

TITLE 11.2

INDUSTRIAL PRETREATMENT PROGRAM

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CHAPTER 11.2-01. GENERAL PROVISIONS

11.2-01-01. Purpose and Policy. This title sets forth uniform requirements for discharges into the City of Bismarck's Publicly Owned Treatment Works (POTW). It is the intent of the Board of City Commissioners that the requirements and standards contained in this ordinance comply with all applicable state and federal laws.

The objectives of this title are:

1. To prevent the introduction of pollutants in the POTW which will interfere with the operation of the POTW;
2. To prevent the introduction of pollutants into the POTW which will pass through the POTW inadequately treated into the receiving waters or atmosphere or otherwise be incompatible with the POTW;
3. To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW;
4. To protect both POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
5. To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other federal or state laws to which the POTW is subject;
6. To prevent the excessive introduction of fats, oil and grease (FOG) into the sewer system and the wastewater treatment plant;
7. To prevent the accumulation of grease within the sewer system which can lead to sanitary sewer pipe blockages and subsequent back ups and sanitary sewer overflows (SSO);
8. To reduce the costs of maintaining the sewer system by preventing the accumulation of grease and residue within the sewage system lines and ensure that the cost of maintaining the public sewer system is equitably distributed amongst users;
9. To clarify grease disposal requirements for Food Service Establishments (FSEs); and
10. To protect public health and safety from pollution caused by SSO.

This title provides for the regulation of discharges into the City of Bismarck's POTW through the issuance of permits to certain users and through enforcement of the requirements, authorizes monitoring and enforcement activities, requires user reporting, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This title provides for the regulation of and establishes criteria for the use of public sewers, private sewage disposal, building sewers and connections, and general prohibitions.

This title provides for the regulation of industrial wastewater discharges into the City of Bismarck's POTW.

This title sets forth uniform requirements for FSEs that discharge wastewater to the City of Bismarck's sanitary sewer.

This title describes the POTW user charge system, as the Board of Commissioners will annually adopt and review City of Bismarck's Schedule of Fees and Charges.

This title provides penalties for violations of provisions of this ordinance, and the orders, rules, regulations and permits issued hereunder.

This title shall apply in the City of Bismarck, North Dakota, and to persons outside the City who are, by contract or agreement with the City or otherwise, users of the City's POTW. Except as otherwise provided herein, the Director of Public Works Utility Operations shall administer, implement and enforce the provisions of this ordinance.

11.2-01-02. Abbreviations and Definitions.

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

BOD – Biochemical Oxygen Demand
BOD₅ – 5-Day Biochemical Oxygen Demand
BMP – Best Management Practice
CFR – Code of Federal Regulations
CIU – Categorical Industrial User
COD – Chemical Oxygen Demand
EPA – U.S. Environmental Protection Agency
FOG – fats, oils, and grease
FSE – Food Service Establishment
gpd – gallons per day
IU – Industrial User
lb/d – pounds per day
mg/l – milligrams per liter
NPDES – National Pollutant Discharge Elimination System

NSCIU – Non-Significant Categorical Industrial User
POTW – Publicly Owned Treatment Works
RCRA – Resource Conservation and Recovery Act
SIU – Significant Industrial User
SSO – Sanitary Sewer Overflow
TSS – Total Suspended Solids
U.S.C. – United States Code

Unless the context specifically indicates otherwise, the following terms as used in this title shall have the following meanings:

1. "Act" - The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.
2. "Approval Authority" - The North Dakota Department of Environmental Quality.
3. "Authorized or Duly Authorized Representative of the Industrial User" –
 - a. If the Industrial User (IU) is a corporation:
 - i. 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
 - ii. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - b. If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.
 - c. If the User is a Federal, State, or local 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 Industrial Users described in paragraphs (a) through (c), above, may designate a Duly 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 Control Authority.

4. "Best Management Practices (BMPs)" - Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 11.2-03-01 [40 CFR 403.5(a)(1) and (b)], or to prevent or reduce the introduction of fats, oils, and grease (FOG) to the sanitary sewer system. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMPs shall be considered local limits and Pretreatment Standards for the purposes of Section 307(d) of the Act.

5. "Biochemical Oxygen Demand (BOD)" - The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five (5) days at 20 degrees Centigrade, usually expressed as concentration, e.g. milligrams per liter (mg/l).

6. "Board" - The Board of City Commissioners of the City of Bismarck.

7. "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 it to the building sewer, beginning five (5) feet outside the inner face of the building wall.

8. "Building Sewer" - That extension from the building drain, the sewer, or other place of disposal.

9. "Categorical Industrial User" - An Industrial User subject to a categorical Pretreatment Standard or categorical Standard.

10. "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. Section 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

11. "City" - The City of Bismarck or the Board of City Commissioners of the City of Bismarck. See also "Control Authority."

12. "Combined Sewer" - A sewer intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

13. "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.

14. "Control Authority" - The City of Bismarck or the Board of City Commissioners of the City of Bismarck.

15. "Cooling Water" - The water discharged from any use such as air conditioning, cooling or refrigeration, or during which the only pollutant added to the water is heat.

16. "Director" - The Director of Public Works Utility Operations for the City of Bismarck. The term also means a Duly Authorized Representative of the Director.

17. "E.P.A." - The United States Environmental Protection Agency.

18. "Engineer" - The City Engineer of the City of Bismarck or an authorized agent of the Engineer.

19. "Excessive Infiltration/Inflow" - The quantities of infiltration/inflow which can be economically eliminated from a sewerage system by rehabilitation, as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions versus the total costs for transportation and treatment of the infiltration/inflow.

20. "Fats, Oils, and Grease ("FOG")" - Any substance, such as vegetable, animal or other product that is used in, or is a by-product of, the cooking or food preparation process, and that turns or may turn viscous or may solidify with a change in temperature or other conditions. Grease may originate from, but not limited to, discharges from scullery sinks, pot and pan sinks, dishwashing machines, soup kettles and floor drains located in areas where grease-containing materials may exist.

21. "FOG-Producing Establishment ("FPE")" - Any establishment, business, or facility known to discharge FOG-laden wastewater into the sanitary sewer system belonging to the City of Bismarck.

22. "Food Service Establishment ("FSE")" - Food service facility licensed by the City of Bismarck that prepares and/or provides food for consumption. FSEs are divided into two classes:

a. "Class 1 FSE" - Any establishment where a grill, deep fry unit, broaster, wok or grease producing process is used to prepare food. All new Class 1 FSEs are required to install approved grease interceptor(s). All new and existing Class 1 FSEs are required to implement and adhere to the best management practices in this ordinance.

b. "Class 2 FSE" - Any establishment using only a heat-producing device, such as a microwave, conventional oven, toaster oven, hot dog rotisserie, coffee maker, etc. to prepare food. Any food establishment that prepares and/or serves meals two (2) or fewer times per week or satellite food service establishments where primary food preparation is conducted offsite or initial preparation of foods does not occur. A satellite food service facility is one that maintains thoroughly cooked food hot. All Class 2 FSEs must implement and adhere to the best management practices in this ordinance.

23. "Food Waste Disposal Unit" - A device that shreds or grinds up solid or semisolid waste material into smaller portions for disposing it in the sanitary sewer. These devices are also referred to as grinders, garbage grinders and garbage disposals.

24. "Garbage" - Solid waste from the domestic and non-residential preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

25. "Grab Sample" - A sample that is taken from a wastestream without regard to the flow in the wastestream over a period of time not to exceed fifteen (15) minutes.

26. "Grease Interceptor" - A vault that is located on the exterior of a building which has a minimum of two compartments. The capacity of the interceptor provides adequate residence time so that the wastewater has time to cool, allowing grease to congeal and rise to the surface where it accumulates until the interceptor is cleaned.

27. "Grease Interceptor Waste" - Any grease, food particles, organic or inorganic solid or semisolid waste collected and intercepted by a grease interceptor usually in layers of floatable, suspended and settleable substances, which are ultimately removed for proper disposal.

28. "Grease Trap" - A grease removal device located within a facility, which helps to protect the internal plumbing from grease clogs. The device is also intended to intercept most grease and solids before entering the sanitary sewer system.

29. "Grease Removal Device" - An interceptor, trap or other mechanical device designed, constructed, and intended to remove, hold, or otherwise prevent the passage of grease to the sanitary sewer.

30. "Hauled Waste" - Any water and/or waste which has been removed and transported from any pit, sump, holding tank, septic tank, wastewater treatment facility, or industrial facility.

31. "Indirect Discharge" - The introduction of pollutants into the POTW from any nondomestic source regulated under section 307(b), (c), or (d) of the Act.

32. "Industrial Pretreatment Manager" – Manager of the Control Authority's Industrial Pretreatment Program. The Industrial Pretreatment Manager serves as the Duly Authorized Representative of the Director for responsibilities identified in the enforcement response plan.

33. "Industrial User" - A source of Indirect Discharge.

34. "Infiltration" - Water other than wastewater that enters a sewerage system (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include and is distinguished from inflow.

35. "Inflow" - Water other than wastewater that enters a sewerage system (including sewer service connections) from sources such as roof leaders, cellar drains, yard drains, area drains, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

36. "Interference" - A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the Control Authority's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act (33 U.S.C. section 1345); the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, et seq.); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act (42 U.S.C. 7401, et seq.); the Toxic Substances Control Act (15 U.S.C. 2601, et seq.); and the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. 1431, et seq.).

37. "Interceptor Sewer" - A sewer whose primary purpose is to transport wastewaters from collector sewers to a treatment facility.

38. "May" - May is permissive.

