

LINDEN ROSELLE SEWERAGE AUTHORITY

RULES AND REGULATIONS

LINDEN ROSELLE SEWERAGE AUTHORITY

RULES AND REGULATIONS

August 01, 2010

TABLE OF CONTENTS

	<u>PAGE</u>
<u>SECTION 1.0 – GENERAL</u>	
1.1 Purpose and Policy	1-1
1.2 Definitions	1-2
1.3 Abbreviations	1-13
<u>SECTION 2.0 – PROHIBITIONS & LIMITATIONS ON WASTEWATER DISCHARGE</u>	
2.1 Prohibitions on Wastewater Discharges	2-1
2.2 Specific Limitations on Wastewater Discharges	2-4
Table 1	2-5
Figure 1	2-12
2.3 Federal Categorical Pretreatment Standards	2-13
2.4 Modification of Federal Categorical Pretreatment Standards	2-19
2.5 State Requirements	2-19
2.6 Authority's Right of Revision	2-19
2.7 Excessive Discharge	2-19
2.8 Trucked or Hauled Wastes	2-19
2.9 Best Management Practices	2-19
<u>SECTION 3.0 – CONTROL OF PROHIBITED WASTES</u>	
3.1 Regulatory Actions	3-1
3.2 Pretreatment Facilities	3-1
3.3 Submission of Plans	3-2
3.4 Admission to Property	3-2
3.5 Bypass of Pretreatment Equipment	3-2

TABLE OF CONTENTS

	<u>PAGE</u>
3.6 Accidental Discharges, Slug Control Plans and Reports of Potential Problems	3-6
3.7 Public Notification	3-8

SECTION 4.0 – INDUSTRIAL USER DISCHARGE PERMITS

4.1 Wastewater Analyses	4-1
4.2 Discharge Permit Requirement	4-1
4.3 Permit Applications	4-1
4.4 Permit Application Contents	4-1
4.5 Signatories and Certification	4-2
4.6 Permit Duration and Renewal	4-2
4.7 Discharge Permit Contents	4-3
4.8 Permit Modifications	4-5
4.9 Discharge Permit Transfer	4-6
4.10 Discharge Permit Revocation	4-6

SECTION 4A – PERMIT PROCESSING, DECISIONS AND APPEALS

4A.1 Permit Decisions	4A-1
4A.2 Application Review	4A-1
4A.3 Draft Permit	4A-1
4A.4 Fact Sheet Statement	4A-1
4A.5 Statement of Basis	4A-2
4A.6 Public Notice	4A-2
4A.7 Public Hearing	4A-2

TABLE OF CONTENTS

	<u>PAGE</u>
4A.8 Response to Comments	4A-3
4A.9 Obligation to Raise Issues and Provide Information During Public Comment Period	4A-3
4A.10 Final Decision	4A-3
4A.11 Request for Adjudicatory Hearing	4A-3
4A.12 Request Contents	4A-4
4A.13 Determination – Party to Action	4A-6
4A.14 Granting or Denying Adjudicatory Hearing Request	4A-6
4A.15 Notice Contested	4A-7
4A.16 Stays of Permit Conditions	4A-7

SECTION 5.0 – INDUSTRIAL WASTEWATER MONITORING AND REPORTS

5.1 Reporting Requirements for Industrial Users	5-1
5.2 Records and Monitoring	5-12
5.3 Inspection, Sampling and Analyses	5-14
5.4 Confidential Information and Public Access	5-17
5.5 Signatories and Certification	5-18
5.6 Timing	5-18

SECTION 6.0 – ENFORCEMENT PROCEDURES

6.1 Harmful Contributions	6-1
6.2 Termination of Services	6-1
6.3 Legal Action	6-2

TABLE OF CONTENTS

PAGE

6.4	Penalties	6-4
6.5	Notice of Violations and Show Cause Hearing	6-15
6.6	Civil Administrative Penalties – Procedures	6-19
6.7	Public Comment on Proposed Interim Limits in Administrative Consent Orders	6-23
6.8	Civil Administrative Hearings – Procedure	6-26
6.9	Enforcement Response Plan	6-30
6.10	Grace period applicability; Procedures	6-38
6.11	Table of minor and non-minor violations; grace periods	6-42

SECTION 7.0 – FEES

7.1	Purpose	7-1
7.2	Charges and Fees	7-1

SECTION 8.0 – SEVERABILITY

7-1

APPENDICES

- A.** N.J.S.A. 58:10A-10
- B.** Linden Sewer Use Ordinance
Roselle Sewer Use Ordinance
- C.** 40 CFR 403 Federal EPA Pretreatment Regulations
- D.** Resolutions Adopting Rules and Regulations

THE LINDEN ROSELLE SEWERAGE AUTHORITY

RULES AND REGULATIONS

SECTION 1.0 – GENERAL

1.1 Purpose and Policy

These Rules and Regulations set forth uniform requirements for discharges into the wastewater collection systems of the City of Linden and the Borough of Roselle that are connected to treatment works owned by The Linden Roselle Sewerage Authority. They are intended to comply with State and Federal laws and regulations pertaining to wastewater treatment and industrial pretreatment.

Federal and State Statutory Law and Regulations when cited in these Rules and Regulations by way of reference or incorporation, are intended to include all future amendments and supplements to such statutes and regulations.

The objectives of these Rules and Regulations are:

- A. To prevent the introduction of pollutants which will interfere with the operation of the treatment works or contaminate the resulting sludge;
- B. To prevent the introduction of pollutants which will pass through the treatment works, inadequately treated, into receiving waters or the atmosphere, or otherwise be incompatible with the treatment works; and
- C. To improve the opportunity to recycle and reclaim wastewater's and sludges from the treatment works.

These Rules and Regulations authorize monitoring and enforcement activities, required industrial user reporting, and provide for the regulation of dischargers to the POTW through enforcement of general requirements for all dischargers and through the issuance of permits to certain industrial dischargers. Except as otherwise provided, the Executive Director of The Linden Roselle Sewerage Authority shall administer, implement and enforce these Rules and Regulations.

1.2 Definitions

Unless the context specifically indicates otherwise, the following terms shall have the following meanings:

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.

Approval Authority – The Administrator of the Division of Wastewater Facilities Regulation Program or his/her authorized representatives.

Approved Test Procedure – All analyses shall be performed in accordance with the analytical test procedures approved under 40 CFR Part 136. Analyses of those pollutants not covered therein shall be performed in accordance with procedures approved by the NJDEP.

Authority – The Linden Roselle Sewerage Authority.

Authorized Representative of Industrial User

(1) If the user is a corporation:

- (A) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
- (B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for Industrial Discharge Permit related control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

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

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

- (4) The individuals described in paragraphs 1 through 3, above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Authority.

Best Management Practices (BMPs) – Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in *Sections 2.0 and 3.0 of these Rules and Regulations*. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Biochemical Oxygen Demand (BOD) – The quantity of oxygen utilized in the biochemical oxidation of organic matter for five (5) days at 20 C expressed in terms of weight and concentration (mg/l) in accordance with an approved test procedure.

Borough – The Borough of Roselle

Bypass – The anticipated or unanticipated intentional diversion of wastestreams from any portion of a pretreatment facility required by the Authority under Section 3.2 of these Rules and Regulations.

Categorical Industrial User – An industrial user subject to categorical standards in accordance with Appendix C and Appendix D of the EPA General Pretreatment Standards (40 CFR Part 403).

Categorical Standards – Pretreatment Standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced to a POTW by existing or new Industrial Users in specific industrial subcategories.

Chemical Oxygen Demand (COD) – A measure of the oxygen consuming capacity of inorganic and organic matter present in water or wastewater expressed as the amount of oxygen consumed from a chemical oxidant in accordance with an approved test procedure.

City – The City of Linden

Commissioner – The Commissioner of the New Jersey Department of Environmental Protection or his/her authorized representative.

{Section 1.2}

Compatible Pollutant – Biochemical oxygen demand, suspended solids, pH and fecal coliform bacteria, and such additional pollutants as are (or may in the future be) specified and controlled in the Authority's NJPDES permits, where the POTW is designed to treat such pollutants and, in fact, does treat such pollutants to the degree required by the NJPDES permit.

Composite Sample – A sample consisting of several effluent portions collected during a specified time period and combined to make a representative sample.

Consistent Removal – A reduction in the amount of a pollutant or alteration of the nature of the pollutant by the wastewater treatment system to a less toxic or to a harmless state, as measured according to the procedures set forth in Section 403.7 (d)(2) of the "General Pretreatment Regulations for Existing and New Sources of Pollution: (40 CFR Part 403).

Control Authority – The Linden Roselle Sewerage Authority, where the Authority has an approved Pretreatment Program under the provisions of 40 CFR 403.1 and N.J.A.C. 7:14A-19.1, et seq.

Cooling Water – Any water used for the purpose of carrying away excess heat and which may contain biocides used to control biological growth or other additives to protect the system against corrosion, scaling or the like.

Discharge – The releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a pollutant into the waters of the State or onto the land or into wells, from which the pollutant might flow or drain into said waters, and shall include the release of any pollutant into a municipal treatment works.

Domestic Wastewater- The liquid waste or liquid-borne waste discharged from residential units, normally resulting from the non-commercial preparation, cooking and handling of food and wastes from sanitary conveniences.

EPA – The United States Environmental Protection Agency

Executive Director – The Executive Director of the Linden Roselle Sewerage Authority.

Existing User or Existing Industrial User – Includes all persons discharging wastewater to treatment works of the Authority, the City or the Borough at the time these Rules and Regulations are adopted by the Authority.

Garbage – Solid wastes from the domestic and commercial preparation, cooking, dispensing, handling, storage and/or sale of food.

Grab Sample – A sample taken from a wastestream on a one-time basis without regard to flow or time.

Grace Period - Means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

Hazardous Pollutant – Any toxic pollutant as defined in these Definitions or as defined in N.J.A.C. 7:14A-1.2; any hazardous substance as defined in N.J.A.C. 7:14A-1.2; any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Sec. 135 et. seq.); any substance, the use of, or manufacture of which has been prohibited under the Toxic Substance Control Act (15 U.S.C. Sec.2601 et. seq.); any substance identified as a known carcinogen by the International Agency for Research on Cancer; and any hazardous waste as defined or identified in N.J.A.C. 7:26G-4.1 or 40 CFR Part 261.

Holding Tank Waste - Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

Incompatible Pollutant – Any pollutant which is not a compatible pollutant.

Industrial Discharge Permit – A written authorization to discharge wastewater issued to an industrial user by the Authority in accordance with these Rules and Regulations pursuant to and in accordance with all applicable Federal State and Local laws, regulations and ordinances, including (but not limited to) 40 CFR 403.11, N.J.A.C. 7:14A-19.8 and the City of Linden and Borough of Roselle Sewer Use Ordinances.

Such authorization may establish discharge limitations, monitoring obligations and other requirements that are more or less stringent than these Rules and Regulations, except that no such limitations, requirements or obligations shall be less stringent than those found in any applicable State or Federal law regulation.

The authorization, when issued, shall constitute a NJPDES Permit-by-Rule under N.J.A.C. 7:14A-2.5 (a) 7.

{Section 1.2}

Industrial Process Wastewater – The liquid waste or liquid borne waste resulting from the processes employed by any person identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under one of the following divisions:

- Division A - Agriculture, Forestry and Fishing
- Division B - Mining
- Division D - Manufacturing
- Division E - Transportation, Communications, Electric, Gas and Sanitary Services
- Division I - Services

Industrial User -- Any person discharging primarily non-domestic wastewater into the treatment works.

Interference – (1) Disrupting the operation of a POTW or its treatment processes so as to significantly reduce the POTW's operating efficiency, contribute to cause, or increase a violation of any condition of a State or Federal permit and which the POTW operates, or otherwise inhibits treatment plant operations; or (2) preventing the approved use or disposal of sludge produced by the POTW in accordance with Section 405 of the Act, and regulations, criteria or guidelines developed pursuant to the Federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 3251 et. seq.) the Federal Clean Air Act (42 U.S.C. 7401 et. seq.), the Federal Toxic Substances Control Act (15 U.S.C. 2601' et. seq.) Sections 2, 4, and 6 of the State Act and to the extent practicable, the New Jersey Guidelines for the Utilization and Disposal of Municipal and Industrial Sludges and Septage.

Major Industrial User

- (1) Any industrial user who discharges industrial process wastewater in any one day into the Authority's facilities where:
 - (A) The user is subject to Categorical Pretreatment Standards under 40 CFR 403.6 or 40 CFR Chapter I Subchapter N; or
 - (B) The users volume of process wastewater exceeds 25,000 gallons per day or;
 - (C) The amount of BOD, COD or Suspended Solids in the discharge exceeds the mass equivalent of 25,000 gallons per day of domestic waste; or
 - (D) The volume exceeds five percent of the average daily flow of the treatment works or exceeds five percent of the average dry weather hydraulic or organic capacity of the treatment works; or

{Section 1.2}

- (E) The discharge contributes five percent or more of the daily mass loading of the pollutants listed in Table 1 of these Rules and Regulations or Appendix A Tables II-IV of the NJPDES regulations (N.J.A.C. 7:14A-4.10); or
 - (F) The discharge consists of 25,000 gallons or more per day of polluted groundwater which is pumped from the ground in order to decontaminate an aquifer; or
 - (G) The user is designated as a Major Industrial User by the Authority on the basis that the user has a reasonable potential of adversely affecting the Authority's operations; or
 - (H) The user is designated as a Major Industrial User by the Authority on the basis that the user is or has been in violation of any Federal, State, or local pretreatment standard or requirement, including but not limited to, significant noncompliance as set forth in 40 CFR 403.8 (f)(2)(vii); or
 - (I) The Authority determines that it would be consistent with the intent and purpose of the Pretreatment Act or State Act to require a permit for the discharge, or that the discharge may conflict with the objectives set forth in the Federal General Pretreatment Regulations (40 CFR 403) or these Rules and Regulations.
 - (J) The industrial user meets any other criteria as a "Significant Indirect User" under N.J.A.C. 7:14A-1.2 or a "Significant Industrial User" under 40 CFR 403.3(t).
- (2) Provided however, that upon a finding by the Authority that an industrial user has no reasonable potential for adversely affecting its operation or for violating any Federal, State or local pretreatment standard or requirement, the Authority may at any time, on its own initiative or in response to a petition received from an industrial user, and in accordance with 40 CFR 403.8 (f)(6), determine that any industrial user meeting the criteria of paragraphs (1)(b) through (i) above is not a Major Industrial User.

NJAC- New Jersey Administrative Code

NJDEP - The New Jersey Department of Environmental Protection

{Section 1.2}

New Jersey Pollutant Discharge Elimination System (NJPDDES) – The New Jersey system for the issuing, modifying, suspending, revoking, reissuing, terminating, monitoring and enforcing discharge permits pursuant to the State Act. The term also includes discharge permit (NPDES) issued pursuant to Section 402 of the Clean Water Act of 1977 (33 U.S.C. 1251 et. seq.).

Person – Any individual, firm, company, partnership corporation, association, group or society, including the State of New Jersey and agencies, districts, commissions and political subdivisions created or pursuant to State law and Federal agencies, departments or instrumentalities therefore.

pH – The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions in grams per liter of solution. Solutions with a pH greater than 7 are said to be basic; solutions with a pH less than 7 are said to be acidic; pH equal to 7 is considered neutral. Analyses shall be performed in accordance with an approved test procedure.

Pollutant- Any dredged soil, solid waste, holding tank waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal or agricultural waste or other substance discharged into the waters of the State, the introduction of which renders these waters detrimental or immediately or potentially dangerous to the public health or unfit for public or commercial use.

Pretreatment – The application of physical, chemical and/or biological processes to reduce the amount of pollutants in, or alter the nature of the polluting properties of wastewater prior to discharging such wastewater into the treatment works.

Pretreatment Standards – All applicable Federal or State Rules and Regulations implementing Section 307 of the Clean Water Act of 1977 (33 U.S.C. 1251 et. seq.) or N.J.S.A. 58:11-49, as well as any nonconflicting State or local standards. In cases of conflicting standards or regulations, the more stringent shall apply.

Public Owned Treatment Works (POTW) – Treatment works owned and operated by the Authority, the City or the Borough.

Regional Administrator – The Regional Administrator for Region II of the United States Environmental Protection Agency or his/her authorized representative.

{Section 1.2}

Serious Violation – An exceedance of a discharge limitation set forth in a permit, administrative order or administrative consent agreement, including interim enforcement limits, as follows:

- (1) For discharge limitations for pollutants that are measured by concentration or mass;
 - (A) Violations of a discharge limitation that is expressed as a monthly average:
 - (i) By 20 percent or more for hazardous pollutant; and
 - (ii) By 40 percent or more for a non-hazardous pollutant;
 - (B) Violations of a discharge limitation that is expressed as a daily maximum or minimum without a monthly average;
 - (i) by 20 percent or more of the average of all of the daily maximum or minimum values for a hazardous pollutant; and
 - (ii) By 40 percent or more of the average of all of the daily maximum or minimum values for a non-hazardous pollutant;
- (2) The greatest violation of a pH range limitation in any one calendar day which violation deviates from the midpoint of that range by at least 40 percent of the range, excluding however, the excursions specifically excepted by an industrial discharge permit with continuous pH monitoring.

Example: A pH range limitation of 6.0 to 9.0 has a midpoint of 7.5. Any reading that is 10.5 or greater, or 4.5 or less would be a "Serious Violation".

Significant Non-Complier (SNC) – Any person who commits any of the following violations:

- (1) A serious violation for the same pollutant at the same discharge point source, in any two months of any consecutive six month period;

{Section 1.2}

- (2) Exceedance of any discharge limitation expressed as a monthly average for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period.
- (3) If there is a discharge limitation for a particular pollutant not expressed as a monthly average, exceedance of the monthly average of the daily maximums for the discharge limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;
- (4) Any exceedance of a discharge limitation for pH by any amount, excluding the excursions specifically excepted by an Industrial Discharge Permit with continuous pH monitoring, at the same discharge point source in any four months of any consecutive six month period; or
- (5) Failure to submit a completed discharge monitoring report in any two months of any six month period.

State – State of New Jersey

State Act – The New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et. seq.

Standard Industrial Classification (SIC) – A classification pursuant to the Standard Industrial Classification Manual, 1972 (as revised) issued by the Executive Office of the President, Office of Management and Budget.

Storm Water – Any flow occurring during or immediately following any form of natural precipitation and resulting therefrom.

Suspended Solids – The Total Nonfilterable Residue as defined in Manual of Methods for Chemical Analyses of Water and Wastes and analyzed in accordance with an approved test procedure.

{Section 1.2}

Toxic Pollutant – Those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly by ingestion through food chains, may, on the basis of information available to the Commissioner, cause death, disease, behavioral abnormalities, cancer, genetic mutants, physiological malfunctions, including malfunctions in reproduction, or physical deformation in such organisms or their offspring. Toxic pollutants shall include but not be limited to those pollutants designated under Section 307 of the Federal Act or Section 4 of the State Act.

Treatment Works – any device or system, whether public or private, used in the collection, transportation, storage, treatment, recycling, or reclamation of municipal or industrial waste of a liquid nature, including; intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alternations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; any other works including sites for the treatment process or for ultimate disposal of residues resulting from such treatment.

Treatment Works Plant- That portion of the treatment works designed to provide treatment to wastewater.

Upset- An exceptional incident in which there is unintentional and temporary noncompliance with a discharge limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. Upset also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Executive Director or NJDEP. Upset does not include noncompliance to the extent caused by operational error, improperly designed facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

Wastewater – The liquid and water-carried wastes from dwellings, commercial buildings, industrial facilities, and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which is discharged into or permitted to enter the treatment works of the Authority, the City or the Borough.

{Section 1.2}

Terms not otherwise defined herein shall be as adopted in the latest edition of Standard Methods for the Examination of Wastewater, published by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation; the "Federal Guideline for State and Local Pretreatment Programs, "EPA- 430/9-76-017a, Volume 1, 1977, or the latest revision thereof; the Clean Water Act, 33 U.S.C. 1251 et. seq.; the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et.seq.; or "Pretreatment for Sewerage, etc. "N.J.S.A. 58:11-49 et. seq.

{Section 1.2}

1.3 Abbreviations

The following abbreviations shall have the following meaning:

BOD	-	Biochemical Oxygen Demand, 5 day
CFR	-	Code of Federal Regulation
COD	-	Chemical Oxygen Demand
EPA	-	United States Environmental Protection Agency
l	-	Liter
mg	-	Milligram
mg/l	-	Milligram per liter
ml/l	-	Milliliter per liter
N.J.A.C.	-	New Jersey Administrative Code
N.J.S.A.	-	New Jersey Statutes Annotated
NJPDES	-	New Jersey Pollutant Discharge Elimination System
NPDES	-	National Pollutant Discharge Elimination System
POTW	-	Publicly Owned Treatment Works
SIC	-	Standard Industrial Classification
SIU	-	Significant Industrial User
ug/l	-	Microgram per Liter
USC	-	United States Code
TSS	-	Total Suspended Solids

SECTION 2.0 – PROHIBITIONS & LIMITATIONS ON WASTEWATER DISCHARGE

2.1 Prohibitions on Wastewater Discharges

No person may discharge, or allow to be discharged, into treatment works of the Authority, the City or the Borough any wastewater which significantly contributes to a violation of any parameter in the Authority's NJPDES permit or to a violation of the City or Borough sewer use ordinance, or which contains any of the following:

- A. Oil and Grease – (a) oil and grease in concentrations or amounts violating pretreatment standards, including petroleum-based hydrocarbons as determined by silica gel absorption; (b) floatable fats, wax, grease, or oil; (c) total fats, wax, grease, or oil in concentrations of more than fifty (50) mg/l, whether emulsified or not, or containing substance which may solidify or become viscous at the temperatures between 32 and 150 F (0 and 65 C) at the point of discharge into the treatment works.
- B. Explosive and/or Flammable Mixtures
 - (1) Liquids, solids or gases which by reason of their nature or quantity may, either alone or by interaction with other substances, cause fire or explosion or be injurious in any other way to the treatment works or the operation of the works, including, but not limited to gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides;
 - (2) Pollutants which create a fire or explosion hazard in the treatment works, including but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade, using the test methods specified in 40 CFR 261.21.
- C. Noxious Materials – pollutants which, either singly or by interaction with other wastes, are malodorous, are capable of creating a public nuisance or hazard to life or health, or are present in sufficient concentrations to prevent entry into the treatment works for its maintenance and repair;

{Section 2.1C}

- D. Improperly Shredded Garbage – garbage that has not been ground or comminuted to such a degree that all particles will be floating or carried freely in suspension under flow conditions normally prevailing in the treatment works, with no particle greater than one-half (1/2) inch in any dimension, except that this prohibition does not apply to garbage disposal units in private dwellings whose only discharge is domestic wastewater;
- E. Radioactive Wastes –radioactive wastes except in conformance with N.J.A.C. 7:28-11.2 (Disposal of Radioactive Materials-Disposal by release into sanitary sewerage systems);
- F. Solid or Viscous Wastes – Wastes which may cause an obstruction to the flow in a sewer or otherwise interfere with proper operation of the treatment works (such materials include, but are not limited to: grease, improperly shredded garbage, animal guts or tissues, diseased human organs or tissue fluids, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, and similar substances);
- G. Excessive Discharge –wastewater at a flow rate during a period longer than fifteen (15) minutes that exceeds more than five (5) times the average daily flow rate of the industrial user during normal operation, or wastewater containing such concentrations or quantities of pollutants that may cause a treatment process upset, interference or significant loss of treatment efficiency in the judgement of the Executive Director;
- H. Toxic Pollutants – any toxic pollutant exceeding (1) standards promulgated by the Administrator of the EPA pursuant to Section 307 (a) of the Clean Water Act of 1977 (as amended), (2) standards promulgated pursuant to Section 4 of the State Act, or (3) measurable acute toxicity as set forth in Section 2.2B.
- I. Stormwater – discharge of stormwater, including surface and groundwater from sump pumps, cellar drains, and any other source;
- J. Discolored Materials - wastes with color which would cause the treatment works to exceed water quality color criteria;

{Section 2.1J}

K. Substances Interfering with Sludge Management – any substance which may cause the POTW's sludge to be unsuitable for reclamation, reuse or disposal. In no case shall a substance discharged to the POTW cause the POTW to be in non-compliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act, any criteria, guidelines, or regulations affecting sludge use or disposal development pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control act, or, to the extent practicable, the "New Jersey Guidelines for the Utilization and Disposal of Municipal and Industrial Sludge and Septage";

L. Corrosive Wastes – Exceptions; Compliance Determination

- (1) Any waste which may cause corrosion or deterioration of the treatment works; all wastes discharged to the treatment works must not have a pH value lower than 6.0 or greater than 9.0 standard units; prohibited materials include, but are not limited to: concentrated acids, alkalines, sulfides, chloride and fluoride compounds, and substances which will react with water to form acidic or alkaline products which have a pH value outside the range of 6.0 to 9.0
- (2) The following pH limits shall apply where continuous pH monitoring systems are employed by an Industrial Discharge Permittee with the approval of the Authority;
 - (a) Using charts from the continuous recorder of the pH transmitter located at the final discharge, the pH shall be maintained between 6.0 and 9.0, except that certain excursions from this range are permitted in accordance with the following criteria;
 - (i) No individual excursion from the 6.0 – 9.0 range of pH values shall exceed 60 minutes.
 - (ii) The total time during which the pH values are outside the range of 6.0 – 9.0 shall not exceed 7 hours and 26 minutes in any calendar month.
 - (iii) Notwithstanding (i) and (ii) above, no individual excursion which is at a pH level lower than 5.0 shall be permitted for any period of time.

{Section 2.1L. 2(iii)}

- (b) For DMR reporting purposes, the daily maximum and minimum pH taken from the final discharge point will be reported. All excursions will be listed showing the duration. The total hours and minutes will be calculated and reported.
- (c) When a continuous pH monitoring system malfunctions or is otherwise inoperable, a pH sample shall be taken at a minimum of two hour intervals each calendar day in lieu of continuous monitoring. If the pH analyses from the first grab sample is out of permitted range, a second sample will be taken within 60 minutes. Hourly monitoring will continue until the pH levels are in compliance with the discharge limitations. A violation will be assessed according to the same criteria applied for continuous monitoring. (See (a)(i), (a)(ii), (a)(iii) above).

Heat – heat in amounts which will inhibit biological activity in the treatment works, resulting in interference or causing damage, but in no case heat in such quantities that the temperature exceeds 65 C (150 F) at the treatment works and 40C (104 F) at the treatment works plant, unless the NJDEP, upon request of the POTW, approves alternative temperature limits.

2.2 Specific Limitations on Wastewater Discharges

- A. Table 1 presents the maximum concentrations of specific pollutants for wastewater discharges to the treatment works by any person. Dilution of any wastewater discharge for the purpose of satisfying these requirements is a violation of these rules and regulations.

TABLE 1
SPECIFIC POLLUTANT LIMITS

<u>Pollutant</u>	<u>Maximum 24-Hour Average Concentration</u>	
Arsenic (Total)	1.0	mg/l
Ammonia-Nitrogen	22.0	mg/l
Biochemical Oxygen Demand (BOD)	600	mg/l
Cadmium (Total)	4.0	mg/l
Chromium (Hexavalent)	3.0	mg/l
Chemical Oxygen Demand (COD)	1,000	mg/l
Copper (Total)	3.0	mg/l
Cyanide (Total)	2.0	mg/l
Iron (Total)	15.0	mg/l
Nickel (Total)	5.0	mg/l
Oil and Grease (See Section 2.1A)	50.0	mg/l
Phenols (Total)	10.0	mg/l
pH (See Section 2.1L)	6.0 – 9.0	SU
Settleable Solids (SS)	10.0	ml/l
Sulfides	10.0	mg/l
Total Suspended Solids (TSS)	600	mg/l
Zinc (Total)	5.0	mg/l

The maximum concentration, at any time during the twenty four (24) hour period, shall not exceed three times the 24-hour average.

2.2 Specific Limitations on Wastewater Discharges

B. Wastewater discharge to the treatment works shall have no measurable refractory acute toxicity as determined by the Refractory Toxicity Assessment Protocol (RTA) as contained in the document entitled "Protocol for Conducting Refractory Toxicity Assessment Testing Under the Linden Roselle Sewerage Authority Industrial Pretreatment Program", herein after referred to as the RTA Protocol. The RTA Protocol (Revision 4) was approved by NJDEP on March 14, 2005 and adopted by LRSA on April 27, 2005.

