

**City of Fayetteville Staff Review Form**

**2015-0003**

**Legistar File ID**

**1/20/2015**

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Billy Ammons

1/2/2015

Wastewater Treatment Plant /  
Utilities Department

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Staff recommends approval of modifications to the Code of Ordinances, Article III, Discharge and Pretreatment Regulations and Related Modifications to Article V, Rates and Charges.

**Budget Impact:**

Account Number		Fund	
Project Number		Project Title	
<b>Budgeted Item?</b>	NA	Current Budget	
		Funds Obligated	
		Current Balance	\$ -
<b>Does item have a cost?</b>	No	Item Cost	
<b>Budget Adjustment Attached?</b>	NA	Budget Adjustment	\$ -
		Remaining Budget	\$ -

V20140710

Previous Ordinance or Resolution # \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

Approval Date: \_\_\_\_\_

Comments:

**MEETING OF JANUARY 20, 2015**

**TO:** Mayor and City Council

**THRU:** Don Marr, Chief of Staff  
Water, Sewer & Solid Waste Committee

**FROM:** Billy Ammons, CH2M HILL

**DATE:** January 2, 2015

**SUBJECT:** Approval of Modifications to the Code of Ordinances, Article III, Discharge and Pretreatment Regulations and Related Modifications to Article V, Rates and Charges.

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**RECOMMENDATION:**

City Administration recommends approval of modifications to the Code of Ordinances, Article III, Discharge and Pretreatment Regulations and related modifications to Article V, Rates and Charges.

**BACKGROUND:**

The City of Fayetteville Paul R. Noland Wastewater Treatment Plant ADEQ Permit Number AR0020010 required the City to submit Sewer Use Ordinance modifications to come into compliance with current 40 CFR 403 regulations within twelve (12) months of the effective date (March 1, 2013) of the permit. The proposed modifications were submitted to ADEQ as required. ADEQ has reviewed and approved the modifications.

**DISCUSSION:**

Modifications to the Discharge and Pretreatment Regulations ordinance were made to come into compliance with 40 CFR 403, to simplify language, use newer terminology, to more closely match EPA model ordinance language, or to incorporate language recommended by ADEQ. ADEQ approval is not required for Extra Strength Surcharge requirements and fees, hauled wastewater fees, and industrial wastewater discharge permit fees. These items were moved from Article III, Discharge and Pretreatment Regulations to Article V, Rates and Charges. This will simplify any future changes.

**BUDGET/STAFF IMPACT:**

Staff will make changes to the ADEQ-approved Pretreatment Program document to incorporate ordinance modifications and submit for ADEQ approval. No Budget Impact.

**Attachments:**

Staff Review Form  
Modified Article III  
Modified Article V



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE




Kit Williams  
*City Attorney*

Blake Pennington  
*Assistant City Attorney*

Patti Mulford  
*Paralegal*

TO: **Mayor Jordan**  
**City Council**

THRU: **Kit Williams**, City Attorney

FROM: **Blake Pennington**, Assistant City Attorney 

DATE: **January 6, 2015**

RE: **Penalties for Violations of Discharge and Pretreatment Regulations**

Included in the changes required by the Code of Federal Regulations to our discharge and pretreatment regulations is a requirement that fines for violations must be up to \$1,000.00. This conflicts with Fayetteville Code § 10.99 **General Penalties**, which provides that no ordinance may allow a penalty greater than \$500.00 and any ordinance that includes a higher fine must be reduced to the lower amount when judgment for a violation is entered by the court. Therefore, along with the changes noted in the Staff Review Memo, I have also included a new § 10.99(A)(4), which provides as follows:

Notwithstanding the foregoing, violations of City of Fayetteville discharge and pretreatment regulations, codified at §§ 51.070 – 51.087, shall be subject to potentially higher penalties as provided in § 51.083 **Administrative Enforcement Remedies** and § 51.084 **Judicial Enforcement Remedies**, as required by federal law.

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**ARTICLE III  
DISCHARGE AND  
PRETREATMENT REGULATIONS**

**51.070 Purpose**

This article sets forth standards and requirements for users of the Water Resource Recovery Facility (WRRF) for the City of Fayetteville and enables the city to comply with all applicable federal and state laws, including Clean Water Act (33 U.S.C. §1251 et seq.) and the General Pretreatment Regulations (40 CFR 403). The objectives of this article are:

- (A) To prevent the introduction of pollutants into the WRRF that will interfere with its operation or contaminate its resulting biosolids;
- (B) To prevent the introduction of pollutants into the WRRF which will pass through the WRRF, inadequately treated, into receiving waters or otherwise be incompatible with the WRRF;
- (C) To protect both WRRF personnel who may be affected by wastewater and biosolids in the course of their employment and the general public;
- (D) To improve opportunities for reuse and recycling of wastewater and biosolids from the WRRF;
- (E) To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the WRRF;
- (F) To enable the city to comply with its National Pollutant Discharge Elimination System permit conditions, biosolids use and disposal requirements, and any other federal or state laws to which the WRRF is subject; and
- (G) To provide for penalties for violations of the regulations established herein.
- (H) To encourage pollution prevention through waste minimization, source reduction, reuse practices, recycling, and water and energy conservation.

This article authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(Ord. No. 3965, 5-7-96; Ord. No. 4088, §1, 4-7-98; Code 1991, §51.070)

**51.071 Applicability**

This article shall apply to all users of the WRRF.

(Ord. No. 3965, §§2, 3 (Exh. A), 5-7-96; Ord. No. 4088, 4-7-98; Code 1991, §51.071)

**51.072 Administration**

Except as otherwise provided herein, the City, as defined in this article, shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon the City may be delegated by the City to his/her authorized representative.

(Code 1991, §51.072)

**51.073 Abbreviations**

The following abbreviations shall have the designated meanings:

See table.

BOD	Biochemical oxygen demand
BMP	Best Management Practice
CFR	<i>Code of Federal Regulations</i>
CIU	Categorical Industrial User
EPA	U.S. Environmental Protection Agency
gpd	gallons per day
NPDES	National Pollutant Discharge Elimination System
NAICS	North American Industrial Classification System
RCRA	Resource Conservation and Recovery Act
TSS	Total suspended solids
SIU	Significant Industrial User
SNC	Significant Noncompliance
U.S.C.	United States Code
WRRF	Water Resource Recovery Facility

(Ord. No. 3965, §§2, 3 (Exh. A), 5-7-96; Code 1991, §51.073)

**51.074 Definitions**

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

*Act or the Act.* The Federal Water Pollution

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Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251 et seq.

*Approval Authority.* Arkansas Department of Environmental Quality.

*Authorized signatory or authorized or duly authorized representative of the user.*

- (1) If the user is a corporation:
  - (a) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or
  - (b) The manager of one or more manufacturing, production, 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.
- (2) If the user is a partnership or sole proprietorship: A general partner or proprietor, respectively.
- (3) If the user is a federal, state or local governmental facility: A director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility.
- (4) The individuals described in paragraphs (1) through (3) above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

*Best Management Practices or BMPs.* Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 51.075(B) (1) and (2). 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 also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent limits.

*Biochemical oxygen demand (BOD).* The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20° centigrade, usually expressed as a concentration of milligrams per liter (mg/l).

*Categorical pretreatment standard or categorical standard.* Any regulation containing pollutant discharge limits promulgated by EPA in accordance with §§307(b) and (c) of the Act (33 U.S.C. §1317) which apply to a specific category of users and which appear in 40 CFR Chapter 1, Article N, Parts 405-471.

*Categorical Industrial User (CIU).* An Industrial User subject to a categorical Pretreatment Standard or categorical Standard.

*City.* The mayor or his/her duly authorized representative, or the City of Fayetteville, the Fayetteville City Council or its duly authorized representative. The City is the Control Authority as defined in 40 CFR 403.3(f)(1).

*Control Authority.* The City.

*Composite sample.* The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time, as specified by the City.

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

*Daily Maximum Limit.* The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

*Domestic waste.* Liquid and water-carried waste

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generated by a typical household or waste comprised of waste equivalent to that generated by a typical household - human excrement and gray water (household showers, dishwashing operations, etc.). This does not include waste from commercial or industrial processes whether generated at a household or other premises.

*Environmental Protection Agency (EPA).* The U.S. Environmental Protection Agency or its authorized representative.

*Existing source.* Any source of discharge that is not a "New Source."

*Grab sample.* An individual sample collected over a period of time not to exceed 15 minutes.

*Hauled Wastewater.* Wastewater that is loaded to a tanker truck, a portable tank or other container and conveyed to another location for discharge. Hauled wastewater includes, but is not limited to, septic tank waste and portable toilet waste.

*Indirect discharge or discharge.* The introduction of pollutants into the WRRF from any nondomestic source.

*Industrial user.* A discharger into the WRRF of nondomestic wastewater.

*Interference.* A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the WRRF, its treatment processes or operations or its biosolids processes, use or disposal and therefore, is a cause of a violation of the City's NPDES permit or a cause of the prevention of biosolids 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: §405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State biosolids management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

*Instantaneous limit.* The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

*Local Limit.* Specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and

(b).

*May.* Discretionary or permissive.

*Monthly Average.* The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

*Monthly Average Limit.* The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

*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.

*National Pollutant Discharge Elimination System (NPDES) permit.* A permit issued to a WRRF or other discharger pursuant to §402 of the Act.

*New source.*

(1) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under §307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

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

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

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

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- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of §(1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
- (a) Begun, or caused to begin as part of a continuous onsite construction program:
    - (i) Any placement, assembly, or installation of facilities or equipment; or
    - (ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - (b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

*Noncontact cooling water.* Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

*North American Industry Classification System (NAICS)* is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed under the auspices of the Office of Management and Budget (OMB) and adopted in 1997 to replace the Standard Industrial Classification (SIC) system.

*Pass through.* A discharge which exits the WRRF into waters of the United States in quantities or concentrations which, along or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's NPDES

permit, including an increase in the magnitude or duration of a violation.

*Person.* Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, or local governmental entities.

*pH.* A measure of the acidity or alkalinity of a substance, expressed in standard units.

*Pharmaceutical drug.* Also referred to as medicine, medication or medicament, can be loosely defined as any chemical substance intended for use in the medical diagnosis, cure, treatment, or prevention of disease.

