

SEWER USE ORDINANCE

SECTION 1 - GENERAL PROVISIONS

1.1 Purpose and Policy

This ordinance sets forth uniform requirements for users of the wastewater collection and Publicly Owned Treatment Works (POTW) for the Bluefield Sanitary Board (BSB) and enables BSB to comply with all applicable State and Federal laws and regulations including the Clean Water Act (33 U.S.C. 1251 et seq.), and the General Pretreatment Regulations (40 CFR Part 403) and the Virginia Permit Regulation (VR680-14-01 Part 7). Additionally this Ordinance is to provide for the maximum possible beneficial public use of BSB's POTW through regulation of sewer construction, sewer use, and wastewater discharges. Further objectives of this ordinance are:

- A. To prevent the introduction of pollutants into the POTW or collector system that will interfere with the operation of the POTW or collector system, or shorten the design life thereof;
- B. To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;
- C. To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
- D. To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public;
- E. To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW;
- F. To provide for fees for the equitable distribution of the cost of operation, maintenance and improvement of the POTW; and

- G. To enable BSB to comply with its NPDES and VPDES permit conditions, sludge use and disposal requirements and any other Federal or State laws to which the POTW is subject.

This ordinance shall apply to all users of the POTW. The ordinance authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance and enforcement activities; establishes administrative review procedures; requires industrial user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

1.2 Administration

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

1.3. Definitions

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

- A. Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.
- B. Approval Authority. The Executive Director or Director of the Virginia State Water Control Board in the area served by the West Side Plant. The Executive Director or Director of the Division of Natural Resources in the area served by the Ada Plant.
- C. ASTM. The American Society for Testing and Materials.

D. Authorized Representative of the Industrial User.

1. If the industrial user is a corporation, authorized representative shall mean:
 - 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.
 - b. the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
2. If the industrial user is a partnership, or sole proprietorship, an authorized representative shall mean a general partner or proprietor, respectively;
3. If the industrial user is a Federal, State or local governmental facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her designee;
4. The individuals described in paragraphs 1-3 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 BSB.

- E. Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20° centigrade expressed in terms of mass and concentration [milligrams per liter (mg/l)].
- F. Bluefield Sanitary Board. The City of Bluefield, West Virginia's Sanitary Board created pursuant to §16-13-18 of the Code of West Virginia.
- G. Building Sewer. The extension from a building wastewater plumbing facility to the treatment works.
- H. Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by the U. S. EPA in accordance with §§307(b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of industrial users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.
- I. City. The City of Bluefield, West Virginia.
- J. Color. The optical density at the visual wave length of maximum absorption, relative to distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.
- K. Combined Sewer. Any sewer intended to receive both wastewater and storm or surface water.
- L. 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.
- M. Control Authority. The Executive Director or Director of the Virginia State Water Control Board in the area served by the Westside Plant. The Executive Director or Director of the Division of Natural Resources in the area served by the Ada Plant.
- N. Day. The 24 hour period beginning at 12:01 a.m.
- O. Discharger. Person or persons, firm, company, industry or other similar sources of wastewater who introduce such into the POTW.

- P. Easement. An acquired legal right for the specific use of land owned by others.
- Q. Environmental Protection Agency or EPA. The U. S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Regional Water Management Division Director or other duly authorized official of said agency.
- R. Establishment. Any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal processing operations, quarry, oil, refinery, boat, vessel, and each and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the physical, chemical or biological properties of any state waters.
- S. Existing Source. Any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards which will be applicable to such source if the standard is thereafter promulgated in accordance with §307 of the Act.
- T. Garbage. The solid animal and vegetable wastes resulting from the domestic or commercial handling, storage, dispensing, preparation, cooking and serving of foods.
- U. Grab Sample. A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and without consideration of time.
- V. Ground Water. Any water beneath the land surface in the zone of saturation.
- W. Indirect Discharge or Discharge. The introduction of (non-domestic) pollutants into the POTW from any non-domestic source regulated under §307(b), (c) or (d) of the Act.
- X. Industrial User or User. A source of indirect discharge, or a non-domestic discharge to a treatment works.
- Y. Industrial Wastes. Liquid or other wastes resulting from any process of industry, manufacture, trade or

business, or from the development of any natural resources.

- Z. Instantaneous Maximum Allowable Discharge Limit. The maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.
- AA. Interference. A discharge which alone or in conjunction with a discharge or discharges from other sources: 1) inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and 2) therefore is a cause of a violation of BSB's NPDES and/or VPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder (or more stringent state or local regulations): §405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.
- BB. Medical Waste. Isolation wastes, infectious agents, human blood and blood byproducts, pathological wastes, sharps, body parts, fomites, etiologic agents, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.
- CC. Municipality. A city, county, town, district association, authority or other public body created under the law and having jurisdiction over disposal sewage, industrial, or other wastes.
- DD. Natural Outlet. Any outlet into a watercourse, pond, ditch, lake, or any other body of surface or groundwater.
- EE. New Source.
- (1) Any building, structures, 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 there are substantially independent factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of §(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 on-site 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.

FF. Non-contact Cooling Water. Water used for cooling which does not come into direct contact with any raw material intermediate product, waste product, or finished product.

GG. NPDES. National Pollutant Discharge Elimination System permit program, administered by the State of West Virginia.

HH. Owner. The Commonwealth of Virginia or State of West Virginia or any of their political subdivisions, including, but not limited to,

sanitation district commissions and authorities, sanitary boards, and public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any person or group of persons acting individually or as a group.

- II. Pass Through. A discharge which exits the POTW into waters of the U.S. in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of BSB's NPDES and/or VPDES permit (including an increase in the magnitude or duration of a violation).
- JJ. Person. Any individual, partnership, copartnership, 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.
- KK. pH. A measure of the acidity or alkalinity of a substance, expressed in standard units.
- LL. Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and the characteristics of the wastewater [i.e., pH, temperature, TSS, turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity, odor].
- MM. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical or biological processes, by process changes, or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.
- NN. Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on an industrial user, other than a pretreatment standard.

- OO. Pretreatment Standards or Standards. Prohibitive discharge standards, categorical pretreatment standards, and local limits.
- PP. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in §2.1 of this ordinance.
- QQ. Properly Shredded Garbages. Garbage that has been shredded to such a degree that all particles will be carried freely under flow conditions normally prevailing in the treatment works, with no particle greater than 1/2 inch in any dimension.
- RR. Publicly Owned Treatment Works or POTW. A "treatment works" as defined by §212 of the Act (33 U.S.C. 1292), which is owned by the State or municipality. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes and any conveyances which convey wastewater to a treatment plant. The term also means the municipal entity having jurisdiction over the industrial users and responsibility for the operation and maintenance of the treatment works.
- SS. Residential User (Class I). All premises used only for human residency and which is connected to the treatment works.
- TT. Sanitary Wastewater. Wastewater discharged from the sanitary conveniences of dwellings, office buildings, industrial plants, or institutions.
- UU. Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
- VV. Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).
- WW. Significant Industrial User. (a) industrial users subject to categorical pretreatment standards; and (b) any other industrial user that i) discharges an average of 25,000 gpd or more of process wastewater, ii) contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the treatment plant or, iii) is designated as significant by BSB on the basis that the industrial user has a reasonable potential for adversely

affecting the POTW's operation or for violating any pretreatment standard or requirement.