- (1) The ability to recognize refractory toxicity in industrial user (IU) discharges is necessary to allow the LRSA to achieve and maintain permit compliance. Toxicity levels can be highly variable and complex; therefore, a routine and consistent program of refractory toxicity testing is necessary.

Historical RTA testing has demonstrated that LRSA's effluent toxicity coincides with recognized industrial refractory toxicity. All major IU permittees will be required to meet the LRSA established Refractory Toxicity Pretreatment Limit. The pretreatment toxicity goal is for the LRSA influent to contain very low or non-detectable levels of refractory toxicity based on RTA results. This goal will ensure the treatment plant effluent will meet the compliance goal of a 96-hour *Americamysis bahia* bioassay result equal to or greater than a 50 percent lethal concentration (LC50) of 65% effluent (Note: this revised limit became effective on August 1, 2005). A toxicity threshold value of LC50 85% has been established to provide a margin of safety in protecting against compliance failures. If the effluent LC50 is 85% or less in two

{Section 2.2B.1}

consecutive toxicity tests, major IUs of the LRSA treatment plant and, as deemed necessary, other existing or proposed dischargers may be required to perform RTA testing. The following are requirements for toxicity pretreatment limitations:

- (2) The RTA testing for existing major IU permittees and proposed new major IUs shall be performed according to the LRSA RTA Protocol. RTA testing may also be required for other existing and proposed discharges to the LRSA on a case-by-case basis at the discretion of the LRSA.

In brief, RTA tests involve treating samples from the LRSA sewer system in bench-scale, batch bioreactors and testing the resulting batch effluents for toxicity. The bioreactors are designed to simulate, as closely as possible, the treatment conditions and performance at the LRSA treatment plant. Two types of bioreactors are used: (1) control bioreactors (two) that replicate existing treatment conditions and consist of the LRSA influent (or simulated plant influent) and activated sludge and (2) another bioreactor that simulates the addition of industrial discharge to the treatment plant and consists of the IU wastewater spiked into the plant influent (or simulated plant influent) and activated sludge. Following batch treatment, the bioreactor mixed liquors are allowed to settle and the resulting supernatants are filtered and then tested for acute toxicity using *A. bahia* as described in the U.S. Environmental Protection Agency (EPA) document entitled "Methods for Measuring the Acute Toxicity of Effluent and Receiving Waters to Freshwater and Marine Organisms, Fifth

{Section 2.2B.2}

Edition (EPA-821-R-02-012)” and N.J.A.C. 7:18 with modifications for pH adjustment and number of test replicates as described in the RTA Protocol. Evidence of toxicity contribution would be demonstrated if the effluent of the IU-spiked bioreactor is significantly more toxic than the control bioreactor effluent(s).

- (3) RTA data interpretation is a step-wise assessment that involves the comparison of LC50s and a statistical model, if LC50 comparisons are insufficient. Ninety-six (96)-hour LC50 values are determined using the methodology for evaluation of multi-concentration test data described in Section 11 of EPA’s “Methods for Measuring the Acute Toxicity of Effluent and Receiving Waters to Freshwater and Marine Organisms, Fifth Edition (EPA-821-R-02-012)” and N.J.A.C. 7:18 subchapter 7. LC50 results and the associated 95% confidence intervals shall be reported to the same number of significant digits as the effluent concentrations used for the toxicity test (e.g., tenths decimal point when the 12.5% effluent concentration is used).

- a. Step 1 – Compare Test Effluent 96-hour LC50s
If the IU-spiked test effluent is more toxic than one of the control effluents (i.e., LC50 less than control LC50) and the 95% confidence intervals associated with the LC50s do not overlap (i.e., significant difference) or are not calculable, the IU may have failed the test. This result is defined as a potential failure.

{Section 2.2B.3a.}

If the IU-spiked test is more toxic than both of the controls (i.e., LC50 less than control LC50s) and the associated LC50 confidence intervals do not overlap (or are not calculable), the results are considered definitive and the IU has failed the RTA test.

In some cases, acute toxicity may not be observed in the RTA effluents as well as the LRSA effluent. When the LC50s of the IU-spiked test effluent and the LRSA effluent are $\geq 100\%$, the IU is apparently not contributing to pass-through toxicity at LRSA; therefore, the IU passes the test. The IU also passes if the IU-spiked test effluent is less toxic than the control effluents (i.e., IU-spiked test LC50 is greater than both control LC50s).

A statistical model may be applied when LC50 values are insufficient to evaluate toxicity (see Step 2). If the LRSA effluent is acutely toxic (i.e., LC50 $< 100\%$), which indicates pass-through toxicity, the RTA effluent results are statistically compared even if the IU-spiked test and control test LC50s are $\geq 100\%$. Statistical testing is also applied if (1) the IU-spiked test is more toxic than one or both controls, but the LC50 confidence intervals overlap (i.e., no significant difference) or are not calculable and (2) the IU-spiked test and control(s) LC50s are equally toxic (i.e., LC50s $< 100\%$ are equal).

{Section 2.2B.3a.}

b. Step 2 – Statistical Evaluation of RTA Results

If necessary, the control and IU-spiked test data are compared using a General Linear Model (GLM) as described in the RTA Protocol. If the GLM results indicate that the IU-spiked test effluent is more toxic than one of the control tests, the IU has potentially failed the RTA. If the results show that the IU-spiked test effluent is more toxic than both of the control tests, the results are definitive and the IU has failed the RTA. The level of significance for judging statistical differences between the IU-spiked test and control test is a p value of 0.015.

(4) a. In the event that the initial RTA test is a “potential failure” (IU-spiked test more toxic than one control) or “definitive failure” (IU-spiked test more toxic than both controls), a confirmation RTA test shall be performed within 30 days of the reported potential or definitive failure. The confirmation RTA test shall follow LRSA’s RTA Protocol.

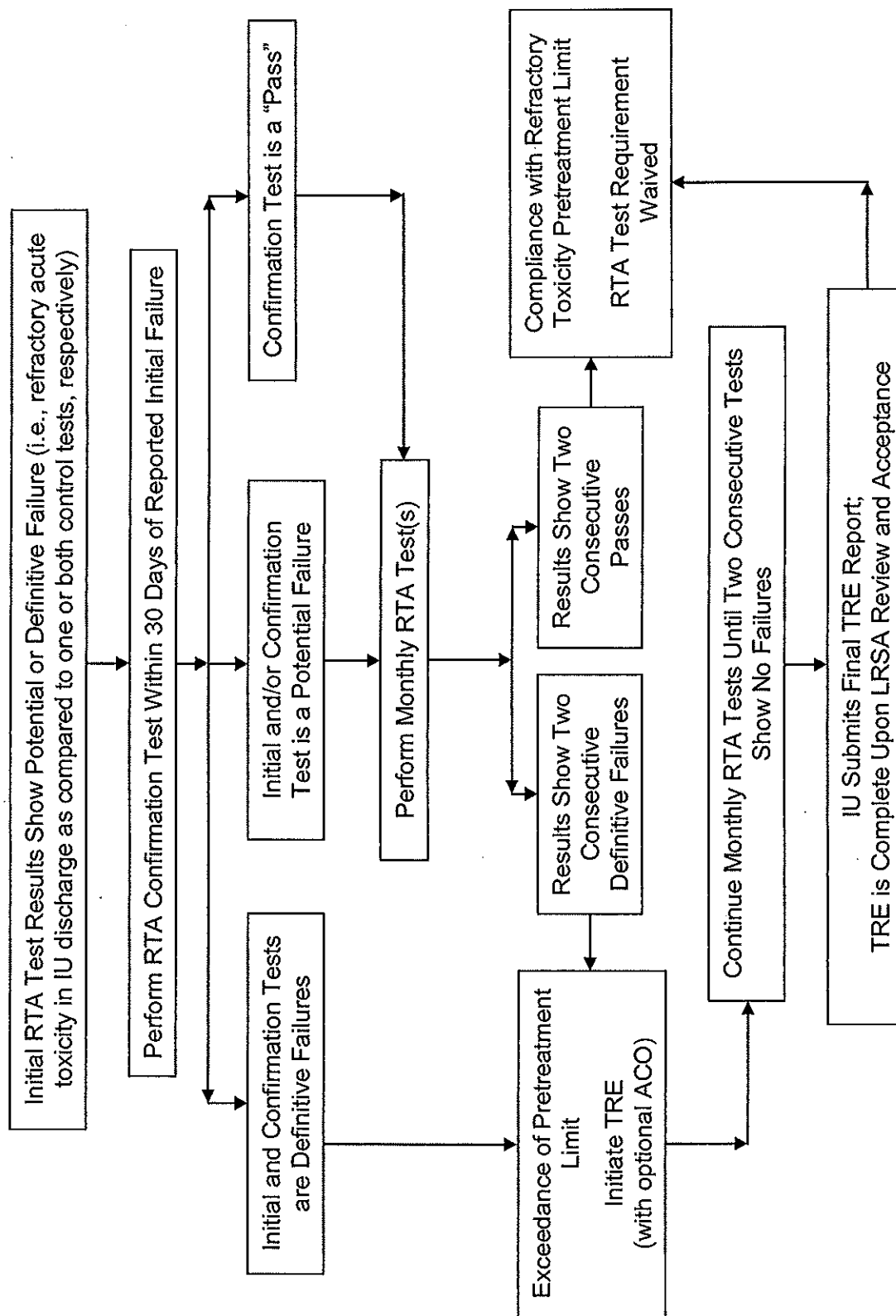
b. If no failure is observed during the confirmation test, a follow-up RTA test shall be conducted within 30 days to confirm that the discharge does not contain refractory toxicity. If no refractory toxicity is observed in two consecutive tests (i.e., confirmation test and the follow-up test), the RTA testing requirement shall be waived. If refractory toxicity is observed in the follow-up test, RTA testing shall continue monthly until either no toxicity is observed in

{Section 2.2B.4b.}

- b. two consecutive RTA tests or definitive toxicity is confirmed. LRSA reserves the right to increase or decrease the frequency of testing.
- c. If the initial and confirmation tests both show potential failures or they show a combination of definitive and potential failures (in either order), RTA tests shall be performed monthly.
If two consecutive monthly tests show definitive failures, the limit for refractory acute toxicity has been exceeded. See Recommendations and Orders Section 6.5E(6).
If two consecutive monthly tests show no failures, the RTA testing requirement will be waived. LRSA reserves the right to increase or decrease the frequency of testing.
- d. If the initial and confirmation tests are definitive failures, then the limit herein (2.2 B. above) for refractory acute toxicity has been exceeded. See Recommendations and Orders Section 6.5E(6).

NOTE: Figure 1, a schematic of the decision process in evaluating RTA test failures and enforcement is provided herein.

Figure 1. Decision Process for Evaluating Refractory Toxicity Assessment (RTA) Test Failures
Represents Sections 2.2B and 6.5E(6) of LRSA's Rules and Regulations



2.3 Federal Categorical Pretreatment Standards

Upon promulgation of a Federal Categorical Pretreatment Standard for a particular industrial subcategory, the Federal Standard, if more stringent than limitations imposed under these Rules and Regulations for sources in that subcategory, shall immediately supersede these limitations and affected industrial users shall comply with such standards within the stated deadlines. The Executive Director shall make reasonable attempts to notify affected industrial users of the applicable reporting requirements under 40 CFR Section 403.12, but a failure to notify does not relieve such industries of the obligation to comply with such reporting requirements.

A. Sampling Waivers for Categorical Pollutants

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

- (1) The Authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.
- (2) The monitoring waiver is valid only for the duration of the effective period of the Permit or other equivalent individual control mechanism, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent Industrial Discharge Permit.
- (3) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

The request for a monitoring waiver must be signed in accordance with the Signatory requirements for Industrial User reports as found in the Authorized Representative definition in Section 1.2 and include the certification statement in Section 5.5. Non-detectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

{Sec. 2.3 A (3)}

- (4) Any grant of the monitoring waiver by the Authority must be included as a condition in the User's Industrial Discharge Permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver will be maintained by the Authority for 5 years after expiration of the waiver.
- (5) Upon approval of the monitoring waiver and revision of the User's Industrial Discharge Permit by the delegated Authority, the Major Industrial User must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:
- “Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under Section 5.1 B(3) of these Rules and Regulations”.
- (6) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the Major Industrial User's operations, the User must immediately: Comply with the monitoring requirements of Section 5.1 B.(3) a. or with other more frequent monitoring requirements imposed by the Authority; and notify the Authority.
- (7) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

B. Use of Equivalent Concentration Limits for Categorical Pollutants

The Authority may convert the mass limits of the categorical Pretreatment Standards at 40 CFR parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Major Industrial Users. When converting such limits to concentration limits, the Authority will use the concentrations listed in the applicable subparts of 40 CFR parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by Section 2.7.

Equivalent limitations calculated in accordance with *this section* are deemed Pretreatment Standards for the purposes of section 307(d) of the Act and this part. Once incorporated into its Industrial Discharge Permit, the Major Industrial User must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived. {Sec. 2.3 B.}

Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

Any Industrial User operating under an Industrial Discharge Permit incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Authority within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Authority of such anticipated change will be required to meet the mass or concentration limits in its Industrial Discharge Permit that were based on the original estimate of the long term average production rate.

C. Use of Equivalent Mass Limits for Categorical Pollutants

When the limits in a categorical Pretreatment Standard are expressed only in terms of pollutant concentrations, an Industrial User may request that the Authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Authority. The Authority may establish equivalent mass limits only if the Industrial User meets all the following conditions in paragraph (1) a. through (1) e. of this section.

- (1) To be eligible for equivalent mass limits, the Industrial User must:
- a. Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;
 - b. Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;
 - c. Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and long-term average production rate must be representative of current operating conditions;
 - d. Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and

{Sec. 2.3 C. (1d.)}

- e. Have consistently complied with all applicable categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.

(2)

An Industrial User subject to equivalent mass limits must:

- a. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
- b. Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;
- c. Continue to record the facility's production rates and notify the Authority whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in paragraph (1)(c.) of this section. Upon notification of a revised production rate, the Authority will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
- d. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraph (1)(a.) of this section so long as it discharges under an equivalent mass limit.

(3)

Where the Authority chooses to establish equivalent mass limits, it will:

- a. Calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average Standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor;
- b. When notified of a revised production rate, reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and
- c. Retain the same equivalent mass limit in subsequent Industrial Discharge Permit terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to Section 2.7. The Industrial User must also be in compliance with (see Sections 3.5 and 3.6.

{Sec. 2.3 C. (3) c.}

- (4) The Authority may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants which cannot appropriately be expressed as mass.

Equivalent limitations calculated in accordance with this section are deemed Pretreatment Standards for the purposes of section 307(d) of the Act and this part. Once incorporated into its Industrial Discharge Permit, the Industrial User must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

Any Industrial User operating under an Industrial Discharge Permit incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Authority within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Authority of such anticipated change will be required to meet the mass or concentration limits in its Industrial Discharge Permit that were based on the original estimate of the long term average production rate.

D. Non-Significant Categorical Industrial Users

The Authority may determine that an Industrial User subject to categorical Pretreatment Standards under 403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

- (1) The Major Industrial User, prior to the Authority finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
- (2) The Major Industrial User annually submits the certification statement required in Section 5.5 together with any additional information necessary to support the certification statement; and

{Sec. 2.3 D. (2)}

- (3) The Major Industrial User never discharges any untreated concentrated wastewater.

Where the Authority has determined that a Major Industrial User meets the criteria for classification as a Non-Significant Categorical Industrial User, the Authority will evaluate, at least once per year, whether an Industrial User continues to meet the criteria in this Section.

Annual certification by Non-Significant Categorical Industrial Users.
An industrial user determined to be a Non-Significant Categorical Industrial User pursuant to *this section* must annually submit the following certification statement, signed in accordance with the signatory requirements in Section 1.2. This certification must accompany any alternative report required by the Authority:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____, to _____, _____ [month, days, year]:(a) The facility described as _____ [facility name] met the definition of a non-significant categorical Industrial User as described in Section 2.3 D of the Rules and Regulations, the facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information:_____

{Sec. 2.3 D. (3)}

2.4 Modification of Federal Categorical Pretreatment Standards

If the Authority's wastewater treatment system achieves consistent removal of pollutants limited by Federal Pretreatment Standards, the Authority may apply to the Approval Authority for modification of specific limits in the Federal Pretreatment Standards. If the requirements contained in 40 CFR Section 403.7 are fulfilled and prior approval from the Approval Authority is obtained, the Authority may modify pollutant discharge limits in the Federal Pretreatment Standards.

2.5 State Requirements

State requirements and limitations on discharges shall apply where they are more stringent than these Rules and Regulations or the federal requirements.

2.6 Authority's Right of Revision

The Authority reserves the right to establish more stringent limitations or requirements on discharges to the treatment works than are contained in these Rules and Regulations.

2.7 Excessive Discharge

No industrial user shall increase the use of process water or in any way otherwise dilute a discharge as a substitute for adequate treatment to comply with the Federal Categorical Pretreatment Standards or any other pollutant-specific limitation developed by the Authority or the State.

2.8 Trucked or Hauled Wastes

No person shall introduce, discharge or allow to be discharged into the treatment works of the Authority, the City or the Borough, any wastewaters or pollutants which are trucked or hauled, except at discharge points designated by the Executive Director.

2.9 Best Management Practices

The Authority may develop Best Management Practices (BMPs) to implement the local limits noted in Section 2.1. Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this part and section 307(d) of the Act.

{Sec. 2.9}

SECTION 3.0 – CONTROL OF PROHIBITED WASTES

3.1 Regulatory Actions

If wastewaters violating the restrictions imposed under Section 2 of these Rules and Regulations are discharged into the treatment works of the Authority, the City or the Borough, the Executive Director shall take all actions necessary to:

- A. Prohibit the discharge of such wastewater;
- B. Require an industrial user to demonstrate that inplant modifications will reduce or eliminate the discharge so as to be in conformance with these Rules and Regulations;
- C. Require pretreatment, including storage facilities or flow equalization, necessary to ensure compliance with these Rules and Regulations;
- D. Require the discharger to pay the costs incurred by the Authority for any damages including engineering, legal and administrative costs; and
- E. Take such other remedial action, including discontinuation of service and court action for injunctive relief, as may be desirable or necessary.

3.2 Pretreatment Facilities

- A. Dischargers shall provide wastewater pretreatment if required by the terms of an industrial Discharge Permit issued under Section 4.0 in order to comply with these Rules and Regulations and all Pretreatment Standards as defined herein. The permittee shall achieve compliance with Federal, State, local and Authority discharge limits and Pretreatment and Standards within the times specified by such Pretreatment Standard and applicable regulations.
- B. Pretreatment facilities, where required, shall be provided for at the dischargers own cost and expense. Such facilities shall be operated efficiently and maintained in good working order and in accordance with the requirements of a discharge permit, these Rules and Regulations, and all other applicable Federal, State or local laws, regulations or ordinances.

{Sec. 3.2 B.}

3.3 Submission of Plans

Where pretreatment or equalization of wastewater flow is required, plans, specifications, operating procedures, and other pertinent data and information shall be submitted by the discharger to the Executive Director for review and comment. The review of such plans and operating procedures does not relieve the discharger from the responsibility of modifying the facility as necessary to produce wastewater characteristics acceptable to the Authority. Any subsequent modifications to such pretreatment or flow-control facilities (including changes in any method of operation) affecting the discharge shall not be made without approval of the Executive Director.

3.4 Admission to Property

The Executive Director or a delegated representative of LRSA, the Commissioner and/or the Regional Administrator, upon the presentation of credentials, may enter upon the premises of any discharger at reasonable times for the purpose of inspecting or copying any records required to be kept under these Rules and Regulations, and Federal and State regulations.

The Executive Director, the Commissioner, and/or the Regional Administrator upon presentation of credentials, may enter upon the premises of any discharger at any time for the purpose of inspecting any monitoring equipment or to conduct measuring, sampling or testing of the discharge of wastewater to the treatment works.

3.5 Bypass of Pretreatment Equipment

- A. A permittee shall not allow an anticipated bypass to occur unless the permittee demonstrates, to the satisfaction of the Authority that:
- (1) The anticipated bypass is unavoidable in order to prevent loss of life, personal injury, or severe property damage;
 - (2) There were no feasible alternatives to the anticipated bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime;
 - (3) The anticipated bypass will not occur during normal periods of equipment downtime or preventive maintenance when back-up equipment can be installed to avoid the anticipated bypass;
 - (4) The permittee complied with the reporting requirements in (B) below; and
 - (5) The permittee received the Authority's written prior approval for the anticipated bypass.

{Sec. 3.5 A. (5).}

B. All permittees shall comply with the reporting requirements for anticipated bypasses in this subsection.

- (1) The permittee shall, if possible, at least 10 days prior to the date of the anticipated bypass, provide prior written notice of the anticipated bypass to the Authority including:
 - a. The exact dates and times of the anticipated commencement and end of the anticipated bypass;
 - b. The permittee's rationale as to why the anticipated bypass has to occur;
 - c. That the permittee will be properly operating the facility at the time of the anticipated bypass;
 - d. That the anticipated bypass is unavoidable to prevent loss of life, personal injury, or severe property damage, including the name, title, address and telephone number of the individual that made the determination for the permittee, the date and information upon which that individual made the determination and any other information the Authority requests;
 - e. That there is no feasible alternative to the anticipated bypass, including but not limited to the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime; and
 - f. That the anticipated bypass will not occur during normal periods of equipment downtime or preventive maintenance when backup equipment can be installed to avoid the anticipated bypass.

C. Any permittee who has an unanticipated bypass not otherwise reported under Section 5.1B shall comply with the reporting requirements for unanticipated bypass in this subsection.

{Section 3.5C}

- (1) The permittee shall, within 24 hours after the commencement of the unanticipated bypass or of the permittee becoming aware of the unanticipated bypass, verbally communicate the following information to the Authority via telephone;
- a. A description of the discharge, including the time of the discharge, location of discharge, volume of discharge and the concentration of pollutants in the discharge;
 - b. The duration of the unanticipated bypass, including the dates and times of the commencement and end, or anticipated end of the unanticipated bypass, and if the reason for unanticipated bypass has not been corrected, the anticipated time when the permittee will correct the situation to remove the need for the unanticipated bypass;
 - c. The cause of the unanticipated bypass;
 - d. Steps the permittee will take to determine the cause of the unanticipated bypass;
 - e. Steps the permittee will take to reduce and eliminate the noncomplying discharge; and
 - f. Steps the permittee is taking to reduce, eliminate and prevent reoccurrence of the unanticipated bypass.

----- (2) The permittee shall within five days after the commencement of the unanticipated bypass or of the permittee becoming aware of the unanticipated bypass, submit written documentation to the Authority, including all of the information listed below. The Authority must receive the information required below within the five-day period in order for the violator to meet this requirement. If the permittee becomes aware that it has failed to submit any relevant facts required in C. (1) above, or submitted incorrect information required in C. (1) above, the permittee shall immediately submit such facts or information to the Authority.

- a. All of the information required by C. (1) above;
- b. All properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation.

{Section 3.5C.(2)b.}

- c. The reasons that the unanticipated bypass occurred, including the circumstances leading to the unanticipated bypass;
- d. Evidence that the permittee was properly operating the facility at the time of the bypass;
- e. Evidence that the permittee submitted notice of the unanticipated bypass as required pursuant to C.(1) above, including the name, title, address and telephone number of the individual who satisfied this requirement, the date and specific time the individual notified the Authority for the permittee, the specific method that the individual used to notify the Authority, the name and title of the individual within the Authority to which the permittee gave such notice;
- f. Evidence that the permittee complied with all remedial measures the Authority required;
- g. The permittee's rationale for its determination supporting that the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, including the name, title, address and telephone number of the individual that made the determination for the permittee, the date and information upon which that individual made the determination and any other information the Authority requests.
- h. Evidence that there was no feasible alternative to the unanticipated bypass, including, but not limited to, the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime; and
- i. Evidence that the unanticipated bypass did not occur during normal periods of equipment downtime or preventive maintenance when backup equipment should have been installed to avoid the unanticipated bypass.

{Section 3.5C(2)i.}

3.6 Accidental Discharges, Slug Control Plans and Reports of Potential Problems

A. The Authority shall evaluate whether each Major Industrial User needs a plan or other action to control Slug Discharges or any accidental discharges of prohibited material or other substances regulated by these Rules and Regulations. Facilities to prevent such accidental discharge shall be provided and maintained at the industrial user's own cost and expense. Each Major Industrial User must be evaluated within 1 year of being designated a Major Industrial User. No industrial user shall be permitted to introduce pollutants into the system until accidental discharge/slug control prevention procedures have been reviewed by the Executive Director. For purposes of this subsection, a Slug Discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the Authority's regulations, local limits or permit conditions. The results of such activities shall be available to the Approval Authority upon request. Major Industrial Users are required to notify the Authority immediately of any changes at its facility affecting potential for a Slug Discharge. If the Authority decides that a sludge control plan is needed, the plan shall contain, at a minimum, the following elements:

- (1) Description of discharge practices, including non-routine batch Discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the Authority of Slug Discharges, including any discharge that would violate a prohibition under 40 CFR 403.5(b) with procedures for follow-up written notification within five days;
- (4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading 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.

Upon request, the above mentioned detailed plans showing facilities and operating procedures to provide protection shall be submitted to the Executive Director for review and comment prior to construction of the facility. Review of such plans and operating procedures shall not relieve the industrial user from the responsibility of modifying any such facility as is necessary to meet the requirements of these Rules and Regulations.

{Sec. 3.6 A. (4).}

- B. Subject to the reporting requirements for Major Industrial Users contained in Section 5.1B of these Rules and Regulations, industrial users shall provide:

(1) Telephone Notice

In case of an accidental discharge of prohibited materials or other substances regulated under these Rules and Regulations, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load that may cause potential problems for the POTW, or if for any reason an industrial user does not comply or will be unable to comply with any prohibition or limitation in these Rules and Regulations, the industrial user responsible for such discharge shall immediately telephone and notify the Authority of the incident. The notification shall include location of discharge, type of waste, concentration and volume. Furthermore, such industrial user shall take immediate action to contain and minimize the accidental discharge to the POTW so as to prevent interference with the treatment process and/or damage to the treatment works.

(2) Written Notice

Within five (5) working days following such discharge under this section, the industrial user shall submit to the Executive Director a detailed written report describing the date, time and cause of the discharge, the quantity and characteristics of the discharge and corrective action taken at the time of the discharge, and the measures to be taken by the industrial user to prevent similarly 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, fish kills, 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 these Rules and Regulations or other applicable laws.

(3) Notice to Employees

All industrial users shall develop an emergency notification procedure. A notice shall be permanently posted to the industrial user's bulletin board or other prominent place advising employees of the responsible individual to notify in the event of a dangerous discharge. Employers shall ensure that all employees who may cause such a dangerous discharge to occur be advised of the emergency notification procedure.

{Sec. 3.6 B. (3).}

3.7 Public Notification

The Authority shall, at least annually, provide for public notification in the largest daily newspaper published in the City and Borough of industrial users which, at any time during the previous twelve months were in significant non-compliance with applicable, pretreatment requirements. For the purposes of this section, an industrial user is in such significant non-compliance if its violation meets one or more of the criteria set forth in 40 CFR 403.8 (f)(2)(viii)(A) through (H) see below.

Such notification will summarize any enforcement actions taken against such industrial users during the same twelve months.

Significant Non-Compliance Determination under Federal 40 CFR 403.8(f) (2) (viii)

By February 1st annually, PUBLIC NOTICE for any Industrial User that meets any of the following criteria:

1. Chronic Violation of discharge limits:
66% or more of all measurements taken for the same pollutant parameter during a 6 month period which exceed a numeric Pretreatment Standard or Requirement, including instantaneous limits.
2. Technical Review Criteria (TRC):
33% or more of all measurements taken for the same pollutant parameter taken during a 6 month period equal or exceeding the product of the numeric Pretreatment Standard or Requirement including instantaneous limits [as defined by 40 CFR 403.1(1)] multiplied by the applicable TRC;
non hazardous TRC=1.4 BOD,TSS, fats, Oil & Grease
hazardous TRC=1.2 all other pollutants except pH.
3. Any other violation of a Pretreatment Standard or Requirement [as defined by 40 CFR 403.3(1)] (daily maximum, long term average, instantaneous limit, or narrative standard) that the POTW determined has "Caused alone or in combination with other Discharges, interferences or pass thru including endangering the health" of POTW personnel or general public.
4. Any discharge of a pollutant that has "Caused Imminent Endangerment to human Health, welfare or to the environment" or has resulted in "LRSA's exercise of it emergency authority under paragraph (f) (1) (vi) (B) of this section to halt or prevent such a discharge".