*Pollutant.* Any dredged spoil, solid waste, incinerator residue, sewage, garbage, biosolids, 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, TSS, turbidity, color, BOD, chemical oxygen demand (COD), toxicity, or odor).

*Pollution Prevention (P2).* Waste reduction prior to recycling, treatment, or disposal. Pollution prevention means "source reduction" as defined under the Pollution Prevention Act, and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation, or use of less toxic alternatives.

*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 WRRF. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

*Pretreatment requirements.* Any substantive or procedural requirement, other than a pretreatment standard, related to pretreatment and imposed on a user.

*Pretreatment standards or standards.* Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, narrative BMPs, and local limits.

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*Prohibited discharge standards or prohibited discharges.* Prohibitions against the discharge of certain substances; these prohibitions appear in §51.075(B) of this article.

*Qualified professional.* A person who is proven to be competent or suited for a specific position or task.

*Sewage.* Human excrement and gray water (household showers, dishwashing operations, etc.).

*Shall.* Mandatory.

*Significant industrial user.*

- (1) A user subject to categorical pretreatment standards; or
- (2) A user that:
  - (a) Discharges an average of 25,000 gpd or more of process wastewater to the WRRF (excluding sanitary, noncontract cooling, and boiler blowdown wastewater); or
  - (b) Contributes a process wastestream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the WRRF treatment plant; or
  - (c) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the WRRF's operation or for violating any pretreatment standard or requirement.
- (3) Upon a finding that a user meeting the criteria in (2) has no reasonable potential for adversely affecting the WRRF's operation or for violating any pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a 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.

*Slug load or slug.* Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in this article or any discharge of a nonroutine, episodic nature, including but not limited to, an accidental spill or a noncustomary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the City's regulations, local limits or permit conditions.

*Standard Industrial Classification (SIC) Code.* A

classification pursuant to the *Standard Industrial Classification Manual* issued by the United States Office of Management and Budget.

*State.* State of Arkansas.

*Storm water.* Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

*Surcharge.* A service charge in addition to the normal monthly rate which shall be assessed to the significant industrial users who discharge into the city system wastewater having an average BOD concentration in excess of 300 milligrams per liter or an average TSS concentration in excess of 300 milligrams per liter.

*Total suspended solids.* The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

*Toxic pollutant.* Any pollutant or combination of pollutants listed as toxic in regulations promulgated by EPA under §307 (33 U.S.C. §1317) of the Act.

*Treatment plant's effluent.* The discharge from the wastewater treatment plant into the receiving stream.

*User.* Any person who contributes or permits the contribution of wastewater into the WRRF.

*Wastewater.* Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions.

*Wastewater treatment plant.* That portion of the WRRF which is designed to provide treatment of municipal sewage and compatible industrial waste.

*Water Resource Recovery Facility (WRRF).* A "treatment works," as defined by §212 of the Act (33 U.S.C. §1292) which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant. The WRRF is the Publicly Owned Treatment Works or POTW as defined in 40 CFR 403.3(q).

(Ord. No. 3965, §§2, 3 (Exh. A), 5-7-96; Ord. No. 4088, §2, 4-7-98; Code 1991, §51.074)

## 51.075 General Sewer Use Requirements

(A) Wastewater generated by development located in



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100-year floodplain not to be transported or treated by facilities constructed under EPA Project No. C-050366-01 for 50 years.

(1) For the purpose of this section area of existing development shall mean an area which, at the EPA issued a finding of no significant impact for EPA Project No. C-050366-01 was:

- (a) Occupied by existing structures or facilities;
- (b) Substantially surrounded by existing structures or facilities and which serves no significant independent natural floodplain function; or
- (c) Characterized by substantial investment in public infrastructure but which is only partially occupied by structures or facilities.

(2) No wastewater generated by development located in the 100-year floodplain shall be transported or treated by facilities constructed under EPA Project No. C-050366-01 for a period of 50 years from January 1, 1987, except that service may be provided to:

- (a) Areas of existing development in a floodplain;
- (b) Commercial or public facilities which by nature must be located in a floodplain;
- (c) Areas of projected growth if the environmental information document for EPA Project No. C-050366-01 demonstrates that proposed development will be consistent with the floodplain management criteria for flood-prone areas (44 CFR 60.3) of the Federal Emergency Management Agency (FEMA) and will have no significant impacts on natural functions and values of the floodplain; or
- (d) An area of projected growth if an environmental impact statement demonstrates that there is no practicable alternative to such growth, that such growth will be consistent with the floodplain management criteria for flood-prone areas (44 CFR 60.3) of FEMA, and that the benefits of such growth outweigh its environmental costs.

(B) *Prohibited discharge standards.*

(1) *General prohibitions.* No person shall introduce or cause to be introduced into the WRRF any pollutant or wastewater which causes, or has the potential to cause, pass through or interference. These general prohibitions apply to all users of the WRRF whether or not they are subject to categorical pretreatment standards or any other federal, state, or local pretreatment standards or requirements.

(2) *Specific Prohibitions.* No person shall introduce or cause to be introduced into the WRRF the following pollutants, substances, or wastewater:

- (a) Pollutants which create a fire or explosive hazard in the WRRF, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140° Fahrenheit (60° C) using the test methods specified in 40 CFR 261.21;
- (b) Wastewater having a pH less than 5.0 or more than 12.4, or otherwise causing corrosive structural damage to the WRRF or equipment;
- (c) Solid or viscous substances including, but not limited to, fats, oil or grease of animal or vegetable in amounts which will cause obstruction of the flow in the WRRF resulting in interference but in no case solids greater than one-half inch in any dimension;
- (d) 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 WRRF;
- (e) Wastewater having a temperature greater than 150° Fahrenheit (65° C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° Fahrenheit (40° C);
- (f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
- (g) Pollutants which result in the presence of toxic gases, vapors, or fumes within

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- the WRRF in a quantity that may cause acute worker health and safety problems;
- (h) Trucked or hauled pollutants, except at discharge points designated by the City in accordance with §51.076(D) of this article;
  - (i) Any 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;
  - (j) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye, wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the city's NPDES permit;
  - (k) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable federal or state regulations and approved by the City;
  - (l) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, condensate, deionized water, noncontact cooling water, and unpolluted wastewater, unless specifically authorized by the City;
  - (m) Sludges, screenings, or other residues from the pretreatment of industrial wastes;
  - (n) Medical wastes or pharmaceutical drugs, except as specifically authorized by the City;
  - (o) Wastewater causing, alone or in conjunction with other sources, the WRRF to violate its NPDES permit or the treatment plant's effluent to fail a toxicity test;
  - (p) Any substance which may cause the WRRF's effluent or other product of the WRRF such as residues, biosolids or scums, to be unsuitable for normal landfill/land application, reclamation or reuse, or to interfere with the reclamation process;
  - (q) Detergents, surface-active agents, or other substances which may cause excessive foaming in the WRRF;
  - (r) Any material into a manhole through its top unless specifically authorized by the City.
  - (s) Non-flushable wipes, non-dispersible wipes, and non-biodegradable wipes including, but not limited to, baby wipes, paper towels, dusting wipes, cleaning wipes, and disposable mop heads.
- Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the WRRF.
- (C) *Categorical pretreatment standards or categorical standards.* 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. Users must comply with the categorical pretreatment standards. Categorical pretreatment standards are hereby incorporated.
    - (1) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the City may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
    - (2) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the City shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
    - (3) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
    - (4) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.
  - (D) *Local limits.* To protect against pass through and interference, no Industrial User may discharge or cause to be discharged into the WRRF any wastewater pollutant concentration exceeding the Technically Based Local Limits (TBLLs) developed from time to time by the City as

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required by Part III in City of Fayetteville NPDES permits No. AR0020010 and AR0050288 authorized by 40 CFR 403.5 (c) and approved by the Approval Authority. TBLLs based on calculated Maximum Allowable Industrial Loadings are located in the City's Pretreatment Program, Part 2. At the discretion of the City, TBLLs may be imposed and shall apply at the "monitoring point" described in the individual industrial wastewater discharge permits. All concentration limits for metals shall be in terms of "total" metals unless otherwise indicated. At the discretion of the City, mass limitations may be imposed in addition to or in place of concentration based TBLLs. The City may also develop BMPs in individual wastewater discharge permits, to implement specific pollutant limitations. Such BMPs shall be considered Local Limits and Pretreatment Standards. When new Local Limits are implemented or revised, the City will provide individual notice to parties who have requested such notice and an opportunity to respond, as set forth by 40 CFR 403.5 (c) (3).

- (E) *Right of revision.* The city reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the WRRF.
- (F) *Dilution.* No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The City may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

(Ord. No. 3965, §§2, 3, Exh. A, 5-7-96; Ord. No. 4088, §3, 4-7-98; Code 1991, §51.075)

### 51.076 Pretreatment of Wastewater

- (A) *Pretreatment facilities.* Users shall provide wastewater treatment as necessary to comply with this article and shall achieve compliance with all pretreatment standards, local limits, and the prohibitions set out in §51.075(B) of this article within the time limitations specified by EPA, the state, or the City, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the City for review, and shall be acceptable by the City before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the

responsibility of modifying such facilities as necessary to produce a discharge acceptable to the City under the provisions of this article.

- (B) *Additional pretreatment measures.*
- (1) Whenever deemed necessary, the City may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocated and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the WRRF and determine the user's compliance with the requirements of this article.
  - (2) The City may require any person discharging into the WRRF to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
  - (3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the City, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the City and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at the user's expense.
  - (4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.
  - (5) At the City's discretion and when deemed necessary the industrial user shall have a licensed wastewater treatment operator on duty at all times when treating and discharging regulated wastewater to the City's collection system. Said operator shall meet the license or level of operator qualifications deemed necessary for proper treatment per Arkansas Pollution Control and Ecology Commission's Regulation #3.
- (C) *Accidental discharge/slug control plans.* The City shall evaluate whether each significant industrial user needs an accidental discharge/slug control plan or other action to control slug discharges.

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The City 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 City may develop such a plan for any User. An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including nonroutine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the City of any accidental or slug discharge, as required by §51.079(F) of this article. Such notification must also be given for any discharge which would violate any of the prohibited discharges in §51.075(B) of this article; and
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

(D) *Hauled wastewater.*

Hazardous waste will not be accepted by truck or liquid waste hauler at the WRRF.