- XX. Slug Load. Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in §2.1 of this ordinance or any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a non-customary batch discharge.
- YY. Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the U. S. Office of Management and Budget.
- ZZ. Standard Methods. The latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, Water Pollution Control Federation, and American Water Works Association.
- AAA. State. The Commonwealth of Virginia or State of West Virginia in accordance with the applicable situation.
- BBB. Storm Sewer. A sewer for conveying storm, surface, and other waters, which is not intended to be transported to a treatment works.
- CCC. Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting therefrom, including snowmelt.
- DDD. Surface Water.
- (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce.
 - (ii) all interstate waters, including interstate "wetlands";
 - (iii) all other waters such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands", sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

- (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
- (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
- (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (iv) all impoundments of waters otherwise defined as surface waters under this definition;
- (v) tributaries of waters identified in paragraphs (i) - (iv) of this definition;
- (vii) "Wetlands" adjacent to waters, other than waters that are themselves wetlands, identified in paragraphs (i) - (v) of this definition.

EEE. Executive Director. The person designated by BSB to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this ordinance or his duly authorized representative.

FFF. 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.

GGG. Toxic Pollutant. One of 126 pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by the EPA under the provision of §307 (33 U.S.C. 1317) of the Act.

HHH. Treatment Facility shall mean only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

III. Treatment Plant. That portion of the POTW designed to provide treatment of sewage and industrial waste.

JJJ. Treatment Works. Any devices and systems used for the storage, treatment, recycling and/or reclamation of sewage or liquid industrial waste, or other waste necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

KKK. Treatment Plant Effluent. Any discharge of pollutants from the POTW into waters of the State.

LLL. VPDES. Virginia Pollutant Discharge Elimination System permit program, as administered by the Commonwealth of Virginia.

MMM. Wastewater. Liquid and water-carried industrial wastes, and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

Shall is mandatory; may is permissive or discretionary. The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.

1.4 Abbreviations

The following abbreviations shall have the designated meanings:

- BOD - Biochemical Oxygen Demand
- CFR - Code of Federal Regulations
- COD - Chemical Oxygen Demand

- gpd - Gallons Per Day
- l - Liter
- mg - Milligrams
- mg/l - Milligrams per liter
- O&M - Operation and Maintenance
- POTW - Publicly Owned Treatment Works
- RCRA - Resource Conservation and Recovery Act
- SIC - Standard Industrial Classifications
- SWDA - Solid Waste Disposal Act (42 U.S.C. 6901, et seq.)
- TSS - Total Suspended Solids
- USC - United States Code

SECTION 2 - GENERAL SEWER USE REQUIREMENTS

2:I Connection to Treatment Works Required

The owner of any house, building, or property which is used for commercial, industrial and/or residential purposes, abutting on any

street, alley, or rights-of-way in which there is or may be located a gravity sewer connected to the treatment works of the BSB, is required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly to the proper sewer in accordance with the provisions of this Ordinance, within thirty (30) days after notice that sewer is available within three hundred (300') feet of the property line. This section shall not apply to any person served by a privately constructed, owned, operated, and maintained sewer and treatment facility which discharges directly to a natural outlet in accordance with the provisions of this Ordinance and applicable State and Federal laws.

2:II Connection Permit

- (a) No person shall uncover, make any connections with, use, alter, or disturb any wastewater sewer or storm sewer without first obtaining a written permit from the Executive Director.
- (b) There shall be two (2) classes of permits for connections to the BSB's treatment Works & Treatment Facilities.

CLASS I - residential
CLASS II - industrial

In all cases, the owner shall make application for a permit to connect to the BSB's treatment works on a form furnished by the BSB. The permit application shall be supplemented by wastewater information required to administer this Ordinance. A permit and inspection fee in an amount to be set by the BSB from time to time in accordance with the applicable laws and regulations shall be paid to the BSB at the time the application is filed.

2:III Existing Building Sewers

Existing building sewers may be used for connection of new buildings only when they are found, on examination and testing by the Executive Director to meet the requirements of this Ordinance.

2:IV. Surface Runoff and Groundwater Drains

- (a) No person shall connect roof, foundation, areaway, parking lot, roadway, or other surface runoff or groundwater drains to any sewer which is connected to a treatment works unless such connection is authorized in writing by the Executive Director. The Connection of such drains shall conform to codes specified in Section 2:V or as specified by the Executive Director as a condition of approval of such connection.
- (b) Except as provided in Section 2:IV(a) above, roof, foundation, areaway, parking lot, roadway, or other surface runoff or groundwater drains shall discharge to natural outlets or storm sewers.

2:V. Conformance to Applicable Codes

- (a) The connection of a building sewer into a treatment works shall conform to the requirements of the building and plumbing code or other applicable requirements of the BSB, or the procedures set forth in appropriate specifications of the State of West Virginia Sewerage Regulations, Uniform Building Code, and American Society of Testing Materials. The connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved in writing by the Executive Director before installation.

2:VI. Connection Inspection

The applicant for a building sewer or other drainage connection permit shall notify the Executive Director when such sewer or drainage connection is ready for inspection prior to its connection to the BSB's treatment works. Such connection inspections and testing as deemed necessary by the Executive Director shall be made by the Executive Director.

2.VII. Prohibited Discharge Standards

No industrial user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all industrial users of the POTW whether or not they are subject to categorical pretreatment

standards or any other federal, state or local pretreatment standards or requirement. Furthermore, no industrial user may contribute the following substances to the POTW:

- A. Pollutants which create a fire or explosive hazard in the municipal wastewater collection system and POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.
- B. Any wastewater having a pH less than 5.0 or otherwise causing corrosive structural damage to the POTW or equipment, or endangering City personnel.
- C. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, but in no case solids greater than three inches (3") or eight (8) centimeters in any dimension.
- D. Any wastewater containing 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 either the POTW; or any wastewater treatment or sludge process, or which will constitute a hazard to humans or animals.
- E. Any wastewater having a temperature greater than 120°F, or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C).
- F. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
- G. Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- H. Any trucked or hauled pollutants, except at discharge points designated by BSB in accordance with §3.V.