{Sec. 3.7}

5. Failure to meet a compliance schedule milestone, within 90 days after scheduled date contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.
6. Failure to provide required reports within 30 days after the due date:
Required reports such as baseline monitoring reports, 90-day compliance reports, periodic self monitoring and compliance reports with compliance schedules.
7. Failure to accurately report non-compliance.
8. Any other violation or group of violations, which may include a violation of Best Management Practices which the POTW determines will adversely affect the operation or implementation of the local Pretreatment program.

{Sec. 3.7}

SECTION 4.0 – INDUSTRIAL USER DISCHARGE PERMITS

4.1 Wastewater Analyses

When requested by the Authority, an industrial user shall submit information on the nature and characteristics of its wastewater within the time period specified in the request. The Authority may periodically require a user to update this information.

4.2 Discharge Permit Requirement

- A. No major industrial user shall connect or discharge to the treatment works of the Authority, the City of Linden and the Borough of Roselle without having obtained an Industrial Discharge Permit from the Authority. The terms of such permit may be modified thereafter from time to time, and a reasonable time provided for compliance.
- B. Any violation of the terms and conditions of an Industrial Discharge Permit shall be deemed a violation of these Rules and Regulations and will subject the violator to enforcement actions, penalties and sanctions set forth in Section 6.0 of these Rules and Regulations.

Obtaining an Industrial Discharge Permit does not relieve a user of its obligation to comply with all Federal and State pretreatment standards or requirements, or with any other requirements of Federal or State laws or regulations, or the Sewer Use Ordinances of the City of Linden and Borough of Roselle.

4.3 Permit Applications

Any user required to obtain a discharge permit who proposes to discharge into the treatment works must file a completed application for this discharge permit at least 180 days prior to the date which any discharge will commence.

4.4 Permit Application Contents

The following information may be required as part of an application for a discharge permit:

- A. Written certification from the appropriate Federal or State regulatory agencies as to whether the applicant is included within particular industrial categories or subcategories for purposes of industrial pretreatment standards.
- B. All information required by section 5.1 (B) (1) b. (i) through (viii) of these Rules and Regulations.

{Sec. 4.4 B.}

- 4.4 C. 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 treatment works.
- D. Number and type of employees, hours of operation and proposed or actual working hours of operation.
- E. Each product produced by type, amount, process or processes and rate of production.
- F. Type and amount of raw materials processed (average and maximum per day).
- G. Site plans, floor plans, mechanical and plumbing plans and details showing sewers, floor drains and appurtenances by size, location and elevation and all points of discharge.
- H. Time and duration of discharges.
- I. Any other information as may be deemed necessary by the Executive Director to evaluate the permit application.

Incomplete or inaccurate applications will not be processed, but will be returned to the applicant for revision.

4.5 Signatories and Certification

All permit applications must be signed by an authorized representative as defined in Section 1.2 of these Rules and Regulations. The application shall include the certification set forth in Section 5.5 of these Rules and Regulations.

An application signed by an individual other than a corporate officer shall include a corporate resolution authorizing that individual to make the application on behalf of the corporation. An application submitted by a non-corporate user shall be signed by the proprietor or a general partner.

4.6 Permit Duration and Renewal

- A. Industrial Discharge Permits shall be issued for fixed terms not to exceed five (5) years.

Each permit shall indicate a specific date upon which it shall expire, and may be for a period of five years at the discretion of the Authority

- B. Any permittee wishing to renew an expiring discharge permit shall file a complete application for a permit at least 180 days before the expiration date.

{Sec. 4.6 B.}

- 4.6 C. The terms and conditions of a discharge permit are continued in force until the effective date of a new permit or the denial of the permit application if:
- (1) The Authority without fault on the part of the permittee, fails to issue a new permit with an effective date on or before the expiration date of the previous permit;
 - (2) The permittee has submitted a timely and complete application as provided in Section 4.6.B. above.
- D. Permits continued under Section 4.6.C. above, shall remain fully effective and enforceable.
- E. Any such continuance shall not exceed a period of six (6) months from the expiration date of the permit so continued.

4.7 Discharge Permit Contents

An Industrial Discharge Permit shall include such conditions as are deemed reasonably necessary by the Authority to prevent pass-through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal and protect against damage to the treatment works.

- A. Discharge Permits must contain:
- (1) A statement of the permit duration and the date upon which it will expire (no more than 5 years);
 - (2) A statement that the permit is non-transferable without prior notice to the Authority and approval by the Authority in accordance with Section 4.9 of these Rules and Regulations, a copy of the existing Industrial Discharge Permit must be provided to the new owner or operator;
 - (3) Effluent limits, including Best Management Practices, based on applicable pretreatment standards;
 - (4) Self-monitoring, sampling, reporting, notification and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, including the process for seeking a waiver for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 2.3A, or a specific waived pollutant in the case of an individual Industrial Discharge Permit, sampling locations, sampling frequency and sample type based on Federal, State and local law; and

{Sec. 4.7 A. (4).}

4.7 A.

- (5) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any compliance schedule. Such schedules may not extend the time for compliance beyond that required by applicable Federal, State or local law.
- (6) Requirements for the development and implementation of spill (slug) control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated or non-routine discharges, if determined by the Authority to be necessary;
- (7) Require the development of a compliance schedule for each Industrial User for the installation of pretreatment technology, required to meet applicable Pretreatment Standards and Requirements;
- (8) Require the submission of all notices and self-monitoring reports from Industrial Users as are necessary and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including, but not limited to the reports required in Sections 2.3. and 5.1B.

4.7 B. Discharge permits may contain, but will not be limited to, 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) Requirements for the installation of pretreatment technology, pollution control and/or appropriate containment devices, designed to reduce, eliminate or prevent the introduction of pollutants into the treatment works;
- (3) Development of waste minimization plans;
- (4) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- (5) A statement that compliance with the discharge permit does not relieve the permittee of responsibility for compliance with Federal and State pretreatment standards, including those which become effective during the term of the permit; and
- (6) Other conditions as deemed appropriate by the Executive Director to ensure compliance with these Rules and Regulations and State and Federal laws, Rules and Regulations.

{Sec. 4.7 B. (6).}

4.8 Permit Modifications

The Authority may modify a discharge permit for good cause including, but not limited to, the following reasons:

- A. To incorporate any new or revised Federal, State or local pretreatment standards or requirements;
- B. To address significant alterations or additions to the users operation, processes, or wastewater volume or character since the issuance date of the permit;
- C. A change in the Authority's plant or treatment works, or changes in the Authority's influent characteristics or loadings that require or make desirable either a temporary or permanent reduction or increase of the authorized discharge or pollutant limits;
- D. The permitted discharge poses a threat to the treatment works, personnel or the receiving waters.
- E. Violation of any terms or conditions of the permit;
- F. Misrepresentation or failure to disclose all relevant facts in the discharge permit application or in any required reporting;
- G. The Authority shall, with the consent of the permittee and without following the procedures set forth in Sec. 4A, modify a permit to make any of the following changes:
 - (1) Correct typographical errors and make language changes that have no legal or substantial effect or correct technical or administrative errors which do not result in changes to the permit effluent limitations;
 - (2) Require more frequent monitoring or reporting by the permittee;
 - (3) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;
 - (4) Reflect a change in the owner or operator of a facility provided that a certification has been submitted to the Authority in accordance with Sec. 4.9.

{Sec. 4.8 G. (4).}

4.9 Discharge Permit Transfer

Industrial Discharge Permits may be transferred to a new owner or operator only if the current permittee gives at least 90 days advance notice to the Executive Director and the Executive Director approves the permit transfer. The notice to the Executive Director must include a written certification by the new owner or operator which:

- A. States that the new owner and/or operator has no immediate intent to change the facilities operations and processes;
- B. Identifies the specific date on which the transfer is to occur; and
- C. Acknowledges full responsibility for complying with the existing discharge permit.

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

4.10 Discharge Permit Revocation

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

- A. Failure to notify the Authority of significant changes to the wastewater prior to the changed discharge;
- B. Failure to provide prior notification to the Executive Director of changed conditions pursuant to these Rules and Regulations;
- 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 the Authority timely access to the facility premises and records;
- G. Failure to meet effluent limitations;
- H. Failure to pay fines;

{Sec. 4.10 H.}

4.10 Discharge Permit Revocation

- 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 business ownership of a permitted facility; or
- M. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or of these Rules and Regulations.

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

{Sec. 4.10 (M.)}

SECTION 4A - PERMIT PROCESSING, DECISIONS AND APPEALS

4A.1 Permit Decisions

The Authority will evaluate the data supplied by the user and may require additional information. Within 180 days of receipt of a complete discharge permit application the Authority will determine whether or not to issue a permit. This time limit may be extended by the Authority in the case of permit renewals for an additional 180 days during the permit continuance period provided for in Section 4.6

The Authority may deny any application for a discharge permit or modification.

No discharge permit shall be issued, renewed or modified by the Authority so as to relax any effluent limitation unless the permittee or applicant has complied with the requirements of N.J.S.A. 58:10A-6K.

4A.2 Application Review

- A. Within 90 days of receipt of an application, the Authority shall send written notice to the applicant as to whether the application is a complete one for the purposes of a technical review. The notice shall specify if the application lacks a required submission or if a particular submission is incomplete.
- B. The time for the Authority to issue or deny a permit shall not commence until the application has been deemed complete.

4A.3 Draft Permit

After review of the complete application the Authority will either;

- A. Issue a draft new permit, permit modification, or permit renewal, together with an explanatory fact sheet statement; or
- B. Issue a denial of application, permit revocation or suspension, together with a statement for the basis of such action.

4A.4 Fact Sheet Statement

The fact sheet (4A.3.A.) will briefly set out the significant factors considered and include when applicable:

- A. A description of the type of facility or activity to be permitted.
- B. Type and quantity of wastes or pollutants proposed to be discharged.
- C. A sketch or description of the location of the discharge and regulated activities described in the application.

- 4A.4 D. A brief summary of the basis for the permit conditions (normally by citing statutory and regulatory references).
- E. A summary of any variances.
- F. Any calculations or explanations or a reference to where such calculations or explanations may be found for the derivation of effluent limits to be imposed.
- G. Special notification requirements.

4A.5 Statement of Basis

The Statement of Basis (4A.3.B.) will briefly describe:

- A. The type of facility or activity which is the subject of the application or the permit.
- B. The type and quantity of wastes or pollutants proposed to be discharged; and
- C. The reasons for the decision.

4A.6 Public Notice

- A. The Authority shall provide public notice of the proposed issuance of an industrial permit, or of a major modification of an existing permit.
- B. The public notice shall identify the permittee; briefly describe major modifications and advise that the complete permit is available for inspection at the Authority offices. The notice shall also advise that written comments on the proposed action and request for public hearing will be accepted until a date specified in the notice, which shall be not less than 30 days after the date of the notice's publication.
- C. Such notice shall be published in any or all of the newspapers designated annually as its official newspaper publication and copies of the notice shall be mailed to the Mayor and Council of the City of Linden and Borough of Roselle, the applicant user and any other person the Executive Director deems proper or necessary.

4A.7 Public Hearing

- A. The Authority may, in its sole judgement and discretion, hold a public hearing concerning a permit decision if there is or may be significant public interest or if it determines that a hearing would be likely to clarify legal and/or factual issues and that oral testimony is essential to adequately express all issues and concerns.

- 4A.7 B.** Notice of a Public Hearing shall be given in the manner provided in 4A.6.B. and C., above.

4A.8 Response to Comments

The Authority shall respond to comments concerning draft permits by issuing a document at the time a final permit decision is issued, and shall:

- A. State what action the Authority has taken on the final permit or permit decision;
- B. Specify which provisions of the draft permit have been changed and the reasons for the changes;
- C. Briefly respond to all significant and relevant comments raised during the comment period or at any public hearing;
- D. Be made available to any person, without charge, upon request.

4A.9 Obligation to Raise Issues and Provide Information During Public Comment Period

In order to contest any permit decision of the Authority, an applicant, permittee or person seeking to be considered a party to a permit action shall raise all reasonably ascertainable issues and objections pertaining thereto in writing to the Authority by the close of the comment period.

If an applicant or other person fails to raise such issues and objections during the comment period, the right to contest, object or raise issues with regard to a permit action in a subsequent adjudicatory hearing or appeal shall be deemed to have been waived.

4A.10 Final Decision

The Authority shall make the final permit decision after the close of the comment period. The Authority shall notify in writing the applicant or permittee and each person submitting comments of the final decision. A notice of such action shall be published and mailed as set forth in 4A.6.

4A.11 Request for Adjudicatory Hearing

- A. A determination to grant, deny, modify, suspend or revoke a permit shall constitute a contested case under the "Administrative Procedure Act" (N.J.S.A. 52:14B-1 et.seq.) for the purpose of affording a permittee or party to a permit action an opportunity to contest a permit determination in an administrative hearing.

4A.11 B. A permittee or person seeking to be considered a party to the action may submit to the Authority a written request for an adjudicatory hearing to such for final determination in 4A.11.A. above, as follows:

1. A permittee shall submit the request in accordance with 4A.12. below within 30 days following receipt of notice of the final permit decision.
2. A person seeking to be considered a party to the action for the purpose of requesting an adjudicatory hearing shall submit the request in accordance with 4A.12.B. below within 30 days following receipt of notice of the final permit decision.
3. The request shall be submitted to:
Executive Director
Linden Roselle Sewerage Authority
PO Box 4118
5005 South Wood Avenue
Linden, NJ 07036

A copy of the request shall be submitted to: Monitoring Manager, at the above address.

4A.12 Request Contents

- A. A permittee shall include with the request the following information.
1. Permit number and issuance date;
 2. Date that final permit decision was received;
 3. A list of the contested permit conditions and the legal or factual questions at issue, including the basis of any objection, and their relevance to the permit decision together with a statement that these issues were raised during the comment period;
 4. Suggested revised or alternative permit conditions;
 5. A request, if necessary, for a barrier-free location for the disabled;
 6. An estimate of the amount of time needed for the hearing;
 7. Name, mailing address and telephone number of the person making the request;
 8. Information and documents relied upon to support the request.

- 4A.12 B.** A person seeking consideration as a party to the action shall include with the request the following:
1. The facility name and permit number;
 2. A statement setting forth:
 - a. Each legal or factual question alleged to be at issue;
 - b. Whether the legal or factual issue was raised during the public comment period;
 - c. The relevance of the legal or factual issue to the permit decision and a designation of the specific factual areas to be adjudicated;
 - d. An estimate of the amount of time for the hearing;
 3. The date that notification of the final permit decision was received;
 4. Names, addresses and telephone numbers of the requester and all persons represented by requester;
 5. A factual statement of the nature and scope of the interest of the requester;
 6. A request, if necessary for a barrier-free hearing location;
 7. A statement by the requester that, upon motion by any party granted by the Administrative law judge, or upon order of the judge's initiative, such person shall make available to appear and testify at the administrative hearing, if granted, the following: the requester; all affected persons represented by the requester; and all officers, directors, employees, consultants and agents of the requester;
 8. Specific references to the contested permit conditions as well as suggested revised or alternative permit conditions, including permit denials which, in the judgement of the person making the hearing request, would be required to implement the purposes of the State "Water Pollution Control Act";
 9. Identification of the basis for any objection to the application of control or treatment technologies, if identified in the basis or fact sheets, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of the State "Water Pollution Control Act";
- C. The Authority, in its discretion, may extend the time for submission of an adjudicatory hearing request for good cause.

4A.13 Determination – Party to Action

- A. The Authority shall determine, or shall refer to an Administrative Law Judge, whether a person other than an applicant or permittee, is a party to the action. The determination shall be made within 30 days of receipt of the request. If the request is referred to the Administrative Law Judge, the judge has an additional 30 days to decide on the request.
- B. A person shall be considered to be a party to the action only if:
 - 1. The person's objections to the Authority's decisions were raised during the public comment period or at the public hearing, if any;
 - 2. The person demonstrates the existence of a significant issue of law or fact, and the issue is likely to affect the permit decision;
 - 3. The person can show an interest, including an environmental, aesthetic or recreational interest, which is or may be affected by the permit decision and that the interest can be fairly traced to the challenged action and is likely to be redressed by a decision favorable to that person. An organization may contest a permit decision on behalf of one or more of its members if the organization's members could otherwise be a party to the actions in their own right, and the interests the organization seeks to protect are germane to the organizations purpose; and
 - 4. The person submits the information required in 4A.12.
- C. Whenever a person's request to be considered a party to the action is granted, the Authority or the Administrative law judge, as appropriate, shall identify the permit conditions which have been contested by such person for which an administrative hearing will be granted. Permit conditions which are not so contested shall not be affected by, or considered at, the adjudicatory hearing.
- D. A permittee or applicant shall be allowed to participate in any proceeding where a person, other than a permittee or applicant, is seeking to become a party to the action. All requests to be considered party for a particular permit shall be combined. When such a request is granted and a permittee's request for administrative hearing is granted, the actions may be combined into a single hearing.

4A.14 Granting or Denying Adjudicatory Hearing Request

- A. The Authority, in its discretion, shall decide the extent to which, if at all, the request for an adjudicatory hearing shall be granted in whole or in part.

4A.14 B. The Authority shall deny a request for adjudicatory hearing if:

1. The request does not conform with information requirements of 4A.12;
 2. The request does not include genuine issues of material fact or of law relevant to the permit decision;
 3. The request was not submitted within the required time limit;
 4. The contested legal and/or factual issues were not raised during the public comment period;
- C. For any adjudicatory hearing granted, the Authority shall specify the permit conditions contested. The hearing shall be limited to those conditions.
- D. If a hearing request is denied, the Authority shall state the reasons and the denial shall be considered a final action.

4A.15 Notice

- A. The Authority shall provide public notice of the grant of adjudicatory hearing by mailing the same to:
1. The Permittee or Applicant;
 2. Commenter;
 3. Persons testifying at a public hearing;
 4. Persons who requested an adjudicatory hearing or requested to be a party to the action.
- B. All adjudicatory hearings shall be governed by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 et seq.

4A.16 Stays of Contested Permit Conditions

- A. The Authority's grant of a request for an adjudicatory hearing shall not automatically stay any contested permit condition(s). A permittee shall submit a written request by certified mail, or by other means which provides verification of the date of delivery seeking a stay of any permit condition where the permittee has requested an adjudicatory hearing to contest the specific permit condition or any permit condition where the permittee has requested a major modification to alter the specific permit condition.

4A.16 B. A stay shall not be requested or granted for the initial permit issued to a new source, new discharger, or a recommencing discharger, and the permittee shall either discharge in accordance with the initial permit or not discharge until final action is taken.

C. In its request for a stay under A. above, a permittee shall, for each permit condition at issue, submit a written evaluation with appropriate documentation which describes:

1. The permittee's ability to comply with the permit condition(s) using existing treatment facilities. For effluent limitations, the permittee shall summarize the past 24 months of discharge data and indicate the level of pollutant control actually achieved. If no past effluent data are available, the permittee shall procure and submit the results of at least one sample;
2. The permittee's ability to comply with the permit condition(s) by implementing low cost short-term modifications to the existing treatment facility if it is demonstrated that the permit conditions cannot be achieved using existing facilities. Examples of short-term modifications include, but are not limited to, treatment process modifications, chemical addition, pollution abatement/prevention and change of products generated. The evaluation shall also include the cost for the implementation of such short-term modification(s);
3. The level of pollutant control actually achieved using short-term modifications if the evaluations demonstrate that the permittee is unable to achieve permit compliance. For effluent limitations, the permittee shall indicate the maximum treatment levels consistently achievable;
4. The cost to comply with the permit conditions if the evaluations demonstrate that the permittee is unable to achieve permit compliance using existing facilities and/or short-term modifications. This evaluation may also include a demonstration of any negative economic impacts that the cost to achieve permit compliance will have on the permittee (for example, the need to close, relocate, or reduce production) and to the community (for example, the loss of jobs or loss of tax base); and
5. Environmental impacts, if any, that granting a stay will have on the treatment works or its receiving waterbody.

4A.16 D. If the Authority determines that the information submitted pursuant to C. above is deficient, it shall inform the permittee of its determination and establish a time limit for resubmission. If the permittee does not submit the information requested or in the time period specified, the Authority shall:

1. Deny the stay request; or
2. Make a final decision based upon whatever information has been submitted.

E. The Authority may grant a stay request, in whole or in part, based upon consideration of the following:

1. For a stay of permit conditions pursuant to A. above, where the permittee has been granted an adjudicatory hearing to contest a specific permit condition(s), the Authority, in its evaluation, shall consider;
 - a. The pollution source and its impact upon the treatment works.
 - b. The level of pollutant control actually achieved by the existing treatment facility;
 - c. The degree and extent that short-term treatment alternatives including their cost may be applied to the existing treatment facility and what treatment level improvements may result from these alternatives; and
 - d. The cost to achieve total compliance with permit conditions, including the degree and extent of any negative economic impacts on the permittee and the community in relation to the environmental impacts that will result from not achieving compliance with permit conditions.
2. For a stay of permit conditions where the permittee has requested a major modification to alter a specific permit condition, the Authority shall grant a stay, without the need to request an adjudicatory hearing, if it makes a preliminary determination that a major modification is appropriate but the Authority cannot process the modification or revocation and reissuance request in a timely manner.

F. When a stay is granted a permittee shall comply with the conditions of the existing permit which are not stayed and all other interim conditions. The Authority reserves the right to withdraw a stay or alter the terms and conditions of a stay at any time for lack of good faith compliance efforts by the permittee or if the Authority subsequently determines that the treatment works are being impacted to such a degree that an alteration(s) to the stayed conditions is necessary.

4A.16 G. Where the Authority grants a stay request, the stay decision may include interim conditions, as follows:

1. Interim permit conditions or interim effluent limitations developed in accordance with the considerations in E. above;
2. Interim conditions by which the stayed permit conditions are phased into effect; and
3. For a stay pending an adjudicatory hearing, the interim conditions shall not be less stringent than the conditions in the existing permit unless it is demonstrated that the existing permit conditions were developed in error and a modification is justified.

H. In granting or denying a stay, the Authority shall:

1. Detail in writing the specific permit conditions that are stayed, if any; and
2. Include the reasons for granting or denying the stay.

I. The Authority may, upon its own initiative, issue a stay of a permit condition where it determines based on the considerations in E. above that a stay is appropriate.

J. A person who has requested an adjudicatory hearing may also request a stay provided notice of the request is also provided to the permittee. The Authority may grant a stay requested by a person if it is demonstrated that issuance of the permit was based upon a substantial error(s) in interpretation of the enabling legislation or interpretation of the applicable rules. The Authority shall deny a request for a stay if the person fails to meet the criteria for consideration as a party to the action.

SECTION 5.0 - INDUSTRIAL WASTEWATER MONITORING AND REPORTS

5.1 Reporting Requirements for Industrial Users

A. General Reporting Requirements

All industrial users shall comply with the reporting requirements under 40 CFR 403.12 and all applicable State pretreatment reporting requirements.

Except in the case of Non-Significant Categorical Users, the reports [required in Sections 5.1 B (1-4)] which require the Baseline Monitoring Report (BMR), 90-day, periodic, and semi-annual reports shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This sampling and analysis may be performed by the Authority in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the User will not be required to submit the compliance certification required under Section 5.5. In addition, where the Authority itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.

B. Specific Reporting Requirement

(1) Baseline Monitoring Reports

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

{Sec. 5.1B.(1) a}

5.1 B. (1)

b. Users described above must submit the following information set forth below.

(i) Identifying Information: The name and address of the facility, including the name of the operator and owner.

(ii) Environmental Permits: A list of any environmental control permits held by or for the facility.

(iii) Description of Operations: A brief description of the nature, average rate of production, and standard industrial classifications of the operations (s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

(iv) 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 wastestreams formula set out in 40 CFR 403.6 (e).

(v) Measurement of Pollutants:

AA. The categorical pretreatment standards applicable to each regulated process.

BB. The results of sampling and analysis identifying the nature and concentration and/or mass, where required by the standard or by the Authority, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.

The sample must be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 5.3.C of these Rules and Regulations.

{Sec. 5.1B.(1)b.(v)BB.}

5.1 B. (1) b. (v.)

CC. Sampling must be performed in accordance with procedures set out in Section 5.3B of these Rules and Regulations.

DD. In cases where the standard requires compliance with a Best Management Practice or pollution prevention alternative, the Industrial User shall submit documentation as required by the Authority or the applicable standards to determine compliance with the standard.

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

(vii) Compliance Schedule: If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 5.1.B(5) of these Rules and Regulations.

(viii) Signature and Certification: All baseline monitoring reports must be signed and certified in accordance with Section 5.5 of these Rules and Regulations.

(2) Reports on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the Executive Director a report containing the information described in Section 5.1B(1)b. (iv), (v), &

{Sec. 5.1B.(2)}

5.1 B. (2)

(vi) of these Rules and Regulations. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6 (c), this report shall contain a reasonable measure of the user's long-term production rate.

For all other users subject to categorical pretreatment standard expressed in terms of allowable pollutant discharge per unit of production (or other measure of operations), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 5.5 of these Rules and Regulations.

(3) Periodic Compliance Reports

- a. All significant categorical industrial users (except a Non-Significant Categorical User as defined in Section 2.3 D. of these Rules and Regulations) shall, twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with Section 5.5 of these Rules and Regulations.
- b. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge
- c. If a user subject to the reporting requirement in this section monitors any regulated pollutant, at the appropriate sampling location, more frequently than required by the Executive Director using the procedure prescribed in Section 5.3B of these Rules and Regulations, the results of this monitoring must be included in the report.
- d. In cases where a Pretreatment Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Authority to determine the compliance status of the User.

{Sec. 5.1B.(3) d.}

5.1 B. (4) Discharge Monitoring Reports

- a. All major industrial users as defined in the LRSA Rules and Regulations, Section 1.2 must report results of monthly discharge compliance monitoring. Results of those parameters required to be monitored during the particular month, including a description of the nature, concentration, and flow of the pollutants, are to be reported on the designated Discharge Monitoring Report forms and submitted on a monthly basis.

The required monitoring parameters and reporting frequencies are also specified in each industrial user discharge permit. All DMR reports shall be signed by an authorized representative (Section 1.2) if that representative is the highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility, who may, in his absence, authorize another responsible high ranking official to sign a monthly monitoring report if a report is required to be filed during that period of time. The highest ranking official shall, however, be liable in all instance for the accuracy of all the information provided in the monitoring report; provided, however, that the highest ranking official may file, within seven days of his return, amendments to the monitoring report to which he was not a signatory. The filing of amendments to a monitoring report in accordance with this paragraph shall not be considered a late filing of a report for purposes of Section 6.4 of these Rules and Regulations or for purposes of determining a significant non-complier.

- b. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
- c. If a user subject to the reporting requirement this section monitors any pollutant more frequently than required by the Authority, using the procedures prescribed in Section 5.3B of these Rules and Regulations, the results of this monitoring shall be included in the report.
- d. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Authority to determine the compliance status of the User.

{Sec. 5.1B.(4)d.}

5.1 B. (5)

Compliance Schedule Progress Report

All compliance schedules which may be required by the Authority of any permittee shall comply with the following conditions:

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

(6) Reports of Changed Conditions

Each user must notify the Authority of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least ninety (90) days before the change.

- a. The Authority may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 4.0 of these Rules and Regulations.
- b. The Authority may issue a wastewater discharge permit or modify an existing wastewater discharge permit under Section 4.0 of these Rules and Regulations in response to changed conditions or anticipated changed conditions.

{Sec. 5.1B(6)b.}

- c. For purposes of the requirement, significant changes include, but are not limited to, flow increases of ten percent (10%) or greater, and the discharge of any previously unreported pollutant.

(7) Reports from Unpermitted Users

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the Authority as the Authority may require.