- (1) Domestic waste haulers are required to submit an application to discharge liquid wastes. This application must be accompanied by a fee in accordance with §51.137(G). Hauled domestic waste may be introduced into the WRRF only at locations approved by the City and at such times as are established by the City. Such wastes shall not violate §51.075 of this article or any other requirements established by the City. A fee must be paid for each domestic waste load in accordance with §51.137(G). The City may require the domestic waste haulers to obtain wastewater discharge permits.
- (2) The City may require haulers of industrial waste to obtain wastewater discharge permits. The City may require generators of hauled industrial waste to obtain wastewater discharge permits. The City also may prohibit the disposal of hauled industrial waste. The

discharge of hauled industrial waste is subject to all other requirements of this article.

- (3) If the industrial waste is from a categorical user, the hauled wastewater must include waste analysis proving it meets the required limitations of its respective category.
- (4) Domestic waste haulers and industrial waste haulers may only discharge loads at locations designated by the City. No load may be discharged without prior consent of the City. The City may collect samples of each hauled load to ensure compliance with applicable standards. The City may require the hauler to provide a waste analysis of any load prior to discharge.
- (5) Domestic waste and industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. For industrial waste, the form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.
- (6) Any waste not deemed domestic by the City will be handled on a case by case basis at the discretion of the City.

(Ord. No. 3965, §2, 3 (Exh. A), 5-7-96; Code 1991, §51.076)

**51.077 Wastewater Discharge Permit Application**

(A) *Wastewater analysis.* When requested by the City, a user must submit information on the nature and characteristics of the user's wastewater within thirty (30) days of request, unless otherwise specified. The City is authorized to prepare a form for this purpose and may periodically require users to submit or update the information.

(B) *Wastewater discharge permit requirement.*

- (1) No significant industrial user shall discharge wastewater into the WRRF without first obtaining a wastewater discharge permit from the City, except a significant industrial user that has filed a timely application pursuant to §51.077(C) of this article may continue to discharge for the time period specified therein.

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- narrative;
- (2) The City may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of this article.
- (3) Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this article and subjects the wastewater discharge permittee to the sanctions set out in §51.082 through §51.084 of this article. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state, and local law.
- (C) *Wastewater discharge permitting; existing connections.* Any non-permitted user required to obtain a wastewater discharge permit, who was discharging wastewater into the WRRF prior to the effective date of this article and who wishes to continue such discharges in the future, shall, within 90 days after said date, apply to the City for a wastewater discharge permit in accordance with §51.077(E) of this article, and shall not cause or allow discharges to the WRRF to continue after 180 days of the effective date of this article except in accordance with a wastewater discharge permit issued by the City.
- (D) *Wastewater discharge permitting; new connections.* Any user required to obtain a wastewater discharge permit that proposes to begin or recommence discharging into the WRRF must obtain such permit prior to the beginning or recommending of such discharge. An application for this wastewater discharge permit, in accordance with §51.077(E) of this article, must be filed at least 90 days prior to the date upon which any discharge will begin or recommence.
- (E) *Wastewater discharge permit application contents.* All users required to obtain a wastewater discharge permit must submit a permit application accompanied by a fee in accordance with 51.137(H). The City may require a user to submit as part of an application the following information:
- (1) The information required by §51.079(A)(2) of this article;
- (2) A comprehensive description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals (not just trade names) used or stored at the facility which are, or could accidentally or intentionally be, discharged to the WRRF. A qualified professional must certify to the accuracy of this process
- (3) Number of employees, hours of operation, and proposed or actual hours of operation;
- (4) Each product produced by type, amount, process or processes, and rate of production;
- (5) Type and amount of raw materials processed (average and maximum per day);
- (6) Comprehensive site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, chemical storage areas, and appurtenances by size, location, and elevation, and all points of discharge. A qualified professional must certify to the accuracy of this schematic(s);
- (7) Time, average gallons per day discharged and duration of discharges; and
- (8) Any other information as may be deemed necessary by the City to evaluate the wastewater discharge permit application.
- (9) Pollution Prevention (P2) activities such as source reduction, waste minimization, environmental management systems, water and energy conservation, and use of less toxic alternatives.
- Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.
- (F) *Application signatories and certification.* All wastewater discharge permit applications and user reports must be signed by an authorized signatory of the user and contain the following certification statement:
- I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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(G) *Wastewater discharge permit decisions.* The City will evaluate the data furnished by the user and may require additional information. Within 90 days of receipt of a complete wastewater discharge permit application, the City will determine whether or not to issue a wastewater discharge permit. The City may deny any application for a wastewater discharge permit.

(Ord. No. 3965, §§2, 3 (Exh. A), 5-7-96; Code 1991, §51.077)

**51.078 Wastewater Discharge Permit Issuance Process**

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

(B) *Wastewater discharge permit contents.* Wastewater discharge permits shall include such conditions as are deemed reasonably necessary by the City to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, protect the public, facilitate biosolids management and disposal, and protect against damage to the WRRF.

(1) Wastewater discharge permits must contain:

- (a) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five years;
- (b) A statement that the wastewater discharge permit is nontransferable except in accordance with §51.078 (E).
- (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 practices) to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law; and
- (e) 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.

(f) Requirements to control Slug Discharge, if determined by the City to be necessary.

(2) Wastewater discharge permits may contain, but need not be limited to, the following conditions:

- (a) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- (b) Requirements for the installation and maintenance of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- (c) Requirements for the development and implementation of accidental discharge/slug control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges;
- (d) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the WRRF;
- (e) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- (f) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit; and
- (g) Other conditions as deemed appropriate by the City to ensure compliance with this article, and federal and state laws, rules, and regulations.
- (h) A licensed wastewater operator as deemed necessary on duty at all times

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of treatment and discharge of regulated wastewater discharge to the City's collection system (per §51.076(B)(5)).

(C) *Wastewater discharge permit appeals.* A permittee may petition the City to reconsider the terms of a wastewater discharge permit within 30 days of notice of issuance of the discharge permit.

- (1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- (2) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alterative condition, if any, it seeks to place in the wastewater discharge permit.
- (3) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.
- (4) If the City fails to act within 30 days of receipt of the request, the request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit, shall be considered final administrative actions for purposes of judicial review.

(D) *Wastewater discharge permit modification.* The City may modify the wastewater discharge permit for good cause including, but not limited to, the following reasons:

- (1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
- (2) To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
- (3) A change in the WRRF that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- (4) Information indicating the permitted discharge poses a threat to the WRRF, WRRF personnel, the receiving waters, or threats to the WRRF's beneficial biosolids use;
- (5) Violation of any terms or conditions of the wastewater discharge permit;

(6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

(7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;

(8) To correct typographical or other errors in the wastewater discharge permit;

(9) To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with 51.078(E).

(E) *Wastewater discharge permit transfer.* Wastewater discharge permits may be transferred to a new owner or operator if the permittee gives at least seven days advance notice to the City, provides a copy of the existing permit to the new owner or operator, and the City approves the wastewater discharge permit transfer. The notice to the City 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.

Failure to provide notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

(F) *Wastewater discharge permit revocation.* The City may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- (1) Failure to notify the City of significant changes to the wastewater prior to the changed discharge;
- (2) Failure to provide prior notification to the City of changed conditions pursuant to §51.079(E) of this article;
- (3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

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- (4) Falsifying self-monitoring or other reports;
- (5) Tampering with monitoring equipment;
- (6) Refusing to allow the City 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; or
- (12) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this article.

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

- (G) *Wastewater discharge permit re-issuance.* A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit re-issuance by submitting a complete permit application, in accordance with §51.077(E) of this article, a minimum of 90 days prior to the expiration of the user's existing wastewater discharge permit.
- (H) *Regulation of waste received from other jurisdictions.*

- (1) If another jurisdiction, or user located within another jurisdiction, contributes wastewater to the WRRF, the City shall enter into an interjurisdictional agreement with the contributing jurisdiction; enter into an agreement with, or permit, users located in another jurisdiction; or both. Certain hauled wastewater may be exempted from the requirements of this paragraph with specific authorization by the City.
- (2) An interjurisdictional agreement, as required by paragraph (1), above, shall contain the following conditions:
  - (a) A requirement for the contributing jurisdiction to adopt a sewer use

ordinance which is at least as stringent as this article and local limits which are at least as stringent as those set out in §51.075(D) of this article. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the city's ordinance and/or local limits;

- (b) A requirement for the contributing jurisdiction to submit a revised user inventory on at least an annual basis;
- (c) A provision specifying which pretreatment implementation activities, including wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing jurisdiction; which of these activities will be conducted by the City; and which of these activities will be conducted jointly by the contributing jurisdiction and the City;
- (d) A requirement for the contributing jurisdiction to provide the City with access to all information the contributing jurisdiction obtains as part of its pretreatment activities;
- (e) A provision insuring the City access to the facilities of users located within the contributing jurisdiction's boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the City; and
- (f) A provision specifying remedies available for breach of the terms of the interjurisdictional agreement.

(Ord. No. 3965, §§2, 3 (Exh. A), 5-7-96; Ord. No. 4088, §§4, 5, 4-7-98; Code 1991, §51.078)

### 51.079 Reporting Requirements

(A) *Baseline monitoring reports.*

- (1) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the WRRF shall submit to the City a report which contains the information listed in paragraph (B), below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to



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the promulgation of an applicable categorical standard, shall be required to submit to the City a report which contains the information listed in paragraph (2), 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.

(2) Users described above shall submit the information set forth below.

(a) *Identifying information.* The name and address of the facility, including the name of the operator and owner.

(b) *Environmental permits.* A list of any environmental control permits held by or for the facility.

(c) *Description of operations.* A comprehensive narrative description of the nature, average rate of production, all applicable NAICS and standard industrial classifications of the operation(s) carried out by such user. This description should include a comprehensive schematic process diagram which indicates points of discharge to the WRRF from the regulated processes. A qualified professional must certify to the accuracy of this process narrative and wastewater flow schematics.

(d) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the WRRF 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). The City may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(e) *Measurement of pollutants.*

(i) The categorical pretreatment standards applicable to each regulated process.

(ii) The results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or by the City) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily

maximum, and long term average concentrations or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in §51.079(J) of this article. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the City or the applicable standards to determine compliance with the standard.

(iii) Sampling must be performed in accordance with procedures set out in §51.079(K) of this article.

(f) *Certification.* A statement, reviewed by the user's authorized signatory 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.