39. "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.

40. "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 Act which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5.

41. "National Pollution Discharge Elimination System (NPDES) Permit" - Any permit or requirement issued by the North Dakota Department of Environmental Quality pursuant to the Federal Water Pollution Control Act as amended for the purpose of regulating the discharge of sewage, indirect discharges, or other wastes under the authority of Section 402 of the Act.

42. "New Source" - Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

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

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

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

Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (k)(1)(ii), or (k)(1)(iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous onsite 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; or

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

43. "Owner or occupant" - Any person owning or using the lot, parcel of land or premises connected to and discharging sewage into the sewage system of the City, and who pays for or is legally responsible for the payment of water rates or charges made against the lot, parcel of land, building or premises if connected to the sewage system, or who would pay or be legally responsible for such payment.

44. "Pass Through" - A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

45. "Person" - Any individual, firm, company, association, governmental agency, society, corporation, group, political subdivision, partnership, co-partnership, joint stock company, trust, estate, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

46. "pH" - The logarithm of the reciprocal of the concentration of hydrogen ions in moles per-liter of solution.

47. "Pollutant" - Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

48. "Pretreatment" - The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; or by other means, except by diluting the concentration of the pollutants, 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 CFR 403.6(e).

49. "Pretreatment Requirement" - Any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.

50. "Properly Shredded Garbage" - Wastes from the preparation, cooking, dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

51. "Public Sewer" - A sewer in publicly owned land or easements and controlled by the City of Bismarck.

52. "Publicly Owned Treatment Works (POTW)" - A treatment works, as defined by section 212 of the Act (33 U.S.C. section 1292), which is owned by the Control Authority. This definition includes any devices or systems used on the collection, storage, treatment, recycling, and reclamation of sewage or indirect discharges of a liquid nature and any conveyances, which convey wastewater to a treatment plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

53. "Sanitary Sewage" - The water carried wastes from residences, hotels, food service establishments, restaurants, eating houses, or from business establishments or premises engaged solely in the sale, storage or repair of goods, wares or merchandise, and which contains garbage, human wastes, or animal wastes.

54. "Sanitary Sewer Overflow" (SSO) - Any unplanned discharge from the separate sanitary sewer system.

55. "Sewage" - See "Wastewater".

56. "Sewer" - A pipe or conduit for carrying wastewater.

57. "Shall" - Shall is mandatory.

58. "Significant Industrial User (SIU)" –

a. An Industrial User subject to categorical Pretreatment Standards;
or

b. An Industrial User that:

- i. Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
- ii. Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
- iii. Is designated as such by the Control Authority on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement (in accordance with 40 CFR 403.8(f)(6)).

c. The Control Authority may determine that an Industrial User subject to categorical Pretreatment Standards is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

- i. The Industrial User, prior to the Control Authority's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
- ii. The Industrial User annually submits the certification statement required in Section 11.2-06-11.12(b) [see 40 CFR 403.12(q)], together with any additional information necessary to support the certification statement; and
- iii. The Industrial User never discharges any untreated concentrated wastewater.

d. Upon a finding that a User meeting the criteria in paragraph (b) above has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement, the Control Authority may at any time, on its own initiative or in response to a petition received from an Industrial User and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a Significant Industrial User.

59. "Significant Noncompliance" - Violation of one or more of the criteria in the following paragraphs (a) through (h) by a Significant Industrial User, or violation of one or more of the criteria in the following paragraphs (c), (d), or (h) by an Industrial User:

a. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by Section 11.2-03-02;

b. Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by Section 11.2-03-02 multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

c. Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other discharges, interference, or pass through (including endangering the health of POTW personnel or the general public);

d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the POTW's exercise of its emergency authority under 40 CFR 403.8(f)(1)(vi)(B) to halt or prevent such a discharge;

e. 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;

f. Failure to provide, within forty-five (45) days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance;

h. Any violation or group of violations, which may include a violation of BMPs, which the POTW determines will adversely affect the operation or implementation of the Control Authority's Pretreatment program.

60. "Slug Discharge" - Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits, or permit conditions.

61. "State" - State of North Dakota.

62. "Storm Sewer" - A sewer intended to carry only storm waters, surface runoff, street wash waters, and drainage, but which excludes sewage and indirect discharges.

63. "Suspended Solids" - The total suspended matter that either floats on the surface of, or is suspended in water, wastewater, or other liquids, and that is removable by laboratory filtering with a standard glass fiber filter.

64. "Twenty-five percent rule" - A requirement of when grease interceptors shall be fully pumped out and cleaned. This rule requires that when the combined FOG (including floating solids) and the settled solids accumulation reaches twenty-five percent (25%) of the total designed hydraulic depth of the grease interceptor, the grease interceptors shall be fully pumped out and cleaned. This requirement will help to ensure that the minimum hydraulic detention time and the required available hydraulic volume are maintained to effectively intercept and retain FOG in the interceptor. A similar rule, the "fifty percent rule," applies to sand or grit removal devices, requiring that sand or grit removal devices be fully pumped out and cleaned when sand or grit accumulation reaches fifty percent (50%) of the total designed hydraulic depth of the device.

65. "User" - Any person who discharges, causes or permits the discharge of wastewater into the POTW.

66. "User Charge" - A charge levied on users of a treatment works for the user's proportionate share of the cost of operation and maintenance (including replacement) of such works under Section 204(b)(1) and 201(h)(2) of the Act and this subpart.

67. "Unpolluted Water" - Any water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to sanitary sewers and wastewater treatment facilities provided. This includes surface water, runoff, groundwater, subsurface drainage, non-contact cooling water, or storm water from roof drains, roof downspouts, exterior foundation drains, sump pumps, drain tiles, yard drains, foundation drains, or other sources of storm water.

68. "Wastewater" - The liquid water carrying domestic or indirect discharges from dwellings, non-residential buildings, industrial facilities, and stormwater that may be present, whether treated or untreated, which is discharged into or permitted to enter the POTW.

CHAPTER 11.2-02. BUILDING SEWERS AND CONNECTIONS

11.2-02-01. Permit - General. An unauthorized person may not uncover, make connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City Engineer.

11.2-02-02. Permit Application. There are two classes of building sewer permits: (1) For residential and non-residential service; and (2) For service to establishments producing indirect discharges. In either case, the owner, or his agent, shall make an application on a special form furnished by the City. The permit application must be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the City Engineer. A permit and inspection fee must be paid to the City at the time the application is filed. The amount of such fee shall be established by resolution by the Board.

11.2-02-03. Connection Costs. All costs and expenses incidental to the installation and connection of the building sewer must be borne by the owner. The owner shall indemnify the City from all loss or damage that may directly or indirectly be occasioned by the installation and/or use of the building sewer.

11.2-02-04. Connections. A separate and independent building sewer must be provided for every building. Existing building sewers may be used in connection with new buildings only when they are found, on examination and test by the City Engineer, to meet all requirements of this title.

11.2-02-05. Construction. The size slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing the pipe, jointing, testing and backfilling the trench, shall conform to the requirements of the North Dakota State building and plumbing code or other applicable rules and regulations of the City. In the absence of suitable code, provisions set forth in appropriate specifications of the latest edition of Recommended Standards for Sewage Works, published by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers (Ten States Standards) shall apply.

11.2-02-06. Location. Wherever possible, the building sewer must be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewerage carried by the building's drain shall be lifted by approved methods and discharged to the building sewer.

11.2-02-07. Restrictions. A person may not make connection of roof downspouts, exterior foundation drains, or other sources of surface runoff or groundwater to a building sewer, or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the City Engineer and the North Dakota Department of Environmental Quality.

11.2-02-08. Building Codes. The connection of the building sewer into the public sewer shall conform to the requirements of the North Dakota State building and plumbing codes or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications of the Ten States Standards. All such connections must be gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the City Engineer before installation.

11.2-02-09. Inspection. The applicant for the building sewer permit shall notify the City Engineer when the sewer is ready for inspection and connection to the public sewer. The connection and testing must be made under the supervision of the City Engineer or his representative.

11.2-02-10. Safety and Restoration. All excavations for building sewer installation must be adequately guarded with barricades and lights so as to protect the public from hazard, in accordance with the Manual of Uniform Traffic Control Devices. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

CHAPTER 11.2-03. REGULATIONS

11.2-03-01. General and Specific Prohibitions. A user may not discharge or cause to be discharged any pollutant or wastewater which alone or in combination with other discharges causes pass through or interference. Further, a user may not discharge or cause to be discharged, directly or indirectly, any of the following substances, pollutants, or wastewater into the POTW, including the City's sewer system:

1. Any pollutants which create a fire or explosion hazard in the sewer system or wastewater treatment facilities, including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21.

2. Solid or viscous substances in amounts which will cause obstruction to the flow in the POTW resulting in interference.

3. Any wastewater having a pH less than 6.0, a pH greater than 11.0, or having other corrosive property capable of causing damage or hazard to structures, equipment or personnel of the POTW.

4. Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the POTW. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the Act.

5. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by applicable state or federal regulations.

6. Pollutants which result in the presence of toxic gases, vapors or fumes in the POTW facilities that may cause a public nuisance, hazard to life or cause acute health and safety problems for workers.

7. Any substance which may cause the POTW's effluent or any other product of the wastewater treatment process such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the

reclamation process. In no case shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act, or any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substance Control Act or State Standards applicable to the sludge management method being used.

8. Any substance which will cause the POTW to violate its NPDES and/or other State Disposal System Permits.

9. Any wastewater with objectionable color not removed in the treatment process, such as but not limited to dye wastes and vegetable tanning solutions.