(8) Notice of Violation/Repeat Sampling and Reporting/Upsets

- a. If such monitoring indicates a violation, the user shall notify the Authority within 24 hours of becoming aware of the violation(s). That user shall repeat the sampling and analyses and submit the results to the Authority within 30 days after becoming aware of the violation. Resampling will not be required if the Authority performs monitoring (sampling and analyses) at the user at least once a month, or performs such monitoring between the time the initial sampling was conducted and the time the user or the Authority receives the results of the analysis of this sampling. Where the Authority has performed the sampling and analysis in lieu of the Industrial User, the Authority will perform the repeat analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis.
- b. The user shall report to the Authority:
 - (i) Any exceedance of any effluent limitation that causes injury to person, or damage to the environment or poses a threat to human health or the environment, (ii) any exceedance of any effluent limitation for toxic pollutant within, two hours of its occurrence, or becoming aware of its occurrence.

Within 24 hours of the occurrence or of becoming aware of the occurrence, the user shall provide the Authority with additional information as may be required by the Authority, including an estimate of the danger posed by the discharge to the environment, whether the discharge is continuing, and the measures taken or being taken to remediate the problem and damage to the environment, and to avoid a repetition.

Thereafter the user shall submit a written report of the occurrence within five days to the Authority.

{Sec.5.1B.(8)b.}

c. The user shall report to the Authority any Serious Violation within 30 days of the violation. The report shall include a statement indicating that the user understands the civil administrative penalties required to be assessed for Serious Violations, whether or not the user has raised or intends to raise any affirmative defenses under NJSA 58:10A-10.2. The report shall also explain the nature of the Serious Violation and the measures taken to remedy the cause or prevent a recurrence of the Serious Violation.

d. Any user who:

- (i) Reports effluent discharge values that could make the user a Serious Violator or otherwise become a Serious Violator for one or more specific parameters for which the user is required to monitor less frequently than monthly, and does not contest, or unsuccessfully contests, the assessment of a civil administrative penalty therefore, or
- (ii) Reports on exceedance of an effluent discharge limitation for the same pollutant at the same discharge point source by an amount for four out of six consecutive months, or
- (iii) Fails to submit a complete monitoring report to the Authority, and does not contest, or unsuccessfully contests, the assessment of a civil administrative penalty therefore;

Shall automatically adjust its monitoring and reporting frequency to monthly commencing at the direction of the Executive Director. The Executive Director may restore the original monitoring frequency if the user has not committed any violations listed above in (i), (ii), and (iii) for six consecutive months.

e. Any permittee who has an upset not otherwise covered in 5.1B.(4) and 5.1(B)a-d above, shall comply with the reporting requirements for upset in this subsection.

{Sec. 5.1B.(8)e.}

- (i) The permittee shall, within 24 hours after the commencement of the upset, verbally communicate the following information to the Authority by telephone:
- AA. A description of the discharge, including the time of the discharge, the location of discharge, the volume of the discharge and the concentration of pollutants discharge;
 - BB. The duration of the discharge, including the dates and times, and if the reason for the upset has not been corrected, the anticipated time when the permittee will return the discharge to compliance;
 - CC. The cause of the upset;
 - DD. Steps the permittee will take to determine the cause of the upset.
 - EE. Steps the permittee will take to reduce and eliminate the non-complying discharge; and
 - FF. Steps the permittee is taking to reduce, eliminate, and prevent reoccurrence of the upset.
- (ii) The permittee shall, within five days after the commencement of an upset, or of the permittee becoming aware of an upset, submit documentation to the Authority, including properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation and including all of the information listed below.

The Authority must receive the information required below within the five-day period in order for the violator to meet this requirement. If the permittee becomes aware that it has failed to submit any relevant facts required above, or submitted incorrect information required above, the permittee shall immediately submit such facts or information to the Authority.

{Sec. 5.1B. (8) e. (ii)}

- AA. All of the information required by (e) i above.
- BB. All properly signed contemporaneous operating logs, or other relevant evidence on the circumstances of the upset.
- CC. Reasons that the upset occurred, including the cause of the upset and the identity of the person causing the upset;
- DD. Evidence that the permittee was properly operating the facility at the time of the upset;
- EE. Evidence that the permittee submitted notice of the upset as required above, or in the case of an upset resulting from the performance by the permittee of maintenance operations, the permittee provided prior notice and received prior written approval therefore from the Authority, including the name, title, address and telephone number of the individual who satisfied this requirement, the date and specific time the individual notified the Authority for the permittee, the specific method that the individual used to notify the Authority, and the name and title of the individual within the Authority to which the permittee gave such notice; and
- FF. Evidence that the permittee complied with all remedial measures the Authority required

{{(Sec. 5.1B. (8) e. (ii)FF.)}}

(9) Notification of the Discharge of Hazardous Wastes

- a. Any user who commences the discharge of hazardous waste shall notify the POTW, the USEPA 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 hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent of such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, and estimation of the mass and concentration of such constituents in the wastestream discharge during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each a hazardous waste discharge. However, notifications of changed conditions must be submitted under Section 5.1B(6) of these Rules and Regulations. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of Section 5.b (2)1, 5.1B(2), and 5.1B(3) of these Rules and Regulations.
- b. Dischargers are exempt from the requirements of paragraph (a) above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

{Sec. 5.1B.(9)b.}

- c. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the Authority, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective dates of such regulations.
- d. In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- e. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by Rules and Regulations ordinance, a permit issued thereunder, or any applicable Federal or State law.

5.2 Records and Monitoring

- A. Industrial users discharging or proposing to discharge wastewaters to the treatment works shall maintain such records of production and related factors, effluent flows, and pollutant amounts or concentrations necessary to demonstrate compliance with these Rules and Regulations and with State and Federal pretreatment standards and requirements, including documentation associated with Best Management Practices. Such records shall be made available to the Authority, the NJDEP and USEPA upon request by the Executive Director. Such records shall be retained for a minimum of 5 years.
- B. Users subject to the reporting requirements of these Rules and Regulations shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by these Rules and Regulations, including documentation associated with Best Management Practices, and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method and time of sampling, and the name of the person(s) taking the samples, the dates analyses were performed, who performed the analyses, the analytical techniques or methods used and the results of such analyses.

These records shall remain available for a period of at least five (5) years. This period shall be automatically extended for the duration of any litigation concerning the user or where the user has been specifically notified of longer retention period by the Authority.

{Sec 5.2B.}

5.2

- C.** Industrial users shall install (at the user's own cost) monitoring equipment approved by the Authority to facilitate the accurate observation, sampling and measurement of wastes. Such equipment shall be maintained in proper working order and kept safe and accessible at all times. Alternatively, the Authority may choose to install such equipment at its expense.
- D.** Whether constructed on public or private property, such monitoring facilities shall be constructed according to requirements of the Authority and other applicable construction standards and specifications. Plans and specifications for such work shall be submitted to the Executive Director for review and comment before construction.

{Sec 5.2D.}

5.3 Inspection, Sampling and Analyses

A. Representative Sampling Point

Industrial users proposing to connect to, or continue discharging to, any part of the treatment works must make available, upon request of the Executive Director, a sampling point representative of the discharge. Such sampling point shall be approved by the Executive Director and shall be located on public property, if requested by the Executive Director. The cost for installing and maintaining such representative sampling point shall be borne by the industrial user. Access to this point shall be available to the Authority, the City, the Borough, the NJDEP and USEPA for purposes of conducting sampling, inspections, compliance monitoring and metering operations.

B. Sample Collection and Compliance Determination

The reports required in Sections 5.1 B. (1-4) must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements in accordance with Section 5.3 D.

Compliance determinations shall be made by the Executive Director, the Commissioner, and/or the Regional Administrator, with respect to Section 2 Prohibitions and Limitations on the basis of the following:

- (1) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph. Except as indicated in Sub-Section B. (2) below, the user must collect wastewater samples using flow proportional techniques Composite collection techniques. In the event flow proportioned sampling is infeasible the Authority may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. Multiple grab samples which are unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Authority, where appropriate. In addition, grab samples may be required to show compliance with instantaneous discharge limits. Where time-proportional composite sampling or grab sampling is authorized by the Authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities.

- (2) Samples for oil, and grease, temperature, pH, cyanide, phenols, sulfides and volatile organic compounds must be obtained using of a minimum of one representative sample using the grab sample collections technique. Using protocols specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to analysis as follows: For Cyanide, total Phenols, and Sulfides the samples may be composited in the laboratory or in the field; for Volatile Organics and Oil & Grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Authority, as appropriate.
- (3) For sampling required in support of baseline monitoring and 90-day compliance reports, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Authority may authorize a lower minimum.
- (4) For the periodic and semi-annual reports (Discharge Monitoring Reports) required of the Major Industrial Users in accordance with Sections 5.1 B. (3-4), the Authority shall specify the number of grab samples necessary to assess compliance with Applicable Pretreatment Standards and Requirements.

C. Analysis of Industrial Wastewater

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 NJDEP.

D. Sampling Frequency

Sampling of industrial wastewater for the purpose of determining compliance with the prohibition and limitations set forth in these Rules and Regulations or any industrial discharge permit shall be done at such intervals as the Executive Director may designate.

{Sec. 5.3D.}

E. Inspection

- (1) Each permitted user shall be inspected by the Authority at least once a year, except users discharging only stormwaters or non-contract collecting water. Storm water facilities shall be inspected if those waters have come into contact with a hazardous discharge site as set forth in N.J.S.A. 58:10A-61.

Inspections will be made within 6 months of a permittee's application for a permit renewal or the issuance of permit for a new facility.

However, if for any reason a scheduled inspection cannot be made, it shall be rescheduled to be performed within 30 days of the originally schedule inspection as in case of a temporary shutdown, or resumed operation.

Inspection shall include:

- a. A representative sampling of the effluent for each permitted facility.
- b. An analysis of all collected samples by a certified laboratory other than one that has been used by the permittee, or that is directly or indirectly owned, operated or managed by the permittee;
- c. An evaluation of the maintenance record of the permittee's treatment equipment;
- d. An evaluation of the permittee's sampling techniques;
- e. A random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding twelve (12) month period signed by a responsible official of the certified laboratory, certifying the accuracy of the test results; and
- f. An inspection of the permittee's sample storage facilities and techniques if the sampling is normally performed by the permittee.

{Sec. 5.3E.(1)f.}

- E. (2) In addition to the inspection requirements described under E. (1) above, the Authority shall inspect the facilities of all permittees identified as a Significant Non-Complier. This inspection under this paragraph shall be conducted within 60 days of receipt of the discharge monitoring report that initially results in the permittee being identified as a Significant Non-Complier. The inspection shall include a random check of written summaries of test results, prepared by the certified laboratory providing the tests results, for the immediately preceding 12 month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results. A copy of each summary shall be maintained by the permittee. The inspection shall be for the purpose of determining compliance and shall only be performed once each calendar year. The Authority may elect not to make an inspection hereunder if an inspection has been made pursuant to E.(1) above, within 6 months of the period which an inspection is required to be conducted under E.(1) above.

5.4 Confidential Information and Public Access

Information and data on industrial users obtained from reports, questionnaires, permit applications, monitoring programs, inspection and other sources shall be available to the public and governmental agencies without restriction, unless the industrial user request confidential treatment and demonstrates to the satisfaction of the Executive Director that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets. Public access shall also be governed by N.J.S.A. 47:1A-2. Wastewater constituents and characteristics, however, shall not be recognized as confidential information.

Non-confidential industrial user information on file with the Authority may be obtained by interested parties (including members of the public and governmental agencies) by contacting the Executive Director to arrange a time (normally between the hours of nine A.M. and three P.M.) and place for review and copying of available documents. The cost of copying shall be the responsibility of such interested party.

When information classified by the Executive Director as confidential is requested by the EPA or NJDEP for purposes related to these Rules and Regulations, the New Jersey Pollutant discharge Elimination System (NJPDES), or the State or Federal Pretreatment Programs, the Authority shall refer such requests to the industrial user that furnished the information in question. Confidential information shall be kept in a separate, locked file accessible only to the Executive Director and the Monitoring Manager.

{Sec. 5.4}

5.5 Signatories and Certification

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

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

5.6 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 United States Postal Service, the date of receipt of the report shall govern.

{Sec. 5.6}

SECTION 6.0 – ENFORCEMENT AND ENFORCEMENT PROCEDURES

6.1 Harmful Contributions

The Authority may suspend wastewater treatment service, when necessary in the opinion of the Executive Director, to stop an actual or threatened discharge which presents or may present an imminent and substantial endangerment to the health or welfare of persons or to the environment, or of causing interference to the POTW.

A person notified of the suspension of wastewater treatment service shall immediately stop or eliminate the contribution of wastewater. If such person fails to comply with the suspension notification, the Authority shall take necessary steps including immediate severance of the sewer connection pursuant to N.J.S.A. 58:11-56, to prevent or minimize damage to treatment works or endangerment to individuals or the environment. The Authority may reinstate wastewater treatment service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the discharger describing the cause of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the Authority within fifteen (15) calendar days of the date of occurrence.

6.2 Termination of Services

In addition to termination under Section 6.1, above, the Authority may terminate service in accordance with N.J.S.A. 58:11-56 where a discharge violates any applicable State statute or regulation or any of the following conditions:

- A. Failure of an industrial user to accurately report the wastewater constituents and characteristics of his discharge;
- B. Failure of the industrial user to report significant changes in operations or wastewater constituents and characteristics;
- C. Refusal of reasonable access to the discharger's premises for the purpose of inspection or monitoring; or
- D. A significant violation of these Rules and Regulations

{6.2 D.}

6.3 Legal Action

A. Legal Authority

A person violating any provisions of these Rules and Regulations (including pretreatment standards), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), Pretreatment Standards for Sewerage (N.J.S.A. 58:11-49 et seq.) and for each violation of any rule, pretreatment standard, effluent limitation, administrative order or permit issued by the Authority including each serious violation as defined in N.J.A.C. 7:14-8.2 and Section 1.2, above, and each violation that causes a violator to be or continue to be significant noncomplier as defined in N.J.A.C. 7:14-8.2 and Section 1.2, above, shall be liable for a penalty of not more than \$50,000 for each violation, or subject to injunctive or other appropriate relief in actions instituted by the Authority, subject to, and including any applicable grace period in accordance with Section 6.10 and 6.11 below.

- (1) Civil Action penalties, injunctive and equitable relief under N.J.S.A. 2A:35A-4.
- (2) Civil Actions for penalties, injunctive relief under N.J.S.A. 58:11-55.
- (3) A Civil Action for appropriate relief under N.J.S.A. 58:10A-10.a. (2) and 58:10A-10.c.
- (4) An action for a civil penalty in accordance with N.J.S.A. 58:10A-10(4) and 58:10A-10.e.
- (5) An action by way of issuance of summons in accordance with N.J.S.A. 58:10A-10.4.
- (6) The issuance of a civil administrative penalty in accordance with N.J.S.A. 58:10A-10.1, 10.5, 10.6, 10.7, and 10.8 and 10.9.
- (7) The petition to the Attorney General or County Prosecutor to bring a criminal action under N.J.S.A. 58:10A-10.a(5) and 58:10A-10.f.
- (8) An action for restraint, injunction or other relief under N.J.S.A. 40:14A-28.
- (9) The issuance of an order requiring such person to comply, in accordance with N.J.S.A. 58:10A-10.a. (1) and 10.b.
- (10) Assessment of a penalty for each violation that causes a violator to be, or continue to be, a Significant Non-Complier as defined at Section 1.2, above, for issuance under (5) or (6) above.

{6.3A. (10)}

- (11) Assessment of a penalty for each Serious Violation as defined at Section 1.2, above, for issuance under (5) or (6) above.
- (12) Assessment of a penalty in accordance with Section 6.4A (1), (2), (3), (4), (5) and (6) below and N.J.A.C. 7:14-8.16, for issuance under (5) or (6) above.
- (13) Assessment of a penalty for submitting inaccurate or false information in accordance with Section 6.4B below and N.J.A.C. 7:14-8.6, for issuance under (5) or (6) above.
- (14) Assessment of a penalty for failure to allow lawful entry and inspection in accordance with Section 6.4C below and N.J.A.C. 7:14-8.7, for issuance under (5) or (6) above.
- (15) Assessment of a penalty for failure to properly conduct monitoring or sampling activities or to submit discharge monitoring reports/self-monitoring reports, or other pretreatment monitoring reports in accordance with Section 6.4D below and N.J.A.C. 7:14-8.9(c), (d) and (e), for issuance under (5) or (6) above.

B. Continuing Violations

If the violation is of a continuing nature, each day shall constitute a separate violation. Each violation of any provision of the Water Pollution Control Act or any rule, regulation, pretreatment standard, effluent limitation, administrative order or permit issued by the Authority shall constitute an additional, separate and distinct violation. In addition, the unpermitted discharge of each separate pollutant shall constitute an additional, separate and distinct violation.

C. Interim Enforcement Limits; Administrative Consent Order Limits and Public Notice

In the case of one or more pollutants for which interim enforcement limits have been established pursuant to an administrative order, including an administrative consent order, by the Authority, the permittee shall be liable for the enforcement limits stipulated therein. The issuance of administrative orders and administrative consent orders by the Authority shall be subject to their provisions of N.J.S.A. 58:10A-6.1, and Section 6.7 below covering public notice and public participation.

{6.3C.}

6.4 Penalties

A. Penalty Assessment

- (1) The Authority may assess a civil or civil administrative penalty for purpose of actions described in Section 6.3 above, subject to, and including any applicable grace period in accordance with Section 6.10 and 6.11 of not more than \$50,000 for each violation in the manner set forth in this Section 6.4A. The Authority shall assess a minimum mandatory civil administrative penalty of not less than \$1000 for each serious violation and not less than \$5000 for each violation that causes a violator to be, or continue to be, a significant noncomplier.
- (2) If a violator establishes, to the satisfaction of the Authority, that a single operational occurrence has resulted in the simultaneous violation of more than one effluent limit, the Authority may consider such violation of interrelated effluent limits to be a single violation for the purpose of assessing penalties.
- (3) Except for penalties assessed as set forth in Section 6.4B.,C. and D. below, to assess a civil or civil administrative penalty pursuant to this Section 6.4A, the Authority shall:
 - a. Determine the seriousness of the violation pursuant to (5) below; and
 - b. Determine the conduct of the violator pursuant to (6) below
 - c. Assess the penalty at the midpoint of the range within the matrix below, unless adjusted pursuant to (7) below.
- (4) The matrix of ranges of penalties is as follows:

SERIOUSNESS

<u>CONDUCT</u>		<u>Major</u>	<u>Moderate</u>	<u>Minor</u>
	Major	\$10,000-\$50,000	\$5,000-\$25,000	\$2,000-\$13,000
	Moderate	\$5,000-\$10,000	\$2,500-\$5,000	\$500-\$3,000
	Minor	\$500-\$7,500	\$500-\$2,500	\$250-\$1,250

{6.4A. (4)}

- (5) The Authority shall determine the Seriousness of the violation as major, moderate or minor as follows:
- a. Major shall include:
- (i) Any violation of any effluent limitation that is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:
 - (aa) By more than 50 percent for a hazardous pollutant;
 - (bb) By more than 100 percent for a non hazardous pollutant; or
 - (cc) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment;
 - (ii) The greatest violation of a pH effluent range in any one calendar day which violation deviates from midpoint of the range by more than 50 percent of the midpoint of the range, excluding the excursions specifically excepted by a permit with continuous pH monitoring; or
 - (iii) Any other violation not included in (i) or (ii) above, which either:
 - (aa) Has caused or has the potential to cause serious harm to human health or the environment; or
 - (bb) Seriously deviates from the requirements of the Water Pollution Control Act or any rule, pretreatment standards, effluent limitation, administrative order or permit issued pursuant thereto; serious deviation shall include, but not be limited to, those violations that are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

{6.4A(5) a. (iii)(bb)}

b. **Moderate shall include:**

- (i) Any violation, other than a violation of an effluent limitation identified in (ii) or (iii) below, which has caused or has the potential to cause substantial harm to human health or the environment;
- (ii) Any violation of an effluent limitation which is measured by concentration or mass of any discharge exceeding the effluent limitation as follows:
 - (aa) By 20 to 50 percent for a hazardous pollutant; or
 - (bb) By 40 to 100 percent for non-hazardous pollutant;
- (iii) The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent but no more than 50 percent of the midpoint of the range, excluding the excursions specifically excepted by a permit with continuous pH monitoring or;
- (iv) Any violation, other than a violation of an effluent limitation identified in (ii) or (iii) above, which substantially deviates from the requirements of the Water Pollution Control Act of any rule, pretreatment standards, effluent limitation, administrative order or permit issued pursuant thereto; substantial deviation shall include, but not be limited to, violations that are in substantial contravention of the requirements or which substantially impair or undermine the operations or intent of the requirement.

{6.4A(5) b. (iv.)}

c. **Minor shall include:**

- (i) Any violation other than a violation of an effluent limitation identified in (ii) or (iii) below, not included in (5) a. or b. above;
- (ii) Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:
 - (aa) By less than 20 percent for a hazardous pollutant; or
 - (bb) By less than 40 percent for a non-hazardous pollutant; or
- (iii) The greatest violation of a pH effluent in any one calendar day which violation deviates from the midpoint of the range by less than 40 percent of the midpoint of the range, excluding the excursions specifically excepted by a permit with continuous pH monitoring.

(6) The Authority shall determine the Conduct of the violator as major, moderate or minor as follows:

- a. Major shall include an intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
- b. Moderate shall include an unintentional but foreseeable act or omission by the violator;
- c. Minor shall include any other conduct not included in (6) a. or b., above.

(7) The Authority may move from the midpoint of the range, to an amount not greater than the maximum amount nor less than the minimum amount in the range, on the basis of the following factors:

- a. The compliance history of the violator;
 - (i) No violations of the same effluent limitation and discharge point at all in the two years immediately preceding the pending violation shall result in a reduction equal to 25 percent of the midpoint.

{6.4A. (7) a. (i)}

- (ii) No serious or fewer than four lesser violations of the same effluent limitation and discharge point in the two years immediately preceding the pending violation shall result in a reduction equal to 10 percent of the midpoint.
- (iii) One isolated serious violation or four or more lesser violations of the same effluent limitation and discharge point in the two years immediately preceding the date of the pending violation shall result in an increase equal to 10 percent of the midpoint.
- (iv) Any violation(s) which caused a person to become or remain in significant noncompliance or two or more isolated serious violations where such violations are of the same effluent limitation and discharge point in the two years immediately preceding the date of the pending violation shall result in a 25 percent increase of the midpoint;
- b. Where the nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of violation from the Authority;
- c. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
- d. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and
- e. Other specific circumstances of the violator or violation.

{6.4A. (7) e.}

B. Civil Administrative Penalty for Submitting Inaccurate or False Information

- (1) The Authority may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the Water Pollution Control Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.
- (2) Each day, from the day of submittal by the violator of the false or inaccurate information to the Authority to the day of receipt by the authority of a written correction by the violator shall be an additional, separate and distinct violation.
- (3) The Authority shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the midpoint of the following ranges except as adjusted pursuant to (d) below:
 - a. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in amount up to \$50,000 per act or omission;
 - b. For each other violation not identified pursuant to (3)a. above, for which the violator does not correct the violation within 10 days after becoming aware of the violation, the civil administrative penalty shall be in an amount up to \$30,000; and
 - c. For each other violation not identified pursuant to (3)a. above, for which the violator corrects the violations within 10 days after becoming aware of the violation, the civil administrative penalty shall be in amount up to \$1,000.

{6.4B. (3) c.}

- (4) The Authority may, in its discretion, adjust the amount determined pursuant to (3) above on the basis of the following factors;
- a. The compliance history of the violator;
 - b. The number, frequency and severity of the violations;
 - c. The measures taken by the violator to mitigate the effect of the current violation or to prevent future violations;
 - d. The deterrent effect of the penalty;
 - e. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not recur;
 - f. Any unusual or extraordinary costs or impact directly or indirectly imposed on the public or the environment as a result of the violation;
 - g. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and
 - h. Other specific circumstances of the violator or violation.
- (5) A violation of this section is a non-minor violation and is not subject to a grace period.

C. Civil Administrative Penalty for Failure to Allow Lawful Entry and Inspection

- (1) The Authority may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibit immediate lawful entry and inspection of any premises, building or place by any authorized Authority representative.
- (2) Each day, from the initial day of failure by the violator to allow immediate lawful entry and inspection to the day of receipt by the Authority of written notification from the violator that the violator will not refuse, inhibit or prohibit immediate lawful entry and inspection, shall be an additional, separate and distinct violation.
- (3) The Authority shall assess a civil administrative penalty for violations described in this section at the midpoint of the following ranges except as adjusted pursuant to (4) below:

{6.4C. (3)}

- a. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which an administrative or permit exists under the Water Pollution Act the civil administrative penalty shall be in an amount up to \$50,000; and
 - b. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount up to \$8,000.
- (4) The Authority may, in its discretion, adjust the amount determined pursuant to (3) above on the basis of the following factors;
- a. The compliance history of the violator;
 - b. The number, frequency and severity of the violations;
 - c. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violation;
 - d. The deterrent effect of the penalty;
 - e. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring that the violation does not reoccur;
 - f. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
 - g. Any impact on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and
 - h. Other specific circumstances of the violator or violation.
- (5) A violation of this section is a non-minor violation and is not subject to a grace period.

{6.4C. (5)}

**D. Civil Administrative Penalty for Failure to Properly
Conduct Monitoring or Sampling**

- (1) The Authority may assess civil administrative penalty pursuant to this section against each violator who fails to carry out monitoring or sampling activities or to submit discharge monitoring reports, baseline monitoring reports or monitoring report forms required by any rule, water quality standard, effluent limitation, administrative order or permit.
- (2) Each violation, including each parameter that is required to be monitored, sampled and reported and that is not monitored, sampled, and reported, is an additional, separate and distinct violation.
- (3) Except as provided in (5) below, the Authority shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the midpoint of the following ranges except as adjusted pursuant to (4) below;
 - a. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to \$50,000;
 - b. For any unintentional but foreseeable act or omission by the violator, the civil administrative penalty shall be in an amount up to \$40,000; or
 - c. For any other violations the civil administrative penalty shall be in an amount up to \$20,000.
- (4) The Authority may, in its discretion, adjust the amount determined pursuant to (3) above on the basis of the following factors;
 - a. The compliance history of the violator;
 - b. The number, frequency and severity of the violation(s);
 - c. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
 - d. The deterrent effect of the penalty;
 - e. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring that the violation does not reoccur.

{6.4D. (4) e.}

- f. Any unusual or extraordinary costs or impact directly or indirectly imposed on the public or the environment as a result of the violation;
 - g. Any impacts on receiving water, including stress upon the aquatic biota, or impairment of drinking water supply, resulting from the violation; and
 - h. Other specific circumstances of the violator or violation.
- (5) For any person's failure to submit a complete discharge monitoring report, the Authority shall assess a minimum mandatory civil administrative penalty of not less than \$100 for each effluent parameter omitted on a discharge monitoring report, nor greater than \$50,000 per month for any one discharge monitoring report.
- a. The civil administrative penalty assessed pursuant to (5) above shall begin to accrue on the fifth day after the date on which the discharge monitoring report was due and shall continue to accrue at least for 30 days if the violation is not corrected.
 - b. The Authority may continue to assess civil administrative penalties for the failure to submit a complete discharge monitoring report beyond the 30 day period referenced in (5)a. above, until the violation is corrected.
 - c. To contest a civil administrative penalty assessed pursuant to this section, a violator shall submit evidence of extenuating circumstances that prevented timely submission of a complete discharge monitoring report, or portion thereof, within 30 days after the date on which the effluent parameter information was required to be submitted. If the violator fails to submit the required information within this 30 day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so.

{6.4D. (5) c.}

- d. A violator will not be subject to a civil administrative penalty for the inadvertent omission of one or more effluent parameters in a discharge monitoring report if both of the following conditions are met:
 - i. The violator submits the omitted information to the Authority within 10 days after receipt by the violator of notice of the omission; and
 - ii. The violator demonstrates to the satisfaction of the Authority that the violation for which the Authority assessed the civil administrative penalty was due to an inadvertent omission by the violator of one or more effluent parameters.
- (6) A violation of this section is a non-minor violation and is not subject to a grace period.