(g) *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in §51.079(B) of this article.

(h) *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with §51.077(F) of this article.

(B) *Compliance schedule progress report.* The following conditions shall apply to the compliance schedule required by §51.079(A)(2)(g) of this article:

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable

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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, beginning and conducting routine operation);

- (2) No increment referred to above shall exceed nine months;
- (3) The user shall submit a progress report to the City not later than 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
- (4) In no event shall more than nine months elapse between such progress reports to the City.

(C) *Report on compliance with categorical pretreatment standard deadline.* Within 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 WRRF, any user subject to such pretreatment standards and requirements shall submit to the City a report containing the information described in §51.079(A)(2)(d) through (f) of this article. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with §51.077(F) of this article.

(D) *Periodic compliance reports.*

- (1) All significant industrial users shall, at a frequency determined by the City but in no case less than every six months, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the

user must submit documentation required by the City or the pretreatment standard necessary to determine the compliance status of the user. All periodic compliance reports must be signed and certified in accordance with §51.077(F) of this article.

- (2) 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.
- (3) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the City, using the procedures prescribed in §51.079(J) and §51.079(K) of this article, the results of this monitoring shall be included in the report.

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

- (1) The City 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 §51.077(E) of this article.
- (2) The City may issue a wastewater discharge permit under §51.077(G) of this article or modify an existing wastewater discharge permit under §51.078(D) of this article in response to changed conditions or anticipated changed conditions.
- (3) For purposes of this requirement, significant changes include, but are not limited to, flow changes of 20% or greater, and the discharge of any previously unreported pollutants.

(F) *Reports of potential problems.*

- (1) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load, that may cause potential problems for the WRRF (including a violation of the prohibited discharge standards in §51.075(B)

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of this article), the user shall immediately telephone and notify the City 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.

- (2) Within five business days following such discharge, the user shall, unless waived by the City, 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 may be incurred as a result of damage to the WRRF, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed pursuant to this article.
- (3) If required by the City, 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 are advised of the emergency notification procedure.
- (4) Significant industrial users are required to notify the City immediately of any changes at its facility affecting the potential for a slug discharge.

(G) *Reports from unpermitted users.* All users not required to obtain a wastewater discharge permit shall provide appropriate reports as may be required by the City.

(H) *Notification of violation/repeat sampling and reporting.*

- (1) If sampling performed by a user indicates a violation, the user must notify the City as soon as possible but no later than 24 hours after becoming aware of the violation. The user shall also immediately repeat the sampling and analysis and submit the results of the repeat analysis to the City within the time period specified by the City but at no time later than 30 days after becoming aware of the violation. The user may not be required to resample if the City samples between the user's initial sampling and when the user receives the results of this sampling.
- (2) If the City performed the sampling and analysis in lieu of the industrial user, the City will perform the repeat sampling and analysis

unless it notifies the user of the violation and requires the user to perform the repeat sampling and analysis.

(I) *Notification of the discharge of hazardous waste.*

- (1) Any person who commences the discharge of hazardous waste shall notify the City, the EPA Regional Waste Management Division Director, and state hazardous waste authorities (in writing) of any discharge into the WRRF of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than 100 kilograms of such waste per calendar month to the WRRF, 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 in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications to the City must be made prior to the commencement of the discharge. Notifications of changed conditions must be submitted under Section §51.079(E) 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 §51.079(A), (C), and (D) of this ordinance.
- (2) In the case of any new regulations under §3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the City, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.
- (3) 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.

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- (4) This reporting provision does not create a right to discharge any substance not otherwise permitted to be discharged by this article, a permit issued thereunder, or any applicable federal or state law.

- (J) *Certification of Permit Applications and User Reports.* The following certification statement is required to be signed and submitted by users submitting permit applications in accordance with Section §51.077; users submitting baseline monitoring reports under Section §51.079(A); users submitting reports on compliance with the categorical Pretreatment Standard deadlines under Section §51.079(C); users submitting periodic compliance reports required by Section §51.079(D) (1)-(3). The following certification statement must be signed by an Authorized Representative as defined in Section §51.074:

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.

- (J) *Analytical requirements.*

- (1) 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 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.
- (2) All independent laboratories performing analyses for users, including, but not limited to, self-monitoring, periodic reports on continuing compliance, baseline monitoring reports and/or split sample verification, shall be certified by the ADEQ Laboratory Certification Program for the specific analysis being performed. The City reserves the right

to reject any analysis performed by an independent laboratory that is not duly certified for a particular analysis.

- (K) *Sample collection.*

- (1) 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.
- (2) Except as indicated in subsection (3) and (4), below, the user must collect wastewater samples using 24-hr flow-proportional composite collection techniques. In the event flow proportional sampling is infeasible, the City may authorize the use of time proportional sampling or a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits.
- (3) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic chemicals must be obtained using grab collection techniques.
- (4) For sampling required in support of baseline monitoring and 90-day compliance reports required in §§51.079(A) and (C), a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the City may authorize a lower minimum. For the reports required by §51.079(D), the industrial user is required to collect the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements.

- (L) *Date of Receipt of Reports.* Written reports will be deemed to have been submitted on the date post-marked. 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.

- (M) *Record keeping.* Users subject to the reporting requirements of this article shall retain, and make available for inspection and copying, all records of information obtained pursuant to any

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monitoring activities required by this article and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with Best Management Practices established under 51.075(D). 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 U.S. EPA, state, or City.

(Code 1991, §51.079; Ord. No. 3965, §§2, 3 (Exh. A), 5-7-96; Ord. No. 4088, §6, 4-7-98)

### 51.080 Compliance Monitoring

(A) *Right of entry; inspection and sampling.* The City shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this article and any wastewater discharge permit or order issued hereunder. Users shall allow the City 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.

- (1) 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 City will be permitted to enter without delay for the purposes of performing specific responsibilities.
- (2) The City 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.
- (3) The City 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 least annually by a certified technician to ensure their accuracy. Calibration records shall be made available to

the City upon request.

- (4) 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 City and shall not be replaced. The costs of clearing such access shall be borne by the user.
- (3) Unreasonable delays in allowing the City access to the user's premises shall be a violation of this article.
- (B) *Search warrants.* If the City has been refused access to a building, structure or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the City may seek issuance of a search warrant from the city district court.

(Code 1991, §51.080)

### 51.081 Confidential Information

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

(Code 1991, §51.081)

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**51.082 Publication of Users in Significant Noncompliance**

The City shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the City's WRRF, a list of the users which, during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall be applicable to all significant industrial users (or any other industrial user that violates paragraphs (C), (D) or (H) of this Section) and shall mean:

- (A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits as defined in 51.074;
- (B) Technical review criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 51.074 multiplied by the applicable criteria: 1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH;
- (C) Any other violation of a pretreatment standard or requirement as defined by 51.074 (daily maximum, long term average, instantaneous limit, or narrative standard) that the City determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of city or WRRF personnel or the general public;
- (D) Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge;
- (E) Failure to meet within 90 days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (F) Failure to provide within forty five (45) after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on

compliance with compliance schedules;

- (G) Failure to accurately report noncompliance; or
- (H) Any other violation(s), which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the local pretreatment program.

(Code 1991, §51.082; Ord. No. 3965, §§2, 3 (Exh. A), 5-7-96; Ord. No. 4088, §8, 4-7-98)

**51.083 Administrative Enforcement Remedies**

- (A) *Notice of violation.* When the City finds that a user has violated (or continues to violate) any provision of this article, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the City shall serve upon such user either an informal warning or a written notice of violation. Within five business days of the receipt of the notice of violation, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the City. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing an informal warning or a notice of violation.
- (B) *Consent orders.* The City may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to §51.083(D) and §51.083(E) of this article and shall be judicially enforceable.
- (C) *Show cause hearing.* The City may order a user which has violated or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the City and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show

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cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least five business days prior to the hearing. Such notice shall be served on a representative of the user who meets the criteria of an authorized signatory. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

(D) *Compliance orders.* When the City finds that a user has violated or continues to violate any provision of this article, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the City 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 ordinances may also 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 national 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.

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

- (1) Immediately comply with all requirements; and
- (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.
- (3) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(F) *Administrative charges.*

- (1) When the City finds that a user has violated or continues to violate any provision of this article, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the City may charge such user in an amount not to exceed one thousand dollars (\$1,000.00). Such fines shall be assessed on a per violation, per day basis. The City may add the costs of administrative enforcement actions, such as notices and orders, to the charge.
- (2) Users desiring to dispute such charges must file a written request with the City Clerk within ten (10) working days of being notified of the charge. The Sewer Committee shall convene a hearing on the matter. In the event the charge is upheld by the Sewer Committee, the City may also add the costs of the appeal, such as notices and orders, to the charge.
- (3) Issuance of an administrative charge shall not be a bar against, or a prerequisite for, taking any other action against the user.

(G) *Emergency suspensions.* The City may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The City may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the WRRF, or which presents or may present an endangerment to the environment.

- (1) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the City shall take such steps as deemed necessary, including immediate severance of the sewer connection or water service, to prevent or minimize damage to the WRRF, its receiving stream, or endangerment to any individuals. The City may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City that the period of endangerment has passed, unless the termination proceedings in §51.083(H) of this article are initiated against the user.

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- (2) If necessary, severance of the sewer connection or water service may occur without notice.
- (3) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the City within five business days.

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

- (H) *Termination of discharge.* Any user that violates the conditions in §51.078(F) of this article is subject to discharge termination. Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under §51.083(C) of this article why the proposed action should not be taken. Exercise of this option by the City shall not be a bar to, or a prerequisite for, taking any other action against the user.

(Code 1991, §51.083; Ord. No. 3965, §§2, 3 (Exh. A), 5-7-96)

### 51.084 Judicial Enforcement Remedies

- (A) *Injunctive relief.* When the City finds that a user has violated (or continues to violate) any provision of this article, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the City may petition the appropriate court through the City's attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this article on activities of the user. The City may also seek such other action as is appropriate for 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.

(B) *Civil penalties.*

- (1) A user which has violated or continues to violate any provision of this article, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the City for a maximum civil penalty of \$1,000.00 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 violation.