10. Any wastewater having a temperature greater than 60 degrees Centigrade (140 degrees Fahrenheit), or which will inhibit biological activity in the POTW resulting in interference, but in no case, wastewater which causes the temperature of the introduction of the POTW to exceed 40 degrees Centigrade (104 degrees Fahrenheit).

11. Any pollutants, including oxygen demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW.

12. Any unpolluted water, except for subsurface drainage and sources of storm water discharged directly to the sanitary sewer system by property owners from October 1 through April 30.

13. Any wastewater containing fats, wax, grease or oils, including petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that:

a. Deposit grease or oil in the sewer lines in such manner as to obstruct the sewers; or

b. Overload the User's skimming and grease handling equipment;
or

c. Will cause interference or pass through.

14. Any garbage that has not been properly shredded.

15. Any hauled waste, except as permitted by section 11.2-06-10.

16. Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair.

17. Sludges, screenings, or other residues from the pretreatment of indirect discharges.

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

19. Detergents, surface-active agents, or other substances that might cause excessive foaming in the POTW.

20. Any medical wastes, except as specifically authorized by the Director.

11.2-03-02. Limitations on Wastewater Strength.

1. National Pretreatment Standards and Requirements: National Pretreatment Standards and Requirements promulgated by the E.P.A. pursuant to the Act must be met by all users that are subject to such standards if they are more stringent than the limitations in this title. An application for modification of the national pretreatment standards may be considered for submittal to the Regional Administrator by the Director when the POTW achieves consistent removal of the pollutants defined by 40 CFR 403.7.

2. State Requirements: State requirements and limitations on discharges must be met by all users that are subject to such standards if they are more stringent than federal requirements and the limitations of this title.

3. City's Right of Revision: The City reserves the right to establish by ordinance more stringent or more lenient limitations or requirements on discharges to the POTW if deemed necessary to comply with the objectives presented in Chapter 11.2-01.

4. Dilution: A User may not increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Requirement. The Director may impose mass limitations on users who are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases when the imposition of mass limitations is appropriate.

5. Local Limits: The Director is authorized to establish local limits pursuant to 40 CFR 403.5(c). Except as noted in 11.2-03-02.7 no significant industrial user may discharge wastewater containing materials in excess of the following daily maximum local limits:

Material	Uniform Daily Maximum Limit (mg/l)
Arsenic	2.08
Cadmium	0.09
Chromium (Total)	4.39

Copper	2.50
Lead	0.94
Mercury	0.06
Nickel	0.79
Oil and Grease (Total)	150
Selenium	0.20
Silver	0.94
Zinc	7.93

Except as noted in 11.2-03-02.7, no significant industrial user may discharge wastewater containing materials in excess of the following monthly average local limits:

Material	Uniform Monthly Average Limit (mg/L)	Contributory Average Limit (mg/L)	Monthly
Arsenic	0.15	1.03	
Cadmium	0.09		
Chromium (Total)	4.39		
Copper	2.50		
Lead	0.65		
Mercury	0.05		
Molybdenum	0.73		
Nickel	0.79		
Selenium	0.20		
Silver	0.94		
Zinc	3.68		

The above local limits are based on total metal concentrations and apply at the point of discharge to the City's sewer system. Unless otherwise stated in individual discharge permits, the uniform limits shall apply to all significant industrial user discharges. Application of the contributory limit is made at the discretion of the Director. The Director may impose mass limitations in addition to or in place of the above concentration based limits if deemed appropriate to prevent interference or to protect the quality of the treatment plant effluent or sludge.

6. Best Management Practices (BMPs): The Director may develop BMPs in individual wastewater discharge permits to implement local limits and the requirements of section 11.2-03-01. National Pretreatment Standards may require compliance with BMPs.

7. Special Mass-Based Limitations: In developing the above limits, limited amounts of treatment capacity have been reserved for small quantities of wastewater that exceed these limits. Wastewater may be accepted on a mass-limitation basis from new dischargers providing that prior approval for such discharges is obtained from the Director and the discharge will not cause

exceedance of any of the maximum allowable headworks loadings (MAHLs) of the POTW.

All wastewater shall be subject to sampling and analysis prior to and/or during discharge. The cost of testing to characterize wastes shall be the responsibility of the discharger.

8. Special Agreements: Provisions contained in this chapter shall not be deemed to prevent any contract authorized by the Board of City Commissioners in the usual manner between the City and any user whereby an indirect discharge of unusual strength or characteristic may be accepted by the City for treatment which will not violate or cause the City to violate federal or state discharge standards, and which will not be harmful to the POTW.

11.2-03-03. Wrongful Discharge of Waste Into Storm Sewer Watercourse. No person shall discharge wastewater or indirect discharges into any storm sewer or other watercourse within the City. Wastewater or indirect discharges may be discharged pursuant to this chapter only into the sanitary sewer system via an approved building sewer or at discharge points authorized by the Director.

CHAPTER 11.2-04. FATS, OIL AND GREASE CONTROL

11.2-04-01. Facilities Required to Remove Grease. All new Class 1 FSEs shall install grease removal devices to prevent the discharge of FOG to the building drainage system and the public sewer system. Grease removal devices shall be installed to receive the drainage from plumbing fixtures and equipment with grease-laden wastewater located in FSEs. Grease removal devices are not required for residential users. Existing Class 1 FSEs shall install grease removal devices when they remodel their kitchen involving structural renovations in their food preparation area including the sewer system, or cause excessive grease accumulation in the sanitary sewer. All Class 1 and Class 2 FSEs shall implement and adhere to the BMPs in this ordinance.

11.2-04-02. Best Management Practices. To minimize the discharge of FOG into the sanitary sewer system, the following Best Management Practices shall be implemented by all classes of FSEs. This includes kitchen practices and employee training that are essential in minimizing FOG discharges:

1. Installation of drain screens. Drain screens shall be installed on all drainage pipes in food preparation areas. This includes kitchen sinks, floor drains and mop sinks.

2. Segregation and collection of waste cooking oil. All waste cooking oil shall be collected and stored properly in recycling receptacles. Such recycling receptacles shall be maintained to ensure that they do not leak. Licensed waste haulers or an approved recycling facility must be used to dispose of waste cooking oil. This would not apply to FSEs without deep fry units.

3. Disposal of food waste. Food wastes shall be disposed of directly into the trash or garbage, and not in the drain.

4. Employee training. Employee training shall be provided as part of the normal orientation process and annually thereafter including, at a minimum, the following subjects.

a. How to “dry wipe” pots, pans, dishware and work areas before washing to remove grease.

b. How to properly dispose of food waste and solids in enclosed plastic bags prior to disposal in trash bins or containers to prevent leaking and odors.

c. The location and use of absorption products to clean under fryer baskets and other locations where grease may be spilled or dripped. All FSEs are responsible to safely install materials to meet this requirement.

d. How to properly dispose of grease or oils from cooking equipment into a grease receptacle without spilling.

5. Kitchen signage. FOG control practices shall be posted in food preparation and dishwashing areas at all times.

6. Grease removal devices. All FSEs shall maintain their grease removal devices in accordance with this ordinance.

11.2-04-03. New Construction. All new Class 1 FSEs shall install grease removal device in accordance with the North Dakota State Plumbing Code. All classes of FSEs are required to submit the drainage plumbing plans to the Director for approval prior to obtaining a building permit. Failure to construct in accordance with approved plans is a violation of this ordinance.

New FSEs that are required to maintain a grease removal device by this or other applicable ordinances, shall install such a unit prior to commencement of discharge to the sanitary sewer.

11.2-04-04. Existing Users.

1. Existing Class 1 FSEs not equipped with a grease removal device shall install an adequately sized grease removal device in accordance with the specifications of this ordinance when the kitchen is remodeled involving structural renovations in their food preparation area including the sewer system or their discharge causes excessive grease accumulation in the sanitary sewer.

2. An Existing Facility changing from a Class 2 FSE to a Class 1 FSE shall be required to install an approved grease removal device.

11.2-04-05. Grease Interceptor Sizing Criteria and Construction Requirements.

Grease interceptors shall be constructed in accordance with the North Dakota State Plumbing Code. There shall be a minimum of one (1) manhole per ten (10) feet of interceptor length to provide access for cleaning. Manhole covers shall be gastight in construction and have a minimum opening dimension of twenty-four (24) inches. Concrete covers are not acceptable. In areas where traffic may exist, the interceptor shall be designed for the appropriate traffic load. The access manholes shall extend at least to finished grade and be designed and maintained to prevent surface and ground water from entering the grease interceptor.

All grease interceptors shall be of a type and capacity approved by the Director and shall be so located to be easily accessible for cleaning and inspection. The size, type and location of each grease interceptor shall be approved by the Director before installation. The Director is authorized to make determinations of grease interceptor adequacy and need, based upon a review of relevant information regarding grease interceptor performance, maintenance, and facility site and building plan review and to require repairs to, and modification or replacement of such interceptors.

11.2-04-06. Grease Trap Sizing Criteria and Construction Requirements. Grease traps shall be sized according to fixture volume to allow for proper FOG removal. The volume of the fixtures connected to the grease trap should not exceed two and one half (2.5) times the flow rate in gallons per minute of the grease trap.

Grease traps shall be installed on waste lines leading from kitchen floor drains, mop sinks, food preparation and washing sinks, and other fixtures or equipment where grease may be introduced into the sewer system. FSEs that have grease traps or those that install them are subject to the requirements below:

1. The grease trap may be set on the floor or partially or fully recessed in the floor to suit piping and structural conditions. Baffle systems and all other internal pieces shall be removable to facilitate cleaning and replacement, but must be in place at all other times.