- I. Any noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance, a hazard to life, or to prevent entry into the sewers for maintenance and repair.
- J. Any 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 BSB's NPDES and/or VPDES permit. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than 10 percent from the seasonably established norm for aquatic life.
- K. Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the Executive Director in compliance with applicable State or Federal regulations.
- L. Storm water, surface water, ground water, artisan well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, and unpolluted industrial wastewater, unless specifically authorized by the Executive Director.
- M. Any sludges, screenings, or other residues from the pretreatment of industrial wastes.
- N. Any medical wastes, except as specifically authorized by the Executive Director in a wastewater discharge permit.
- O. Any wastewater causing the treatment plant's effluent to fail a toxicity test in accordance with Regulation VR 680-21-00, of the Virginia Water Quality Standards or any amendments or replacements thereof.
- P. Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the POTW.
- Q. Any discharge of fats, oils, or greases of animal or vegetable origin is limited to 100 mg/l, or some lesser limit which may be placed in a permit at the discretion of the Executive Director.

- R. Any discharge of petroleum or hydrocarbon products is limited to 20 mg/l, or some lesser limit which may be placed in a permit at the discretion of the Executive Director.

Wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the POTW.

2.VIII. Federal Categorical Pretreatment Standards

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

2.IX. State Requirements

State pretreatment standards located at West Virginia Code §§20-5A-1, et seq. are hereby incorporated.

2.X. Charges and Surcharges

- A. The charges and fees for service are those fees established by the rate ordinance heretofore enacted by the City of Bluefield and any amendments or changes in said rate ordinance which may hereinafter be enacted by the City of Bluefield.
- B. A surcharge, in addition to the user charges as defined above will be assessed to all users whose wastewater constituents exceed the following limits:

BOD - 240 milligrams per liter
Suspended Solids - 240 milligrams per liter

This surcharge will be based on the following formulas applicable to users whose wastewaters are treated at the POTW:

$US = (BOD - 240)(8.345)(0.21) Vu$ for 1 million gal. and over

$US = (SS - 240)(8.345)(0.26) Vu$ for 1 million gal. and over

$US - (BOD_a - 240)(8.345)(\$1.00/\#BOD)$ for up to 1 million gal. and over

$US = (SS - 240)(8.345)(\$1.00/\#SS)$ for up to 1 million gal. and over

where

US = User's surcharge per month in dollars

BOD = Average measured BOD value of user's wastewater in mg/l

SS-Average measured SS value of user's wastewater in mg/l

Vu = Volume of user's monthly wastewater contribution in millions of gallons

*The above formulas reflect the current estimated operation and maintenance costs for treatment per pound of BOD and SS at the POTW. The factors affecting such costs may be reviewed by the Sanitary Board and the above formulas revised to reflect revised operation and maintenance costs as required.

Sec. 5 Industrial Cost Recovery Charge. Each industrial user, unless otherwise excluded, shall be required to pay an industrial costs recovery charge in addition to their user charge and/or surcharge in accordance with United States Environmental Protection Agency requirements. Unless otherwise excluded, each industrial user's industrial cost recovery charge shall be computed, based on the treatment facility servicing the industry, and the following parameters:

WHERE:

Q = Average Daily Wastewater Flow Contributed by the User in Gallons Per Day.

BOD = Is the Average Daily Poundage of Five (5) Day Biochemical Oxygen Demand Contributed by a User,

Which shall be Calculated
as Follows:

Q (in MGD) x BOD_5 (in
mg/1) x 8.34, Where:

Q is in the Form of
Million Gallons Per Day
(MGD)

BOD_5 is in the Form of
Milligrams Per Liter
(mg/1)

SS

= Is the Average Daily
Poundage of Suspended
Solids Contributed by a
User, Which Shall be
Calculated as Follows:

Q (in MGD) x SS (in mg/1)
x 8.34, Where:

Q is in the Form of
Million Gallons Per Day
(MGD)

SS is in the Form of
Milligrams Per Liter
(mg/1)

Sample Industrial Recovery Calculation
Assumed Parameters Are

Q	= 150,000 Gallons Per Day
BOD	= 180 mg/1
SS	= 200 mg/1

BOD Calculation

.15 MGD x 180 mg/1 x 8.34	= 225.18 Pounds Per Day
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SS Calculation

.15 MGD x 200 mg/1 x 8.34	= 250.20 Pounds Per Day
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THEREFORE:

Q	= 150,000 GPD
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BOD = 225.18 #/Day
 SS = 250.20 #/Day

If We Assume the Flows are Treated at the BSB's Plant

Q = 150,000 GPD x \$863.94/1,000 Gallons = \$129,591
 BOD = 225.18 #/Day x \$529.83/Pound = \$119,307
 SS = 250.20 #/Day x \$617.19/Pound = \$154,421

Total Cost Recovery Payments Required Over Useful Life \$403,319

Annual Payment = $\frac{\$403,319}{30 \text{ Years Useful Life}}$ = \$13,444/Year

Monthly Payment = $\frac{\$13,444/\text{Year}}{12}$ = \$1,120/Month

C. The requirements for exclusion from the above charges are as follows:

Industrial users (as defined in 40 CFR 35.905-8(a), (b), (c), (d) and (e) which discharge only non-processed, segregated, domestic waste, or waste from sanitary conveniences (for example, the so-called "dry" industries) which are not significant industrial users under the Regulations (40 CFR 35,925-12).

2.XI. BSB's Right of Revision

BSB reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW if deemed necessary to comply with the objectives presented in Section 1.I of this ordinance or the general and specific prohibitions in Section 2.VII of this ordinance.

2.XII. Special Agreement

BSB reserves the right to enter into special agreements with industrial users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a pretreatment standard or requirement. However, the

industrial user may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. The industrial user may also request a variance from the categorical pretreatment standard from EPA. Such a request will be approved only if the industrial user can prove that factors relating to its discharge are fundamentally different from the factors considered by EPA when establishing that pretreatment standard. An industrial user requesting a fundamentally different factor variance must comply with the procedural and substantive provisions in 40 CFR 403.13.

Nothing in this article shall be construed as preventing any agreement or arrangement between the BSB and any user of the treatment works and treatment facility whereby wastewater of unusual strength or character (only in terms of BOD and/or Suspended Solids) is accepted into the system and specially treated subject to additional payments or user charges as may be applicable.

2.XII. Dilution

No industrial 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 Executive Director may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

SECTION 3 - PRETREATMENT OF WASTEWATER

3.I Pretreatment Facilities

Industrial users shall provide necessary wastewater treatment as required to comply with this ordinance and shall achieve compliance with all categorical pretreatment standards, local limits and the prohibitions set out in Section 2.VII above within the time limitations specified by the EPA, the applicable State, or the Executive Director -- whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to BSB shall be provided, operated, and maintained at the industrial user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to BSB for review, and shall be acceptable to BSB before construction of the facility. The review of such plans and operating procedures will in no way relieve the industrial user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to BSB under the provisions of this ordinance.