- (2) In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
- (3) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(C) *Criminal penalties.*

- (1) A user who willfully or negligently violates any provision of this article, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000.00) per violation, per day.
- (2) A user who willfully or negligently introduces any substance into the WRRF which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty not more than one thousand dollars (\$1,000.00) per violation, per day. 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 article, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this article shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000.00) per violation, per day. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

- (D) *Cost recovery.* The City may recover reasonable attorney's fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost



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of any actual damages or fines incurred by the City.

- (E) *Remedies nonexclusive.* The remedies provided for in this article are not exclusive. The City 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 within the City's Pretreatment Program. However, the City may take other action against any user, including but not limiting to, misdemeanor and felony fines and imprisonment when the circumstances warrant.

(Code 1991, §51.084; Ord. No. 3965, §§2, 3 (Exh. A), 5-7-96)

**51.085 Affirmative Defenses to Discharge Violations**

(A) *Upset.*

- (1) For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (3) are met.
- (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 City as soon as possible but no later than 24 hours after becoming aware of the upset. If this information is provided orally, a written submission must be provided within five

business days:

- (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;
- (iii) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance; and
- (iv) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

- (4) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

- (5) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

- (B) *Prohibited discharge standards.* A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the prohibitions in §51.075(B)(1) of this article or the specific prohibitions in §51.075(B)(2)(c) through (r), except for §51.075(B)(2)(h), if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- (1) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- (2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of

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interference, was in compliance with applicable biosolids use or disposal requirements.

(C) *Bypass.*

(1) For the purposes of this section:

(a) "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.

(b) "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.

(2) 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 (C) and (D) of this section.

(3) Notice.

(a) If a user knows in advance of the need for a bypass, it shall submit prior notice to the City, at least ten business days before the date of the bypass, if possible.

(b) A user shall submit oral notice to the City of an unanticipated bypass that exceeds applicable pretreatment standards as soon as possible but no later than 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five business 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 City may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(4) Bypass Prohibited; Exceptions.

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

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

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

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

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

(Code 1991, §51.085; Ord. No. 3965, §§2, 3 (Exh. A), 5-7-96; Ord. No. 4088, §7, 4-7-98)

**51.086 Miscellaneous Provisions**

(A) *Pretreatment charges and fees.* The City may adopt reasonable fees for reimbursement of the costs of development and administration of the City's pretreatment program which may include:

(1) Fees for wastewater discharge permit applications including the cost of processing such applications;

(2) Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users;

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

(4) Fees for filing appeals; and

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(5) Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this article and are separate from all other fees, fines, and penalties, chargeable by the City.

(B) *Severability.* If any provision of this article is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

(C) *Conflicts.* All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this article, are hereby repealed to the extent of the inconsistency or conflict.

(Code 1991, §51.086; Ord. No. 3965, §§2, 3 (Exh. A), 5-7-96)

### **51.087 Surcharge**

(A) Any significant industrial user generating discharge which exhibits none of the characteristics of wastes prohibited in §51.075 but which has an average concentration of surcharge parameters in 51.137(E) in excess of the allowed strengths in 51.137(E) during a 24-hour period, may be required to obtain a discharge permit. Such discharge may, however, be accepted by the WRRF for treatment in accordance with Extra Strength Surcharge requirements in 51.137(E).

(B) The City reserves the right to review and approve any waters or industrial waste entering the city's sewer system or proposed to be discharged into the system having an average daily flow greater than 10% of the design flow capacity of the plant which will treat the waste. In the event the city's measurement discloses such flow in excess of such capacity, the city shall be under no obligation to receive such flow in excess of 10% of designed capacity and the city's published rate shall not apply to such excess. An owner affected hereby shall be promptly notified of such determination by the City. A special contract, at the city's option, may be made with the user to accommodate such excess flow.

(Code 1991, §51.087)

### **51.088-51.109 Reserved**

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**51.137 Monthly Sewer Rates**

(A) *Monthly sewer rates.*

(1) All monthly sewer charges shall be calculated from the customer's monthly water usage. The following monthly rates are hereby fixed as rates to be charged for sewer services:

Class	Usage Rate (In Gallons)	Cost per 1,000 gallons
Residential	First 2,000 gallons	\$3.10
	Greater than 2,000 gallons	3.10
Non-Residential	All Usage	2.42
Major Industrial	All Usage	2.42
Farmington	All Usage	4.66
Outside city	All Usage	4.66
Elkins	85% of metered water usage	2.81
	Usage above 85% of metered water usage	1.98

Class	Usage Rate (In Gallons)	Cost per 1,000 gallons
Residential	First 2,000 gallons	\$3.00
	Greater than 2,000 gallons	4.00
Non-Residential	All Usage	3.02
Major Industrial	All Usage	3.03
Farmington	All Usage	5.13
Outside city	All Usage	5.57
Elkins	85% of metered water usage	3.53
	Usage above 85% of metered water usage	1.85

Class	Usage Rate (In Gallons)	Cost per 1,000 gallons
Residential	First 2,000 gallons	\$3.07
	Greater than 2,000 gallons	4.10
Non-Residential	All Usage	3.10
Major Industrial	All Usage	3.21
Farmington	All Usage	5.28
Outside city	All Usage	5.74
Elkins	85% of metered water usage	3.64
	Usage above 85% of metered water usage	1.91

Class	Usage Rate (In Gallons)	Cost per 1,000 gallons
Residential	First 2,000 gallons	\$3.14
	Greater than 2,000 gallons	4.18
Non-Residential	All Usage	3.18
Major Industrial	All Usage	3.40
Farmington	All Usage	5.44
Outside city	All Usage	5.91
Elkins	85% of metered water usage	3.75
	Usage above 85% of metered water usage	1.96

(2) Beginning January 1, 2012, all monthly sewer quantity charge- usage rates per 1,000 gallons shall be increased by 3% per year.

(3) Sewer related fees levied by the Cities of Farmington or Greenland shall be added to the wastewater utility bill at the request of Farmington or Greenland. These fees may be calculated on a per-thousand volumetric usage or a per month basis.

(B) *Monthly sewer service charge.*

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- (1) In addition to the above, each customer shall pay a monthly sewer service charge in accordance with the following schedule:

<b>Table E-1 Monthly Sewer Service Charge Prior to January 1, 2009</b>			
Meter Size	Inside City	Outside City†	Farmington†
5/8" x 3/4 "	\$ 10.36	\$ 10.35	\$ 10.35
1 inch	13.47	19.35	19.35
1½ inch	21.99	34.33	34.33
2 inch	31.44	49.32	49.32
3 inch	73.01	104.40	104.40
4 inch	120.26	171.97	171.97
6 inch	238.37	340.87	340.87
8 inch	356.48	509.76	509.76

<b>Table E-2 Monthly Sewer Service Charge After December 31, 2008</b>			
Meter Size	Inside City	Outside City†	Farmington†
5/8" x 3/4"	\$ 12.45	\$ 12.40	\$ 11.40
1 inch	16.20	23.10	21.30
1½ inch	26.45	41.10	37.80
2 inch	37.80	54.30	50.00
3 inch	87.75	125.50	115.30
4 inch	144.50	206.60	189.85
6 inch	286.45	409.60	376.40
8 inch	428.40	612.60	563.00

<b>Table E-3 Monthly Sewer Service Charge After December 31, 2009</b>			
Meter Size	Inside City	Outside City†	Farmington†
5/8" x 3/4 "	\$ 12.80	\$ 12.80	\$ 11.70
1 inch	16.65	23.80	21.90
1½ inch	27.15	42.30	38.90
2 inch	38.85	55.90	51.50
3 inch	90.20	129.25	118.75
4 inch	148.60	212.80	195.55
6 inch	294.50	421.88	387.70
8 inch	440.45	631.00	579.90

<b>Table E-4 Monthly Sewer Service Charge After December 31, 2010</b>			
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Meter Size	Inside City	Outside City†	Farmington†
5/8" x 3/4"	\$ 13.20	\$ 13.20	\$ 12.10
1 inch	17.15	24.50	22.60
1½ inch	28.00	43.60	40.10
2 inch	40.05	57.60	53.05
3 inch	93.00	133.10	122.30
4 inch	153.25	219.20	201.50
6 inch	303.70	434.50	400.00
8 inch	454.20	650.00	597.30

†Cost of Service Methodology required by contract.

- (2) Beginning January 1, 2012, all monthly sewer service charges shall be increased by 3% per year.
- (C) *Determination of sewer quantity charge for residential customers.*

(1) In the case of residential customers residing in a single family home, duplex, triplex, and/or fourplex, the average monthly water consumption for the preceding months of December, January, and February shall be computed separately for each customer, and a uniform monthly charge for each customer shall be determined by applying the schedule of rates set out in subsection (A) of this section to such average monthly water consumption. In the case of a residential user for whom a uniform monthly charge has been established and who moves to a new location the same uniform monthly charge shall apply at the new location. In the case of new residential customers, sewer averages shall be established based on the number of individuals residing within the dwelling unit, at a rate of 2,100 gallons per customer per month. This methodology of sewer averaging shall not apply to multi-family structures containing five (5) or more units in a contiguous building.

(2) In the case of sewer customers who do not have a water meter provided by a public water utility, the sewer usage volume billed shall be the average volume of all users in the sewer system in like dwellings from the most recent system-wide sewer average calculation.

(D) *Determination of charge for non-residential and major industrial customers.* In the case of non-residential and/or major industrial customers, the monthly sewer charge shall be determined by applying the schedule of rates prescribed in subsection (A) of this section to the monthly water

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usage of such customers. In the event that a non-residential or major industrial customer discharging waste into the city's sanitary sewer system produces evidence to the Water and Wastewater Director demonstrating that a substantial portion of the total amount of water from all sources used for all purposes does not reach the sanitary sewer which is in excess of the factors used in establishing the rates in subsection (A) of this section, an estimated percentage of total water consumption to be used in computing charges may be established by the Water and Wastewater Director. The factors used in establishing said rates are on file in the office of the Water and Wastewater Director and are incorporated herein by reference thereto. Any rate so adjusted by the Water and Wastewater Director shall be effective for a 12-month period beginning with the billing for the month when rates adjudged hereby go into effect.