2. There shall be sufficient clearance for the removal of the trap cover for cleaning. The trap shall be equipped with a flow control fitting. A suitable flow control fitting shall be installed ahead of each trap in the waste line beyond the fixture and as close as possible to the underside of the lowest fixture. When wastes of two or more sinks or fixtures are combined for use by one grease trap, a single flow control fitting shall be used. All grease traps shall have a vented waste line to retain water and prevent siphoning.

Grease traps control limited amounts of FOG and are considered voluntary mechanisms to control FOG discharges from FSEs. However, if a FSE decides to install a grease trap, the following sizing guidelines are recommended. The volume of the fixtures connected to the grease trap should not exceed two and one half (2.5) times the

flow rate in gallons per minute of the grease trap. The following table provides the criteria that should be considered for grease trap sizing:

Rate of flow, gpm	Grease retention capacity, lbs	Maximum allowable fixture volume in gallons
20	40	50
25	50	62.5
35	70	87.5
50	100	125

11.2-04-07. Grease Removal System Maintenance. The owner or lessee of every FSE required to install or use a Grease Removal Device shall, at its own expense, inspect, clean, and maintain the Grease Removal Device in efficient operating condition at all times.

1. Facilities with Grease Interceptors

a. Unless otherwise specified by the Director, each interceptor in active use shall be cleaned at least once every three months or when the total accumulation of surface FOG (including floating solids) and settled solids reaches twenty-five percent (25%) of the grease interceptor's overall liquid depth (25 Percent Rule), whichever comes first. The Director may specify cleaning more frequently when quarterly pumping is shown to be inadequate. The Director may change the required maintenance frequency to reflect changes in actual operating conditions. Any Food Service Establishment desiring a schedule less frequent than quarterly shall submit a request to the Director along with the maintenance servicing records, including measurements of the thickness of the floating FOG and bottom solids layer, and volume removed.

b. A reduction in cleaning frequency may be granted by the Director when it has been determined that the FOG interceptor has adequate detention time for FOG removal. The cleaning frequency will depend on variables such as: (a) the capacity of the device, (b) the amount of grease in the wastewater, (c) the amount of solids in the wastewater and (d) degree of adherence to the FOG BMPs.

c. FSEs shall require the liquid waste hauler, transporter, or any other person cleaning or servicing an interceptor to completely evacuate all contents, including floating materials, wastewater, bottom solids, and grease during servicing. Skimming the surface layer of waste material, partial cleaning of the interceptor or use of any method that does not remove the entire contents of the collection device is prohibited. The suction of the floating materials shall be done prior to removal of other contents. After complete evacuation, the walls, top, and bottom of the

interceptor shall then be thoroughly scraped and the residue removed. Upon completion of the servicing, the FSE manager or his/her designated representative shall inspect the interior of the interceptor and then document this servicing in the facility's grease removal device maintenance log. In the event that the interceptor is larger than the capacity of the vacuum truck, it shall be completely evacuated within a twenty-four (24) hour period.

d. The discharge of liquid, semi-solids, or solids back into an interceptor during and/or after servicing is prohibited. Decanting or discharging of any grease removal device wastes back into the grease removal device, any private sewer, any sewage drainage piping, any storm sewer system or any other grease removal device is prohibited.

2. Facilities with Grease Traps.

a. Grease traps shall be serviced as regularly as daily or weekly as needed but at a minimum of twice per month, or when the amount of grease captured is at twenty-five percent (25%) of the trap's capacity, whichever is sooner. After the accumulated grease has been removed, the grease trap shall be thoroughly inspected to make certain that the inlet, outlet, and air relief ports are clear of obstructions.

b. A reduction in cleaning frequency may be granted by the Director when it has been determined that the grease trap has adequate detention time for FOG removal. The cleaning frequency will depend on variables such as: (a) the capacity of the device, (b) the amount of grease in the wastewater, (c) the amount of solids in the wastewater and (d) degree of adherence to the FOG BMPs.

c. A flow control device must be installed before each grease trap.

d. A dishwasher or food grinder shall not be connected to a grease trap. Exemptions for existing facilities will be granted.

e. Grease traps must be regularly inspected for leaking seams, pipes, and flow control fitting(s) and repaired if necessary. Grease traps and their baffles shall be maintained free of all caked-on FOG and other waste. Removable baffles shall be removed and cleaned during the maintenance process.

f. Grease and other waste removed from the grease trap shall not be disposed of into any drain or sewer. Waste must be disposed of in accordance with federal, state and/or local laws.

3. Facilities with grease removal devices other than grease traps or grease interceptors must follow the manufacturer's recommendations for operation and maintenance.

11.2-04-08. Bacteria, Enzymes and other Chemical Additives. The introduction of bacteria, emulsifiers, de-emulsifiers, surface active agents, degreasers, or enzymes either directly or indirectly into a grease trap or grease interceptor, other than in typical business operation practices such as dishwashing or sanitation, is strictly prohibited.

11.2-04-09. Abandoned Grease Interceptors. An FSE that abandons grease interceptors shall have them removed.

11.2-04-10. Record Keeping and Inspections. Each FSE shall maintain a grease removal device maintenance log. The log shall include the dates of service, who performed the service and the disposal method. A record of maintenance, repairs, and a log of pumping and waste hauling of contents shall be maintained and provided to the Director upon request.

1. All FSEs will be inspected periodically by the City. FSEs shall allow the City ready access at all reasonable times for the inspection of grease removal devices and all pertinent maintenance records for the grease removal devices.

2. Upon the showing of proper credentials, the Director shall have the authority to enter an FSE's premises for scheduled or unscheduled inspections. Failure of the Director to make prior arrangements for an inspection shall not be considered a legitimate reason to refuse admittance. An FSE must keep records associated with waste cooking oil collection and disposal, interceptor hauling and maintenance records on-site for a minimum of three (3) years and must be available for inspection by the Director during normal business hours. A separate maintenance log shall be maintained for each grease removal device. Grease removal device maintenance logs shall include at a minimum the following information:

a. Identification of the grease removal device.

b. The date that maintenance occurred.

c. The volume of grease removed in gallons.

d. The thickness of the bottom solids and floating grease layer that are removed and the total depth of the grease removal device in inches.

e. The name of the company and person(s) performing the maintenance.

The waste removed from the grease removal device must be disposed of in accordance with federal, state and/or local laws.

11.2-04-11. Reporting. When the Director has determined that an FSE must provide written reports, these reports shall be submitted in accordance with the requirements of the Director. Written reports required by this title will be deemed submitted upon actual receipt by the Director.

11.2-04-12. Variance from Grease Interceptor Requirements. A variance from the grease interceptor requirements may be allowed if it is shown that an alternative pretreatment technology is equally effective in controlling the FOG discharge or that it is not feasible to install an interceptor. In determining whether or not to grant a variance, the Director may consider the following:

1. Whether or not there is adequate space for installation and/or maintenance of a grease interceptor. The FSE must demonstrate that the installation of a grease interceptor is not feasible or advisable.

2. Whether or not the FSE can justify and demonstrate that an alternative pretreatment technology is equivalent or better than a grease interceptor in controlling its FOG discharge.

3. Any request for a variance must be made in writing to the Director. The written request must include the reasons for the FSE's failure or inability to comply.

Upon a determination by the Director, in consultation with the City's Community Development Director or designee and the City's Director of Public Health or designee, that there are sufficient reasons to justify a variance, the FSE will be relieved to the extent expressly provided for in the variance. A variance shall contain terms and conditions that serve as basis for its issuance. A variance may be revoked at any time if any of the terms and conditions for its issuance are not satisfied or if the conditions upon which the variance was based change to the extent that the justification for the variance no longer exists. The variance shall be valid so long as the FSE remains in compliance with the terms and conditions specified in the variance.

Denial of a variance is subject to an appeal to the Board of City Commissioners. A written notice of appeal must be filed with the City Administrator within ten (10) days of receipt of the notice of denial. If no appeal is filed within the time specified the action of the Director shall be final.

Upon receipt of a notice of appeal the Board shall set a date for a hearing within fifteen (15) days of receipt of the notice of appeal. Notice of the time and place for the hearing must be served upon the applicant personally or by certified mail at least five (5) days before the hearing. The Board shall hear such testimony and other evidence as it deems necessary and expedient and thereupon make its findings and decision, which shall be final.

11.2-04-13. Surcharge For Noncompliant Class 1 Food Service Establishments. Class 1 FSEs that do not install a grease interceptor may pay a monthly surcharge, as indicated in the City of Bismarck's Schedule of Fees and Charges, due to increased costs due to the accelerated cleaning frequency of the collection system, additional treatment of these wastes and/or the savings incurred for not installing a grease interceptor.

11.2-04-14. Severability. In the event that any provision of this chapter is held to be invalid, illegal, unconstitutional or unenforceable under the laws of the State of North Dakota or the United States of America, such defect shall not affect the validity of the remaining provisions of this chapter which can be given effect without the defective provision or of this chapter as a whole. To this end, the provisions of this chapter are declared severable.

11.2-04-15. Enforcement. In the event that a FSE fails to maintain a grease removal device as required in this chapter, the FSE shall be given a seven (7) day notice to perform the maintenance required by this chapter on the grease removal device. If after the seven (7) day notice, the grease removal device is not serviced, the City may order the work to be performed by an approved contractor. The cost of the work shall be billed to the FSE. If the FSE fails to pay the full amount of the bill, the outstanding amount may be assessed against the property where the maintenance was performed.