3.II. Additional Pretreatment Measures

- A. Whenever deemed necessary the Executive Director may require industrial users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the industrial user's compliance with the requirements of this ordinance.
- B. Each person discharging into the POTW greater than 100,000 gallons per day or greater than four (4%) of the average daily flow in the POTW, whichever is lesser, (or a lesser amount in the event the Executive Director determines that the discharge is greater than can be handled by the collector or interceptor system or the POTW) shall install and

maintain, on his property and at his expense, a suitable storage and flow control facility to insure equalization of flow over a twenty-four (24) hour period. The facility shall have a capacity for at least thirty (30%) of the daily discharge volume and shall be equipped with alarms and a rate of discharge controller, the regulation of which shall be directed by the Executive Director. A wastewater discharge permit may be issued solely for flow equalization.

- C. Grease, oil and sand separators shall be provided when, in the opinion of the Executive Director, they are necessary for the proper handling of wastewater containing excessive amounts of grease, oil, or sand; except that such separators shall not be required for residential users. All interception units shall be of type and capacity approved by the Executive Director 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 owner at the owner's expense.

(1) Grease traps shall be provided for all restaurants and similar establishments where the quantity of grease and fats in liquid wastes is likely to be large, or at the direction of the Executive Director.

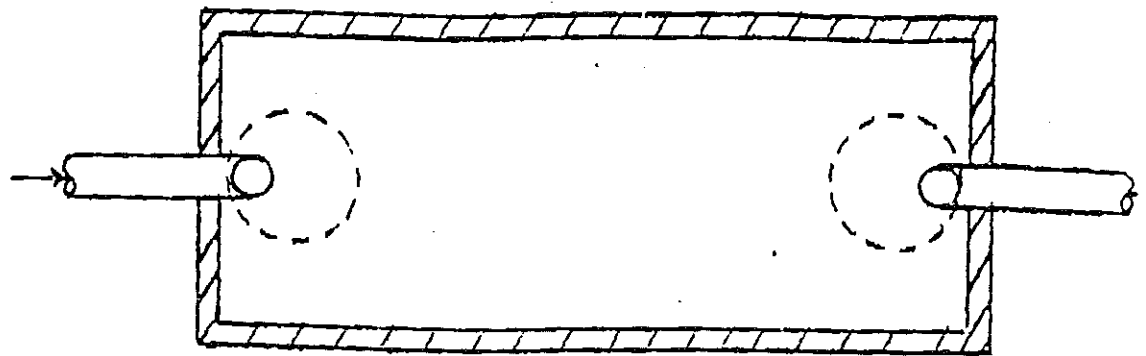
(2) The grease trap shall be located within thirty (30') feet of the source in order to prevent grease from congealing in the collection system.

(3) Only those plumbing fixtures into which the grease and fats are to be discharged are to be connected to the grease trap and no other plumbing fixture shall be connected to the grease trap.

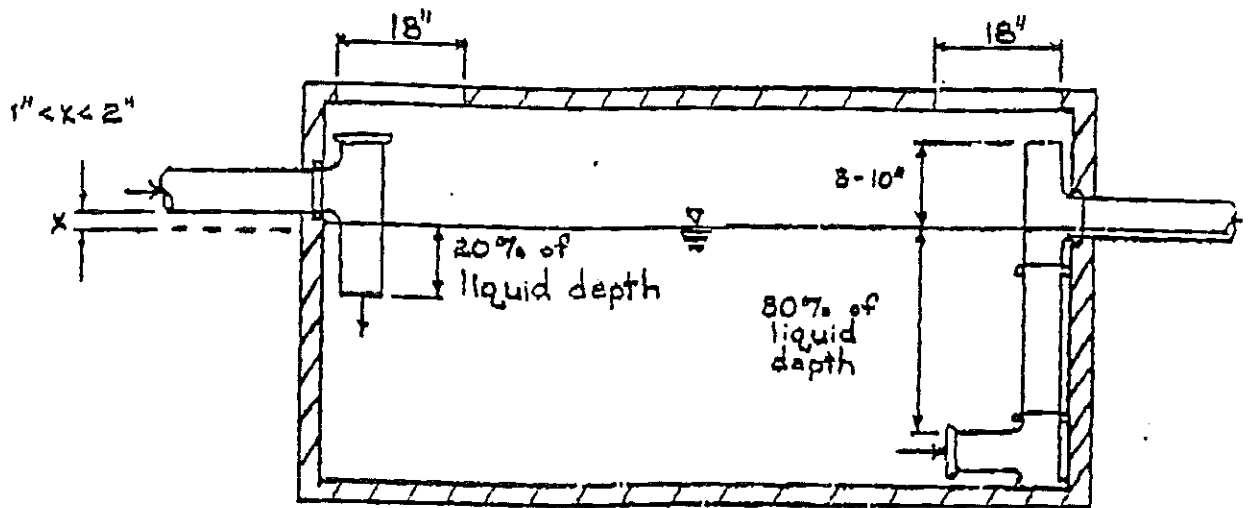
(4) The grease trap shall have a capacity of 150 gallons or 3 gallons per meal served during the peak meal time, whichever is greater. Capacity of grease traps at non-restaurants shall be established on a case-by-case basis by the Executive Director.

(5) Units may be built on site as approved by the Executive Director or following septic tank criteria and shall be baffled or teed to prevent effluent flow from disturbing the floating grease layer with the length of the inlet baffle or tee to be 20% of the liquid depth, submerged inlets being

prohibited. Outlets shall be 80% or more of liquid depth to prevent organics from settling out and to provide maximum storage of floatable material. A tee shall be placed vertically on the floor of the unit and fitted to join with the outlet tee to provide support for the outlet structure. The invert of the inlet structure should be greater than 1" but less than 2" higher than the outlet structure with the tank installed. The inlet and outlet structure shall extend 10" above the normal liquid level. Materials used for the inlet and outlet structures shall have long-term resistance to chemical and electrolytic corrosion and be compatible with the material used in the sewer system. Tanks must be watertight with access manholes over the inlet and outlet structures with a minimum open space of 18" by 18". In wet areas, manhole covers must be watertight. The units must be skimmed periodically and otherwise properly maintained and kept in good working order. A typical plan for such units is as follows:



PLAN



SECTION

- D. Industrial users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.
- E. At no time shall two readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, be more than thirty (30%) nor any single reading over fifty (50%) of the lower explosive limit (LEL) of the meter.

3.III. Accidental Discharge/Slug Control Plans

Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this Ordinance. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the BSB for review, and shall be approved by the BSB before construction of the facility. No user who commences contribution to the POTW after the effective date of this ordinance shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the BSB. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility as necessary to meet the requirements of this Ordinance. In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

Within five (5) days following an accidental discharge; the user shall submit to the Executive Director a detailed written report

describing the cause 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 treatment works and treatment facility, fish kills, 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 by this section or other applicable law.

A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall insure that all employees who may cause or suffer such a discharge to occur are advised of the emergency notification procedure.