(E) *Extra Strength Surcharge.*

- (1) For all significant industrial users as defined in §51.074, whose wastewater discharge is greater than 300 mg/l of BOD<sub>5</sub> and/or TSS, the City shall levy an Extra Strength Surcharge for each parameter in accordance with the following unit charges:

<b>Table F3 Extra Strength Surcharges</b>	
<b>After 12/1/2011</b>	
Extra Strength BOD <sub>5</sub>	\$0.3145 per pound
Extra Strength TSS	\$0.2209 per pound

- (2) Starting after December 31, 2011, Extra Strength Surcharges shall be increased by 3% per year.
- (3) Extra Strength Surcharges shall be billed monthly and shall be computed on the basis of water meter reading (wastewater discharge volume).
- (4) All sampling and analyses of the wastewater characteristics shall be performed in accordance with U.S. Environmental Protection Agency 40 Code of Federal Regulations Part 136 approved methods.
- (5) The volume of flow used in computing surcharge shall be based upon metered water consumption as shown in the records of meter readings maintained by the city's business office. In the event that a user discharging waste into the city sanitary sewer system produces evidence to the city demonstrating

that a portion of the total amount of water used for all purposes is not discharged into the sanitary sewer, a separate meter or meters or other approved flow measuring device may be installed at the user's expense, upon its request, to measure only that portion of the total flow being discharged into the city sewer system. If a surcharge is assessed by the city, it shall be shown separately on the monthly billing.

- (6) Any person discharging industrial waste into the sanitary sewers of the city who procures any part or all of the user's water supply from sources other than the city, all or part of which is discharged into the sanitary sewer, shall install and maintain at the user's expense water meters of the type approved by the city for the purpose of determining the proper volume of flow to be used in computing sewer service charges. Such meter will be read monthly and tested for accuracy when deemed necessary by the city. Where it can be shown that a portion of the water measured by the aforesaid meter or meters does not enter the sanitary sewer system of the city, a separate meter or meters or other approved flow measuring device may be installed at the user's expense, upon its request, to measure only that portion of the total flow being discharged into the city sewer system. If a surcharge is assessed by the city, it shall be shown separately on the monthly billing.
- (7) Computation of extra strength surcharges shall be based on the following formula:
- (a) Extra strength surcharge:
- $$S = V \times 8.34 \times [\text{BOD Unit Charge (BOD - 300)} + \text{SS Unit Charge (TSS - 300)}]$$
- (b) Where:
- S = Surcharge in dollars
- V = Sewer volume in million gallons
- 8.34 = Pounds per gallon of water
- BOD Unit Charge = Unit charge for BOD in dollars per pound
- BOD = BOD strength in parts per million
- 300 = Allowed BOD strength in parts per million
- TSS Unit = Unit charge for suspended

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Charge		solids in dollars per pound
TSS	=	Suspended solids strength in parts per million
300	=	Allowed TSS Strength in parts per million

7-1-86; Ord. No. 3285, 8-4-87; Ord. No. 3398, 1-3-89; Ord. No. 3491, 7-17-90; Ord. No. 3637, §§1, 2, 8-18-92; Ord. No. 4059, §2, 10-7-97; Code 1991, §51.137; Ord. No. 4530, 12-02-03; Ord. No. 4803, 12-20-05; Ord. 4998, 4-3-07; Ord. 5129, 4-15-08; Ord. 5438, 9-20-11)

**51.138 Definitions Pertaining to Water and Sewer Rates**

(F) *Elkins sewer charges.*

- (1) Elkins' payment for wastewater treatment shall be based on 85% of the metered water purchased. The volume of wastewater received by Fayetteville at the "Point of Connection" shall be measured by the installed wastewater meter. Volumes of wastewater below or above the agreed upon percentage (85%) of metered water, as measured by the wastewater meter, shall be recorded on a monthly basis, with a reconciliation of the net difference to occur semiannually in June and December. If the reconciliation volume is over the agreed upon percentage, this amount shall be billed to Elkins in June and December at the actual computed cost of wastewater collection to and treatment at the Noland Wastewater Treatment Plant, not including the calculated rate of return and not including depreciation charges, but including any capacity surcharge, based on the most recent rate as determined in paragraph B of this Contract. If the reconciliation volume is below the agreed upon percentage, the actual amount billed for the difference shall be refunded to Elkins in June and December
- (2) Elkins impact fee charges. The City of Elkins shall pay an additional \$0.25 per 1,000 gallons of wastewater, for all wastewater volume charges including both the 85% of metered water volume and for wastewater in excess of the 85% of the metered water purchased billed volume.

(G) *Hauled Wastewater Fees.*

- (1) Application fee. An application to discharge hauled domestic waste must be accompanied by a fee of \$100.00.
- (2) Discharge fee. A fee of \$50.00 must be paid for each hauled domestic waste load discharged.

(H) *Industrial Wastewater Discharge Permit Fee.*

- (1) Application fee. An application for an industrial wastewater discharge permit must be accompanied by a fee of \$500.00.

(Code 1965, §21-26; Ord. No. 1165, 4-18-58; Ord. No. 3197,

For the purpose of the sections pertaining to water and sewer rates, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (A) *City of Farmington customer.* Customer whose structure being served for water and/or wastewater is physically located within the incorporated limits of the City of Farmington, Arkansas, who is served by the City of Fayetteville for water and/or sewer service.
- (B) *Inside City customer.* Customer whose structure being served for water and/or wastewater is physically located inside the incorporated limits of the City of Fayetteville, AR.
- (C) *Infiltration/inflow.* The total quantity of water other than wastewater from both infiltration and inflow without distinguishing the source from defective pipes, pipe joints, connections, manholes, roof down spouts, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, storm sewer cross connections, catch basins, cooling towers, storm waters, surface runoffs, street wash water, or drainage. Infiltration and Inflow are specifically prohibited from being intentionally allowed into the sanitary sewer system.
- (D) *Irrigation users.* Irrigation users include meters installed which serve primarily landscape irrigation systems and include city-owned meters which directly connect to the city water system (water only) or privately owned meters located downstream of a city-owned meter (exempt meters). Meters which serve park properties, golf courses, commercial nurseries and/or land agricultural uses shall be classified as irrigation except for meters at these locations which serve exclusively non-irrigation uses. Exempt meters which serve uses other than landscape irrigation systems shall also be considered irrigation and shall not be considered commercial.
- (E) *Major industrial user.* An industrial customer who uses an average of 5,000,000 gallons or more of metered water per month in the previous calendar year for non-irrigation use at a common facility/building. This does not apply to combined or consolidated sets of bills for non-irrigation use

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at separate facilities/buildings.

- (F) *Municipality*. A city, town, county, parish, district, association, or other public body (including an inter-municipal agency of two or more of the foregoing entities) created under state law having jurisdiction over disposal of sewage, industrial waste or other waste. The definition includes special districts such as water, sewer, sanitary, utility, drainage, transport, or disposal of liquid waste of the general public in a particular geographic area.
- (G) *Non-residential customer or user*. All customers that do not meet the specific definitions of residential customers, irrigation users, or major industrial users. Non-residential customers include but are not limited to retail establishments, restaurants, office buildings, laundries, governmental, educational, social, charitable, religious, medical, penal institutions, poultry houses, other private business and service establishments. It also includes industrial users using less than an average of 5,000,000 gallons per month in the previous calendar year.
- (H) *Operation and maintenance*. Those functions that result in expenditures during the useful life of the treatment works for materials, labor, utilities, and other items which are necessary for managing and for which such works were designed and constructed. The term "operation and maintenance" includes replacement.
- (I) *Replacement*. Expenditures for obtaining and installing components, equipment and appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed.
- (J) *Residential customer or user*. Any contributor of wastewater to the city's treatment works whose dwelling in a single family home, duplex, triplex, fourplex and/or any individually metered dwelling unit that is used for domestic dwelling purposes only.
- (K) *Treatment works*. Any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes. These include intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions improvement; remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate

disposal of residues resulting from such treatment (including land for composting biosolids, temporary storage of such compost, and land used for the storage of treated wastewater in land treatment systems before land application); or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

- (L) *Useful life*. The estimated period during which a treatment works will be operated.
- (M) *User charge*. That portion of the total wastewater service charge which is levied in a proportional and adequate manner for the cost of operation, maintenance and replacement of the wastewater treatment works.
- (N) *Water meter*. A water volume measuring and recording device, furnished and installed by the water department of the city. In some bulk water cases, primarily for construction uses where a standard water meter cannot be used due to large volume or water velocity requirements, the water shall be measured using a pitot gauge and a timer.

(Code 1965, §21-26.1; Ord. No. 1760, 9-9-70; Ord. No. 2913, 4-19-83; Ord. No. 2972, 1-17-84; Ord. No. 3197, 7-1-86; Ord. No. 3491, 7-17-90; Ord. No. 3637, §3, 8-18-92; Ord. No. 4059, §3, 10-7-97; Code 1991, §51.138; Ord. 5124, 4-1-08)

### 51.139 Reviews of Water and Sewer Rates, Notification to User

- (A) *Periodic review by city; revision of rates*. The city shall review the charges periodically and revise the rates as necessary to ensure that adequate revenues are generated to pay the cost of operation, maintenance, and replacement, and that the system continues to provide for the proportional distribution of operation, maintenance, and replacement costs among users and user classes.
- (B) *Notification of user*. The city shall notify each user at least annually, in conjunction with a regular bill, of the rates being charged for operation, maintenance and replacement of the wastewater treatment works.

(Code 1965, §21-27; Ord. No. 1103, 2-20-56; Code 1991, §51.139; Ord. 5125, 4-1-08)

**State law reference(s)**--Cities of the first class - Sale or purchases of water to other municipalities, A.C.A. §14-234-108; Cities of the first class - Sale of water to certain persons; A.C.A. §14-234-109; Waterworks operated in governmental



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capacity - Services to nonresident consumers, A.C.A. §14-234-110; Service to adjacent areas-Municipalities generally, A.C.A. §14-234-111.

**51.140 Water Billing Procedure**

(A) *Water service bills.* All bills for water services shall be rendered in the net amount due. Water bills are due and payable on or before the 20th day following the billing date stated on the water bill. Water bills not paid on or before the due date shall be considered delinquent and an additional charge of 10% of the total bill shall be paid; provided said penalty may be waived for elderly or handicapped utility customers pursuant to a penalty waiver program approved by the City Council.

