.F.R. § 403.5, with procedures for follow-up written notification within five (5) days;

4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operation, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

SECTION 32: NOTICE OF POTENTIAL PROBLEMS, INCLUDING SLUG LOADING

A) All Categorical and Noncategorical Industrial Users shall immediately notify the Environmental Officer of all discharges, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or slug loadings as defined in 40 C.F.R. § 403.5(b), that could cause problems to the POTW by the Industrial User. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective taken by the user.

B) Within five (5) days following such discharge, the Industrial User shall, unless waived by the Environmental Officer, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the Industrial User of any fines, penalties, or other liability which may be imposed pursuant to this Ordinance.

SECTION 33: AFFIRMATIVE DEFENSE

A) If a person can establish that an event, which would otherwise be a violation of this Ordinance, an Industrial User Wastewater Discharge Permit issued pursuant to this Ordinance, or other Federal, State, or local law, was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation.

B) Conditions necessary for a demonstration of affirmative defense. An Industrial User who wishes to establish an affirmative defense shall demonstrate, through properly signed, contemporaneous operation logs, or other relevant evidence that:

1) The event that resulted in a violation occurred and the Industrial User can identify the cause(s) of the violation as being solely an act of God, war, strike, riot, or other catastrophe;

2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;

3) The Industrial User has submitted the following information to the Environmental Officer within twenty-four (24) hours of becoming aware of the violation (if this information is provided orally a written submission must be provided within five (5) days);

a) A description of the event that resulted in a violation and the 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;

c) Steps being taken and/or plans to reduce, eliminate and prevent recurrence of the noncompliance.

Any verbal notice must include all of the information set out in a) through c) above.

C) Burden of proof. In any enforcement proceeding the Industrial User seeking to establish an affirmative defense shall have the burden of proof.

D) Reviewability of agency consideration. In the exercise of prosecutorial discretion, the Environmental Officer will review any claims of an affirmative defense. No determinations made in the course of his/her review shall constitute final action subject to judicial review. Industrial Users will have the opportunity for a judicial determination on any claim of an affirmative defense only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.

E) User responsibility. The Industrial User shall control production or all Discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

SECTION 34: NOTIFICATION OF DISCHARGE OF HAZARDOUS WASTES

A) If the permittee knows in advance of the need to discharge of a hazardous waste, the permittee shall submit prior written notice, at least ten days before the date of the discharge of a hazardous waste, to the Control Authority. If the permittee does not know in advance of the discharge of a hazardous waste, the permittee shall immediately notify the Control Authority and submit a written notice to the the Control Authority within five (5) days to the discharge. The notification shall identify the hazardous waste discharged and the amount of the hazardous waste discharged.

B) In addition to the reporting requirements set out in A) above, Industrial Users shall notify the Environmental Officer, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261. Such notification must include the name of the hazardous waste as set forth in 40 C.F.R. Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: an identification of the hazardous constituents contained in the wastes; an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month; and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. Industrial Users shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 C.F.R. § 403.12(j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 C.F.R. § 403.12(b), (d) and (e).

B) Dischargers are exempt from the requirements of paragraph B) above during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R. § 261.30(d) and § 261.33(e). Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 C.F.R. §§ 261.30(d) and 261.33(e), requires a one-time notification.

Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional information.

C) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the Environmental Officer, the EPA Regional Waste Management Division Director and the State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

D) In the case of any notification made under this Section, the Industrial User shall certify that is has a program in place to reduce the volume and toxicity of hazardous wastes generated to the extent determined to be economically practical.

E) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Ordinance, an Industrial User Wastewater Discharge Permit issued thereunder, or any applicable State or Federal law.

SECTION 35: CONFIDENTIAL INFORMATION

A) Information and data on a User obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the User specifically requests and is able to demonstrate to the satisfaction of the Environmental Officer that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the User under applicable state law. Any such request must be asserted at the time of submission of the information or data. Any information requested to be held confidential shall be stamped "confidential business information," "confidential," or "privileged" on each page containing such information by the User at the time the information is submitted.

B) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this Ordinance, the applicable TPDES permit issued for the operation of the POTW, and/or the Pretreatment Programs; provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceeding involving the person furnishing the report. Effluent data as defined in 40 C.F.R. § 2.302 will not be considered confidential and will be available to the public without restriction.

SECTION 36: MISCELLANEOUS OFFENSES RELATING TO SEWER SYSTEM

No person other than a regular employee or officer of the Control Authority charged with such duties, shall do or aid in doing any of the following acts:

1) Opening, closing, lifting or removing the cover of any sanitary sewer manhole or clean-out plug of the City sanitary sewers.

2) Interfering with, destroying, impairing, injuring or defacing any property which is a part of or essential to the proper functioning of the POTW.

3) Covering or concealing from view any sanitary sewer manhole.

4) Tapping and/or otherwise connecting into an existing sanitary sewer which is a part of the POTW.

SECTION 37: JUDICIAL ENFORCEMENT REMEDIES

A) Civil Remedies.