E. Affirmative Defenses

- (1) If the Authority determines that an exceedance of an effluent limitation was caused by an upset, or a testing laboratory error or bypass, the Authority shall not consider the exceedance a violation and the Authority shall not assess a penalty.
- (2) A violator shall be entitled to such affirmative defenses only if, in the determination of the Authority the violator satisfies the following:
 - a. The violation occurred as a result of an upset or a testing laboratory error, or approved anticipated bypass or unanticipated bypass.
 - b. The violator complied with all of the requirements of Section 5.1B(8) and Section 3.5.
 - c. A violator asserting a testing or laboratory error as an affirmative defense shall also have the burden to demonstrate that violation involving the exceedance of a effluent limitation was the result of an unanticipated test interference, sample contamination, analytical defects, or procedural deficiencies in sampling or other similar circumstances beyond the violator's control.

{6.4E. (2) c.}

- (3) The Authority shall consider the exceedance of an effluent limitation a violation if the Authority determines that any of the following conditions exist:
 - a. The exceedance was not caused by an upset, or a testing laboratory error, or approved anticipated bypass or unanticipated bypass.
 - b. The violator has not complied with the reporting requirements of Section 5.1B(8) and Section 3.5.
- (4) A violator shall not be entitled to an affirmative defense set forth in paragraph (1) above, to the extent that the violation was caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

6.5 Notice of Violation and Show Cause Hearing

A. Notice of Violation

Whenever the Executive Director finds that any person has violated or is violating these Rules and Regulations, or any Industrial Discharger Permit, Order, Directive, Prohibition, or other requirement issued thereunder, the Executive Director may cause to be served upon such person a written notice stating the nature of the violation and providing a reasonable time, not to exceed 30 days, for the satisfactory correction thereof. Such Notice of Violation is not a condition precedent to any other enforcement action taken under this Section 6.0.

{6.5 A..}

B. Show Cause Hearing Notice

Where no Notice of Violation is issued for such violation, or if the violation is not corrected by timely compliance after the issuance of a Notice of Violation, the Executive Director may order any person who has violated or is violating these Rules and Regulations, or any Industrial Discharge Permit, Order, Directive, Prohibition or other requirement issued thereunder to show cause why an enforcement action under this Section 6.0 should not be taken. A written notice shall be served on the offending party, specifying the time and place of a hearing to be held regarding the violation, the reasons why the action is to be taken, the proposed enforcement action and directing the offending party to show cause why the proposed enforcement action should not be taken. The notice of hearing shall be served by certified mail (return receipt requested) at least 10 days before the hearing. Service may be made on any agent or officer of a corporation. Such show cause hearing is not a condition precedent to any enforcement action under this Section 6.0.

C. Hearing Officer

A hearing officer designated by the Executive Director shall conduct the hearing and take the evidence. Such hearing officer is empowered to:

- (1) Issue notices of hearing requesting the attendance and testimony of witness and the production of evidence relevant to any matter involved in any such hearing.
- (2) Transmit to the Executive Director a report of the evidence and hearing, including transcripts/records and other evidence, together with recommendations for action thereon.

D. Hearing

At any hearing, testimony taken shall be under oath and recorded either by the hearing officer in a summary manner or stenographically. In the latter case, the transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges therefor.

{6.5D.}

6.5 E. Recommendations and Orders

After reviewing the testimony and evidence, the hearing officer may recommend that the Executive Director:

- (1) Issue an order to the party responsible for the discharge or violation directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed or existing treatment facilities, devices or other related appurtenances are properly operated, and such further orders and directives as are necessary and appropriate.
- (2) Order, assess and issue a penalty or penalties in accordance with Section 6.4 and order, direct and cause appropriate action to be taken by the Authority under Section 6.3 with regard to such penalties.
- (3) Order, direct and cause such other appropriate actions to be taken under Sections 6.1, 6.2 and 6.3.
- (4) Issue such further orders and directives as may be appropriate under these Rules and Regulations, including, but not limited to, an order that if a penalty is not paid when legally due, all water, sewer service to the user to be terminated, or any permit issued to the violator be revoked.
- (5) The Executive Director shall have the authority to issue the orders and other actions specified in (1) through (4) above, except that any monetary penalties exceeding the sum of \$1,000 shall be authorized by a majority of the Members of Authority then present acting at a duly convened meeting. All other penalties assessed by the Executive Director shall be subsequently ratified and confirmed by a majority of the Members of the Authority then present acting at a duly convened meeting.
- (6) a. Where the violation consists of an exceedance of the limit for Refractory Acute Toxicity (see Sec. 2.2B) the Executive Director shall have the authority to order (which order may be through an Administrative Consent Order, (Sec 6.7)) the violator to perform a Toxicity Reduction Evaluation (TRE) to identify the cause(s) of, and the source(s) of toxicity at the users permitted facilities (see Figure 1).

The TRE plan should be based on EPA guidance (EPA/600/2-88/070, EPA/600/6-91-003, and EPA/833/B-99/002) and should include a description of planned activities, the project

{Sec. 6.5E. (6) a.}

team and a schedule of implementation and compliance. Upon approval of the TRE plan by the LRSA, the plan, schedule and any stipulated penalties for non-compliance shall become part of the Order or ACO.

- b. The IU will continue to perform monthly RTA tests. However if an ACO or Order is issued, the order may specify an interim limit that provides that two consecutive RTA test failures will not be deemed a violation of the limit.
- e. It is anticipated that the IU's refractory toxicity will be eliminated as a result of the TRE activities. The order or ACO will provide that the IU may complete the TRE when (1) the IU submits a final report that documents the identification of the toxicant(s), source(s) of the toxicant(s) and the method for eliminating toxicity in the discharge and (2) the results of two consecutive monthly RTA tests show no failures (Figure 1). If LRSA confirms the findings of the report and the RTA test results, the RTA requirement shall be waived. LRSA reserves the right to increase or decrease the frequency of testing.
- f. The order or ACO will also provide that an IU discharge permit may be modified as necessary for the imposition of numerical pretreatment limits for any specific toxicants or class of toxicants identified during the TRE. Also the implementation of a Pollution Prevention Plan (PPP) may be required based on the results of the TRE.

{Sec. 6.5E. (6) d.}

6.6 Civil Administrative Penalties-Procedures for Assessment, Payment and Settlement

A. Issuance of Penalty Assessment

The Authority may issue a civil administrative penalty assessed under Section 6.4 and 6.5 above.

B. Assessment of Costs

- (1) The Authority may also assess, by civil administrative order any costs recoverable pursuant to N.J.S.A. 58:10A-10c, including the reasonable costs of investigation and inspection, and preparing and litigation a contested case before an Administrative Law Judge (except assessments for compensatory damages and economic benefit) in accordance with N.J.S.A. 58:10A-10.5, 10.9 and N.J.S.A. 58:10A-10c.
- (2) All costs paid by the Authority to the Office of Administrative Law pursuant to that Office's schedule of reimbursement for administrative hearings shall be recoverable from the violator where the Authority is the prevailing party. An assessment for such hearing costs shall be included in the Executive Director's final decision or order.

C. Notice

Notice of the penalty or assessment under 6.6A or B above shall be given to the violator by certified mail (return receipt requested) or by personal service.

The notice shall:

- (1) Identify the section of the Authority's Rules and Regulations, permit, statute, waste quality standard, effluent limitation or administrative order violated.
- (2) Concisely state the facts which constitute the violation.
- (3) Specify the amount of the penalty imposed and cost assessment to be sought.
- (4) Advise the violator of the right to an Administrative Hearing in accordance with N.J.S.A. 58:10A-10.5, et seq., by an Administrative Law Judge in the Office of Administrative Law.

{6.6C. (4)}

D. Payment

- (1) If no hearing is requested in accordance with N.J.S.A. 58:10A-10.5, a payment of penalty or cost assessment is due and payable on the 21st day of the receipt by the violator of the Notice of Penalty or Assessment.
- (2) If a hearing is requested, any penalty or assessment is due and payable upon delivery or mailing of the Executive Director's final decision, whichever is sooner, to the violator. Such due date may be made effective to any date thereafter as the final decision may provide.

E. Interest

- (1) In addition to any penalties or assessment, a violator who fails to contest or to pay such penalty or assessment or fails to enter into a payment schedule with the Authority, within 30 days of the date the penalty or assessment is due and owing, shall be subject to an interest charge on the amount of the penalty or assessment from the date that amount was due and owing.
- (2) If a violator contests or appeals a civil administrative penalty or assessment in the Office of the Administrative Law or to a court of competent jurisdiction, and the penalty, or assessment is upheld in whole or in part, the Authority shall be entitled to daily interest charge on the amount of the judgement in accordance with N.J.S.A. 58:10A-10.8, until the amount is paid in full.
- (3) Rate of interest shall be that established by the New Jersey Supreme Court for interest rates on judgements as set forth in the rules Governing the Courts of New Jersey.

{6.6E. (3)}

F. Collection, Enforcement and Docketing

A Civil Administrative penalty or assessment imposed pursuant to final decision or final order:

- (1) May be collected or enforced by summary proceeding in a court of competent jurisdiction in accordance with the "Penalty Enforcement Law" (N.J.S.A. 2A: 58-1 et seq.)
- (2) Shall constitute a debt of the violator, any may be docketed with the Clerk of the Superior Court, and shall have the same standing as any judgement docketed pursuant to N.J.S.A. 2A: 16-1.

G. Settlement and Compromise

The Authority may settle any civil administrative penalty assessed according to the factors identified in (3) below as follows:

- (1) The Authority shall have full discretion to settle the amount of the civil administrative penalty assessed or due for violations occurring during a period up to 24 months preceding the effective date of an administrative consent order except that the Authority shall not reduce the amount of the civil administrative penalty to less than the minimum amount, if applicable prescribed in Secs. 6.4A(1) or 6.4D(5).
- (2) In the case of all other violators, the Authority may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in Secs. 6.4A(1) or 6.4D(5).
- (3) In settling such penalty the Authority may consider the following:
 - a. Mitigating or extenuating circumstances not considered in the notice of civil penalty assessment.
 - b. The implementation by the violator of pollution prevention and/or abatement measures; in addition to those minimally required by applicable statute or rules;
 - c. The implementation by the violator of measures to clean up, reverse or repair environmental damage previously caused by the violation.

{6.6G. (3) c.}

- d. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Authority in an Administrative Order and/or a notice of civil administrative penalty assessment and provided that the violator waives the right to request an administrative hearing on the penalty under N.J.S.A. 58:10A-10.5, et seq.
- e. Any other terms acceptable to the Authority.

- (4) In its discretion, the Authority may enter into a written agreement with a violator in which the Authority agrees to accept payment of a civil administrative penalty in installments.

The Authority shall not enter into any such agreement if full payment is to be made more than 90 days from the execution of the agreement unless the violator posts financial assurance with the Authority pursuant to one of the financial assurance mechanisms found in Appendix D of N.J.A.C. 7:14-8.1 et seq. or in other form the Authority specifically approves in writing in the individual matter. The financial assurance shall be in an amount that the Authority reasonably determines will tend to ensure good faith compliance with the agreement. In determining the amount the Authority may consider the following:

- a. The amount of the penalty;
- b. The amount and frequency of the installment payments;
- c. The duration of the agreement;
- d. Other remedies the Authority may exercise under the agreement if any of its terms are not met, and the extent to which they may find to ensure compliance;
- e. The violator's history of compliance (including but not limited to, compliance with other schedules for the payment of penalties);
- f. Expenditures that the violator has made or has agreed to make for pollution control and/or pollution prevention; and

{6.6G. (4) f.}

- g. Other specific circumstances of the violator bearing on the effectiveness of the financial assurance in ensuring adherence to the agreement or the extent to which financial assurance is necessary to ensure such adherence.
- (5) Any violator which enters into a consent order with the Authority that includes a compliance schedule shall post financial assurance in the full amount of the cost of fully complying with all the terms and conditions imposed by the Authority pursuant to one of the financial assurance mechanisms found in Appendix D of N.J.A.C. 7:14-8.1 et seq., or in another form the Authority individually approves in writing for this purpose.

6.7 Public Comment on Proposed Interim Enforcement Limits in Administrative Consent Orders

A. Notice

The Authority will require a violator to provide notice of proposed interim enforcement limits to be incorporated into an administrative consent order and of the opportunity to comment on the proposal for at least 30 days from the publication of the notice.

B. Plan of Notice

The violator shall submit to the Authority a proposed plan to provide the public notice required in D through E below.

C. Approval of Plan

Upon the violator's receipt of the Authority's written approval of the violator's plan to provide public notice, the violator shall provide the public notice as approved by the Authority.

D. Publication and Distribution

The violator shall provide the following public notice of the proposed interim enforcement limits:

- (1) At least three days prior to publication of the public notice required in (D)2 below, the violator shall mail a copy of the public notice and the draft administrative consent order or other documents which includes the proposed enforcement limits to:
 - (a) The mayor or chief executive officer and governing body of the municipality and county in which the violations occurred; and

- (b) Any other interested person the Authority identifies.
- (2) The violator shall publish the public notice in a daily or weekly newspaper within the area affected by the facility which is the subject of the interim enforcement limits.

E. Contents of Notice

The violator shall include the following in the public notice:

- (1) The name and address of the violator upon which the Authority will impose the interim enforcement limits;
- (2) The beginning and ending dates of the public comment period;
- (3) A description of the nature of the violations necessitating the interim enforcement limits;
- (4) A summary of the terms and conditions of the legal document in which the interim enforcement limits in contained;
- (5) The name of the contact person within the Authority to contact for more information;
- (6) The requirements that anyone submitting written comments on the proposed interim enforcement limits shall submit copies of the written comments to both the Authority and the violator; and
- (7) The name and address of the person for the authority and the violator to whom members of the public may submit written comments.

{6.7E. (7)}

F. Public Meeting

If the Authority decides to hold a public meeting on the proposed interim enforcement limits:

- (1) The violator shall also include in the public notice;
 - a. The date, time and place of the public meeting, including the applicable rules and procedures
 - b. A brief description of the nature and purpose of the public meeting, including the applicable rules and procedures;
- (2) The violator shall publish notice of the public meeting not more than 30 days and not less than 15 days prior to the public meeting
- (3) The Authority shall hold the public meeting in the municipality in which the violations necessitating the interim enforcement limits occurred;
- (4) The violator shall attend and participate in the public meeting at the Authority's request; and
- (5) The violator shall, with the prior written approval of the Authority make all necessary arrangements for scheduling and holding the public meeting, including, but not limited to:
 - a. Scheduling of the meeting room;
 - b. Arranging for a court stenographer to record the statements at the public meeting; and
 - c. Payment of all costs of the public meeting, including, but not limited to, hearing room costs, security, stenographer, transcript, and the Authority's cost associated with the public meeting.

{6.7F.(5)c.}

G. Proof of Publication

The violator shall submit to the Authority proof of publication prior to the Authority issuing an administrative order or executing the administrative consent order which includes interim enforcement limits.

H. Comments

After receiving the comments, but before executing an administrative order or an administrative consent order which includes the interim enforcement limits, the Authority will;

- (1) Evaluate each of the comments received;
- (2) Respond to the comments received; and
- (3) Notify each person who submitted written comments of the main provisions of the administrative order or administrative consent order and the final interim enforcement limits and a copy of the Authority's responses to the comments.

6.8 Civil Administrative Hearings – Procedures

A. Contents of Request; Time; Notification

To request an administrative hearing to contest an administrative order, a notice of civil administrative penalty assessment or cost assessment issued by the Authority pursuant to N.J.S.A. 58:10A-10.5, the violator shall submit within 20 days of receipt of notice, in writing to the Executive Director, Linden Roselle Sewerage Authority, 5005 South Wood Avenue, PO Box 4118, Linden, New Jersey 07036 the following: *

- (1) The name, address and telephone number of the violator and his authorized representative;
- *(2) A copy of the order or notice and date received;
- (3) The violator's defense to each of the findings of fact stated in short and plan terms;

* The Authority will forward a copy to NJDEP, Office of Legal Affair (Adjudicatory Hearing Requests) and the Bureau of Pretreatment & Residuals (See N.J.A.C.7: 14-8.4)

- (4) An admission or denial of each finding of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state, and this shall have the effect of a denial. A denial shall, fairly meet the substance of the finding denied. When the violator intends in good faith to deny only a part or qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder.

The violator may not generally deny all the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the facts as the violator believes them to be;

- (5) Information supporting the request and specific reference to or copies of other written documents relied upon to support the request.
- (6) An estimate of the time required for the hearing (in days and/or hours);
- (7) A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- (8) Proof of compliance with all the requirements of Section 5.1B(e) and 3.5 of these Rules and Regulations if the violator intends to raise an affirmative defense to liability for a civil administrative penalty pursuant to Section 6.4B of these Rules and Regulations or to request the Authority determine through an administrative hearing whether or not it agrees with the violators allegations in the matter.

{6.8.A (8)}

- (9) For a notice of civil administrative penalty assessment pursuant to 6.4D(5) the following is applicable:
- a. Documentation of compliance with Sec. 6.4D(5)(c) that the violator has notified the Authority in writing, within 30 days after the date the violator was required to submit the information to the Authority, of extenuating circumstances that prevented timely submission of a complete discharge monitoring report;
 - b. Documentation of the violator's correcting of the violation by submitting the omitted information within 10 days after the violator's receipt of the notice of omission; a violator failure to comply with the notice requirements in 6.4D(5) will be a waiver of the violator's right to correct the violation within the required 10 day period and thus to avert liability; or
 - c. If the violator intends to contest a civil administrative penalty assessed pursuant to 6.4D (5) based on the existence of extenuating circumstances beyond the violator's control, documentation that the violator complied with 6.4D (5) c; if the violator fails to submit the required information within this 30 day period, the violator shall have waived its right to contest the penalty in this manner and be barred from doing so.
- (10) The Authority shall deny the hearing request if it does not receive a complete request within 20 days as set forth above. Failure to notify the Authority within 30 days of the existence of extenuating circumstances preventing timely submission of a discharge monitoring report shall be grounds for the Authority to deny a hearing request.
- (11) If a hearing is requested in accordance with this Sec. 6.8.A. the penalty or assessment shall be deemed a contested case and the same shall be submitted by the Authority to the Office of Administrative Law for an administrative hearing in accordance with N.J.S.A. 52:14B-9 and 10.

{6.8.A (11)}

B. Report of Decision; Review by Authority;
Time for Adoption, Rejection or Modification

- (1) Upon receipt of the Administrative Law Judges' recommended report and decision in an administrative hearing held pursuant to N.J.S.A. 58:10A-10.5 by the Authority and each party of record, the date of receipt being determined in accordance with N.J.S.A. 52:14B-10, the Executive Director shall:
 - a. Receive and accept from each party of record the filing of exceptions, objections, and replies to the report and decision
 - b. Hear or receive and accept the presentation of arguments, either orally or in writing, as required by the Executive Director.
- (2) The Executive Director shall review the record of the administrative law judge and any filings or arguments received and not later than 45 days from the date of receipt of the record and decision adopt, reject, or modify the recommended report and decision.
- (3) If the Executive Director fails to act within 45 days as provided in (2) above, the decision of the administrative law judge shall be deemed adopted as the final decision of the Executive Director, and the recommended report and decision shall be made part of the record of the case.
- (4) For good cause shown, and upon certification by the Director of the Office of Administrative Law and the Executive Director, the time limits established in this subsection may be extended.

{6.8.B. (4)}

C. Final Decision or Order; Notification; Effective Date

- (1) A final decision or order of the Executive Director made in accordance with Section 6.8B, above shall:
 - a. Be in writing or stated in the record;
 - b. Include separately stated findings of fact and conclusions of law, based upon the evidence of record at the hearing of the administrative law judge. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- (2) A final decision or order may incorporate by reference any or all of the recommendations of the administrative law judge.
- (3) Parties of record shall be notified either by personal service or by mail of any final decision or order. Upon request, a copy of the decision or order shall be delivered or mailed by registered mail to each party of record and to a part's attorney of record.
- (4) A final decision or order shall be effective on the date of its delivery or mailing, whichever is sooner, to the party or parties of record, or on any date thereafter as the Authority may provide in the decision or order.
- (5) The date of delivery or mailing shall be stamped on the face of the final decision or order.
- (6) A final decision shall be considered a final agency action, and shall be appealable to a court of competent jurisdiction.

6.9 Enforcement Response Plan

The following represents the Authority's Enforcement Response Plan (ERP), developed in accordance with the requirements of 40 CFR 403.8(f)(1) and (f)(2), and N.J.A.C. 7:14A-19.4.

{6.9}

6.9 A. Format; Other or More Stringent Actions

The ERP set forth below in tabular format, shall not preclude the Authority from:

- (1) Initiating other available enforcement responses where violations are not specifically identified in the ERP.
- (2) Taking more stringent enforcement action than indicated.

B. Response Time

The Authority shall review and respond to all violations of a permit or these Rules and Regulations within 60 days of the receipt of compliance information generated by the user or the Authority. Failure of the Authority to respond within that time shall not relieve a violator from enforcement.

{6.9.C. (3)}

{6.9.B.}

ENFORCEMENT RESPONSE PLAN (Section 6.9)

Feb-08

A. UNAUTHORIZED DISCHARGE

Noncompliance	Nature of the Violation	Enforcement Response	Time Frame	Personnel	Type of Violation & Grace Period (if any)
1. Discharge without a permit. (Permit required)	a. No harm to POTW environment.	NOV with application form if needed.	* 60 days from becoming aware of discharge.	IPP	NM
	b. Harm to POTW/ environment.	Take action to halt activity.	2 days	IPP, ED, ECM LRSA Board	NM
	(IU meets SNC criteria under 40 CFR Part 403.8(f)(2)(vii)(c) or (d)).	Public Notice	Annually, but no later than 60 days after 403 Annual Report submitted to NJDEP	IPP, ED LRSA Board	NM
	c. Noncompliance with order to submit application.	Seek penalty. Per Section 6.4A	6 months	IPP, HO, ED, LRSA Board	NM
2. Failure to renew.	a. Failure to submit application 180 days prior to expiration of current permit.	NOV	* 60 days from due date of application.	IPP	NM
	b. Failure to apply continues after notice by the POTW.	Seek penalty. Per Section 6.4A	6 months	IPP, HO, ED, LRSA Board	NM
3. Discharge outside scope of application/permit.	a. Failure to notify in advance of new introductions of pollutants or significant change in existing pollutants.	NOV with permit application to be modified.	* 60 days from becoming aware of change in discharge.	IPP, ECM	NM

- Key for Personnel Abbreviations:

IPP = IPP Coordinator
 HO = Hearing Officer
 ED = Executive Director
 ECM = Environmental Compliance Manager

NM = Non Minor; Grace Period**M = Minor; Grace Period**

Bold type font signifies revisions to LRSA Enforcement Response Plan in order to comply with the Grace Period Rule N.J.A.C. 7:14-8.4A and 8.18; adopted July 10, 2007 by the NJDEP

* 60 days = per 7:14A-19.3(c)4 requires review and response to violations within 60 days.

B. DISCHARGE LIMIT VIOLATION

Noncompliance	Nature of the Violation	Enforcement Response	Time Frame	Personnel	Type of Violation & Grace Period (If any)
1. Exceedance of local or Federal standard (permit limit).	a. Individual or monthly non-serious violation	NOV; compliance response/corrective action plan, if needed.	* 60 days from receipt of compliance monitoring data.	IPP	NM
	b. Serious violation (Individual or monthly).	NOV	* 60 days from receipt of compliance monitoring data	IPP, ECM	NM
		Seek at least a mandatory minimum penalty, per Section 6.4A	6 months	IPP, HO, ED, ECM LRSA Board	NM
	c. Significant Noncompliance (IU meets SNC criteria under 40 CFR Part 403).	Public Notice	Annually, but no later than 60 days after 403 Annual Report submitted to NJDEP.	IPP, ED LRSA Board	NM
	d. Significant Noncompliance (IU meets SNC criteria under N.J.S.A. 58:10A-3.w)	NOV	* 60 days from receipt of compliance monitoring data.	IPP, ECM	NM
		Seek at least a mandatory minimum penalty. Per Section 6.4A.	6 months	IPP, HO, ED, ECM LRSA BOARD	NM
	e. Exceedance of Toxicity Pretreatment Limit (refer to Section 2.2)	NOV	* 60 days from receipt of second consecutive definitive failure	IPP, HO, ED, ECM	NM
		and			
		ACO or Order	6 months	IPP, HO, ED, ECM LRSA BOARD	NM

- Key for Personnel Abbreviations:

IPP = IPP Coordinator
 HO = Hearing Officer
 ED = Executive Director
 ECM = Environmental Compliance Manager

NM = Non Minor; Grace Period

M = Minor; Grace Period

Bold type font signifies revisions to LRSA Enforcement Response Plan in order to comply with the Grace Period Rule N.J.A.C. 7:14-8.4A and 8.18; adopted July 10, 2007 by the NJDEP

* 60 days = per 7:14A-19.3(c)4 requires review and response to violations within 60 days.

C. MONITORING AND REPORTING VIOLATIONS

Noncompliance	Nature of the Violation	Enforcement Response	Time Frame	Personnel	Type of Violation & Grace Period (if any)
1. Reporting violations	a. Late, 5 or more days after due date (but complete).	NOV, seek penalty including at least mandatory minimum penalty for overdue effluent parameter information, if any, in accordance with Section 6.4D. (note: Penalty waived if complete report is received within 10 days of receipt of NOV).	6 months	IPP, HO, ED, ECM LRSA Board	NM
	b. If late 31 days or more after due date (but complete), IU meets SNC criteria under 40 CFR 403.	Public Notice	Annually, but no later than 60 days after 403 Annual Report submitted to NJDEP	IPP, ED LRSA Board	NM
	c. Incomplete for effluent parameter omission	Seek at least a mandatory minimum penalty in accordance with 6.4D.	6 months	IPP, HO, ED, ECM LRSA Board	NM
	d. Incomplete for data omission (IU meets SNC criteria under 40 CFR Part 403).	Public Notice	Annually, but no later than 60 days after 403 Annual Report submitted to NJDEP.	IPP, HO, ED LRSA Board	NM
	e. Incomplete for effluent parameter omission (IU meets SNC criteria under NJWPCA).	Public Notice and seek at least a mandatory minimum penalty in accordance with Sections 6.4A, 6.4D.	Public Notice in accordance with approved program. Penalty within 6 months.	NJDEP (public notice per NJSA 58.10A-14.1) IPP, HO, ED, ECM LRSA Board	NM

- Key for Personnel Abbreviations:

IPP = IPP Coordinator

HO = Hearing Officer

ED = Executive Director

ECM = Environmental Compliance Manager

NM = Non Minor; Grace Period

M = Minor; Grace Period

* 60 days = per 7:14A-19.3(c)4 requires review and response to violations within 60 days.

C. MONITORING AND REPORTING VIOLATIONS (continued)

Noncompliance	Nature of the Violation	Enforcement Response	Time Frame	Personnel	Type of Violation & Grace Period (If any)
1. Reporting violations (continued)	f. Incomplete for other omissions (IU meets SNC criteria under NJWPCA).	Public Notice and seek at least a minimum mandatory penalty in accordance with Section 6.4A.	Public Notice in accordance with approved program. Penalty within 6 months.	NJDEP (public notice per NJSA 58.10A-14.1) IPP, HO, ED, ECM LRSA Board	NM
	g. Incomplete for other omissions. (Not SNC)	NOV	*60 days	IPP	M-10 days
	h. Falsification	Seek penalty per 6.4B or refer to county	*60 days	IPP, HO, ED, ECM LRSA Board	NM
2. Failure to adhere to compliance schedules (in control document, permit, AO/ACO, letter of agreement).	a. Missed milestone by less than 30 days.	NOV	*60 days	IPP	NM
		*** Seek penalty (note: penalty may be waived if final compliance is met by due date)	6 months	IPP, HO, ED, ECM LRSA Board	
	b. Missed milestone by more than 30 days (IU meets SNC criteria under 40 CFR Part 403)	NOV	*60 days	IPP	NM
		*** Seek penalty, (note: penalty may be waived if final compliance is met by due date)	6 months	IPP, HO, ED, ECM LRSA Board	
		Public Notice	Annually, but no later than 60 days after 403 Annual Report Submitted to NJDEP	IPP, ED, HO LRSA Board	NM
	c. Failure to meet final compliance date.	NOV	*60 days	IPP	NM
		*** Seek penalty	6 months	IPP, HO, ED, ECM LRSA Board	

- Key for Personnel Abbreviations:

IPP = IPP Coordinator
HO = Hearing Officer
ED = Executive Director
ECM = Environmental Compliance Manager

NM = Non Minor; Grace Period

M = Minor; Grace Period

* 60 days = per 7:14A-19.3(c)4 requires review and response to violations within 60 days.