(B) *Termination of service.* The city shall disconnect utility service in accordance with the following policies:

(1) When it becomes necessary for the city to discontinue utility service to a customer for nonpayment of bills, service will be reinstated only after all bills for service then due have been paid and deposit required has been made. It is the policy of the city to terminate service to customers for reason of nonpayment of bills only after they have been given notice and a meaningful opportunity to be heard on disputed bills. The city's form for application for utility service and all bills shall contain, in addition to the title, address, room number, and telephone number of the official in charge of billing, clearly visible and easily readable provisions to the effect:

- (a) That all bills are due and payable on or before the date set forth on the bill; and
- (b) That if any bill is not paid by or before that date, notice will be mailed advising the customer that if the bill is not paid within 28 days following the billing date stated on the water bill service will be disconnected, and the customer's deposit will be forfeited in an amount sufficient to cover the gross amount of his due bill. The forfeiture of the deposit shall take place if the customer has not paid the delinquent bill plus all applicable service charges within seven days after disconnection; and
- (c) That any customer disputing the correctness of his bill shall have a right to a hearing at which time he may be represented in person and by counsel or any other person of his choosing and may present orally or in writing his complaint and contentions to the city official in

charge of utility billing. This official shall be authorized to order that the customer's service not be discontinued and shall have the authority to make a final determination of the customer's complaint.

(2) Requests for delays or waiver of payment will not be entertained; only questions of proper and correct billing will be considered. In the absence of payment of the bill rendered or resort to the hearing procedure provided herein, service will be discontinued at the time specified.

(3) Before service may be re-established following disconnection or forfeiture of a service deposit, the consumer must pay any bill due the city for water service not liquidated by the forfeited deposit. Said consumer must also make a new service deposit in accordance with §51.135(l) and pay an additional service charge of \$35.00.

(4) Definition of 'customer'

(a) For purposes of this section a 'customer' shall mean a person or the spouse of the person in whose name water service from the City of Fayetteville has been obtained. A 'customer' shall also mean the trustee or any beneficiary of a trust which is the owner of any property which has received water service from the City of Fayetteville. Furthermore, a person who is a member of a Limited Liability Company, partnership, or similar entity which received water service in the entity's name or a principal shareholder or director of a corporation which has received water service shall be considered a 'customer'.

(b) Unless the mayor determines it would be unfair and create an undue hardship on any such customer or other person, the failure of such customer to fully pay the customer's city utility bill for any city utility account shall justify the discontinuance of utility service to all of the customer's properties and accounts. The mayor may exempt from discontinuance of service a particular customer's utility account to prevent unfairness and undue hardship.

(5) If the water meter has not been shut off, there shall be a service charge of \$5.00 for collection of a water bill made in the field by a service person.

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(Code 1991, §51.141)

(C) *Billing adjustments.* All water consumers will be required to pay the full amount of the bill calculated by the city, except in those instances where the water meter concerned, or other water plant property, has been shown to be defective and has resulted in an excessive charge to the customer's account.

- (1) Where the consumer has not been negligent by his failure to repair known leaks or causes of excess water consumption, an adjustment may be made to the consumer's bill if in the opinion of the water and wastewater director, or his official representative, an adjustment is justified.
- (2) In no event shall a billing adjustment exceed 50% of the difference between the average of the customer's prior billings and the amount of the disputed billing.
- (3) In no event will a billing adjustment amounting to less than \$1.00 be made.
- (4) If the problem with the bill is due to leakage or some problem other than a misread or a malfunction of city equipment, the consumer shall pay a service charge of \$5.00.
- (5) Permanent house numbers, visible from the street, if possible shall be prominently displayed before a meter check or service call is made.

(Code 1965, §21-28--21-28.2; Ord. No. 1165, 4-18-58; Ord. No. 1731, 2-2-70; Ord. No. 2144, 9-25-75; Ord. No. 2330, 5-3-77; Ord. No. 2675, 11-4-80; Ord. No. 3193, 6-18-86; Ord. No. 3436, 7-5-89; Ord. No. 4223, 2-15-00; Code 1991, §51.140; Ord. 5219, 2-3-09)

### 51.141 Sewer Billing Procedure

- (A) Bills for sewer service shall be rendered monthly. Sewer bills are due and payable on or before the 20<sup>th</sup> day following the billing date stated on the sewer bills. Sewer bills not paid on or before the due date shall be considered delinquent and an additional charge of 10% of the total bill shall be added, and if any bill not paid within 30 days after the bill shall be due, suit may be brought to collect the amount due, together with the expenses of collection and a reasonable attorney's fee.
- (B) In the case of the sewer customers outside the city limits, if the monthly service charges are not paid within the prescribed time, sewer service to the customer will be discontinued in the same manner and subject to the same provisions as prescribed for discontinuance of service under §51.140(B).

### 51.142 Reduction Of Rates

The city hereby covenants and agrees that the rates established by this article shall never be reduced while any waterworks and sewer revenue bonds issued pursuant to Ordinance No. 1166, passed and approved April 18, 1958, are outstanding, unless there is obtained from an independent certified public accountant a certificate that the net revenues of the system for each of the two preceding fiscal years (net revenues being defined as gross revenues less the reasonable expenses of operation and maintenance of the system, including all expense items properly attributable to operation and maintenance under generally accepted accounting practices applicable to municipal waterworks and sewer systems) were equal to the amount required to be set aside for a depreciation fund by Ordinance No. 1166, plus at least 150% of the maximum amount that will become due in any year for principal, interest, and service charges on all waterworks and sewer revenue bonds then outstanding, together with a written opinion from such independent certified public accountant that the proposed new rate will produce sufficient net revenue, as above defined, to make the required deposit into such depreciation fund and to leave a balance equal to at least 150% of the maximum amount that will become due in any year for principal, interest and service charges on all waterworks and sewer revenue bonds then outstanding.

(Code 1965, §21-30; Ord. No. 1165, 4-18-58; Code 1991, §51.142)

### 51.143 Turning-On Of Water; Fees

- (A) All consumer requests for same day turn on service shall pay a \$15.00 turn on fee in advance.
- (B) Before water service shall be turned on, permanent house numbers visible from the street, if possible, must be prominently displayed on the property. In the event water service cannot be turned on because the house numbers have not been prominently displayed or are inaccurate, the customer shall pay a \$15.00 service charge for each trip to the property made by a service person for the purpose of turning on the water; provided there shall be no charge for the first two trips. For existing water services which do not have permanent house numbers prominently displayed on the property, the consumer shall be given written notice by certified mail that if his permanent house numbers are not prominently displayed within seven days from the date of the notice, water service shall be disconnected and shall not be reconnected until a \$15.00 service charge is paid.

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(C) In the event water service cannot be left on because of water running on the customer's side of the meter, a notice shall be left on the property stating that the water was left off because of the running water. In the event the service person is required to make more than one additional trip to turn on the water, or if the trip is made after normal working hours as defined in §51.140(B)(2) there shall be an additional service charge of \$10.00 per trip.

(Code 1965, §§21-31--21-33; Ord. No. 2144, 9-2-75; Ord. No. 2675, 11-4-80; Code 1991, §51.143)

**51.144 Filling Water Tanks On Commercial Trucks; Rates**

(A) Water rates for consumers that purchase water for the purpose of filling water tanks on commercial trucks shall be as follows:

**Table I**  
**Water Rates for Commercial Water Trucks**

Volume	Rate
First 1,000 gallons	A minimum of \$9.00 (\$5.00 labor plus \$4.00 water/tax).
Greater than 1,000 gallons	\$4.00 per 1,000 gallons

(B) Rates are charged on a per-trip basis. The initial labor charge shall be paid upon each arrival at the fill site.

(Ord. No. 3478, 4-3-90; Ord. No. 3491, 7-17-90; Ord. No. 4059, §4, 10-7-97; Code 1991, §51.144; Ord. 5126, 4-1-08)

**51.145 Address Number Requirements**

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (1) *Permanent numbers.* Address numbers that are raised numbers, made of metal, wood, or plastic and are nailed or screwed into the building. These numbers are those assigned to the building by the city.
- (2) *Stick-on numbers.* Address numbers that have an adhesive backing that are designed, or were originally designed, to stick onto the building.
- (3) *Temporary numbers.* Address numbers that are raised numbers, made of metal, wood, or plastic and are nailed or screwed onto a board, and staked into the ground and rise from three

to four feet above the ground. Temporary numbers may also be painted onto a board and staked into the ground.

(B) *Permanent address numbers required.*

- (1) Permanent numbers must be nailed or screwed into the building and must be clearly visible from the street.
- (2) All numbers shall be installed at the expense of the owner and shall be maintained at the owner's expense.
- (3) No "stick-on" numbers shall be accepted.
- (4) All numbers must be made of metal, plastic, or wood.
- (5) All numbers must be at least 3 inches in height.
- (6) All numbers must be contrasting in color to the building.
- (7) Numbers must be displayed on the front of the building, or on the side that faces the street and easily visible from the street.
- (8) Commercial establishments must have permanent numbers nailed or screwed into the building. Commercial establishments with glass fronts may have painted numbers on the glass, but only if there is nowhere possible to nail or screw permanent numbers into the building.
- (9) Commercial establishments that have individual suites must have permanent numbers on the building (building number) and also permanent numbers on each suite (suite number).
- (10) Mobile homes must have permanent address numbers nailed or screwed into the trailer. The numbers must be affixed to the side or end of the trailer that faces the street.
- (11) Mobile home parks must have the park address number displayed at the entrance to the park (may have permanent numbers or painted numbers affixed to park entrance sign), and must also have permanent, individual space numbers affixed to each mobile home.
- (12) Apartment buildings must have the building number permanently affixed to each building, and must also have individual apartment numbers permanently affixed to each

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apartment.

- (13) Buildings not visible from the street must have permanent numbers nailed or screwed into a board and posted at the entrance of the driveway (either on a post or on a tree); numbers must raise from three to four feet above the ground, and be clearly visible from the street. If two or more buildings are on the same drive, permanent numbers must also be nailed or screwed into each individual building, as well as both numbers posted at the entrance of the driveway.
- (14) Construction sites, where the building is not complete enough to affix permanent address numbers, must display temporary numbers at the construction site where they are clearly visible from the street.
- (15) Locations where there is a water meter for purposes of irrigating, watering stock, chicken houses, and the like where there is no building to affix numbers, must be permanently nailed or screwed onto a board and posted at the entrance of the driveway; numbers must rise from three to four feet above the ground, and be clearly visible from the street. If there is no driveway to the property, the board must be posted near the water meter box.

Any variations from this policy must have the prior written consent of the water and sewer services superintendent.