11.2-04-16. Administrative Fees. No fee will be charged for an annual inspection. However, if the Food Service Establishment's or FOG-producing establishment's grease removal device is not in compliance with this ordinance, a re-inspection fee as provided for in the City of Bismarck's Schedule of Fees and Charges may be charged for each inspection thereafter until compliance is achieved.

CHAPTER 11.2-05. WASTEWATER SERVICE CHARGE; FEES

11.2-05-01. Audit. An annual audit of expenses and revenue shall be made at the end of each fiscal year by the board. If upon review of the annual audit the Board deems it necessary, the rates described herein shall be adjusted accordingly to meet the needs of the annual audit with said adjustment to be made by appropriate resolution by the board.

11.2-05-02. Industrial Wastewater Charges. An industrial wastewater charge will be levied to all users whose waters exceed the normal concentrations for Total BOD or TSS indicated in the City of Bismarck's Schedule of Fees and Charges or a rate of flow that has a significant impact on the wastewater treatment plant.

11.2-05-03. Purpose. It is the purpose of this section to provide for the recovery of costs from users of the City's POTW for the implementation of the program established herein. The applicable charges or fees shall be set forth in the City of Bismarck's Schedule of Fees and Charges to be prepared from time to time by the director and City engineer.

1. Charges and Fees. The board shall establish charges and fees which may include:

- a. Charges for monitoring, inspections and surveillance procedures;
- b. Fees for permit applications;
- c. Appeal fees; and

d. Other fees and/or charges as the Board may deem necessary to carry out the requirements of this title.

CHAPTER 11.2-06. ADMINISTRATION

11.2-06-01. Wastewater Discharges. It is unlawful to discharge sewage, indirect discharges, or other wastes to any sewer outlet within the jurisdiction of the City, and/or to the POTW without having first complied with the terms of this ordinance. Where an owner of property leases premises to any other person as an occupant under any rental or lease agreement, if either the owner or the occupant is an industrial user, either or both may be held responsible for compliance with the provisions of this ordinance.

11.2-06-02. Individual Wastewater Discharge Permits. All significant industrial users proposing to connect or to commence a new discharge to the POTW shall obtain an individual Wastewater Discharge Permit before connecting to or discharging into the City's sewer system. All existing significant industrial users connected to or discharging into the City's sewer system shall obtain a Wastewater Discharge Permit within ninety (90) days after the effective date of this ordinance.

11.2-06-03. Permit Applications. All significant industrial users shall complete and file with the Director an application in the form prescribed by the Director and accompanied by a fee set by the board. Existing industrial users shall apply for a Wastewater Discharge Permit Application within thirty (30) days after the effective date of this ordinance and proposed new users shall apply at least ninety (90) days prior to connecting or discharging to the City's sewer system. All permit applications shall include the following:

1. Identifying information. Name including the name of the operator and owners, address and location (if different from the address);

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

3. Description of operations:

- a. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and Standard Industrial Classification of the operation(s)

carried out by the user. This description should include a schematic process diagram, which indicated points of discharge to the POTW from the regulated processes;

b. Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;

c. Number and type of employees, hours of operation, and proposed or actual hours of operation;

d. Type and amount of raw materials processed (average and maximum per day);

e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;

4. Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).

Verifiable estimates of these flows may be allowed by the City where justified by cost or feasibility considerations;

5. Measurement of pollutants:

a. The categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources;

b. The results of sampling and analysis identifying the nature and concentration and/or mass, where required by the Standard or by the Director, of regulated pollutants in the discharge from each regulated process;

c. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported;

d. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 11.2-06-12.1 of this ordinance. Sampling must be performed in accordance with procedures set out in section 11.2-06-12.2 in this ordinance. Where the Standard requires compliance with a BMP or pollution prevention alternative, the user shall submit documentation as required by the Director or the applicable Standards to determine compliance with the Standard;

6. Time and duration of discharges;
7. The location for monitoring all wastes to be covered by the permit;
8. Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on section 11.2-06-11.4(b) [40 CFR 403.12(e)(2)];
9. Any other information as may be deemed by the Director to be necessary to evaluate the permit application.
10. Signature by an Authorized Representative of the user and the certification statement in section 11.2-06-11.12(a). If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this section must be submitted to the Director prior to or together with any reports to be signed by an Authorized Representative. A facility determined to be a Non-Significant Categorical Industrial User by the Director pursuant to section 11.2-01-02.58(c) must annually submit the signed certification statement in section 11.2-06-11.12(b).

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

11.2-06-04. Permit Decisions. The Director will evaluate the data furnished by the industrial user and may require additional information. After evaluation and acceptance of the data furnished, the director may issue a Wastewater Discharge Permit subject to terms and conditions provided herein. The Director may deny any noncompliant application for a wastewater discharge permit.

11.2-06-05. Permit Contents. Wastewater Discharge Permits are expressly subject to all provisions of this title and all other applicable regulations, user charges and fees established by the City.

1. Permits will contain the following:

a. A statement that indicates the wastewater discharge permit issuance date, expiration date, and effective date;

b. A statement that the wastewater discharge permit is nontransferable without prior notification to the City in accordance with section 11.2-06-08 of this ordinance, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

c. Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;

d. Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, sample chain-of-custody, and sample type based on Federal, State, and local law.

e. The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the discharge in accordance with section 11.2-06-11.4(b).

f. Any grant of the monitoring waiver by the Director must be included as a condition in the user's permit.

g. A statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.

h. Requirements to control accidental and/or slug discharges, if determined by the Director to be necessary. The Director shall evaluate whether each significant industrial user needs an accidental discharge/slug discharge control plan or other action to control slug discharges. The Director may require any user to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control slug discharges. Alternatively, the Director may develop such a plan for any user. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

i. Description of discharge practices, including nonroutine batch discharges;

ii. Description of stored chemicals;

iii. Procedures for immediately notifying the Director of any accidental or slug discharge, as required by section 11.2-06-11.6 of this ordinance; and

iv. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

2. Permits may contain, but need not be limited to, the following:

a. The unit charge or schedule of user charges and fees for the wastewater to be discharged to the City's sewer system;

b. Limits on the average and maximum wastewater constitutes and characteristics;

c. Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization;

d. Requirements for installation and maintenance of inspection, monitoring, and sampling facilities, manholes, and equipment, including flow measurement devices;

e. Requirements for installation, operation and maintenance of pretreatment facilities, pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

f. 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;

g. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

h. Specifications for monitoring programs which may include sampling locations, frequency and method of sampling, number types standard for tests and reporting schedule;

i. Requirements for notification to and acceptance by the Director of any new introduction of wastewater constituents, of any substantial change in the volume or characteristic of the wastewater, or of any changes affecting potential for slug discharge;

j. Requirements for disposal of sludges, floats, skimmings, etc.

k. General and specific prohibitions, based on section 11.2-03-01 of this ordinance;

l. Proper operation and maintenance (O&M) of all facilities and systems of treatment and control, and related appurtenances, which are installed or used by the permittee to achieve compliance with the individual wastewater discharge permit, including but not limited to effective performance, adequate funding, adequate operator staffing and

training, and adequate laboratory and process controls including appropriate quality assurance procedures;

m. Duty to halt or reduce production and/or discharges upon reduction of efficiency of operation, or loss or failure of all or part of the treatment facilities;

n. Requirements to restrict discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions;

o. Requirements to install and maintain, on the user's property and at the user's expense, a suitable storage and flow-control facility to ensure equalization of flow;

p. Requirements to provide FOG removal devices, when, in the opinion of the Director, they are necessary for the proper handling of wastewater containing excessive amounts of FOG; except that such removal devices shall not be required for residential users. All removal devices shall be of a type and capacity approved by the Director, shall comply with Chapter 11.2-04, and shall be so located to be easily accessible for cleaning and inspection. Such removal devices shall be inspected, cleaned, and repaired in accordance with Chapter 11.2-04, by the user at their expense.

q. Requirements to provide sand and grit removal devices, when, in the opinion of the Director, they are necessary for the proper handling of wastewater containing excessive amounts of sand or grit; except that such removal devices shall not be required for residential users. All removal devices shall be of a type and capacity approved by the Director, and shall be so located to be easily accessible for cleaning and inspection. Such devices are required to be cleaned at least annually or when the total accumulation of sand or grit reaches fifty percent (50%) of the device's overall liquid depth (50 Percent Rule), whichever comes first. Records associated with sand and grit removal devices, including records of cleanings and maintenance, must be kept on-site for a minimum of three (3) years and must be available for inspection by the Director during normal business hours. A separate maintenance log shall be maintained for each sand or grit removal device. Such removal devices shall be inspected, cleaned, and repaired by the user at their expense.

r. A statement that compliance with the individual 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 individual wastewater discharge permit; and

s. Other conditions as deemed appropriate by the Director to ensure compliance with this title, and State and Federal laws, rules, and regulations.

11.2-06-06. Permit Duration. Any individual wastewater discharge permit must be issued for a specified period, not to exceed five (5) years from the effective date of the permit. A permit may be issued for a period less than five (5) years, at the discretion of the Director. The significant industrial user shall apply for permit reissuance a minimum of ninety (90) days prior to the expiration of the User's existing permit. The terms and conditions of the permit may be subject to modification by the director during the term of the permit as limitations or Requirements as identified in Chapter 11.2-03 are modified or other just cause exists. The user must be informed of any proposed changes in the permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance. An expired permit will continue to be effective and enforceable until the permit is reissued if:

1. The permittee has submitted a complete permit application at least ninety (90) days prior to the expiration date of the user's existing permit; and
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 permittee.