The Executive Director may require any industrial user to develop and implement an accidental discharge/slug control plan. At least once every two years the Executive Director shall evaluate whether each significant industrial user needs such a plan. Any industrial user required to develop and implement an accidental discharge/control slug plan shall submit a plan which addresses, at a minimum, the following:

- A. Description of discharge practices, including non-routine batch discharges.
- B. Description of stored chemicals.
- C. Procedures for immediately notifying the POTW of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any of the prohibited discharges in Section 2.1 of this ordinance.
- D. 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 run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

3.IV. Tenant Responsibility

Where an owner of property leases premises to any other person as a tenant under any rental or lease agreement, if either the owner or the tenant is an industrial user, either or both may be held responsible for compliance with the provisions of this ordinance.

3.V. Hauled Wastewater

- A. Septic tank waste may be accepted into the POTW at a designated receiving structure within the treatment plant area, and at such times as are established by the Executive Director, provided such wastes do not violate Section 2 of this ordinance or any other requirements established or adopted by BSB. Wastewater discharge permits for individual vehicles to use such facilities shall be issued by the Executive Director.
- B. The discharge of hauled industrial wastes as "industrial septage" requires prior approval and a wastewater discharge permit from BSB. The Executive Director shall have authority to prohibit the disposal of such wastes, if such disposal would interfere with the treatment plant operation. Waste haulers are subject to all other sections of this ordinance.
- C. Fees for dumping septage will be established as part of the industrial user fee system as authorized in Section 15.

3.VI. Vandalism

No person shall maliciously, willfully, recklessly or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment, or other part of the POTW.

Any person found in violation of this requirement shall be subject to the sanctions set out in Sections 10-12, below.

SECTION 4 - WASTEWATER DISCHARGE PERMIT ELIGIBILITY

4.I. Wastewater Survey

When requested by the Executive Director all industrial users must submit information on the nature and characteristics of their wastewater by completing a wastewater survey prior to commencing their discharge. The Executive Director is authorized to prepare a form for this purpose and may periodically require industrial users to update the survey. Failure to complete this survey shall be reasonable grounds for terminating service to the industrial user and shall be considered a violation of the ordinance.

4.II. Wastewater Discharge Permit Requirement

- A. It shall be unlawful for any significant industrial user to discharge wastewater into BSB's POTW without first obtaining a wastewater discharge permit from the Executive Director. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections 10-12. 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.
- B. The Executive Director may require other industrial users, including liquid waste haulers, to obtain wastewater discharge permits as necessary to carry out the purposes of this ordinance.

4.III. Wastewater Discharge Permitting Existing Connections

Any significant industrial user which discharges industrial waste into the POTW prior to the effective date of this ordinance and who wishes to continue such discharges in the future, shall, within thirty (30) days after the effective date of this ordinance, apply to the BSB for a wastewater discharge permit in accordance with Section 4.VI below,

and shall not cause or allow discharges to the POTW to continue after thirty (30) days of the effective date of this ordinance except in accordance with a wastewater discharge permit issued by the Executive Director.

4.V Wastewater Discharge Permitting New Connections

Any significant industrial user proposing to begin or recommence discharging industrial wastes into the POTW must obtain a wastewater discharge permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit must be filed at least thirty (30) days prior to the date upon which any discharge will begin.

4.V. Wastewater Discharge Permitting Extrajurisdictional Industrial Users

- A. Any existing significant industrial user located beyond BSB's limits shall submit a wastewater discharge permit application, in accordance with Section 4.VI below, within thirty (30) days of the effective date of this ordinance. New significant industrial users located beyond BSB's limits shall submit such applications to the Executive Director thirty (30) days prior to any proposed discharge into the POTW.
- B. Alternately the Executive Director may enter into an agreement with the neighboring jurisdiction in which the significant industrial user is located to provide for the implementation and enforcement of pretreatment program requirements regulating the industrial user.
- C. Requirements for users in the Town of Bluefield, Virginia and Tazewell County, Virginia shall be the same as requirements within the BSB area in West Virginia.

4.VI. Wastewater Discharge Permit Application Contents

In order to be considered for a wastewater discharge permit, all industrial users required to have a wastewater discharge permit must submit the information required by Section 6.I(B) of this ordinance. The Executive Director shall approve a form to be used as a permit application. In addition, the following information may be required:

- A. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW.
- B. Number and type of employees, hours of operation, and proposed or actual hours of operation of the industrial user.
- C. Each product produced by type, amount, process or processes, and rate of production.
- D. Type and amount of raw materials processed (average and maximum per day).
- E. The site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge.
- F. Time and duration of the discharge.
- G. Any other information as may be deemed necessary by the Executive Director to evaluate the wastewater discharge permit application.

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

4.VII. Application Signatories and Certification

All wastewater discharge permit applications and industrial user reports must contain the following certification statement and be signed by an authorized representative of the industrial user.

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

4.VIII. Wastewater Discharge Permit Decisions

The Executive Director will evaluate the data furnished by the industrial user and may require additional information. Within ten (10) days of receipt of a complete wastewater discharge permit application, the Executive Director will determine whether or not to issue a wastewater discharge permit. If no determination is made within this time period, the application will be deemed denied. The Executive Director may deny any application for a wastewater discharge permit.

SECTION 5 - WASTEWATER DISCHARGE PERMIT ISSUANCE PROCESS

5.I. Wastewater Discharge Permit Duration

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

5.II. Wastewater Discharge Permit Contents

Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Executive Director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, protect ambient air quality, and protect against damage to the POTW.

A. Wastewater discharge permits must contain the following information:

1. A statement that indicates wastewater discharge permit duration, which in no event shall exceed 5 years.

2. A statement that the wastewater discharge permit is nontransferable without prior notification to and approval from BSB, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.
 3. Effluent limits applicable to the user based on applicable standards in Federal, State, and local law.
 4. Self monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law.
 5. Statement of applicable civil, criminal, and administrative 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.
- B. Wastewater discharge permits may, in addition, require the industrial user to comply with the following conditions:
1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
 2. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
 3. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW.
 4. Development and implementation of spill control plans or other special conditions

including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.

5. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.
6. The unit charge or schedule of industrial user charges and fees for the management of the wastewater discharged to the POTW.
7. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
8. 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.
9. Other conditions as deemed appropriate by the Executive Director to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

5.III. Wastewater Discharge Permit Appeals

Any person, including the industrial user, may petition BSB to reconsider the terms of a wastewater discharge permit within ten (10) days of its issuance.

- A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- B. In its petition, the petitioning party must specify the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.
- C. The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

- D. If BSB fails to act within ten (10) days, 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 action for purposes of judicial review.
- E. Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by petitioning for a Writ of Certiorari with the Circuit Court of Mercer County, West Virginia within ten (10) days.