1) Whenever it appears that a user has violated, or continues to violate, any provision of this Ordinance that relates to the discharge of a pollutant into the POTW, the City may petition the State district court or the county court at law, through the City Attorney, for either the injunctive relief specified in Section 37, paragraph A) 2) or the civil penalties specified in Section 37, paragraph A) 3) below, or both the specified injunctive relief and civil penalties.

2) The City may obtain against the violating user a temporary or permanent injunction, as appropriate, that:

   a) prohibits any conduct that violates any provision of this Ordinance that relates to the discharge of a pollutant into the POTW; or

   b) compels the specific performance of any action that is necessary for compliance with any provision of this Ordinance that relates to the discharge of a pollutant into the POTW.

3) The City may recover a civil penalty of up to but not more than $5,000.00 per day for each violation of any provision of this Ordinance that relates to the discharge of a pollutant into the POTW, if the City proves that:

   a) the defendant was actually notified of the Ordinance provision; and

   b) after the defendant received notice of the Ordinance provision, the defendant committed an act or acts in violation of the Ordinance provision or failed to take action necessary for compliance with the Ordinance provision.

B) Criminal Penalties.

1) Any person who has violated any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or any order issued hereunder, or any other pretreatment standard or requirement shall be strictly liable for such violation and shall, upon conviction, be subject to a fine of up to but not more than $5,000.00 per violation, per day.

2) Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Ordinance, an Industrial User Wastewater Discharge Permit, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this Ordinance shall, upon conviction, be subject to a fine of up to but not more than $5,000.00 per violation, per day.

3) In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

C) Civil Suit Under the Texas Water Code. Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of the Texas Water Code, or any rule, permit, or order of the Texas Commission on Environmental Quality, has occurred or is occurring within the jurisdiction of the City of Terrell, exclusive of its extraterritorial jurisdiction, the City, in the same manner as the TCEQ, may have a suit instituted in a state district court through its City Attorney for the injunctive relief or civil penalties or both authorized in Subsection (a) of Section 26.123 of the Texas Water Code, against the person who committed or is committing or threatening to commit the violation. This power is exercised pursuant to Section 26.124 of the Texas Water Code. In any suit brought by the City under this Section 37, Paragraph C), the TCEQ is a necessary and indispensable party.

D) Remedies Nonexclusive. The remedies provided for in this Ordinance are not exclusive of any other remedies that the City may have under state or federal law or other City ordinances. The City may take any, all, or any combination of these actions against a violator. The City is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.

SECTION 38: SUPPLEMENTAL ENFORCEMENT ACTION

A) Performance Bonds. The Environmental Officer may decline to issue or reissue an Industrial User Wastewater Discharge Permit to any User who has failed to comply with any provision of this Ordinance, a previous Industrial User Wastewater Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement unless such User first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Environmental Officer to be necessary to achieve consistent compliance.

B) Water Supply Severance. Whenever a User has violated or continues to violate any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or order

issued hereunder, or any other pretreatment standard or requirement, water service to the User may be severed. Service will only recommence, at the User's expense, after it has satisfactorily demonstrated its ability to comply.

C) Public Nuisances. A violation of any provision of this Ordinance, an Industrial User Wastewater Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, is hereby declared a public nuisance and shall be corrected or abated as directed by the Environmental Officer. Any person(s) creating a public nuisance shall be subject to the provisions of the City Code governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance.

D) In addition to prohibiting certain conduct by natural persons, it is the intent of this Ordinance to hold a corporation or association legally responsible for prohibited conduct performed by an agent acting on behalf of a corporation or association and within the scope of his/her office or employment.

E) Any User that, in violating any Pretreatment Standard or Requirement, including any provision of this Ordinance, causes pass through or interference, or otherwise causes the City to violate the terms of the applicable TPDES permit issued for the operation of the POTW, and as a consequence to incur any civil or criminal penalty, shall be liable to the City for the amount of any such civil or criminal penalty, as well as any costs of compliance with any order issued by EPA, TCEQ, or any State or Federal Court and, additionally, any costs and/or attorneys' fees incurred by the City in defense or compliance with such judicial or administrative action.

F) Any User that violates any Pretreatment Standard or Requirement, including any provision of this Ordinance, shall be liable to the City for any expense, loss, cleanup cost, damages, and/or waste disposal cost incurred by the City because of such violations. Additionally, an administrative fee of up to one-half (1/2) of assessed clean-up costs may be levied by the City against the responsible violator.

SECTION B. All provisions of any existing Ordinance of the City in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of any existing Ordinance of the City, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

SECTION C. It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision, or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

SECTION D. This Ordinance shall become effective immediately upon its passage and publication as required by law, the City Charter, and approval is received from the TCEQ.

DULY PASSED AND APPROVED THIS THE 15th DAY OF October, 2009.

Hal Richards

Hal Richards, Mayor

ATTEST:

John Rounsavall, City Secretary

APPROVED AS TO FORM:

Mary Gayle Ramsey

Mary Gayle Ramsey, Attorney for the City