11.2-06-07. Permit Modification. Permits may be modified for just cause upon thirty (30) days notice. Just cause shall include but not be limited to:

1. Promulgation of a new applicable Federal, State, or local Pretreatment Standard or Requirement;
2. Changes in the requirements of this ordinance;
3. Significant alterations or additions to the significant industrial user's operation, processes, or wastewater volume or character since the time of the individual wastewater discharge permit issuance;
4. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
5. Information indicating that the permitted discharge poses a threat to the City's POTW, personnel, the receiving waters, or the POTW's beneficial sludge use;
6. Violation of any terms or conditions of the individual wastewater discharge permit;
7. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

8. Revision of or a grant of variance from categorical Pretreatment Standards pursuant to 40 CFR 403.13;

9. To correct typographical other errors in the individual wastewater discharge permit; or

10. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with section 11.2-06-08.

11.2-06-08. Permit Transfer. Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least forty-five (45) days advance notice to the Director and the Director approves the wastewater discharge permit transfer. The notice to the Director must include a written certification by the new owner or operator which:

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

2. Identifies the specific date on which the transfer is to occur; and

3. Acknowledges full responsibility for complying with the existing wastewater discharge permit.

11.2-06-09. Regulation of Waste Received from Other Jurisdictions.

1. If another municipality, or user located within another municipality, contributes wastewater to the POTW, the Director shall enter into an intermunicipal agreement with the contributing municipality.

2. Prior to entering into an agreement required by paragraph (1) above, the Director shall request the following information from the contributing municipality:

a. A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;

b. An inventory of all significant industrial users located within the contributing municipality that are discharging to the POTW; and

c. Such other information as the Director may deem necessary.

3. An Inter-Municipal Agreement shall contain the following conditions:

a. A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as this ordinance and local limits, including required Baseline Monitoring Reports (BMRs), which are at least as stringent as those set out in section 11.2-03-02.5 of this ordinance. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the City's ordinance or local limits;

b. A requirement for the contributing municipality to submit a revised industrial user inventory on at least an annual basis;

c. A provision specifying which pretreatment implementation activities, including individual wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the Director; and which of these activities will be conducted jointly by the contributing municipality and the Director.

d. A requirement for the contributing municipality to provide the Director with access to all information that the contributing municipality obtains as part of its pretreatment activities;

e. Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;

f. Requirements for monitoring the contributing municipality's discharge;

g. A provision ensuring the Director access to the facilities of significant industrial users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the Director; and

h. A provision specifying remedies available for breach of the terms of the intermunicipal agreement.

Where the contributing municipality has primary responsibility for permitting, compliance, monitoring, or enforcement, the municipality shall have the right to take action to enforce the terms of the contributing municipality's ordinance or to impose and enforce Pretreatment Standards and Requirements directly against dischargers in the event the contributing jurisdiction is unable or unwilling to take such action.

11.2-06-10. Regulation of Hauled Waste.

1. Discharge of Hauled Waste.

a. No person shall discharge or cause to be discharged to any public sewer or to any public sewer facility or to any private sewer tributary to any public sewer hauled waste as defined in section 11.2-01-02.30 except as authorized by this ordinance.

b. Under no circumstance may hauled waste that would violate any of the prohibitions listed in section 11.2-03-01 be discharged to the POTW.

c. Under no circumstance may hauled waste which is hazardous waste as defined in 40 CFR Part 261, or hauled waste which is hauled using tanks or equipment that previously hauled hazardous waste as defined in 40 CFR Part 261, be discharged to the POTW.

d. Hauled waste of industrial origin or hauled waste of unusually high strength may be discharged only if the original source of the waste has received written approval from the City. The original source of such hauled waste shall submit an application and supplementary information for the City to review. The Director will review the application and will determine acceptability for discharge of the waste based on the application and acceptance criteria for special discharges.

2. Waste Hauler Permit Application.

a. Any person wishing to obtain authorization to discharge hauled waste at the City's POTW shall submit a waste hauler application. Existing haulers shall apply for a waste hauler permit application within sixty (60) days after the effective date of this ordinance and proposed new haulers shall apply and be approved prior to disposal to the City's designated disposal site. If approved, the applicant will be assigned a waste hauler permit number. The following information shall be included with the application:

i. Identifying information. Name including the name of company, company owner, and contact person (if different from owner), physical address and mailing address (if different from physical address), phone number, and email.

ii. Type(s) of liquid waste.

iii. Number of vehicles applicant has in service for transportation of liquid waste.

iv. Proof that waste transporter vehicles which are to discharge at the City's facility are in compliance with all applicable State of North Dakota laws and regulations applicable to waste transporters within the jurisdictions within which applicant operates. Waste transporters operating within North Dakota shall provide a North Dakota Department of Environmental Quality License Number for each vehicle to be operated within the City.

b. The City may rescind a hauler's authorization to discharge hauled waste if the hauler is found to be in violation of the provisions of this ordinance or other local, state, or federal regulations.

3. Waste Hauler Permit Decisions.

The Director will evaluate the data furnished by the waste hauler and may require more information. After evaluation and acceptance of the data furnished, the Director may issue a waste hauler permit subject to terms and conditions provided in the permit. The Director may deny any application for a waste hauler permit.

4. Waste Hauler Permit Duration and Modification.

The duration of a waste hauler permit shall not exceed five (5) years. A permit may be issued for a period less than five (5) years, at the discretion of the Director. The Waste Hauler shall apply for permit reissuance a minimum of ninety (90) days prior to the expiration of the existing waste hauler permit. The terms and conditions of the permit may be subject to modification by the Director during the term of the permit as local, state, or federal requirements are modified or other just cause exists. The Waste Hauler must be informed of any proposed changes in the permit at least thirty (30) days prior to the effective date of change. An expired permit will continue to be effective and enforceable until the permit is reissued if:

a. The permittee has submitted a complete permit application at least ninety (90) days prior to the expiration date of the existing Waste Hauler Permit; and

b. 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 permittee.

5. Waste Discharge Location.

Any hauled waste which is acceptable to the City may be discharged only at the location designated by the Director.

Waste haulers shall maintain the City's designated disposal location in a clean and orderly condition to avoid odors and unsanitary conditions. Hours of operation at the City's disposal station shall be set by the Director or otherwise be as specified in the permit.

6. Hauled Waste Manifest and Samples.

a. No person shall discharge or cause to be discharged hauled waste without fully completing the hauled waste manifest before disposal. Manifest requirements include the date, time, gallons discharged, source, company, transporter initials, and any other information consistent with identification and tracking of wastes.

b. A sample of each load of hauled waste to be discharged shall be collected by the transporter. The Director shall have the right to verify all information required by this section, including the right to measure and analyze any waste regulated under local, State, or federal requirements.

7. Refusal of Waste.

The Director has the right to refuse to accept the discharge of any hauled waste brought to the designated discharge location. Reasons for refusal may include, but are not limited to:

- a. The waste does not meet the conditions under which a prior approval was granted;
- b. The waste could cause pass through or interference at the POTW;
- c. The waste could be detrimental to the health of employees or the general public; or
- d. The waste could cause or contribute to a violation of any local, State, or federal environmental laws and regulations.

8. Denial, Suspension, or Revocation of Permit.

The Director may deny, suspend, or revoke the waste hauler permit of any waste hauler who violates any provision of this section or any condition of its permit, or who commits any of the following violations:

- a. Unauthorized disposal of FOG from grease removal devices. FOG waste is accepted at the City landfill.
- b. Unauthorized disposal of sand or grit removal device waste or wastewater laden with petroleum hydrocarbons. Sand or grit removal device waste is accepted at the City landfill.
- c. Unauthorized disposal of waste from fish cleaning stations.
- d. Failure to regularly fill out the manifest.
- e. Failure to regularly pay for hauled waste disposal services.
- f. Failure to regularly sample.
- g. Violation of any term, condition, or requirement of this ordinance, State, and federal laws.
- h. Obtaining a permit by misrepresentation.
- i. Failure to fully disclose all relevant facts in a permit application.
- j. Failure to pay fees.
- k. Failure to complete or fully disclose all relevant information in manifest.

In the event of permit revocation, notice shall be given and a hearing provided in accordance with sections 11.2-07-03 and 11.2-07-04. Permittees may appeal revocation decisions to the Board.

9. Permit Transfer.

A waste hauler permit is not transferable to any other person or entity. A new owner or operator must apply for a new waste hauler permit and be approved before disposal.

11.2-06-11. Reporting Requirements.

1. Baseline Monitoring Reports.

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

b. Users described above shall submit the information set forth below.

i. All information required in sections 11.2-06-03.1, 11.2-06-03.2, 11.2-06-03.3(a), and 11.2-06-03.4.

ii. Measurement of pollutants.

a. The user shall provide the information required in section 11.2-06-03.5(a) through (d).

b. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

c. 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 waste stream formula in 40 CFR 403.6(e) to evaluate compliance with Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the City;

d. The Director may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

e. The baseline report shall indicate the time, date, and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

iii. Compliance Certification. A statement, reviewed by the user's Authorized Representative as defined in section 11.2-01-02.3 and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and requirements.

iv. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule pursuant to this section must meet the requirements set out in section 11.2-06-11.2 paragraphs (a) and (b) of this ordinance.

v. Signature and Report Certification. All baseline monitoring reports must be certified in accordance with section 11.2-06-11.22(a) of this ordinance and signed by an Authorized Representative as defined in section 11.2-01-02.3.