5.IV. Wastewater Discharge Permit Modification

The Executive Director may modify the wastewater discharge permit for good cause including, but not limited to, the following:

- A. To incorporate any new or revised Federal, State, or local pretreatment standards or requirements.
- B. To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance.
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- D. Information indicating that the permitted discharge poses a threat to the POTW, BSB personnel, or the receiving waters.
- E. Violation of any terms or conditions of the wastewater discharge permit.
- F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting.
- G. Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13.
- H. To correct typographical or other errors in the wastewater discharge permit.
- I. To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

The filing of a request by the permittee for a wastewater discharge permit modification does not stay any wastewater discharge permit condition.

5.V. Wastewater Discharge Permit Transfer

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

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

Failure to provide advance notice of a transfer renders the wastewater discharge permit voidable on the date of facility transfer.

5.VI. Wastewater Discharge Permit Revocation

Wastewater discharge permits may be revoked for the following reasons:

- A. Failure to notify BSB of significant changes to the wastewater prior to the changed discharge.
- B. Failure to provide prior notification to BSB of changed condition pursuant to Section 6.V.
- C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application.
- D. Falsifying self-monitoring reports.
- E. Tampering with monitoring equipment.

- F. Refusing to allow BSB timely access to the facility premises and records.
- G. Failure to meet effluent limitations.
- H. Failure to pay fines.
- I. Failure to pay sewer charges.
- J. Failure to meet compliance schedules.
- K. Failure to complete a wastewater survey or the wastewater discharge permit application.
- L. Failure to provide advance notice of the transfer of a permitted facility.
- M. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or the ordinance.

Wastewater discharge permits shall be voidable upon user's nonuse, cessation of operations, or transfer of business ownership. All wastewater discharge permits are void upon the issuance of a new wastewater discharge permit.

5.VII. Wastewater Discharge Permit Reissuance

A significant industrial user shall apply for wastewater discharge permit reissuance by submitting a complete wastewater discharge permit application in accordance with Section 4.VI a minimum of thirty (30) days prior to the expiration of the industrial user's existing wastewater discharge permit.

5.VIII. Municipal Wastewater Discharge Permits

In the event another municipality contributes all or a portion of its wastewater to the POTW, the POTW may require such municipality to apply for and obtain a municipal wastewater discharge permit.

- A. A municipal wastewater discharge permit application shall include:

1. A description of the quality and volume of the wastewater at the point(s) where it enters the POTW.
 2. An inventory of all industrial users discharging to the municipality.
 3. Such other information as may be required by the Executive Director.
- B. A municipal wastewater discharge permit shall contain the following conditions:
1. A requirement for the municipal user to adopt a sewer use ordinance which is at least as stringent as this ordinance and local limits which are at least as stringent as those set out in Section 2.IV.
 2. A requirement for the municipal user to submit a revised industrial user inventory on at least an annual basis.
 3. A requirement for the municipal user to a) conduct pretreatment implementation activities including industrial user permit issuance, inspection and sampling, and enforcement; or b) authorize the POTW to take or conduct such activities on its behalf.
 4. A requirement for the municipal user to provide BSB with access to all information that the municipal user obtains as part of its pretreatment activities.
 5. Limits on the nature, quality, and volume of the municipal user's wastewater at the point where it discharges to the POTW.
 6. Requirements for monitoring the municipal user's discharge.
- C. Violation of the terms and conditions of the municipal user's wastewater discharge permit shall subject the municipal user to the sanctions set out in Sections 10 through 12.

SECTION 6 - REPORTING REQUIREMENTS

6.I. Baseline Monitoring Reports

- A. 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 significant industrial users subject to such categorical pretreatment standards, and currently discharging to or scheduled to discharge to the POTW, shall submit to BSB a report which contains the information listed in paragraph B, below. At lease ninety (90) days prior to commencement of their discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to BSB a report which contains the information listed in paragraph B, below. A new source shall report the method of pretreatment it intends to use to meet applicable pretreatment standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.
- B. The industrial user shall submit the information required by this section including:
1. Identifying Information. The name and address of the facility including the name of the operator and owners.
 2. Wastewater discharge permits. A list of any environmental control wastewater discharge permits held by or for the facility.
 3. Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such industrial user. This description shall include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
 4. Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use

of the combined wastestream formula set out in 40 CFR 403.6(e).

5. Measurement of Pollutants.

- a. Identity of the categorical pretreatment standards applicable to each regulated process.
- b. The results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or by BSB) of regulated pollutants in the discharge from each regulated process including instantaneous, daily maximum and long term average concentrations (or mass, where required). The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 6.X.
- c. Sampling must be performed in accordance with procedure set out in Section 6.XI.

6. Certification. A statement reviewed by the industrial user's authorized representative and certified by a qualified professional engineer, indicating whether pretreatment standards are being met on a consistent basis--and,, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

7. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest schedule by which the industrial user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

8. All baseline monitoring reports signed and certified in accordance with Section 4.VII.

6.II. Compliance Schedule Progress Report

The following conditions shall apply to the schedule required by 6.I(B)(7). The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, beginning and conducting routine operation). No increment referred to above shall exceed nine (9) months. The industrial user shall submit a progress report to the Executive Director no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not the industrial user complied with the increment of progress, the reason for any delay, (and, if appropriate) the steps being taken by the industrial user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the Executive Director.

6.III. Report on Compliance with Categorical Pretreatment Standard
Deadline

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to such pretreatment standards and requirements shall submit to BSB a report containing the information

described in Section 6.I(B)(4-6). For industrial 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 industrial user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the industrial user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 4.VII.

6.IV. Periodic Compliance Reports

- A. Any significant industrial user subject to a pretreatment standard shall, at a frequency determined by the Executive Director but in no case less than twice per year (in June and December), submit a report specifying the nature and concentration of pollutants in the discharge which are limited by such pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with Section 4.VII
- B. All wastewater samples must be representative of the industrial user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.
- C. If an industrial user subject to the reporting requirement in and of this Section monitors any pollutant more frequently than required by the POTW, using the procedures prescribed in Section 6.XI of this ordinance the results of this monitoring shall be included in the report.

- D. All industrial users shall promptly notify the POTW in advance of any new or increased discharge. BSB may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES or VPDES permit.

6.V. Report of Changed Conditions

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

- A. The Executive Director may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 4.VI.
- B. The Executive Director may issue a wastewater discharge permit under Section 4.VIII or modify an existing wastewater discharge permit under Section 5.IV.
- C. No industrial user shall implement the planned changed condition(s) until and unless the Executive Director has responded to the industrial user's notice.
- D. For purposes of this requirement flow increases of ten percent (10%) or greater, and the discharge of any previously unreported pollutants, shall be deemed significant and reportable hereunder.

6.VI. Reports of Potential Problems

- A. 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 which may cause potential problems for the POTW (including a violation of the prohibited discharge standards in Section 2.VII of this ordinance), industrial user shall immediately telephone and notify BSB of the incident. This notification shall include the location of

discharge, type of waste, concentration and volume, if known, and corrective actions taken by the industrial user.