(C) *Service requests.*

- (1) Permanent numbers must be displayed before any service calls will be made by the city.
- (2) Permanent numbers must be displayed before a meter check or billing adjustment is made by the Water and Sewer Division.
- (3) Permanent numbers must be displayed before water service is turned on at the address.
- (4) In the event a service call is made and the address number is not displayed in the above manner, the property owner shall be assessed a fee of \$15.00 for each trip to the property made by a service person provided there shall be no charge for the first two trips. There shall be a \$25.00 fee assessed for any service calls made after normal working hours (weekdays between 4:00 p.m. and 8:00 a.m., on holidays, or on weekends).
- (5) For existing water services which do not have permanent numbers prominently displayed,

the consumer shall be given written notice by certified mail that if his permanent numbers are not prominently displayed within 21 days from the date of the notice, water service shall be disconnected and shall not be reconnected until permanent numbers have been properly displayed and a \$15.00 service charge is paid.

(Ord. No. 3569, 10-1-91; Code 1991, §51.145)

**51.146 Backflow Prevention**

(A) *Purpose.* The purpose of this section is as follows:

- (1) To protect the public water supply of the city from the possibility of contamination or pollution from backflow into the public water system.
- (2) To promote the elimination or control of cross connections, actual or potential, between the customer's potable water system(s) and nonpotable water systems, plumbing fixtures, and industrial piping systems.
- (3) To contain at the service connection any actual or potential pollution or contamination within the customer's premises.
- (4) To provide a continuous, systematic, and effective program of cross-connection control.

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (1) *Backflow* shall mean a hydraulic condition, caused by a difference in pressures, in which non-potable water or other fluids flow into a potable water system.
- (2) *Backflow preventer* shall mean a testable assembly to prevent backflow.
- (3) *Cross connection* means any actual or potential connection between the public water system and a source of contamination or pollution.
- (4) *Double-check valve assembly (DC)* means a complete assembly meeting AWWA Standard C510 and the requirements of the *Arkansas State Plumbing Code* consisting of two internally loaded, independently operating check valves between two tightly closing resilient-seated shutoff valves, with four properly placed resilient seated test cocks.
- (5) *Reduced-pressure principle backflow*

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*prevention assembly (RP)* means a complete assembly meeting AWWA Standard C511 and the requirements of the *Arkansas State Plumbing Code* consisting of a hydraulically operating, mechanically independent differential relief valve located between two independently operating, internally loaded check valves that are located between two tightly closing resilient seated shutoff valves with four properly placed resilient-seated test cocks.

(6) *Air gap (AG)* means a physical separation between two piping systems.

(C) *Handbook of Policies and Procedures.* There is hereby adopted by the City Council, by reference thereto, the provisions set forth in the *City of Fayetteville Cross-Connection Control Program: Handbook of Policies and Procedures*, as may from time to time hereafter be amended.

(D) *Applicability.*

(1) The requirements and standards set forth herein shall apply to industrial and commercial establishments.

(2) Single-family, residential dwelling units, unless involved in commercial operations, are exempt from the requirements of this section except where they fall under the purview of the *Arkansas State Plumbing Code* and/or the *City of Fayetteville's Cross-Connection Control Program: Handbook of Policies and Procedures*.

(3) These standards are supplemental to and do not supersede or modify the *Arkansas State Plumbing Code* (ASPC) and its latest revisions under which the city operates.

(E) *Administration.* The Water and Sewer Division of the city shall be responsible for administration of this section and evaluating the hazards inherent in supplying a customer's water system.

(F) *Backflow prevention.*

(1) *Evaluation of hazards.* The Water and Sewer Division shall determine whether solid, liquid, or gaseous pollutants or contaminants are, or may be, handled and/or used on the customer's premises in such a manner as to possibly contaminate the public water system.

(2) *Customer installation of BFP.* When a hazard or potential hazard to the public water system is found on the customer's premises, the customer shall be required to install an

approved backflow prevention assembly (BFP), or an air gap, at each public water service connection to the premises.

(3) Type of BFP.

(a) The type of BFP required shall depend on the degree of hazard involved.

(b) Any backflow prevention assembly required herein shall be an approved type which is in compliance with requirements of the *City of Fayetteville's Cross-Connection Control Program: Handbook of Policies and Procedures*.

(4) *Degree of hazard.* The degree of hazard shall be as determined as set forth in AWWA M-14 manual or as described below:

(a) In the case of any premises where there is an auxiliary water supply connected to the plumbing system, the public water system shall be protected from the possibility of backflow by a reduced-pressure principle backflow prevention assembly (RP) at the service connection.

(b) In the case of any premises where substances are handled and/or used that are objectionable, but not hazardous to human health, and the likelihood exists of it being introduced into the public water system by virtue of a backflow occurrence, the public water system shall be protected by an air gap or approved double check valve assembly (DC).

(c) In the case of any premises where there is any material hazardous to human health, which is handled and/or used in such a fashion as to create an actual or potential threat to the public water system by virtue of a backflow occurrence, the public water system shall be protected by an air gap or an approved reduced - pressure principle backflow prevention assembly (RP).

(d) In the case of any premises where there are unprotected cross-connections, either actual or potential, the public water system shall be protected by an approved reduced-pressure principle backflow prevention assembly (RP) or an air gap at the service connection.

(e) In the case of any premises where, because of security requirements or other prohibitions or restrictions, it is

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impossible or impractical to make a complete cross-connection survey, the public water system shall be protected by the installation of an approved reduced-pressure principle backflow prevention assembly (RP) or an air gap at the service connection.

(G) *Noncompliance/emergencies.*

(1) *Violation/notice.* Upon discovery of any protective device required by this section which has not been installed, or is defective, or has been removed, or altered, or relocated, or bypassed, (except emergency situations), written notice shall be given to the customer. Such notice shall set forth the violation, the remedy required, and the time frame in which the violation shall be remedied.

(2) *Water service discontinued.*

(a) If violations are not corrected by the date and time as stated on the notice, the water supply will be discontinued by the Water and Sewer Division.

(b) Discontinued water service shall not be resumed until conditions at the customer's premises have been abated or corrected to the satisfaction of the Water and Sewer Division.

(3) *No water service connection.* No water service connection shall be installed on the premises of any customer unless the public potable water system is protected as required by this section.

(4) *Emergency.* In emergency situations when the public potable water supply is being contaminated or is in immediate danger of contamination, the water service shall be discontinued by the water and sewer division immediately without notice.

(H) *Right of entry.* For the purpose of making any inspections or discharging the duties imposed by this section, the Water and Sewer Division of the city, the state health department, and/or plumbing inspector shall have the right to enter upon the premises of any customer. Each customer, as a condition of the continued delivery to his premises of water from the public water supply, shall be considered as having stated his consent to the entry upon his premises by the Water and Sewer Division of the city, the state health department, and/or plumbing inspector for the purpose stated herein.

(I) *Ownership.* Backflow prevention assemblies required by this section will be installed downstream of the water meter and are owned by, and are the responsibility of the customer of the water utility.

(J) *Installation and costs.* Customers of the city water utility requiring backflow prevention assemblies shall pay all costs associated with installation of the appropriate size and type of backflow preventer under private contract. Backflow prevention assemblies shall be installed in accordance with the requirements of the city's *Cross-Connection Control Program: Handbook of Policies and Procedures*. The Water and Sewer Division shall review and approve all plans for placement of backflow preventers prior to installation. Backflow prevention assemblies not installed in accordance with the requirements of the city's *Cross-Connection Control Program: Handbook of Policies and Procedures* shall be corrected at the customer's expense.

(K) *Testing and maintenance.* The customer or the contractor responsible for the installation of the backflow prevention assembly will notify the Water and Sewer Division immediately after installation of the assembly so that it can be tested and inspected. The Water and Sewer Division will inspect and test the backflow prevention assembly within ten days of the installation date and annually thereafter. In instances where the Water and Sewer Division, the City of Fayetteville, and/or the plumbing inspector deems the hazard to be great enough, testing may be required at more frequent intervals. All costs of testing shall be paid by the customer. Any repairs required as a result of inspections or testing shall be arranged for and paid by the customer through private contract with a certified assembly repair technician. Records of inspections, testing, and/or repairs to backflow preventers shall be kept by the Water and Sewer Division and/or the city and made available to the state health department upon request.

(L) *New construction.* All new construction within the city be effected upon the passage of this section. All existing customer premises shall be in compliance with this section in accordance with the notification by the water utility.

(M) *Thermal expansion.* It is the responsibility of the customer to eliminate possible hazards caused by thermal expansion if a closed system has been created by the installation of a backflow assembly.

(Ord. No. 4140, §1, 2-2-99; Code 1991, §51.146)

**51.147-51.998 Reserved**

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**51.999 Penalty**

- (A) The use or withdrawal of water by any person when prohibited under the terms of §51.001 is declared to be a misdemeanor punishable by a fine of not more than \$25.00; however, if the violation of said sections is continuous in respect to time, the penalty for the continuation thereof shall not exceed \$15.00 for each day that the same is continued.
- (B) It is hereby declared to be a misdemeanor for any person to fail, neglect, or refuse to connect to a city sewer line within the time prescribed by §51.110. Said misdemeanor shall be punishable by a fine in the amount of \$25.00 for the first offense, and shall be punishable by a fine of \$15.00 for each day that such violation continues.
- (C) Any user who is found to have violated an order of the City Council under this chapter (except as set forth in (A) or (B) above), or who violates or knowingly fails to comply with any provision of this chapter or the orders, rules, regulations, and/or permits issued hereunder, shall, upon conviction, be fined as set forth in §10.99 for such offense. Each day on which a violation shall occur or continue shall be deemed a separate or distinct offense. In addition to the penalties provided herein, the city may recover the expenses of litigation by appropriate suit at law against the person found to have violated this chapter or the orders, rules, regulations, and permits issued hereunder.
- (D) Any person who knowingly makes any false statements, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter, shall, upon conviction, be punished by a fine as set forth in §10.99.

(Code 1965, §§21-1.9, 21-5.1(c), 21-144; Ord. No. 1742, 6-1-70; Ord. No. 1757, 8-17-70; Ord. No. 2095, 4-1-75; Ord. No. 3250, 3-17-87; Code 1991, §51.999)

**State law reference(s)** Powers of authority generally, A.C.A. §14-143-109.