2. Compliance Schedule Progress Reports. The following conditions shall apply to the compliance schedule required by section 11.2-06-05.1(g) of this ordinance:

a. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional technology required for the user to meet the applicable Pretreatment Standards (such events include,

but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

b. No increment referred to above shall exceed nine months;

c. The user shall submit a progress report to the Director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

d. In no event shall more than nine (9) months elapse between such progress reports to the Director.

3. Reports on Compliance with Categorical Pretreatment Standard Deadline. Within ninety (90) days following the date for final compliance with applicable categorical Pretreatment Standards, or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any user subject to such Pretreatment Standards and requirements shall submit to the Director a report containing the information described in sections 11.2-06-03.4, 11.2-06-03.5, and 11.2-06-11.1(b)(ii) of this ordinance. For 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 11.2-06-03.12(a) of this ordinance.

4. Periodic Compliance Reports. All SIUs are required to submit periodic compliance reports. IUs that have been designated a Non-Significant Categorical Industrial User under the provisions of section 11.2-01-02.58(c) are also required to submit periodic compliance reports.

a. Except as specified in section 11.2-06-11.4(c), all significant industrial users and nonsignificant categorical industrial users must, at a frequency determined by the Director, submit reports no less than twice per year indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and Requirements, and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a BMP or pollution prevention alternative, the user must submit documentation required by the Director or the Pretreatment Standard necessary to determine the compliance status of the user. At the discretion of the City and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the City may agree to alter the months during which the above reports are to be submitted.

b. The City may authorize an industrial user subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions:

i. The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater;

ii. The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than five (5) years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit.

iii. In making a demonstration that a pollutant is not present, the industrial user must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes;

iv. The request for a monitoring waiver must be signed in accordance with section 11.2-01-02.3, and include the certification statement in section 11.2-06-11.12(a) [40 CFR 403.6(a)(2)(ii)].

v. Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

vi. Any grant of the monitoring waiver by the Director must be included as a condition in the user's permit. The reasons supporting the waiver and any information submitted by the user in its request for the waiver must be maintained by the Director for 3 years after expiration of the waiver.

vii. Upon approval of the monitoring waiver and revision of the user's permit by the Director, the industrial user must certify on each report with the statement in section 11.2-06-11.12(c) below, that there has been no increase in the pollutant in its waste stream due to activities of the industrial user.

viii. In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the user's operations, the user must immediately: Comply with the monitoring requirements of section 11.2-06-11.4(a), or other more frequent monitoring requirements imposed by the Director and notify the Director.

ix. This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

c. The City may reduce the requirement for periodic compliance reports (40 CFR 403.12(e)(3)) to a requirement to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by federal or state requirements, where the industrial user's total categorical wastewater flow does not exceed any of the following:

- i. 880 gallons per day, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches;
- ii. 3.0 pounds per day BOD₅; and
- iii. The loads shown in the table below:

Material	Load (lb/d)
Arsenic	0.00010
Cadmium	0.000039
Chromium (Total)	0.0096
Copper	0.0012
Lead	0.00022
Mercury	0.000018
Molybdenum	0.00028
Nickel	0.00069
Selenium	0.00025
Silver	0.020
Zinc	0.0024

Reduced reporting is not available to Industrial Users that have in the last two (2) years been in Significant Noncompliance, as defined in section 11.2-01-02.59 of this ordinance. In addition, reduced reporting is not available to an Industrial User with daily flow rates, production levels, or pollutant levels that vary so significantly that, in the opinion of the Director, decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period.

d. All periodic compliance reports must be signed and certified in accordance with section 11.2-06-11.12(a) of this ordinance.

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

f. If a user subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Director, using the procedures prescribed in section 11.2-06-12 of this ordinance, the results of this monitoring shall be included in the report.

5. Reports of Changed Conditions.

Each user must notify the Director of any significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least five (5) days before the change.

a. The Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under section 11.2-06-03 of this ordinance.

b. The Director may issue a new individual wastewater discharge permit under section 11.2-06-04 of this ordinance or modify an existing wastewater discharge permit under section 11.2-06-07 of this ordinance in response to changed conditions or anticipated changed conditions.

6. Reports of Potential Problems.

a. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a slug discharge or slug load, that might cause potential problems for the POTW, the user shall immediately telephone and notify the Director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

b. Within five (5) days of the time the user becomes aware of such a discharge described in paragraph (a), the user shall, unless waived by the Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which might be incurred as a

result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.

c. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph (a), above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.

d. Significant industrial users are required to notify the Director immediately of any changes at its facility affecting the potential for a slug discharge.

7. Reports from Unpermitted Users.

All users not required to obtain an individual wastewater discharge permit shall provide appropriate reports to the Director as the Director may require.

8. Notice of Violation/Repeat Sampling and Reporting.

a. If sampling performed by a user indicates a violation, the user must notify the Director 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 Director within thirty (30) days after becoming aware of the violation. Resampling by the industrial user is not required if the City performs sampling at the user's facility at least once a month, or if the City performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the City receives the results of this sampling, or if the City has performed the sampling and analysis in lieu of the industrial user.

9. Notice of Discharge of Hazardous Waste

a. Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents contained

in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under section 11.2-06-11.5 of this ordinance. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical Pretreatment Standards under the self-monitoring requirements of sections 11.2-06-11.1, 11.2-06-11.3, and 11.2-06-11.4 of this ordinance.

b. Users are exempt from the requirements of paragraph (a), above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

c. In the case of any notification made under section 11.2-06-11.9, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

d. In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

e. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable federal or state law.

10. Date of Receipt of Reports.

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

11. Recordkeeping.

Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with Best Management Practices established under section 11.2-03-02.6. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the City, or where the user has been specifically notified of a longer retention period by the Director.

12. Certification Statements.

a. Certification of Permit Applications, User Reports, and Initial Monitoring Waiver. The following certification statement is required to be signed and submitted by users submitting permit applications in accordance with section 11.2-06-03; users submitting baseline monitoring reports under section 11.2-06-11.1; users submitting reports on compliance with categorical Pretreatment Standard deadlines under section 11.2-06-11.3; users submitting periodic compliance reports required by section 11.2-06-11.4; and users submitting an initial request to forego sampling of a pollutant on the basis of section 11.2-06-11.4(b). The following certification statement must be signed by an Authorized Representative as defined in section 11.2-01-02.3:

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.

b. Annual Certification for Non-Significant Categorical Industrial Users. A facility determined to be a Non-Significant Categorical Industrial User by the Director pursuant to sections 11.2-01-02.58(c) and 11.2-01-03.10 must annually submit the following certification statement signed in accordance with the signatory requirements in section 11.2-01-02.3. This certification must accompany an alternative report required by the Director:

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

(a) The facility described as _____ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in section 11.2-01-02.58(c);

b) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based on the following information.

c. Certification of Pollutants Not Present. Users that have an approved monitoring waiver based on section 11.2-06-11.4(b) must certify on each report with the following statement that there has been no increase in the pollutant in its waste stream due to activities of the user:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under section 11.2-06-11.4.

11.2-06-12. Test Procedures.

1. Analytical Requirements.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the 40 CFR Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Director or other parties approved by EPA.

2. Sample Collection.

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

a. Except as provided in paragraphs (b) and/or (c) below, the user must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Director. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits.

b. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

c. For sampling required in support of baseline monitoring and 90-day compliance reports required in sections 11.2-06-11.1 and 11.2-06-11.3, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Director may authorize a lower minimum. For the reports required by section 11.2-06-11.4 [40 CFR 403.12(e) and 403.12(h)], the industrial user is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.

11.2-06-13. Inspection and Monitoring Procedures.

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

a. Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Director shall be permitted to enter without delay for the purposes of performing specific responsibilities.

b. The Director shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

c. The Director may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at a frequency required by the Director to ensure their accuracy. Where at all possible, monitoring facilities shall be located on the premises of the user. There must be safe, ample room to allow accurate flow measuring and sampling.

d. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be born by the user.

e. Unreasonable delays in allowing the Director access to the user's premises shall be a violation of this ordinance.

f. Sampling and monitoring facilities shall be constructed and maintained in such a manner so as to enable the Director to perform monitoring activities independently of the industrial user.

g. The Director shall have the right to use digital photography during inspections and monitoring.

2. The Director may require users to complete a wastewater survey for use in identifying and locating all possible industrial users which might be subject to the POTW's Pretreatment Program, and in identifying the character and volume of pollutants contributed to the POTW by the industrial users.

11.2-06-14. Public Participation.

1. Confidential Information. Information and data obtained by the City from reports, surveys, wastewater discharge permit applications, individual wastewater discharge permits, monitoring programs, and inspection and sampling activities shall be held in accordance with N.D.C.C. Ch. 44-04 relating to public records. Trade secret, proprietary, commercial and financial information

and computer software programs may be considered confidential, privileged, or exempt under the provisions of N.D.C.C. §44-04-18.4 and §44-04-18.5.

2. Publication of Users in Significant Noncompliance. A list of all industrial users that were in significant noncompliance with applicable pretreatment requirements during the previous twelve months shall be published annually in the largest newspaper that provides meaningful public notice within the jurisdiction(s) served by the POTW.

11.2-06-15. Administrative Fees.

The City shall establish fees to cover the costs of inspection and sampling to be collected from each permitted SIU. Such fees shall be established in the City of Bismarck's Schedule of Fees and Charges.

A reinspection fee shall be collected if an SIU is not in compliance with this title.

A reinspection fee shall be paid for each re-inspection under which the SIU is not in compliance with this title.