*** = As per permit, AO/ACO, letter of agreement.

C. MONITORING AND REPORTING VIOLATIONS (continued)

Noncompliance	Nature of the Violation	Enforcement Response	Time Frame	Personnel	Type of Violation & Grace Period (if any)
3. Failure to notify.	a. Failure to report spill or changed discharge.	NOV Seek penalty Per Section 6.4A where necessary.	*60 days Penalty no later than within 6 months of discovery.	IPP IPP, HO, ED, ECM LRSA Board	NM
4. Failure to monitor correctly.	a. Incorrect sample location, incorrect sample type, incorrect sample collection techniques, or incorrect sample analysis.	NOV with proper resampling, including sample analysis.	*60 days	IPP, ECM	NM
5. Failure to report additional monitoring.	a. POTW Inspection finds additional files.	NOV with request to submit additional monitoring data.	*60 days	IPP, ECM	NM

- Key for Personnel Abbreviations:

IPP = IPP Coordinator

HO = Hearing Officer

ED = Executive Director

ECM = Environmental Compliance Manager

NM = Non Minor; Grace Period

M = Minor; Grace Period

* 60 days = per 7:14A-19.3(c)4 requires review and response to violations within 60 days.

D. OTHER PERMIT VIOLATIONS

Noncompliance	Nature of the Violation	Enforcement Response	Time Frame	Personnel	Type of Violation & Grace Period (If any)
1. Wastestreams are diluted to achieve discharge limits.	a. Dilution	NOV	*60 days	IPP, ECM	NM
		Seek penalty Per Section 6.4A	6 months	IPP, HO, ED, ECM LRSA BOARD	
2. Continuing failure to halt or prevent a discharge which caused or causes imminent endangerment to human health, welfare, or the environment or has resulted in the POTW's exercise of its emergency authority under 40 CFR 403.8(f)(1)(vi)(B).	a. Refusal to discontinue activity upon notification.	Take physical (effective) action or seek court order to halt discharge.	2 days maximum	IPP, ED, ECM	NM
3. Failure to maintain in good working order and properly operate, any facilities or systems of control installed to achieve compliance with the terms and conditions of the permit.	a. Violation of operating requirements.	NOV	*60 days	IPP, ECM	NM
4. Entry denial	a. Entry denied or consent withdrawn. Copies of records denied.	NOV	*60 days	IPP, ED	NM
		Seek penalty Per Section 6.4C	6 months	IPP, HO, ED, ECM LRSA Board	
5. Inadequate record keeping.	a. LRSA Inspector finds files incomplete or missing.	NOV	*60 days	IPP	NM

- Key for Personnel Abbreviations:

IPP = IPP Coordinator
 HO = Hearing Officer
 ED = Executive Director
 ECM = Environmental Compliance Manager

NM = Non Minor; Grace Period
 M = Minor; Grace Period

* 60 days = per 7:14A-19.3(c)4 requires review and response to violations within 60 days.

6.10 Grace Period Applicability; Procedures

- A. Each violation identified in Table 1 at Section 6.11 by an "M" in the Type of Violation column and for which the conditions at C. below, are satisfied, is a minor violation, and is subject to a grace period, the length of which is indicated in the column with the heading Grace Period.
- B. Each violation identified in Table 1 at Section 6.11 by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.
- C. The Authority shall provide a grace period for any violation identified as minor under this section, provided the following conditions are met:
 - (1) The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;
 - (2) The violation poses minimal risk to the public health, safety and natural resources;
 - (3) The violation does not materially and substantially undermine or impair the goals of the regulatory program;
 - (4) The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Authority;
 - (5) The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Authority;
 - (6) In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Authority as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;
 - (7) In the case of a violation that does not involve a permit, the person responsible for the violation has not been notified in a previous enforcement action by the Authority as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period; and
 - (8) In the case of any violation, the person responsible for the violation has not been identified by the Authority as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible.

{6.10C. (8)}

D. For a violation determined to be minor under C. above, the following provisions apply:

- (1) The Authority shall issue a notice of violation to the person responsible for the minor violation that:
 - a. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and
 - b. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.
- (2) If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with D.3. below, that compliance has been achieved within the specified grace period, the Authority shall not impose a penalty for the violation.
- (3) The person responsible for a violation shall submit to the Authority, before the end of the specified grace period, written information certified to be true and signed by the person responsible for the minor violation, detailing the corrective action taken or compliance achieved.
- (4) If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing, be certified to be true and signed by the person responsible for the minor violation, and received by the Authority no later than one week before the end of the specified grace period. The request shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. The Authority may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Authority may consider the following:
 - a. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;
 - b. Whether the delay has been caused by circumstances beyond the control of the violator;
 - c. Whether the delay will pose a risk to the public health, safety and natural resources; and
 - d. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

{6.10D. (4)d.}

- (5) If the person responsible for the minor violation fails to demonstrate to the Authority that the violation has been corrected and compliance achieved within the specified grace period or within the approved extension, if any, the Authority may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date the notice of violation under D.1. was issued.
- (6) The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

6.11 Table of minor and non-minor violations; grace periods

- A. Table 1 below identifies particular violations of the Authority's Rules and Regulations, as minor or non-minor for purposes of a grace period, and identifies the duration of the grace period for minor violations. The descriptions of the violations set forth in the table in this section are provided for informational purposes only. In the event that there is a conflict between a violation description in the table and the rule to which the violation description corresponds, the rule shall govern.
- B. The Authority may assess a civil administrative penalty for a violation of the Authority's Rules and Regulations and/or for a violation of any rule, consent agreement or administrative order adopted or issued pursuant thereto, that is not listed in Table 1, following the procedure under C. below.
- C. For violations not listed in Table 1, the Authority shall determine whether the violation is a minor violation and subject to a grace period or whether the violation is non-minor and not subject to a grace period as follows:
 - (1) If, pursuant to D. below, the violation is comparable to a violation listed in Table 1 and the comparable violation in Table 1 is minor, then the violation under this section is also minor, provided the criteria at Section 6.10C. are also met. The minor violation shall be subject to the grace period set forth in Table 1 for the comparable violation.
 - (3) If the violation is not comparable to a violation listed in Table 1 and the violation meets all of the criteria at Section 6.10C., then the violation under this section is minor. The minor violation shall be subject to a grace period of 30 days
 - (4) If, pursuant to D. below, the violation is comparable to a violation listed in Table 1 and the comparable violation in Table 1 is non-minor, then the violation under this section is also non-minor and the penalty shall be assessed in accordance with Section 6.4A.
 - (5) If the violation is not comparable to a violation listed in Table 1 and the violation does not meet the requirements of Section 6.4A. above, the violation is non-minor and the penalty shall be assessed in accordance with Section 6.4A.

{6.11C. (5)}

- D. Comparability of a violation under C. above, with a violation listed in Table 1 is based upon the nature of the violation (for example, a violation of record keeping, permit limitation, or monitoring).

{6.11D.}

Table 1 - Table of Minor and Non-Minor Violations

Citation	Description of Violation	Type of Violation	Grace Period (If any)
Section 2.1	Discharging any pollutant that exceeds the LRSA Rules and Regulations, the City or Borough Sewer Ordinance and or contributes to a violation of any parameter in the Authority's NJPDES permit.	NM	
Section 2.2	Failure to comply with the limits specified in Table 1 and Section 2.2B.	NM	
Section 2.3	Failure to comply with the Federal Pretreatment Standards.	NM	
Section 2.3A. (1)b.	Failure to provide a request for a monitoring waiver for each subsequent Industrial Discharge Permit.	NM	
Section 2.3A. (1)c.	Failure to provide data from one sampling of the facility's process wastewater to demonstrate that a pollutant is not present.	NM	
Section 2.3A. (1)e.	Failure to provide a properly signed certification for a monitoring waiver request.	NM	
Section 2.3A. (1)f.	Failure to utilize EPA approved methods from 40 CFR Part 136 when attempting to demonstrate that a pollutant is not present.	NM	
Section 2.3A. (1)g.	Failure to provide a statement in each DMR certifying that there was no increase in the pollutant in the wastestream due to activities of the Industrial User where a monitoring waiver was granted.	NM	
Section 2.3A. (1)h.	Failure to comply with Section 5.1 B (3) a. or to increase monitoring if a waived pollutant is found to be present, or is expected to be present based on the changes that occur in the Major Industrial User's operations.	NM	
Section 2.3C. (4), 2.3B.	Failure to notify the Authority within two business days that the Industrial User's production level will significantly change, in cases where equivalent mass or concentration limits are calculated from a production based standard.	NM	
Section 2.3C. (2)a.	Failure to maintain and effectively operate treatment technologies adequate to achieve compliance with equivalent mass limits.	NM	
Section 2.3C. (2)b.	Failure to notify the Authority that production based flow rates have varied by more than 20 percent from the baseline production rates.	NM	
Section 2.3D.	Failure of Non - Significant Categorical Industrial Users to notify the Authority that the conditions have changed.	NM	
Section 2.3B., 2.3C. (1)b., 2.7	Dilution of the waste stream to achieve compliance with federal, state or local discharge limits by increasing the volume of process water.	NM	
Section 2.8	Failure to acquire approval for trucked or hauled waste.	NM	
Section 3.2A.	Failure to install pretreatment equipment to comply with federal, state and or local limits.	NM	
Section 3.2B.	Failure to maintain pretreatment equipment in good working order and in accordance with the requirements of the discharge permit, these Rules and Regulations, the federal, state and or local regulations.	NM	
Section 3.3	Failure to submit plans, specifications, operating procedures and other pertinent data and information.	NM	
Section 3.3	Failure to notify of modifications to pretreatment facilities (including changes in the method of operation) and failure to receive approval from the Executive Director for these changes.	NM	
Section 3.4	Failure to allow admission to property for inspection and or copying any records required to be kept under the Rules and Regulations, federal and state regulations.	NM	
Section 3.5A.	Failure to notify of an anticipated bypass.	NM	
Section 3.5A.	Failure to receive approval for an anticipated bypass.	NM	
Section 3.5B.	Failure to comply with reporting requirements for an anticipated bypass as specified in 3.5B.(1) a-f.	NM	
Section 3.5C.	Failure to comply with the reporting requirements for an unanticipated bypass as required under 3.5C(1) a-f and 3.5C(2) a-f.	NM	
Section 3.6A.	Failure to provide protection from accidental discharge of prohibited material or other substances regulated by these Rules and Regulations, if required by the Executive Director.	NM	
Section 3.6A.	Failure to receive approval from the Executive Director for accidental discharge prevention procedures.	NM	
Section 3.6B.	Failure to provide notice of accidental discharge according to Section 3.6B(1) - (3).	NM	

NM = Non Minor; Grace Period
M = Minor; Grace Period

SECTION 6.11

Mar-10

Table 1 - Table of Minor and Non-Minor Violations

Citation	Description of Violation	Type of Violation	Grace Period (If any)
Section 4.2A.	Failure of a major industrial user to discharge without a permit. (Permit required).	NM	
Section 4.3, 4.6	Failure to submit a wastewater discharge permit application 180 days prior to expiration of current permit or commencement of discharge.	NM	
Section 4.9	Failure to provide proper notice of transfer at least 90 days prior.	NM	
Section 4.10A.	Failure to notify the Authority of significant changes to the wastewater prior to the changed discharge.	NM	
Section 4.10B.	Failure to provide prior notification to the Executive Director of changed conditions.	NM	
Section 4.10C.	Failure to disclose all relevant facts in the wastewater discharge permit application.	M	30 days
Section 4.10C.	Misrepresentations in the wastewater discharge permit application.	NM	
Section 4.10D.	Falsifying self-monitoring reports.	NM	
Section 4.10E.	Tampering with monitoring equipment.	NM	
Section 4.10F.	Refusing to allow the Authority timely access to the facility premises and records.	NM	
Section 4.10H.	Failure to pay fines.	NM	
Section 4.10H.	Failure to pay fines.	NM	
Section 4.10I.	Failure to pay sewer charges.	NM	
Section 4.10J.	Failure to meet compliance schedules.	NM	
Section 4.10K.	Failure to complete a wastewater survey or the wastewater discharge permit application.	M	30 days
Section 5.1A.	Failure to comply with the reporting requirements under 40 CFR 403.12 and all applicable State pretreatment reporting requirements.	NM	
Section 5.1B.(1)	Failure to submit a Baseline Monitoring Report within 180 days after the effective date of a categorical pretreatment standard, or final administrative decision on a category determination under 40 CFR 403.6(a)(4).	NM	
Section 5.1B.(3)a	Failure to submit twice per year reports indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards, and measured flows.	NM	
Section 5.1B.(3)b., 5.1B.(4)b., 5.3B.	Failure of wastewater samples to be representative of the user's discharge.	NM	
Section 5.1B.(3)c., 5.1B.(4)c.	Failure to report data for any regulated pollutant that is monitored more frequently than required.	NM	
Section 5.1B.(4)a.	Failure to report results of monthly discharge compliance monitoring.	NM	
5.1B. (1) b.(v) DD., 5.1B. (3) d. Section 5.1B. (4)c.	Failure to submit documentation to confirm compliance with a Best Management Practice.	NM	
Section 5.1B.(4)a., 5.5	Failure for a Discharge Monitoring Report to be signed by an authorized representative.	NM	
Section 5.1B.(5)	Failure to adhere to a compliance schedule (in control document, permit, AQ/ACO, letter of agreement).	NM	
Section 5.1B.(6)	Failure to notify the Authority of significant changes to the wastewater prior to the changed discharge.	NM	
Section 5.1B.(8)a.	Failure to notify the Authority within 24 hours of becoming aware of a violation.	NM	
Section 5.1B.(8)a.	Failure to repeat sampling and analyses within 30 days after becoming aware of a serious violation.	NM	
Section 5.1B.(8)b.	Failure to report to the Authority an exceedance of any effluent limitation that causes injury to person, or damage to the environment or poses a threat to human health or environment.	NM	

NM = Non Minor; Grace Period
M = Minor; Grace Period

SECTION 6.11

Mar-10

Table 1 - Table of Minor and Non-Minor Violations

Citation	Description of Violation	Type of Violation	Grace Period (if any)
Section 5.1B.(8)b.	Failure to report to the Authority an exceedance of any effluent limitation for a toxic pollutant within 2 hours of becoming aware of its occurrence.	NM	
Section 5.1B.(8)c.	Failure to report to the Authority any Serious Violation within 30 days of the violation.	NM	
Section 5.1B.(8)d.	Failure to adjust the monitoring and reporting frequency to monthly as a result of a Serious Violation, or reports an exceedance of an effluent discharge limit for the same pollutant by an amount for four out of six consecutive months, or failure to submit a complete DMR to the Authority.	NM	
Section 5.1B.(8)d.(III)	Failure to submit a complete monitoring report.	NM	
Section 5.1B.(8)e.(II)	Failure of a user to submit documentation to the Authority within five days after becoming aware of an upset.	NM	
Section 5.1B.(8)e.(II)	Failure of a user to submit documentation to the Authority within five days after becoming aware of an upset.	NM	
Section 5.1B.(9)a.	Failure of a user to report the discharge of hazardous waste to the POTW, USEPA Regional Waste Management Division Director, and State Hazardous Waste Authorities, in writing, not previously reported by the user subject to categorical pretreatment standards under the self monitoring requirements.	NM	
Section 5.2A.	Failure to retain discharge records related to effluent flows and pollutants for a minimum of 5 years.	NM	
Section 5.2C.	Failure to install monitoring equipment to facilitate the accurate observation, sampling and measurement of wastes.	NM	
Section 5.2C.	Failure to maintain monitoring equipment in proper working order.	NM	
Section 5.3A.	Failure to provide a sampling point representative of the discharge upon request by the Executive Director.	NM	
Section 5.3B.(1)	Failure to collect wastewater samples using flow proportional composite techniques, when required.	NM	
Section 5.3B.(1).	Failure to properly collect a required wastewater sample.	NM	
Section 5.3B.(2)	Failure to collect oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds using grab collection techniques.	NM	
Section 5.3C., 4.1	Failure to analyze all pollutants collected as part of a wastewater discharge permit application or report, to be performed in accordance with the techniques prescribed in 40 CFR part 136, unless otherwise specified.	NM	
Section 5.3D.	Failure to sample at intervals designated by the Executive Director.	NM	
Section 5.4	Failure to allow discharge related information to be made available to the public without restriction, unless the Industrial user requests confidential treatment if the release of the information would divulge information entitled to protection as trade secrets.	NM	
Section 5.4	Failure to allow access according to N.J.S.A. 47:1A-2.	NM	
Section 5.6	Written reports will be deemed to have been submitted on the date postmarked.	NM	
Section 6.1	Failure to discontinue activity upon notification.	NM	
Section 6.3C.	Failure to adhere to compliance schedule (in control document, permit, AO/ACO, letter of agreement).	NM	

NM = Non Minor; Grace Period
M = Minor; Grace Period

SECTION 6.11

Mar-10

Table 1 - Table of Minor and Non-Minor Violations

Citation	Description of Violation	Type of Violation	Grace Period (if any)
Section 6.4A.(1)	Serious violation, significant non-compliance.	NM	
Section 6.4B.	Submitting false, inaccurate information.	NM	
Section 6.4C.	Failure to allow entry, inspection, and/or access to records and withdrawal of consent to inspection.	NM	
Section 6.4D.	Failure of wastewater samples to be representative of the user's discharge.	NM	
Section 6.4D.	Failure to report data for any regulated pollutant that is monitored more frequently than required.	NM	
Section 6.4D.(1)	Failure to conduct monitoring, sampling, or report additional monitoring.	NM	
Section 6.4D.(5)	Incomplete Discharge Monitoring Report; Industrial User (IU) meets Significant non-complier (SNC) under NJWPCA, more than 5 days late.	NM	
Section 6.4D.(5)a	Failure of a user to submit documentation to the Authority within five days after becoming aware of an upset.	NM	
Section 6.9 ERP C.1.(g)	Incomplete for other omission (Not SNC)	M	10 days

NM = Non Minor; Grace Period
M = Minor; Grace Period

ERP = LRSA Enforcement Response Plan

SECTION 7.0 – FEES

7.1 Purpose

This section establishes fees for dischargers to the Authority's wastewater disposal system for certain activities not included in the Authority's user charges. The applicable charges or fees shall be set forth in the Authority's Schedule of Charges and Fees.

7.2 Charges and Fees

The Authority may adopt reasonable charges and fees which may include:

- A. fees for reviewing accidental discharge prevention procedures and construction;
- B. fees for permit applications;
- C. fees for consistent removal of pollutants otherwise subject to Federal Pretreatment Standards; and
- D. other fees as the Authority may deem necessary to carry out the requirements contained herein.

These fees are related solely to the matters covered by these Rules and Regulations and are separate from all other fees chargeable by the Authority.

SECTION 8.0 – SEVERABILITY

If any provision, paragraph, word, section or article of these Rules and Regulations are invalidated by any court of competent jurisdiction, the remaining provision, paragraphs, words, sections and articles shall not be affected and shall continue in full force and effect.

APPENDIX A

WATER POLLUTION CONTROL

58:10A-10

and Gas Co. v. New Jersey Dept. of Environmental Protection, 193 N.J.Super. 676, 475 A.2d 665 (A.D.1984) affirmed 101 N.J. 95, 501 A.2d 125.

58:10A-10. Violations; remedies, fines and penalties; enforcement; forfeiture of conveyances

a. Whenever the commissioner finds that any person is in violation of any provision of this act, he shall:

(1) Issue an order requiring any such person to comply in accordance with subsection b. of this section; or

(2) Bring a civil action in accordance with subsection c. of this section; or

(3) Levy a civil administrative penalty in accordance with subsection d. of this section; or

(4) Bring an action for a civil penalty in accordance with subsection e. of this section; or

(5) Petition the Attorney General to bring a criminal action in accordance with subsection f. of this section.

Use of any of the remedies specified under this section shall not preclude use of any other remedy specified.

In the case of one or more pollutants for which interim enforcement limits have been established pursuant to an administrative order, including an administrative consent order, by the department or a local agency, the permittee shall be liable for the enforcement limits stipulated therein.

b. Whenever the commissioner finds that any person is in violation of any provision of this act, he may issue an order (1) specifying the provision or provisions of this act, or the rule, regulation, water quality standard, effluent limitation, or permit of which he is in violation, (2) citing the action which caused such violation, (3) requiring compliance with such provision or provisions, and (4) giving notice to the person of his right to a hearing on the matters contained in the order.

c. The commissioner is authorized to commence a civil action in Superior Court for appropriate relief for any violation of this act or of a permit issued hereunder. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Assessment of the violator for the reasonable costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection;

(3) Assessment of the violator for any reasonable cost incurred by the State in removing, correcting or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which the action under this subsection may have been brought;

(4) Assessment against the violator of compensatory damages for any loss or destruction of wildlife, fish or aquatic life, or other natural resources, and for any other actual damages caused by an unauthorized discharge;

(5) Assessment against a violator of the actual amount of any economic benefits accruing to the violator from a violation. Economic benefits may include the amount of any savings realized from avoided capital or noncapital costs resulting from the violation; the return earned or that may be earned on the amount of avoided costs; any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; or any other benefits resulting from the violation.

Assessments under paragraph (4) of this subsection shall be paid to the State Treasurer, except that compensatory damages shall be paid by specific order of the court to any persons who have been aggrieved by the unauthorized discharge. Assessments pursuant to actions brought by the commissioner under paragraphs (2), (3) and (5) of this subsection shall be paid to the "Clean Water Enforcement Fund," established pursuant to section 12 of P.L.1990, c. 28 (C.58:10A-14.4).

d. (1)(a) The commissioner is authorized to assess, in accordance with a uniform policy adopted therefor, a civil administrative penalty of not more than \$50,000.00 for each violation and each day during which such violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration. The commissioner shall adopt, by regulation, a uniform assessment of civil penalties policy by January 1, 1992.

(b) In adopting rules for a uniform penalty policy for determining the amount of a penalty to be assessed, the commissioner shall take into account the type, seriousness, including extent, toxicity, and frequency of a violation based upon the harm to public health or the environment resulting from the violation, the economic benefits from the violation gained by the violator, the degree of cooperation or recalcitrance of the violator in remedying the violation, any measures taken by the violator to avoid a repetition of the violation, any unusual or extraordinary costs directly or indirectly imposed on the public by the violation other than costs recoverable

pursuant to paragraph (3) or (4) of subsection c. of this section, and any other pertinent factors that the commissioner determines measure the seriousness or frequency of the violation, or conduct of the violator.

(c) In addition to the assessment of a civil administrative penalty, the commissioner may, by administrative order and upon an appropriate finding, assess a violator for costs authorized pursuant to paragraphs (2) and (3) of subsection c. of this section.

(2) No assessment shall be levied pursuant to this subsection until after the discharger has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, regulation, order or permit condition violated; a concise statement of the facts alleged to constitute a violation; a statement of the amount of the civil penalties to be imposed; and a statement of the party's right to a hearing. The ordered party shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, then the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order.

(3) If a civil administrative penalty imposed pursuant to this subsection is not paid within 30 days of the date that the penalty is due and owing, and the penalty is not contested by the person against whom the penalty has been assessed, or the person fails to make a payment pursuant to a payment schedule entered into with the department, an interest charge shall accrue on the amount of the penalty due and owing from the 30th day after the date on which the penalty was due and owing. The rate of interest shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

(4) The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Any civil administrative penalty assessed under this section may be compromised by the commissioner upon the posting of a performance bond by the violator, or upon such terms and conditions as the commissioner may establish by regulation, except that the amount compromised shall not be more than 50% of the assessed penalty, and in no

instance shall the amount of that compromised penalty be less than the statutory minimum amount, if applicable, prescribed in section 6 of P.L.1990, c. 28 (C.58:10A-10.1). In the case of a violator who is a local agency that enters into an administrative consent order, the terms of which require the local agency to take prescribed measures to comply with its permit, the commissioner shall have full discretion to compromise the amount of penalties assessed or due for violations occurring during a period up to 24 months preceding the entering into the administrative consent order; except that the amount of the compromised penalty may not be less than the statutory minimum amount, if applicable, prescribed in section 6 of P.L.1990, c. 28 (C.58:10A-10.1). A civil administrative penalty assessed against a local agency for a violation of an administrative consent order may not be compromised by more than 50% of the assessed penalty. In no instance shall the amount of a compromised penalty assessed against a local agency be less than the statutory minimum amount, if applicable, prescribed in section 6 of P.L.1990, c. 28 (C.58:10A-10.1). The commissioner shall not compromise the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation.

(5) A person, other than a local agency, appealing a penalty assessed against that person in accordance with this subsection, whether contested as a contested case pursuant to P.L.1968, c. 410 (C.52:14B-1 et seq.) or by appeal to a court of competent jurisdiction, shall, as a condition of filing the appeal, post with the commissioner a refundable bond, or other security approved by the commissioner, in the amount of the civil administrative penalty assessed. If the department's assessed penalty is upheld in full or in part, the department shall be entitled to a daily interest charge on the amount of the judgment from the date of the posting of the security with the commissioner and until paid in full. The rate of interest shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey. In addition, if the amount of the penalty assessed by the department is upheld in full in an appeal of the assessment at an administrative hearing or at a court of competent jurisdiction, the person appealing the penalty shall reimburse the department for all reasonable costs incurred by the department in preparing and litigating the imposition of the assessment, except that no litigation costs shall be imposed where the appeal ultimately results in a reduction or elimination of the assessed penalty.

(6) A civil administrative penalty imposed pursuant to a final order:

(a) may be collected or enforced by summary proceedings in a court of competent jurisdiction in accordance with "the penalty enforcement law," N.J.S.2A:58-1 et seq.; or

(b) shall constitute a debt of the violator or discharger and the civil administrative penalty may be docketed with the clerk of the Superior Court, and shall have the same standing as any judgment docketed pursuant to N.J.S.2A:16-1; except that no lien shall attach to the real property of a violator pursuant to this subsection if the violator posts a refundable bond or other security with the commissioner pursuant to an appeal of a final order to the Appellate Division of the Superior Court. No lien shall attach to the property of a local agency.

(7) The commissioner shall refer to the Attorney General and the county prosecutor of the county in which the violations occurred the record of violations of any permittee determined to be a significant noncomplier.

e. Any person who violates this act or an administrative order issued pursuant to subsection b. or a court order issued pursuant to subsection c., or who fails to pay a civil administrative penalty in full pursuant to subsection d., or to make a payment pursuant to a payment schedule entered into with the department, shall be subject upon order of a court to a civil penalty not to exceed \$50,000.00 per day of such violation, and each day's continuance of the violation shall constitute a separate violation. Any penalty incurred under this subsection may be recovered with costs, and, if applicable, interest charges, in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). In addition to any civil penalties, costs or interest charges, the court, in accordance with paragraph (5) of subsection c. of this section, may assess against a violator the amount of any actual economic benefits accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce "the penalty enforcement law" in conjunction with this act.

f. (1)(a) Any person who purposely, knowingly, or recklessly violates this act, and the violation causes a significant adverse environmental effect, shall, upon conviction, be guilty of a crime of the second degree, and shall, notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, be subject to a fine of not less than \$25,000 nor more than \$250,000 per day of violation, or by imprisonment, or by both.

(b) As used in this paragraph, a significant adverse environmental effect exists when an action or omission of the defendant causes: serious harm or damage to wildlife, freshwater or saltwater fish, any other aquatic or marine life, water fowl, or to their habitats, or

to livestock, or agricultural crops; serious harm, or degradation of, any ground or surface waters used for drinking, agricultural, navigational, recreational, or industrial purposes; or any other serious articulable harm or damage to, or degradation of, the lands or waters of the State, including ocean waters subject to its jurisdiction pursuant to P.L.1988, c. 61 (C.58:10A-47 et seq.).

(2) Any person who purposely, knowingly, or recklessly violates this act, including making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under this act, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to this act, or by failing to submit a monitoring report, or any portion thereof, required pursuant to this act, shall, upon conviction, be guilty of a crime of the third degree, and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$75,000 per day of violation, or by imprisonment, or by both.

(3) Any person who negligently violates this act, including making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under this act, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to this act, or by failing to submit a discharge monitoring report, or any portion thereof, required pursuant to this act, shall, upon conviction, be guilty of a crime of the fourth degree, and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or by both.