- B. Within five (5) days following such discharge, the industrial user shall, unless waived by the Executive Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, civil penalties, or other liability which may be imposed by this ordinance.
- C. User's failure to notify BSB of potential problem discharges shall be deemed a separate violation of this ordinance.
- D. A notice shall be permanently posted on the industrial user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all employees, who may cause or suffer such a discharge to occur, are advised of the emergency notification procedure.

6.VII. Reports from Nonsignificant Industrial Users

All industrial users not subject to categorical pretreatment standards and not required to obtain a wastewater discharge permit shall provide appropriate reports to BSB as the Executive Director may require.

6.VIII. Notice of Violation/Repeat Sampling and Reporting

If sampling performed by an industrial user indicates a violation, the industrial user must notify the Control Authority within 24 hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the

violation. The industrial user is not required to resample if the POTW performs monitoring at the industrial user's facility at least once a month, or if the POTW performs sampling between the time of the industrial user's initial sampling and the industrial user's receipt of the results of this sampling.

6.XIV. Notification of the Discharge of Hazardous Waste

- A. Any industrial user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 10 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimate of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimate of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under Section 6.V, above. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of Sections 6.I, 6.III, and 6.IV, above.
- B. Dischargers are exempt from the requirements of paragraph 6.IXA of this section during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of non-acute hazardous

wastes in a calendar month, or of any quantity of acute hazardous wastes specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification.

Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

- C. In the case of any new regulations pursuant to Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, 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.
- D. In the case of any notification made under this section, the industrial 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.

6.X. Analytical Requirements

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

6.XI. Sample Collection

- A. Except as indicated in Section B, below, the industrial user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the Executive Director may

authorize the use of time proportional sampling or through a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits.

- B. Samples for oil and grease, temperature, pH, cyanide, phenols, toxicity, sulfides, and volatile organic chemicals must be obtained using grab collection techniques.

6.XII. Determination of Noncompliance

The Executive Director may use a grab sample(s) to determine noncompliance with pretreatment standards.

6.XIII. Timing

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

6.IX. Record Keeping

Industrial users shall retain, and make available for inspection and copying, all records and information required to be retained under this ordinance. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning compliance with this ordinance, or where the industrial user has been specifically notified of a longer retention period by the Executive Director.

SECTION 7 - COMPLIANCE MONITORING

7.I Inspection and Sampling

BSB shall have the right to enter the facilities of any industrial user to ascertain whether the purpose of this ordinance, and any permit

or order issued hereunder, is being met and whether the industrial user is complying with all requirements thereof. Industrial users shall allow the Executive Director or his representatives ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

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

7.II. Search Warrants

If the Executive Director has been refused access to a building, structure or property or any part thereof, and if the Executive Director has demonstrated probable cause to believe that there may be a violation of this ordinance or that there is a need to inspect as part of a routine inspection program of BSB designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then upon application by the BSB Attorney, the Mayor or City Judge of Bluefield, West Virginia or any Magistrate having jurisdiction to do so in Mercer County, West Virginia, shall issue a search and/or seizure warrant describing therein the specific location subject to the warrant. The warranty shall specify what, if anything, may be searched and/or seized on the property described. Such warrant shall be served at reasonable hours by the Executive Director in the company of a uniformed police officer of the BSB. In the event of an emergency affecting public health and safety, inspections shall be made without the issuance of a warrant.

SECTION 8 - CONFIDENTIAL INFORMATION

Information and data on an industrial user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits. and monitoring programs, and from BSB inspection and sampling activities, shall be available to the public without restriction--unless the industrial user specifically requests, and is able to demonstrate to the satisfaction of BSB, that the release of such information would divulge information, processes or methods of production entitled to

protection as trade secrets under applicable State or Federal law. When requested and demonstrated by the industrial 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 or VPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

SECTION 9 - PUBLICATION OF INDUSTRIAL USERS IN SIGNIFICANT NONCOMPLIANCE

BSB shall publish annually, in the largest daily newspaper published in the municipality where the POTW is located, a list of the industrial users which, during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall mean:

- A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of wastewater measurements taken during a 6-month period exceed the daily maximum limit or average limit for the same pollutant parameter by any amount.
- 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 6-month period equals or exceeds the product of the daily maximum limit or the average limit 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 discharge violation that BSB believes has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of City personnel or the general public);
- D. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in BSB'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 30 days after the due date, any required reports, including baseline monitoring reports, 90 day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report noncompliance;
- H. Any other violation(s) which BSB determines will adversely affect the operation or implementation of the local pretreatment program.

SECTION 10 - ADMINISTRATIVE ENFORCEMENT REMEDIES

10.I. Notification of Violation

Whenever the Executive Director finds that any user has violated or is violating this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment requirement, the Executive Director or its agent may serve upon the violating user a written Notice of Violation. Within ten (10) days of the user's receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Executive Director. 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 BSB to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

10.II. Consent Orders

The Executive Director is hereby empowered to enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such orders will include specific action to be taken by the user to correct the noncompliance within a time period also specified by the order. Consent Orders shall have the same force and effect as the administrative orders issued pursuant to Sections 10.IV and 10.V below and shall be judicially enforceable.

10.III. Show Cause Hearing

The Executive Director may order any user which causes or contributes to violation(s) of this ordinance, wastewater discharge permits, or orders issued hereunder, or any other pretreatment standard or requirement, to appear before the Executive Director and show cause why a 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 demand that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. Whether or not the user appears

as ordered, immediate enforcement action may be pursued following the hearing date. A show cause hearing shall not be a prerequisite for taking any other action against the user.

10.IV. Compliance Orders

When the Executive Director finds that a user has violated or continues to violate this ordinance, wastewater discharge permits or orders issued hereunder, or any other pretreatment standard or requirement, it may issue an order to the user responsible for the discharge directing that the user come into compliance within ten (10) days. If the user does not come into compliance within ten (10) days, sewer service shall be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders 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 Federal pretreatment standard or requirement, nor does a compliance order release the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a prerequisite to taking any other action against the user.

10.V. Cease and Desist Orders

When the Executive Director finds that a user is violating this ordinance, the user's wastewater discharge permit, any order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Executive Director

may issue an order to the user directing it to cease and desist all such violations and directing the user to:

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

Issuance of a cease and desist order shall not be a prerequisite to taking any other action against the user.

10.VI. Administrative Fines

- A. Notwithstanding any other section of this ordinance, any user that is found to have violated any provision of this ordinance, its wastewater discharge permit, and orders issued hereunder, or any other pretreatment standard or requirement shall be fined in an amount not to exceed \$2,500.00. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation.
- B. Assessments may be added to the user's next schedule sewer service charge and the Executive Director shall have such other collection remedies as may be available for other service charges and fees.
- C. Unpaid charges, fines, and penalties shall, after ten (10) calendar days, be assessed an additional penalty of Ten (\$10.00) Dollars and interest shall accrue thereafter at a rate of ten (10%) per annum. A lien against the individual user's property will be obtained for unpaid charges, fines, and penalties.
- D. Users desiring to dispute such fines must file a written request for the Executive Director to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit, the Executive Director shall convene a hearing on the matter within thirty (30) days of receiving the request from the industrial user. In the event the user's appeal is successful, the payment together

with any interest accruing thereto shall be returned to the industrial user. BSB may add the costs of preparing administrative enforcement actions such as notices and orders to the fine.