CHAPTER 11.2-07. ENFORCEMENT

11.2-07-01. Compliance Actions. In addition to the other enforcement authority contained in this chapter, the Director may give oral warnings, issue warning letters, issue written notices of violation, require sampling or re-sampling, require the development of corrective action plans by the user, issue administrative orders, suspend or revoke permits, or take any other action necessary to facilitate user compliance with this title or any other applicable rule or regulation.

11.2-07-02. Suspension or Revocation of Permit. A permit may be suspended or revoked by the Director, following notice and an opportunity for a hearing, for just cause, including but not limited to any one or more of the following:

1. Failure to notify the Director of significant changes to the wastewater prior to the changed discharge;
2. Failure to provide prior notification to the Director of changed conditions pursuant to section 11.2-06-11.5 of this ordinance;
3. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
4. Falsifying self-monitoring reports or certification statements;
5. Tampering with monitoring equipment;
6. Refusing to allow the Director timely access to the facility premises and records;

7. Failure to meet effluent limitations;
8. Failure to pay fines;
9. Failure to pay sewer charges;
10. Failure to meet compliance schedules;
11. Failure to complete a wastewater survey or the wastewater discharge permit application;
12. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
13. Violation of any Pretreatment Standard or requirement, or any terms of the wastewater discharge permit or this ordinance.

Notice shall be given and a hearing provided in accordance with Sections 11.2-07-03 and 11.2-07-04. Permittees may appeal revocation decisions to the Board.

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

11.2-07-03. Notification of Violation. Whenever the director finds that any user has violated or is violating this title, a Wastewater Discharge Permit, any prohibition, limitation or requirement contained herein, or any other order issued hereunder, the director may serve upon such user a written notice of violation, stating the nature of the violation and the Director's proposed enforcement action. Within thirty (30) days of the date of the notice, unless a shorter time frame is necessary due to the nature of the violation, a plan for the satisfactory correction thereof must be submitted by such user to the Director. If the Director finds the plan to be acceptable, the Director shall notify the user, in writing, to implement the plan. Submission of a plan does not relieve 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 Director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

11.2-07-04. Show Cause Hearing. If a violation is not corrected by timely compliance, the Director may order any user who causes or allows an unauthorized discharge or other violation to appear and show cause before the Board why the proposed enforcement action, suspension or revocation should not be taken. A notice must be served on the user specifying the time and place of a hearing to be held by the Board regarding the enforcement action, suspension or revocation, and directing the user to show cause before the Board why the proposed enforcement action, suspension or revocation should not be taken. The notice must be served personally or by registered or certified mail at least ten days before the hearing. Service of notice may be made on any authorized representative of the user. The Board may itself conduct the

hearing and take the evidence or may designate members or any officer or employee of the City to act on behalf of the Board. At any hearing held pursuant to this Section, testimony taken must be under oath and recorded stenographically or electronically. The proceedings at the hearing shall be considered by the Board which shall then enter appropriate orders with respect to the alleged improper activities of the user. The Board may make any order authorized by this title up to and including revocation of permits and termination of service. In addition, the Board may levy administrative penalties in an amount up to, but not exceeding, \$1,500.00 for each unauthorized discharge or non-compliance for each day that such violation continues. Any order issued by the Board shall be in addition to any other enforcement action the City may bring against a violator.

11.2-07-05. Administrative Orders.

1. Consent Orders. The Director may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents shall 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 (2) and (3) below and shall be judicially enforceable.

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

3. Cease and Desist Orders. When the Director finds that a user has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, a Pretreatment Standard or Requirement, or order issued hereunder, or that the user's past violations are likely to recur, the Director may issue an order to the user directing it to cease and desist all such violations and directing the user to:

a. Immediately comply with all requirements; and

b. Take such appropriate remedial or preventative 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.

11.2-07-06. Administrative Fines and Penalties. Any user who is found to have violated an order of the Board made in accordance with this title, or who has failed to comply with any provision of this title, and the orders, rules, regulations and/or permits issued hereunder, may be fined or assessed a penalty of not more than \$1,500.00 for each violation. Each day in which a violation shall occur or continue shall be deemed a separate and distinct violation.

11.2-07-07. Emergency Suspension of Service and Discharge Permits. The Director may suspend the wastewater treatment service and the Wastewater Discharge Permit of a user when it appears to the Director that any one or more of the following is true: there is; (a) an actual or threatened discharge that presents or may present an imminent or substantial danger to the health or welfare of persons;(b) a substantial danger to the environment; (c) interference with the operation of the wastewater treatment facility; (d) a violation of any pretreatment limits imposed by this title or any Wastewater Discharge Permit issued pursuant to this title. If a user is notified of a violation and a suspension of services and/or the discharge permit and the user fails to immediately comply voluntarily with the suspension order, the Director shall commence whatever steps are necessary to obtain compliance including, but not limited to, severance of the discharge sewer and/or judicial proceedings. The Director shall reinstate the service and discharge permit upon proof of elimination of the non-complying discharge creating the threat of imminent or substantial damage and upon payment by the user of all of the City's costs incurred as a result of the violation. A detailed written statement submitted by the user describing the causes of the slug or accidental discharge and the measures taken to prevent any future occurrence shall be submitted to the director by the user within 15 days of the date of the occurrence.

Whenever the Director suspends service or the permit of a user pursuant to the emergency provisions of this section, the Director shall serve notice of his/her action on the user personally or by registered mail or certified mail. The user has a right to appeal the Director's action at an informal hearing before the Director upon a request made in writing and filed with the Director. The informal hearing must be held within five (5) days of the request. Following the hearing, the Director may affirm, modify or rescind the action.

Any user dissatisfied with an order of the Director issued pursuant to this section may request a hearing before the Board by filing a written request for a hearing before the Board with the Director. The hearing must be held within fifteen days of receipt of the request, whereupon the Board may affirm, modify or rescind the order. A request for

a hearing filed pursuant to this section does not stay the action appealed pending the hearing.

11.2-07-08. Injunctive Relief Legal Action. If any person or user discharges sewage, indirect discharges, or other wastes into the City's POTW contrary to the provisions of this title, federal or state pretreatment requirements or any order of the City, the City attorney may commence action for appropriate legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

CHAPTER 11.2-08. PENALTIES

11.2-08-01. Penalties.

1. In addition to any penalties, fines, orders or other enforcement action provided for in this title, the Board may impose or assess a penalty in an amount up to, but not exceeding, \$1,500.00 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

In determining the amount of such fine or penalty, the Board may consider all relevant circumstances, including, but not limited to, the extent the harm caused by the violation, the magnitude and duration of the violation, any economic benefit gain by the user through the user's violation, corrective actions taken by the user, and compliance history of the user.

2. Any user violating any of the provisions of this title or who has a discharge which causes a deposit, obstruction, damage or other impairment to the City's POTW shall be liable to the City for any expense, loss, or damage or any increase in treatment or monitoring costs caused by the violation or the discharge. The Director may add to the user's charges and fees the costs for any cleaning, repair or replacement work or costs associated with increased monitoring by the City caused by the violation or discharge.

3. In addition to the administrative penalties or fines provided herein, the City may recover reasonable attorneys' fees, court costs, court reporters' fees and other expenses or costs by appropriate action against the person found to have violated this title or the orders, rules, regulations and permits issued hereunder.

4. Filing a suit shall not be a bar against, or a prerequisite for, taking any other action against a user.

11.2-08-02. Criminal Prosecution.

1. A user who violates any provision of this ordinance, an individual wastewater discharge permit, a Pretreatment Standard or Requirement, or any other order issued hereunder shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than one thousand five hundred dollars (\$1500.00) per violation, per day, or imprisonment for not more than thirty (30) days per violation, per day, or both such fine and imprisonment.

2. A user who introduces any substance into the POTW which causes personal injury or property damage, shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of not more than one thousand five hundred dollars (\$1500.00) or be subject to imprisonment for not more than thirty (30) days per violation, or both such fine and imprisonment. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

3. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, individual wastewater discharge permit, a Pretreatment Standard or Requirement, or any order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine of not more than one thousand five hundred dollars (\$1500.00) per violation, per day, or imprisonment for not more than thirty (30) days per violation, per day, or both such fine and imprisonment.

11.2-08-03. Remedies Nonexclusive. The remedies provided for in this title are not exclusive. The Director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the Director may take other action against any user when the circumstances warrant. Further, the Director is empowered to take more than one enforcement action against any noncompliant user.

CHAPTER 11.2-09. AFFIRMATIVE DEFENSES

11.2-09-01. Upset.

1. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (3), below, are met.

2. For the purposes of this section, upset means an exceptional incident in which there is an unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by

operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

3. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

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

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

c. The user has submitted the following information to the Director within twenty-four (24) hours of becoming aware of the upset:

i. A description of the indirect discharge and cause of noncompliance;

ii. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

iii. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

If the information above is provided orally, a written submission must be provided within five days.

4. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

5. No determination made during administrative review of claims that noncompliance with categorical pretreatment standards was caused by upset, is final administrative action.

6. The industrial user shall control production or all indirect 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.

11.2-09-02. Bypass.

1. A user may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (3) and (4) of this section.

2. For the purposes of this title, bypass means the intentional diversion of wastestreams from any portion of a user's treatment facility. 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.

3. If a user knows in advance of the need for a bypass, it shall submit prior notice to the Director, at least ten (10) days before the date of the bypass, if possible. A user shall submit oral notice to the Director of an unanticipated bypass that exceeds applicable Pretreatment Standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

4. Bypass is prohibited, and the Director may take an enforcement action against a user for a bypass, unless:

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

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

c. The user submitted notices as required under paragraph (3) of this section.

5. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in paragraph (4) of this section.