(4) Any person who purposely or knowingly violates an effluent limitation or other condition of a permit, or who discharges without a permit, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, as defined in subsection b. of N.J.S.2C:11-1, shall, upon conviction, be guilty of a crime of the first degree, and shall, notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, be subject to a fine of not less than \$50,000 nor more than \$250,000, or, in the case of a corporation, a fine of not less than \$200,000 nor more than \$1,000,000, or by imprisonment or by both.

(5) As used in this subsection, "purposely," "knowingly," "recklessly," and "negligently" shall have the same meaning as defined in N.J.S.2C:2-2.

g. All conveyances used or intended for use in the purposeful or knowing discharge, in violation of the provisions of P.L.1977, c. 74

(C.58:10A-1 et seq.), of any pollutant or toxic pollutant are subject to forfeiture to the State pursuant to the provisions of P.L.1981, c. 387 (C.13:1K-1 et seq.).

h. The amendatory portions of this section, as set forth in P.L.1990, c. 28 (C.58:10A-10.1 et al.), except for subsection f. of this section, shall not apply to violations occurring prior to July 1, 1991. L.1977, c. 74, § 10, eff. July 24, 1977. Amended by L.1984, c. 240, § 3, eff. Dec. 28, 1984; L.1986, c. 170, § 3, eff. Dec. 4, 1986; L.1990, c. 28, § 5.

Historical and Statutory Notes

1984 Legislation

The 1984 amendment deleted the County Court and county district court as courts with jurisdiction in subsec. e.; substituted "crime of the fourth degree" for "misdemeanor" in subsec. f.; and added subsec. g.

1986 Legislation

L.1986, c. 170, § 3, in subsec. d. substituted "\$50,000.00 for each violation and each day during which such violation continues shall constitute an additional, separate, and distinct offense" for "\$5,000.00 for each violation and additional penalties of not more than \$500.00 each day during which such violation continues after receipt of an order from the department"; in subsec. e. substituted "\$50,000.00" for "\$10,000.00"; and in subsec. f. substituted "\$5,000.00" for "\$2,500.00", "\$50,000.00" for "\$25,000.00", "\$100,000.00" for "\$50,000.00", and "\$20,000.00" for "\$10,000.00".

1990 Legislation

L.1990, c. 28, § 5, in subsec. a. added provision relating to pollutants for which interim enforcement limits have

been established; in subsec. c. added par. (5) and provided for payments to the "Clean Water Enforcement Fund"; in subsec. d. re-ordered par. designations and added subpars. (b) and (c) to par. (1), inserted requirements for compromises in par. (4), and added pars. (5) to (7); in subsec. e. added provision for assessment for economic benefits to the violator; added subsec. f. and omitted former subsec. f. relating to violators being guilty of a crime of the fourth degree; in subsec. g. substituted "purposeful or knowing" for "willful"; and added subsec. h.

L.1990, c. 28, § 20, set out as a note under § 58:10A-3, provides that the amendment of this section by L.1990, c. 28, § 5, shall take effect July 1, 1991, except that the amendment of subsec. f. of this section by L.1990, c. 28, § 5, shall take effect May 23, 1990; with administrative implementation to take place on and after the effective dates.

Statements: Committee statement to Senate, No. 2188—L.1990, c. 28, see § 58:10A-3.

Committee statement to Assembly, No. 1270—L.1986, c. 170, see § 13:1E-9.

Cross References

Enforcement of provisions of laws relating to Passaic Valley sewerage district, see § 58:14-33.

Administrative Code References

Assessment of civil administrative penalties for Water Pollution Control Act of violations, see N.J.A.C. 7:14-8.1 et seq.

Persons convicted of environmental crimes, see N.J.A.C. 7:26-16.22.

APPENDIX B

CHAPTER XVII

SEWER AND WATER

Article I Sewers

17-1 DEFINITIONS.

As used in this Article:

BOD (denoting biochemical oxygen demand) shall mean the laboratory determination of the quantity of oxygen utilized in the biochemical oxidation of organic matter in a given time and at a specified temperature, being expressed in parts per million or milligrams per liter of oxygen used in a period of five (5) days at twenty (20°) degrees Centigrade.

Domestic waste shall mean the liquid waste or liquid-borne waste (1) resulting from the preparation, cooking and handling of food and/or (2) consisting of human excrement and similar waste from sanitary conveniences.

Environmentally sensitive areas shall mean those areas which are contained within the one hundred (100) year floodplain boundary as shown on the Flood Hazard Boundary/Flood Insurance Rate Maps with an initial identification date of 16 July 1976 and as prepared by the Federal Insurance Administration, Department of Housing and Urban Development; as well as those areas identified as wetlands as defined by the U.S. Fish and Wildlife Service. Those areas specific to the City which have been classified as environmentally sensitive are as delineated on special City tax maps on record at the

Linden Roselle Sewerage Authority and the City Hall of Linden.

Generator shall mean the person who causes septage to be generated.

Hauler shall mean any person registered by the Solid Waste Administration for collection, transportation, and disposal of septage from generator to approved disposal facilities.

Industrial wastes shall mean liquid or other wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resource.

Local waters shall mean both surface and underground waters.

pH shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution, indicating the intensity scale of acidity and alkalinity expressed in terms of a pH scale running from 0.0 to 14.0, with a pH value of 7.0 the midpoint of the scale, representing exact neutrality, and with values above 7.0 indicating alkalinity and those below 7.0 acidity.

Permit shall mean a written authorization by authority resolution to a person permitting the discharge of waste waters into the sewers under specified conditions.

Pollution shall mean the condition of water resulting from the introduction therein of substances of a kind and in quantities rendering it detrimental or immediately or potentially dangerous to the public health or unfit for public or commercial use or detrimental to the propagation, cultivation or conservation of animals, fish or aquatic life.

Properly shredded garbage shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be

carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch in any dimension.

Rules shall mean the rules and regulations of the New Jersey Department of Environmental Protection concerning the statewide management of septage disposal. (N.J.A.C. 7:14-5.1 et seq.)

Septage shall mean the combination of liquid and solid residues resulting from the treatment of water-borne domestic waste in on-site treatment systems.

Sewers shall mean the system of public sewers receiving the discharge of waste waters and directing these to the Linden Roselle Sewerage Authority's treatment facilities.

State and Federal regulatory agencies shall mean all departments, commissions, boards and agencies of the State of New Jersey and of which it is a member, and of the United States having jurisdiction over the subject matter involved.

Suspended solids shall mean the laboratory determination of dry weight expressed in parts per million or milligrams per liter of solids that either float on the surface of, or are in suspension in, water, waste water or other liquids which are removable by laboratory filtering.

Treatment facilities shall mean all facilities for collecting, pumping, treating and disposing of waste water.

User shall mean any person who uses the facilities of the Linden Roselle Sewerage Authority, directly or indirectly, for waste water disposal service.

Vacant shall mean a parcel of land upon which no building, facility, or other construction has been erected or placed. The following criteria, however, shall be

sufficient cause for excluding a parcel of land from the "vacant" category:

- a. When there is a sole owner of an undeveloped lot and an adjoining developed lot, the undeveloped lot shall not be considered vacant.
- b. When an undeveloped lot lies on a street which presently contains sewers, and when a house connection has been provided for that undeveloped lot, the lot shall not be considered vacant.
- c. When a parcel of land was previously developed, and the structure was subsequently razed, the parcel shall not be considered vacant.
- d. When a parcel of land has a prior use (but not necessarily construction of a structure), the parcel of land shall not be considered vacant.
- e. In cases where the City of Linden has issued building permits for undeveloped parcels of land after 28 August 1980 and before 6 October 1980, those parcels of land shall not be considered vacant.

Waste water, waters or wastes shall mean the water-carried wastes created in and carried, or to be carried, away from residences, hotels, apartments, schools, hospitals and industrial establishments, or any other public or private building, together with such industrial wastes as may be present.

003/004 Sanitary relief sewers shall mean those two (2) sanitary gravity relief sewers and associated work, all in the City of Linden, as recommended in the "Facilities Plan for the Elimination of Discharge Points 003 and 004," dated June, 1978, and an Addendum to the Plan, dated August, 1978, and amended August, 1980.
(1979 Code § 14-1; Ord. No. 20-259 § 1; Ord. No. 21-57 § 1)

17-2 LINDEN ROSELLE SEWERAGE AUTHORITY.

17-2.1 Right to Inspect. The Linden Roselle Sewerage Authority shall have the right to enter the premises of any private, public, commercial or industrial establishment using the sewage facilities of the City, and to inspect, measure, sample, test and observe wastes and waste-producing operations and facilities and conveying and treatment facilities on such premises. (1979 Code § 14-5.1)

17-2.2 Waste Flow Subject to Approval by Linden Roselle Authority. Design and installation of plants and equipment for pretreatment or equalization of waste flows shall be subject to review and approval of the Linden Roselle Sewerage Authority and the requirements of all applicable code, ordinances and laws. Pretreatment of flow-equalizing facilities, where provided, shall be maintained continuously in satisfactory and effective operation by the user at his expense. (1979 Code § 14-5.2)

17-2.3 Flow of Polluted Matter. No person shall cause or permit sewage or other polluting matter to flow into or be placed, or to fall or move into, the waters of the Interstate Sanitation District contrary to the requirements and provisions of the Tri-State Compact. (1979 Code § 14-5.3)

17-2.4 Septage Generator's Certification Required. No septage generator shall dispose of septage to a hauler who will dispose of the septage at Linden Roselle Sewerage Authority, unless the septage generator certifies that the septage is domestic, as defined in these regulations, and as required by the rules. (1979 Code § 14-5.4; Ord. No. 21-57 § 1)

17-2.5 Septage Hauler's Certification Required. No hauler shall dispose of septage at Linden-Roselle Sewerage Authority unless the hauler submits a certification with each load that the septage to be disposed of is domestic, as defined in these regulations, and as required by the rules. No personnel

shall knowingly make a false statement or falsify, tamper or render inaccurate a monitoring device or method. (1979 Code § 14-5.5; Ord. No. 21-57 § 1)

17-2.6 Specific Penalties Relating to Septage. Any person failing to comply with any provisions of the rules shall constitute a violation of the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) which provides for civil penalties of up to ten thousand (\$10,000.00) dollars per day of violation and/or criminal penalties of up to twenty-five thousand (\$25,000.00) dollars per day of violation and/or imprisonment for not more than one (1) year. (1979 Code § 14-5.6; Ord. No. 21-57 § 1)

17-2.7 Rules and Regulations. The Linden Roselle Sewerage Authority may promulgate, issue, publish and amend and enforce all such rules and regulations concerning the system or the business and affairs of the Authority, as may be permitted by law, including, but not limited to, rules and regulations regulating the making or connections to the system or the use or services of the system or prohibiting or regulating the discharge into the system or any sewer, sanitation or drainage system connected therewith of (a) storm water drainage from ground surface, roof leaders or catch basins or from any other source, (b) industrial wastes, or (c) oils, acids or any other substances which alone or in combination with other substances discharged into the system, are or may be injurious or deleterious to the system or to its efficient operation. Such rules and regulations may include lists of harmful wastes, discharge of which into the system or any sewer, sanitation or drainage systems connected therewith shall be prohibited. (1979 Code § 14-5.7; Ord. No. 22-72 § 1)

17-3 REQUIREMENTS AND PROHIBITIONS FOR SEWER USE.

17-3.1 Requirements. No person shall cause or permit any waters or wastes to enter or pass into the public sewerage system which fail to meet the following requirements at the point of origin, that is the point of entrance to the public sewer:

- a. pH shall not be less than 6.0 nor more than 9.0.
- b. Shall not contain any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas.
- c. Shall not contain any flammable substance with a flash point lower than one hundred eighty-seven (187°) degrees Fahrenheit.
- d. Shall have temperature within the range of thirty-two (32°) to one hundred fifty (150°) degrees Fahrenheit.
- e. Shall not contain grease or oil or other substance that will solidify or become viscous at temperatures between thirty-two (32°) and one hundred fifty (150°) degrees Fahrenheit.
- f. Shall not contain any garbage that has not been properly shredded. Where the installation and operation of any mechanical garbage grinder is permitted, the use and installation of equipment, including a motor of three-fourths (3/4) horsepower or greater, shall be subject to the review and approval of the Linden Roselle Sewerage Authority.
- g. Shall not contain toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any biological sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters or the sewage treatment plants.

- h. Shall not contain any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by applicable regulations of State and Federal regulatory agencies.
- i. Shall not contain materials which cause excessive discoloration, such as but not limited to dye waste and vegetable tanning solutions.
(1979 Code § 14-2.1)

17-3.2 Prohibitions. No person shall cause or permit any wastes or waters to enter or pass into the public sewerage system which at the point of origin, i.e., the point of entrance to the public sewer, shall contain or cause the following:

- a. Chemical reaction, either directly or indirectly, with the materials of construction to impair the strength or durability of sewer or treatment structures.
- b. Mechanical action that will destroy or damage the sewer or treatment structures.
- c. Restriction of the hydraulic capacity of sewer structures.
- d. Restriction of the normal inspection or maintenance of the sewer structures.
- e. Danger to public health and safety.
- f. Obnoxious conditions inimical to the public interest.
- g. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interferences with proper operation of the sewerage works, such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, whole blood, paunch manure, hair, fleshings, entrails, paper dishes, cups and milk containers, either whole or ground, and unground garbage.

- h. Violation of the Rules and Regulations of the Linden Roselle Sewerage Authority, or any Federal or State laws, rules and regulations. In the event that there are any inconsistencies between such rules, regulations and laws, the more stringent or restrictive of them shall apply and take precedence.
(1979 Code § 14-2.2; Ord. No. 22-72 § 1)

17-3.3 Chemical Contents. No person unless such person shall be an industrial user and shall have obtained a special permit in accordance with Section 17-5, shall cause or permit to enter or pass into the public sewerage system any waters or wastes which contain concentrations in excess of the specified limits for one (1) or more of the following listed chemicals and physical characteristics at the point of entrance to the public sewer. The concentration indicated shall be twenty-four (24) hour average concentration and the maximum concentration at any time during the twenty-four (24) hour period shall not exceed three (3) times the specified concentration limit:

- a. B.O.D., 5 day, 20 degrees C, shall not exceed 600 mgr./L.
- b. Suspended solids shall not exceed 600 mgr./L.
- c. Settleable solids shall not exceed 10 ml/L.
- d. Chemical oxygen demand shall not exceed 1000 mgr./L.
- e. Chromium (Hexavalent) shall not exceed 3 mgr./L.
- f. Cyanides shall not exceed 2 mgr./L.
- g. Cadmium shall not exceed 4 mgr./L.
- h. Nickel shall not exceed 5 mgr./L.
- i. Iron shall not exceed 15 mgr./L.
- j. Zinc shall not exceed 5 mgr./L.
- k. Copper shall not exceed 3 mgr./L.

- l. Arsenic shall not exceed 1 mgr./L.
- m. Phenols shall not exceed 10 mgr./L.
- n. Sulfides shall not exceed 50 mgr./L.
- o. Grease, oil or any oil substance, whether emulsified or free, shall not exceed 50 mgr./L.
- p. Ammonia-nitrogen shall not exceed 22.0 mgr./L (effective March 25, 1995).
(1979 Code § 14-2.3; Ord. No. 31-40 § 1)

17-3.4 Enforcement. If any waters or wastes are discharged or are proposed to be discharged into the public sewerage system which contain waters, substance or substances specifically prohibited in this section, or any other substance or substances which may have a deleterious effect upon the sewerage treatment processes, equipment or receiving waters, or which violate any Federal or State laws or regulations or Linden Roselle Sewerage Authority Rules and Regulations, or which otherwise create a hazard to life or constitute a public nuisance, the Linden Roselle Sewerage Authority shall have the authority to:

- a. Prohibit the discharge of the wastes into the public sewerage system.
- b. Require pretreatment of the wastes to an acceptable condition for discharge into the public sewerage system.
- c. Require control over the quantities and rates of discharge.
- d. Require the application for a permit in accordance with Section 17-5.
- e. Require combinations of any or all of the above.
(1979 Code § 14-2.4; Ord. No. 22-72 § 1)

17-3.5 Written Reports. Upon request of the Linden Roselle Sewerage Authority or of the Fire Department, every

person who causes or permits any waters or wastes to enter or pass into the public sewage systems shall make a written report disclosing its wastes and waste-producing operations and its conveying and treatment facilities, and furnish such other pertinent information as may be requested. Such report shall be made as requested, and shall be submitted without delay no later than fifteen (15) days after the request. Any person who causes or permits any waters or wastes to enter or pass into the public sewage system shall make a written report to the Linden Roselle Sewerage Authority upon increasing the rate of flow of waters or wastes or upon changing the process, products or nature of the water or wastes. (1979 Code § 14-2.5)

17-3.6 Grease Traps.

- a. *Grease Traps.* Grease traps shall be installed in accordance with the Uniform Construction Code as determined by the Plumbing Inspector. The grease traps shall be continuously maintained in order to provide satisfactory and effective operation by the owner, at the owner's expense. There shall be no bypass of the grease trap facilities which would allow the entry of untreated or partially treated wastes to the public sewer system.
- b. All retail food establishments, commercial food processors, meat processors or similar food preparers that are grease producers shall be required to pretreat their discharge with an approved bacteriological product to control and eliminate the introduction of grease into the sewer system.
- c. The bacteriological product must be free of wetting agents, additives and reducing agents, enzymes, solvents or chemical degreasers and must be approved for use by the Superintendent of Public Works or designee prior to application and/or installation of equipment. The bacteria shall be introduced into the system according to manufacturing specs.

- d. The Enforcing Authority of this section shall be Superintendent of Public Works or his designee, who shall have the authority to issue summonses for violations of this section.

(Ord. No. 35-8 § 14-2; New)

17-4 RESERVED.

17-5 CONNECTIONS; PERMIT REQUIRED.

17-5.1 Permit Required. No person shall hereafter cause or permit any industry be connected to the sewerage system of the City without first obtaining a permit from the Linden Roselle Sewerage Authority. (1979 Code § 14-3.1)

17-5.2 Certain Drainage Prohibited. No person shall cause or permit any new connection to be made to the public sewerage system which will allow the entrance therein of storm water drainage from ground surface, roofs, cellars or any other sewers. (1979 Code § 14-3.2)

17-5.3 Exceptions Allowed. Such permit, or a permit specially applied for in the case of a current permittee, may allow discharges which exceed in their chemical, physical or biological characteristics the limits set forth in Section 17-3. Permits under this subsection may be issued where, in its sole determination and discretion, the authority finds that its treatment facilities may be capable of handling, i.e. pass through without impact on treatment efficiency, or treating, within the facilities' design limitations, such wastes, and where the applicant for such permit demonstrates a need, hardship or other special reasons for the issuance of such permit. The authority, in such cases, may impose any and all conditions upon such permit as it may deem necessary to protect the authority's facilities and to insure compliance with all State and Federal laws and regulations pertaining to it

and to protect the authority against any penalties under State or Federal laws and regulations. (1979 Code § 14-3.3)

17-5.4 Rules and Regulations. The Authority may promulgate all rules and regulations it deems necessary or appropriate for the application for permits under this section. (1979 Code § 14-3.4)

17-6 METERS.

The Linden Roselle Sewerage Authority at its own election or upon the request of a user approved by the Linden Roselle Sewerage Authority, shall install one (1) or more metering and sampling stations consisting of one (1) or more manholes or similar structures having suitable devices for metering and sampling. Such installation shall be installed and maintained at the expense of the user. Persons who connect to the public sewage system and discharge industrial wastes therein, shall install metering or sampling stations, or both, prior to use of the public sewage system unless such requirement is waived after investigation and determination by the Linden Roselle Sewerage Authority that the same are presently unneeded. When it is determined by the Linden Roselle Sewerage Authority that the same are needed, the user shall install the required devices. The Linden Roselle Sewerage Authority shall have the right at any time to test, set and replace the meters or other devices in the stations and to remove meters and devices of the Linden Roselle Sewerage Authority. The user shall repair or replace metering and sampling installations as may be required. The Linden Roselle Sewerage Authority, at its option, may determine waste water volumes contributed by a person discharging industrial wastes into the public sewage system, from metered water consumption records of the water utility furnishing water to such person by any means permitted by law.

The measurements, tests and analyses of the characteristics of the waste waters referred to herein shall be determined by "Standard Methods for the Examination of Water and Waste Waters" published by the American Public Health Association, whenever applicable. (1979 Code § 14-4)

17-7 PROHIBITIONS IN AN ENVIRONMENTALLY SENSITIVE AREA.

No person shall cause or permit, for a period of fifty (50) years dated from 28 August 1980, any connection to the 003, 004 sanitary relief sewers in the City which would allow the discharge of waste water from any building, facility, or other construction on any parcel of land defined as being within an environmentally sensitive area, and which parcel of land as of 28 August 1980 was defined as vacant, unless the connection is approved in writing by the U.S. Environmental Protection Agency Region II Administration.

The vacant parcels of land within an environmentally sensitive area which are hereby prohibited from connection to the 003, 004 sanitary relief sewers are as follows:

<i>Block No.</i>	<i>Lot No.</i>	<i>Owner</i>
206	10	City of Linden (Park)
207	7	City of Linden (Park)
242	10	City of Linden (Park)
243	15	City of Linden
244	16	City of Linden
245	3	City of Linden
252	24	City of Linden
280	11	City of Linden
282	3	City of Linden
284	1	City of Linden
284	2	City of Linden
284	14	City of Linden
287	1	W.C. Sexton c/o R. B. Miller
457	19	City of Linden

SEWER AND WATER

17-8

<i>Block No.</i>	<i>Lot No.</i>	<i>Owner</i>
464	2	City of Linden
464	3	City of Linden
464	35	City of Linden
465	2	City of Linden
465	24	City of Linden
466	2 North of West Brook	City of Linden
535	1	City of Linden
545	26	City of Linden
545	35	City of Linden
560	2	City of Linden
561	3	City of Linden (Park)
562	2	City of Linden (Park)
564	2	City of Linden
574	14	City of Linden (Park)
581	16.02	Buckey Pipe Company
582	49	John & Mildred Kocinski
582	61	Texas Eastern Transmission Corp.
582	62	Texas Eastern Transmission Corp.
582	65	Cities Service Company
583	3	John Fedor Realty
583	6	Cities Service Company
583	7	Cities Service Company

(1979 Code § 14-6; Ord. No. 20-259 § 1)

**17-8 USER CHARGE AND INDUSTRIAL COST
RECOVERY SYSTEM FOR THE USE OF SEWERS.**

17-8.1—17-8.9 Reserved.

17-8.10 User Charges.

The annual operation, maintenance and replacement costs (called "O & M costs") of the Linden Roselle Sewerage Authority (called "Authority") for treatment services provided to the City shall be allocated to the City in proportion to use, based upon the City's relative contributions of wastewater volume, biochemical oxygen demand, and suspended solids. The following percentages shall be used by the Authority to allocate its O & M costs: Twenty-six (26%) percent for wastewater volume, forty-eight (48%) percent for biochemical oxygen demand, and twenty-six (26%) percent for suspended solids. The Authority shall review this allocation procedure at least biannually to ensure that (a) the City is charged O & M costs in proportion to use, (b) sufficient revenues are generated, and (c) excess revenue from a class of users is applied toward the O & M costs allocated to that class for the next year.

The annual capital and debt service costs of the Linden Roselle Sewerage Authority (called "Authority") for treatment services provided to the City shall be allocated to the City in proportion to use, based upon the City's relative contributions of wastewater volume, biochemical oxygen demand, and suspended solids. The following percentages shall be used by the Authority to allocated its capital and debt service costs: Forty (40%) percent for wastewater volume, thirty-nine (39%) percent for biochemical oxygen demand, and twenty-one (21%) percent for suspended solids. The Authority shall review this allocation procedure currently with its biannual review of O & M costs to ensure that (a) the City is charged capital and debt service costs in proportion to use, (b) sufficient revenues are generated, and (c) excess revenue from a class of users toward the capital and debt service costs allocated to that class for the next year. (Ord. No. 52-04)

17-8.11 Collection of Authority's Costs.

The City shall collect the Authority's O & M, capital and debt services costs allocated to the City in accordance with subsection 17-8.10 from users of the City's sewer system in

proportion to use. Users of the City's sewer system shall be classified as follows:

- a. *Residential and Small Nonresidential.* Users that discharge less than 25,000 gallons per day of wastewater with biochemical oxygen demand and suspended solids concentrations of less than 235 mg/L and 200 mg/L respectively.
- b. *Major Industrial Class A.* Users that discharge more than 25,000 gallons per day of wastewater and which discharge biochemical oxygen demand (BOD) or total suspended solids concentration (TSS) greater than 30 mg/L respectively or that discharge wastewater with biochemical oxygen demand or suspended solids concentrations greater than 235 mg/L and 200 mg/L respectively shall be defined as Class B Major Industrial users.
- c. *Major Industrial Class B.* Users that discharge more than 25,000 gallons per day of wastewater with biochemical oxygen demand or suspended solids concentrations less than or equal to 30 mg/L respectively shall be defined as Class B Major Industrial users.

(Ord. No. 35-48 § 1; Ord. No. 52-04 § 2)

17-8.12 City's Share of Authority Costs.

The City's share of the Authority's O & M, capital and debt service costs shall be allocated to each of the above classes on the basis of relative wastewater volume, biochemical oxygen demand, and suspended solids contributed by each class. The allocation percentages in subsection 17-8.10 shall be used in this regard.

For users in the Residential and Small Nonresidential class, charges shall be based upon a unit rate per thousand gallons (or one hundred cubic feet) of metered water consumption during the previous year, unless it is determined that a given user's metered water consumption does not fairly represent the

volume of wastewater contributed to the City's sewer system. Charges for such a user shall be based upon the unit rate applied to the volume of the wastewater discharged. The unit rate shall be determined annually by dividing the Authority's O & M, capital and debt service costs allocated for the subject year to the Residential and Small Nonresidential class by the total metered water consumption during the previous year for the Residential and Small Nonresidential class.

For Major Industrial Class A users, charges shall be based upon a unit rate per gallon (expressed in units determined by the Authority, e.g. million gallons per year) of wastewater discharged to the City's sewer system. The Authority may measure such discharges on the basis of a sewage flow meter provided by the user, metered water consumption or other basis determined by the Authority.

Major Industrial Class A users discharges biochemical oxygen demand in concentrations greater than 235 mg/l on an annual average basis or suspended solids concentration greater than 200 mg/L on an average annual basis shall pay a concentration cost recovery charge. The concentration cost recovery charge shall be based upon the additional quantity of biochemical oxygen demand or suspended solids expressed in mass (e.g. tons per year) resultant from the concentrations above these limits using the following formulas:

For BOD: $Q_{bod} = (\text{User's Annual Flow in Million Gallons} \times 8.34 \times (\text{Cbod} - 235)) / 2,000$; and for TSS: $Q_{tss} = (\text{User's Annual Flow in Million Gallons} \times 8.34 \times (\text{Ctss} - 200)) / 2,000$; where Q_{bod} and Q_{tss} equal the quantities of BOD and/or TSS subject to the concentration cost recovery charge and $Cbod$ and $Ctss$ equal the user's concentrations of BOD and/or TSS in milligrams per liter (mg/L). For example a Major Industrial User Class A user discharging two million gallons per year (mgy) with a BOD concentration of 4400 mg/l would generate 1.376 tons per year of BOD subject to the concentration cost recovery charge, calculated as follows:

$$Q_{bod} = (2\text{mgy} \times 8.34 \times (400 \text{ mg/l} - 235 \text{ mg/l}) / 2,000 = 1.376 \text{ tons of BOD}$$

The BOD and TSS concentration cost recovery unit charges shall be determined annually based upon total quantities of biochemical oxygen demand and suspended solids received by the Authority and the costs allocated to BOD and TSS using allocation percentages in subsection 7-8.10.

For user in the Major Industrial Class B users, charges shall be based upon a unit rate per gallon (expressed in units determined by the Authority, e.g. million gallons per year) of wastewater discharged to the City's sewer system. The Authority may measure such discharges on the basis of a sewerage flow meter provided by the user, metered water consumption or other basis determined by the Authority. (Ord. No. 43-35 § 1; Ord. No. 52-04 § 3)

17-8.13 Pretreatment Costs.