- E. Issuance of an administrative fine shall not be a prerequisite for taking any other action against the user.

10.VII. EMERGENCY SUSPENSIONS

The Executive Director may immediately suspend a user's discharge (after informal notice to the user) whenever such suspension is necessary in order 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. BSB may also immediately suspend a user's discharge (immediately after notice and opportunity to respond) that threatens to interfere with the operation of the POTW, or which presents or may present an endangerment to the environment.

- A. 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 Executive Director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Executive Director shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of BSB that the period of endangerment has passed, unless the termination proceedings set forth in Section 10.VIII are initiated against the user.
- B. 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 Executive Director, prior to the

date of any show cause or termination hearing under Sections 10.III and 10.VIII.

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

10.VIII. Termination of Discharge

In addition to those provisions in Section 5.VI of this ordinance, any user that violates the following conditions of this ordinance, wastewater discharge permits, or orders issued hereunder, is subject to discharge termination:

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

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 10.III of this ordinance why the proposed action should not be taken.

SECTION 11 - JUDICIAL ENFORCEMENT REMEDIES

11.I. Injunctive Relief

Whenever a user has violated a pretreatment standard or requirement or continues to violate the provisions of this ordinance, wastewater discharge permits or orders issued hereunder, or any other pretreatment requirement, BSB may petition the Circuit Court of Mercer County, West

Virginia through BSB'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 ordinance on activities of the industrial user. Such other action as appropriate for legal and/or equitable relief may also be sought by the BSB. A petition for injunctive relief need not be filed as a prerequisite to taking any other action against a user.

11.II. Civil Penalties

- A. Any user which has violated or continues to violate this ordinance, any order or wastewater discharge permit hereunder, or any other pretreatment standard or requirement shall be liable to BSB for a maximum civil penalty of \$2,500.00 per violation per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
- B. BSB may recover reasonable attorney's fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by BSB.
- C. 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.
- D. Filing a suit for civil penalties shall not be a prerequisite for taking any other action against a user.

11.III. Criminal Prosecution

- A. Any user that willfully or negligently violates any provision of this ordinance, any orders or wastewater discharge permits issued hereunder, or

any other pretreatment requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$2,500.00 per violation per day or imprisonment for not more than twelve (12) months or both.

- B. Any user that willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a fine of \$2,500.00 and/or be subject to imprisonment for twelve (12) months. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state or federal law.
- C. Any user that knowingly makes any false statements, representations, or certifications in any application, record, report, plan or other documentation filed, or required to be maintained, pursuant to this ordinance, wastewater discharge permit or order, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine of not more than \$2,500.00 per violation per day or imprisonment for not more than twelve (12) months or both.

11.IV. Remedies Nonexclusive

The provisions in Sections 9-12 are not exclusive remedies. BSB may take any, all, or any combination of these actions against a non-compliant user. Enforcement of pretreatment violations will generally be in accordance with BSB's enforcement response plan. However, BSB may take other action against any user when the circumstances warrant. Further, BSB is empowered to take more than one enforcement action against any non-compliant user. These actions may be taken concurrently.

SECTION 12 - SUPPLEMENTAL ENFORCEMENT ACTION

12.I. Performance Bonds

The Executive Director may decline to reissue a wastewater discharge permit to any user which has failed to comply with the provisions of this ordinance, any orders, or a previous wastewater discharge permit issued hereunder, unless such user first files a satisfactory bond, payable to the BSB, in a sum not to exceed a value determined by the Executive Director to be necessary to achieve consistent compliance.

12.II. Liability Insurance

The Executive Director may decline to reissue a wastewater discharge permit to any user which has failed to comply with the provisions of this ordinance, any order, or a previous wastewater discharge permit issued hereunder, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

12.III. Water Supply Severance

Whenever a user has violated or continues to violate the provisions of this ordinance, orders, or wastewater discharge permits issued hereunder, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

SECTION 13 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

13.I. Upset

- A. For the purposes of this section, "upset" means an exceptional incident in which there is

unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (C) are met.
- C. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and the industrial user can identify the cause(s) of the upset;
 - (2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;
 - (3) The industrial user has submitted the following information to the POTW and treatment plant operator within 24 hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) 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.

- D. In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- F. The industrial user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

13.II. General/Specific Prohibitions

An industrial user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general and specific prohibitions in Section 2.I of this ordinance if it can prove that it did not know or have reason to know that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the industrial user was in compliance with each limit directly prior to, and during, the pass through or interference, or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the user was regularly in compliance with its VPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

13.III. Bypass

- A. (1) "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in productions.
- B. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.
- C. (1) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the POTW, at least ten days before the date of the bypass if possible.
- (2) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the POTW within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The POTW may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
- D. (1) Bypass is prohibited, and the POTW may take enforcement action against an industrial 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
 - (ii) The industrial user submitted notices as required under paragraph (C) of this section.
- (2) The Executive Director may approve an anticipated bypass, after considering its adverse effects, if the Executive Director determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

SECTION 14 - SURCHARGE COSTS

[RESERVED]

SECTION 15 - MISCELLANEOUS PROVISIONS

15.I. Pretreatment Charges and Fees

BSB may adopt reasonable charges and fees for reimbursement of costs of setting up and operating BSB's Pretreatment Program which may include:

- A. Fees for wastewater discharge permit applications including the cost of processing such applications.
- B. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing an industrial user's discharge, and reviewing monitoring reports submitted by industrial users.
- C. Fees for reviewing and responding to accidental discharge procedures and construction.
- D. Fees for filing appeals.

- E. Other fees as BSB may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this ordinance and are separate from all other fees, fines and penalties chargeable by BSB.

15.II. Severability

If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be effected and shall continue in full force and effect.

15.III. Conflicts

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance, are hereby repealed only to the extent of the inconsistency or conflict. In the event no such inconsistency or conflict exists such existing ordinances and/or policies shall remain in full force and effect.

SECTION 16 - EFFECTIVE DATE

This ordinance shall be in full force and effect immediately following its passage, approval and publication, as provided by law.

INTRODUCED the 2 day of June, 1992.

FIRST READING: 2 day of June, 1992.

SECOND READING: 9 day of June, 1992.

PASSED this 9 day of June, 1992.

AYES: 3

NAYS: 0

ABSENT: 2

NOT VOTING: 0

APPROVED by me this 9th day of June, 1992.

Paul Cole, Jr.
Mayor

ATTEST: Beverly D. Lersch
City Clerk

~~PUBLISHED:~~ Not required
Publication ~~Date~~