The Authority shall annually allocate to the City the costs of its industrial pretreatment program on the basis of relative wastewater volume from the Major Industrial class (defined in subsection 17-8.11). Such costs shall be charged against users in the Major Industrial class on the basis of relative wastewater volume, biochemical oxygen demand and suspended solids contributed by each. (Ord. No. 52-04 § 4)

17-9 SEWER CONNECTION FEES FOR NEW USERS OR INCREASED FLOWS.

- a. As of October 1, 2008, all new users or increased flows from improved premises shall be charged a fee upon each and every direct or indirect connection to the sewer system. The connection fee of each and every user shall be based on the total number of equivalent service units served by the connection as calculated by a licensed New Jersey engineer or architect. An equivalent service unit (ESU) is the average daily flow of sewage for the average single-family residence in the City. The fee shall be collected upon issuance of a builder's agreement

or a certificate of occupancy in the event that a builder's agreement is not required.

- b. An ESU is presumed to be two hundred fifty-five (255) gallons per day.
- c. The connection fee shall be calculated as follows: one thousand seven hundred fifty (\$1,750.00) dollars per each equivalent service unit.
(Ord. No. 52-45 § 1)

17-10—17-12 RESERVED.

Article II Water

17-13 WATER EMERGENCY.

17-13.1 Declaration of Water Emergency.

Whenever the City Council shall be satisfied and finds that a water emergency exists in the City, it may adopt a resolution declaring that a water emergency exists in the City. Such resolution shall be adopted by the Governing Body at any regular, special, adjourned or emergency public meeting of the City Council. Such resolution shall identify that portion of the City affected by the water emergency, which may include the entire City and shall specify which of the water use regulations contained in subsection 17-13.2 is being imposed as well as any exemptions as may be authorized. Such resolution shall be effective immediately upon publication according to law and shall continue in effect for ninety (90) days, unless extended or repealed as set forth in subsection 17-13.3. For the purpose of this paragraph, a water emergency shall exist if, for any of the following reasons:

- a. The public utility providing water service to all or a portion of the municipality has adopted water use restrictions, has notified the municipality, the New Jersey Board of Public Utilities, and the New Jersey Department of Environmental Protection, as well as any other State, County or local agency entitled to notice of such restrictions and such restrictions are not overruled or declared invalid by any State, County or local agency having the jurisdiction and power to do so; or
- b. The City Council is otherwise satisfied that a water emergency exists in the City.
(1979 Code § 4-32.1; Ord. No. 27-58 § 1)

17-13.2 Water Use Restrictions. Upon adoption by the City Council of a resolution declaring that a water emergency exists in the City in accordance with subsection 17-13.1, all citizens shall be urged to observe voluntary indoor conservation measures and, any of the following water use restrictions shall be imposed and shall be applicable to all residents and tenants, except where a bona fide health emergency exists and to exempt businesses, as specified herein during the water emergency:

- a. The complete ban and prohibition of outside water usage, including the watering of lawns and plants, the filling of pools and the washing of cars; or
- b. Outside water usage on alternate days allowing outside water usage by persons or businesses having even house or box numbers on even days and those having odd house or box numbers on odd days with outside water usage being completely banned and prohibited on the thirty-first day of any month during the water emergency; or
- c. Any other water use restriction specified by the City Council in a resolution required by subsection 17-13.1 which is reasonable under the circumstances

considering the nature and extent of the water emergency. Any water restriction imposed pursuant to this paragraph shall be limited in application to that portion of the municipality, which may include the entire municipality, identified as being affected by the water emergency in the resolution of the Governing Body adopted in accordance with subsection 17-13.1. (1979 Code § 4-32.2; Ord. No. 27-58 § 2)

17-13.3 Duration of Water Use Restrictions. The resolution of the City Council required by subsection 17-13.1 shall, in addition to complying with subsection 17-13.1, provide a period of time during which the water use restrictions imposed shall be applicable and which shall be no longer than reasonably necessary to abate the water emergency under the circumstances considering the nature and extent of the water emergency. At the expiration of the time period specified in the resolution, the water use restriction shall lapse and be inapplicable and unenforceable. If the City Council shall be satisfied that the water emergency has been abated prior to the expiration of the time period specified in the resolution, it shall adopt a resolution declaring the water emergency ended and the water use restrictions inapplicable. If, at the expiration of the time period specified in the resolution, the City Council shall be satisfied that the water emergency continues to exist, it may adopt a resolution in accordance with the requirements of this section continuing the water use restrictions. (1979 Code § 4-32.3; Ord. No. 27-58 § 3)

17-13.4 Enforcement of Water Use Restrictions. The water use restrictions imposed pursuant to this section shall be enforced during a water emergency by the Linden Police Department. Whenever the Linden Police Department shall find a violation of the water use restrictions, the Police Department shall give the violator a written warning and explain the penalties for a second and third offense as provided by subsection 17-13.5. The Linden Police

Department shall keep such records as may be reasonable and necessary for the purpose of determining the persons and businesses who have been warned upon a first offense. The Linden Police Department is hereby empowered to write summonses for the violation of the water use restrictions imposed pursuant to this section. (1979 Code § 4-32.4; Ord. No. 27-58 § 4)

17-13.5 Penalties.

After a first offense in accordance with subsection 17-13.4, any person or business who thereafter violates the water use restrictions imposed pursuant to this section shall be fined or imprisoned in accordance with this paragraph. For a second offense, the fine imposed shall be five hundred (\$500.00) dollars or imprisonment for ten (10) days or both. For a third and subsequent offense, the fine imposed shall be one thousand (\$1,000.00) dollars or imprisonment for thirty (30) days or both. (1979 Code § 4-32.5; Ord. No. 27-58 § 5)

17-14 CROSS CONNECTION CONTROL AND BACKFLOW PREVENTION.

17-14.1 Purpose.

- a. To establish a Cross Connection Control and Backflow Prevention Program in accordance with the New Jersey Safe Drinking Water Act, N.J.A.C. 7:10-10.1-10.10 and the Plumbing Subcode of the New Jersey State Uniform Construction Code, N.J.A.C. 5:23-3.15.
- b. To protect the public water main against actual or potential cross connections, backflow by back pressure and back siphonage by isolating within the premises or private property contamination or pollution that has occurred or may occur because of an unauthorized cross connection on the premises or private property.

- c. To protect the water supply system within the premises or private property against actual or potential cross connections/backflow by pressure and back siphonage.
- d. To eliminate cross connections/backflow by back pressure and back siphonage or any other source of process water used for any purpose which may jeopardize the safety of the water supply or which may endanger the health and welfare of the general public.
(Ord. No. 52-63 § 1)

17-14.2 Responsibility.

The Health Officer or his/her designee in conjunction with the Plumbing Subcode Official and water purveyor will be responsible for determining the need for a backflow prevention assembly. (Ord. No. 52-63 § 1)

17-14.3 Installation.

All backflow prevention devices shall be installed in accordance with the current plumbing code. An initial certificate of compliance will be issued by the Health Department after final inspection by the Plumbing Subcode Official and submission of testing results for the device. Testing will be done in accordance with N.J.A.C. 7:10-10.6 by a certified tester. (Ord. No. 52-63 § 1)

17-14.4 Certificate of Compliance.

Certificates of compliance must be obtained annually from the Health Department. An application for renewal must be completed and submitted to the Health Department with appropriate testing certification in accordance with N.J.A.C. 7:10-10.5 and/or N.S.P.C. 10.5.6. Certificates of compliance for devices installed prior to the enactment of this section must be obtained within ninety (90) days of enactment. Certificates of compliance will be issued upon completion of an application and submission of testing certification. (Ord. No. 52-63 § 1)

17-14.5 Fees.

The fee for an initial certificate of compliance (new devices) will be ten (\$10.00) dollars. The fee for the annual renewal of certificate of compliance will be fifty (\$50.00) dollars submitted within thirty (30) days of expiration of the certificate. Renewals submitted more than thirty (30) days past the expiration date will be subject to a penalty not to exceed one thousand (\$1,000.00) dollars and/or a referral to the water purveyor for discontinuation of service. The fee for an initial certificate of compliance for existing devices is fifty (\$50.00) dollars. (Ord. No. 52-63 § 1)

cc: Law, Treasurer, ~~Engineering~~ L/R Owerage

FIRST READING: JAN 15 2008

ORD. NO. 52-04

2ND & FINAL READING: FEB 19 2008

File LRSA General

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XVII SEWER AND WATER, OF AN ORDINANCE ENTITLED, "AN ORDINANCE ADOPTING AND ENACTING THE REVISED GENERAL ORDINANCES OF THE CITY OF LINDEN, 1999, " PASSED NOVEMBER 23, 1999 AND APPROVED NOVEMBER 24, 1999, AND AS AMENDED AND SUPPLEMENTED

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LINDEN:

Section 1. That Chapter XVII, Sewer and Water, shall be and the same is hereby amended as follows:



ADD NEW SECTION 17-8.10 USER CHARGES

The annual operation, maintenance and replacement costs (called "O & M costs") of the Linden Roselle Sewerage Authority (called "Authority") for treatment services provided to the City shall be allocated to the City in proportion to use, based upon the City's relative contributions of wastewater volume, biochemical oxygen demand, and suspended solids. The following percentages shall be used by the Authority to allocate its O & M costs: twenty-six percent (26 percent) for wastewater volume, forty-eight percent (48 percent) for biochemical oxygen demand, and twenty-six percent (26 percent) for suspended solids. The Authority shall review this allocation procedure at least biannually to ensure that (a) the City is charged O & M costs in proportion to use, (b) sufficient revenues are generated, and (c) excess revenue from a class of users is applied toward the O & M costs allocated to that class for the next year.

The annual capital and debt service costs of the Linden Roselle Sewerage Authority (called "Authority") for treatment services provided to the City shall be allocated to the City in proportion to use, based upon the City's relative contributions of wastewater volume, biochemical oxygen demand, and suspended solids. The following percentages shall be used by the Authority to allocate its capital and debt service costs: Forty percent (40 percent) for wastewater volume, thirty-nine percent (39 percent) for biochemical oxygen demand, and twenty-one percent (21 percent) for suspended solids. The Authority shall review this allocation procedure currently with its biannual review of O & M costs to ensure that (a) the City is charged capital and debt service costs in proportion to use, (b) sufficient revenues are generated, and (c) excess revenue from a class of users toward the capital and debt service costs allocated to that class for the next year.

SECTION 2: DELETE SECTION 17-8.11 COLLECTION OF O & M COSTS

ADD NEW SECTION 17-8.11 COLLECTION OF AUTHORITY'S COSTS

The City shall collect the Authority's O & M, capital and debt services costs allocated to the City in accordance with Section 17-8.10 from users of the City's sewer system in proportion to use. Users of the City's sewer system shall be classified as follows:

Residential and Small Nonresidential - users that discharge less than 25,000 gallons per day of wastewater with biochemical oxygen demand and suspended solids concentrations of less than 235 mg/L and 200 mg/L respectively.

2V 3-8-08

Major Industrial Class A - users that discharge more than 25,000 gallons per day of wastewater and which discharge biochemical oxygen demand (BOD) or total suspended solids concentration (TSS) greater than 30 mg/L respectively or that discharge wastewater with biochemical oxygen demand or suspended solids concentrations greater than 235 mg/L and 200 mg/L respectively shall be defined as Class B Major Industrial users.

Major Industrial Class B - users that discharge more than 25,000 gallons per day of wastewater with biochemical oxygen demand or suspended solids concentrations less than or equal to 30 mg/L respectively shall be defined as Class B Major Industrial users.

SECTION 3: DELETE SECTION 17-8.12 COLLECTION OF DEBT SERVICE

ADD NEW SECTION 17-8.12 CITY'S SHARE OF AUTHORITY COSTS

The City's share of the Authority's O & M, capital and debt service costs shall be allocated to each of the above classes on the basis of relative wastewater volume, biochemical oxygen demand, and suspended solids contributed by each class. The allocation percentages in Section 17-8.10 shall be used in this regard.

For users in the Residential and Small Nonresidential class, charges shall be based upon a unit rate per thousand gallons (or one hundred cubic feet) of metered water consumption during the previous year, unless it is determined that a given user's metered water consumption does not fairly represent the volume of wastewater contributed to the City's sewer system. Charges for such a user shall be based upon the unit rate applied to the volume of the wastewater discharged. The unit rate shall be determined annually by dividing the Authority's O & M, capital and debt service costs allocated for the subject year to the Residential and Small Nonresidential class by the total metered water consumption during the previous year for the Residential and Small Nonresidential class.

For Major Industrial Class A users, charges shall be based upon a unit rate per gallon (expressed in units determined by the Authority, e.g. million gallons per year) of wastewater discharged to the City's sewer system. The Authority may measure such discharges on the basis of a sewage flow meter provided by the user, metered water consumption or other basis determined by the Authority.

Major Industrial Class A users discharges biochemical oxygen demand in concentrations greater than 235 mg/L on an annual average basis or suspended solids concentration greater than 200 mg/L on an average annual basis shall pay a concentration cost recovery charge. The concentration cost recovery charge shall be based upon the additional quantity of biochemical oxygen demand or suspended solids expressed in mass (e.g. tons per year) resultant from the concentrations above these limits using the following formulas:

For BOD: $Q_{bod} = (\text{User's Annual Flow in Million Gallons} \times 8.34 \times (C_{bod}-235)) / 2,000$;
and for TSS: $Q_{tss} = (\text{User's Annual Flow in Million Gallons} \times 8.34 \times (C_{tss}-200)) / 2,000$;
where Q_{bod} and Q_{tss} equal the quantities of BOD and/or TSS subject to the concentration cost recovery charge and C_{bod} and C_{tss} equal the user's concentrations of BOD and/or TSS in milligrams per liter (mg/l). For example a Major Industrial User Class A user discharging two million gallons per year (mgy) with a BOD concentration of 4400 mg/l would generate 1.376 tons per year of BOD subject to the concentration cost recovery charge, calculated as follows:

$$Q_{\text{bod}} = (2\text{mg/y} \times 8.34 \times (400\text{mg/l} - 235\text{mg/l}) / 2,000 = 1.376 \text{ tons of BOD}$$

The BOD and TSS concentration cost recovery unit charges shall be determined annually based upon total quantities of biochemical oxygen demand and suspended solids received by the Authority and the costs allocated to BOD and TSS using allocation percentages in Section 17-8.10.

For user in the Major Industrial Class B users, charges shall be based upon a unit rate per gallon (expressed in units determined by the Authority, e.g. million gallons per year) of wastewater discharged to the City's sewer system. The Authority may measure such discharges on the basis of a sewerage flow meter provided by the user, metered water consumption or other basis determined by the Authority.

SECTION 4 ADD NEW SECTION 17-8.13 PRETREATMENT COSTS

The Authority shall annually allocate to the City the costs of its industrial pretreatment program on the basis of relative wastewater volume from the Major Industrial class (defined in Section 17-8.11). Such costs shall be charged against users in the Major Industrial class on the basis of relative wastewater volume, biochemical oxygen demand and suspended solids contributed by each.

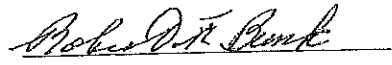
SECTION 5. The remaining provisions of this Chapter except and herein amended and supplemented shall continue in full force and effect to the same extent as if herein fully repeated.

SECTION 6. If any section, subsection, provision, clause, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such adjudication shall not affect the remaining sections, provisions, clauses or portions, which shall be deemed severable therefrom.

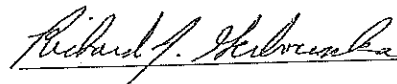
SECTION 7. All ordinances or parts of ordinances inconsistent herewith are hereby amended or repealed to the extent necessary to conform to the terms of this Ordinance.

SECTION 8. This Ordinance shall take effect in the manner provided by law.

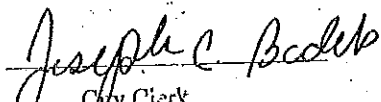
PASSED: February 19, 2008


President of Council

APPROVED: February 20, 2008


Mayor

ATTEST:


City Clerk

Just Reso. file

FIRST READING: JUL 15 2008

ORD. NO. 52-45

2ND AND FINAL READING: AUG 19 2008

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XVII, SEWER AND WATER, OF AN ORDINANCE ENTITLED, "AN ORDINANCE ADOPTING AND ENACTING THE REVISED GENERAL ORDINANCES OF THE CITY OF LINDEN, 1999," PASSED NOVEMBER 23, 1999 AND APPROVED NOVEMBER 24, 1999, AND AS AMENDED AND SUPPLEMENTED

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LINDEN:

Section 1. That Chapter XVII, Sewer and Water, shall be and the same is hereby amended as follows:

ADD NEW SECTION 17-9 SEWER CONNECTION FEES FOR NEW USERS OR INCREASED FLOWS

a. As of October 1, 2008, all new users or increased flows from improved premises shall be charged a fee upon each and every direct or indirect connection to the sewer system. The connection fee of each and every user shall be based on the total number of equivalent service units served by the connection as calculated by a licensed New Jersey engineer or architect. An equivalent service unit (ESU) is the average daily flow of sewage for the average single-family residence in the City. The fee shall be collected upon issuance of a builder's agreement or a Certificate of Occupancy in the event that a builder's agreement is not required.

b. An ESU is presumed to be two hundred fifty-five (255) gallons per day.

c. The connection fee shall be calculated as follows: one thousand seven hundred fifty (\$1,750.00) dollars per each equivalent service unit.

Section 2. The remaining provisions of this Chapter except and herein amended and supplemented shall continue in full force and effect to the same extent as if herein fully repeated.

Section 3. If any section, subsection, provision, clause, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such adjudication shall not affect the remaining sections, provisions, clauses or portions, which shall be deemed severable therefrom.

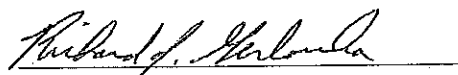
Section 4. All ordinances or parts of ordinances inconsistent herewith are hereby amended or repealed to the extent necessary to conform to the terms of this Ordinance.

Section 5. This Ordinance shall take effect in the manner provided by law.

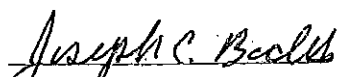
PASSED: AUGUST 19, 2008


President of Council

APPROVED: AUGUST 20, 2008


Mayor

ATTEST:


City Clerk

2V 8-20-08

#23

FIRST READING:

ORD. NO. 52-63

2ND & FINAL READING:

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XVII,
SEWER AND WATER, OF AN ORDINANCE ENTITLED, "AN
ORDINANCE ADOPTING AND ENACTING THE REVISED
GENERAL ORDINANCES OF THE CITY OF LINDEN, 1999,"
PASSED NOVEMBER 23, 1999, AND APPROVED NOVEMBER
24, 1999, AND AS AMENDED AND SUPPLEMENTED

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LINDEN:

Section 1. That Chapter XVII, Sewer and Water, Article II Water, shall be amended as follows:

is hereby amended as follows:

ADD NEW SECTION 17-14, CROSS CONNECTION CONTROL AND

BACKFLOW PREVENTION as follows:

17-14 Cross Connection Control and Backflow Prevention

17-14.1 Purpose:

(A) To establish a Cross Connection Control and Backflow Prevention Program in accordance with the New Jersey Safe Drinking Water Act, N.J.A.C. 7:10-10.1-10.10 and the Plumbing Subcode of the New Jersey State Uniform Construction Code, N.J.A.C. 5:23-3.15.

(B) To protect the public water main against actual or potential cross connections, backflow by back pressure and back siphonage by isolating within the premise or private property contamination or pollution that has occurred or may occur because of an unauthorized cross connection on the premises or private property.

(C) To protect the water supply system within the premise or private property against actual or potential cross connections/backflow by pressure and back siphonage.

(D) To eliminate cross connections/backflow by back pressure and back siphonage or any other source of water or process water used for any purpose which may jeopardize the safety of the water supply or which may endanger the health and welfare of the general public.

17-14.2 Responsibility. The Health Officer or his/her designee in conjunction with the Plumbing Subcode Official and water purveyor will be responsible for determining the need for a backflow prevention assembly.

17-14.3 Installation. All backflow prevention devices shall be installed in accordance with the current plumbing code. An initial Certificate of Compliance will be issued by the Health Department after final inspection by the Plumbing Subcode Official and submission of testing results for the device. Testing will be done in accordance with N.J.A.C. 7:10-10.6 by a certified tester.

17-14.4 Certificate of Compliance. Certificates of Compliance must be obtained annually from the Health Department. An application for renewal must be completed and submitted to the Health Department with appropriate testing certification in accordance with N.J.A.C. 7:10-10.5 and/or N.S.P.C. 10.5.6. Certificates of Compliance for devices installed prior to the enactment of this Ordinance must be obtained within ninety (90) days of enactment. Certificates of Compliance will be issued upon completion of an application and submission of testing certification.

17-14.5 Fees. The fee for an initial Certificate of Compliance (new devices) will be \$10.00. The fee for the annual renewal of Certificate of Compliance will be \$50.00 submitted within thirty (30) days of expiration of the Certificate. Renewals submitted more than thirty (30) days past the expiration date will be subject to a penalty not to exceed \$1,000.00 and/or a referral to the water purveyor for discontinuation of service. The fee for an Initial Certificate of Compliance for existing devices if \$50.00.

CC: Engineer

#31


Section 2. The remaining provisions of the chapter hereby amended and supplemented shall continue in full force and effect to the same extent as if herein fully repeated.

Section 3. If any section, subsection, provision, clause, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such adjudication shall not affect the remaining sections, subsections, provisions, clauses, or portions, which shall be deemed severable therefrom.

Section 4. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Section 5. This Ordinance shall take effect in the manner provided by law.


PASSED: NOVEMBER 25, 2008


President of Council

APPROVED: NOVEMBER 26, 2008


Mayor

ATTEST:


City Clerk

ordchapxviii7-14

Ord #1134

AN ORDINANCE TO FIX AND PRESCRIBE
REGULATIONS, CONDITIONS AND RE-
STRICTIONS AS TO CONNECTION WITH
AND USE OF SEWERS IN THE BOROUGH
OF ROSELLE AND PRESCRIBING PENAL-
TIES FOR VIOLATIONS.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF ROSELLE:

ARTICLE I

DEFINITIONS

Section 1. The following terms when used in this ordinance shall have the following meanings:

(a) "BOD" (denoting Biochemical Oxygen Demand) shall mean the laboratory determination of the quantity of oxygen utilized in the biochemical oxidation of organic matter in a given time and at a specified temperature, being expressed in parts per million or milligrams per liter of oxygen used in a period of five (5) days at 20°C.

(b) "Industrial Wastes" shall mean liquid or other wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resource.

(c) "Local Waters" shall mean both surface and underground waters.

(d) "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution, indicating the intensity scale of acidity and alkalinity expressed in terms of a pH scale running from 0.0 to 14.0, with a pH value of 7.0, the mid-point of the scale, representing exact neutrality and with values above 7.0 indicating alkalinity and those below 7.0 acidity.

(e) A "Permit" shall mean a written authorization by Authority resolution to a person permitting the discharge of wastewaters into the sewers under specified conditions.

(f) "Person" shall mean an individual, partnership, organization, association or a corporation.

(g) "Pollution" shall mean the condition of water resulting from the introduction therein of substances of a kind and in quantities rendering it detrimental or immediately or potentially dangerous to the public health or unfit for public or commercial use or detrimental to the propagation, cultivation or conservation of animals, fish or aquatic life.

(h) "Properly Shredded Garbage" shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch in any dimension.

(i) "State and Federal Regulatory Agencies" shall mean all departments, commissions, boards and agencies of the State of New Jersey and of which it is a member and of the United States having jurisdiction over the subject matter involved.

(j) "Sewers" shall mean the system of public sewers receiving the discharge of wastewaters and directing these to the Linden Roselle Sewerage Authority's treatment facilities.

(k) "Suspended Solids" shall mean the laboratory determination of dry weight expressed in parts per million or milligrams per liter of solids that either float on the surface of, or are in suspension in water, wastewater, or other liquids which are removable by laboratory filtering.

(l) "Treatment Facilities" shall mean all facilities for collecting, pumping, treating, and disposing of wastewater.

(m) "User" shall mean any person who uses the facilities of the Linden Roselle Sewerage Authority, directly or indirectly, for wastewater disposal service.

(n) "Wastewater" and "Waters or Wastes", and each of said words, shall mean the water-carried wastes created in and carried, or to be carried, away from residences, hotels, apartments, schools, hospitals, industrial establishments, or any other public or private building, together with such industrial wastes as may be present.

ARTICLE II

REQUIREMENTS, PROHIBITIONS & REGULATIONS

Section I. It shall be unlawful for any person, firm or corporation to cause or permit any waters or wastes to enter or pass into the public sewerage system which shall fail to meet the following requirements at the point of origin, that is, at the point of entrance to the public sewer:

(1) pH shall not be less than 5.5 nor more than 9.5.

(2) Must not contain any gasoline, benzine, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas.

(3) Must not contain any flammable substance with a flash point lower than 187 deg. F.

(4) Must have temperature within the range of 32 deg. to 150 deg. F.

(5) Must not contain grease or oil or other substance that will solidify or become viscous at temperatures between 32 deg. and 150 deg. F.

(6) Must not contain any garbage that has not been properly shredded. Where the installation and operation of any mechanical garbage grinder is permitted, the use and installation of equipment including a motor of three-fourths (3/4) horsepower or greater shall be subject to the review and approval of the Linden Roselle Sewerage Authority.

(7) Must not contain toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any biological sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters or the sewage treatment plant.

(8) Must not contain any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by applicable regulations of state and federal regulatory agencies.

(9) Must not contain materials which cause excessive discoloration such as, but not limited to, dye wastes and vegetable tanning solutions.

Section II. It shall be unlawful for any person, firm or corporation to cause or permit any waters or wastes to enter or pass into the public sewerage system which at the point of origin, that is at the point of entrance to the public sewer, shall contain or cause the following:

(1) Chemical reaction, either directly or indirectly, with the materials of construction to impair the strength or durability of sewer or treatment structures.

(2) Mechanical action that will destroy or damage the sewer or treatment structures.

(3) Restriction of the hydraulic capacity of sewer structures.

(4) Restriction of the normal inspection or maintenance of the sewer structures.

(5) Danger to public health and safety.

(6) Obnoxious conditions inimical to the public interest

(7) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interferences with proper operation of the sewage works such as but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, whole blood, paunch manure, hair, fleshings, entrails, paper dishes, cups, and milk containers, either whole or ground, and unground garbage.

Section III. It shall be unlawful for any person, firm or corporation to cause or permit any waters or wastes to enter or pass into the public sewerage system which contain concentrations in excess of the specified limits for one or more of the following listed chemicals and physical characteristics at the point of entrance to the public sewer. The concentrations indicated shall be the 24-hour average concentration and the maximum concentration at any time during the 24-hour period shall not exceed three (3) times the specified concentration limit:

- (a) B.O.D., 5 day, 20° C, shall not exceed 600 mgr./L.
- (b) Suspended Solids shall not exceed 600 mgr./L.
- (c) Settlicable Solids shall not exceed 10 ml./L.
- (d) Total Solids shall not exceed 2000 mgr./L.
- (e) Chemical Oxygen Demand shall not exceed 1000 mgr./L.
- (f) Chromium (Hexavalent) shall not exceed 3 mgr./L.
- (g) Cyanides shall not exceed 2 mgr./L.
- (h) Cadmium shall not exceed 4 mgr./L.
- (i) Nickel shall not exceed 5 mgr./L.
- (j) Iron shall not exceed 15 mgr./L.
- (k) Zinc shall not exceed 5 mgr./L.
- (l) Copper shall not exceed 3 mgr./L.
- (m) Arsenic shall not exceed 1 mgr./L.
- (n) Phenols shall not exceed 10 mgr./L.
- (o) Sulfides shall not exceed 50 mgr./L.
- (p) Grease, oil or any oily substance, whether emulsified or free, shall not exceed 50 mgr./L.
- (q) Chlorine Demand shall not exceed 30 mgr./L.

Section IV. If any waters or wastes are discharged, or are proposed to be discharged to the public sewerage system, which contain any other substance or substances which may have a deleterious effect upon the sewage works, treatment processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Linden Roselle Sewerage Authority shall

have authority to:

- (a) Prohibit the discharge of the wastes to the public sewerage system.
- (b) Require pretreatment of the wastes to an acceptable condition for discharge to the public sewerage system.
- (c) Require control over the quantities and rates of discharge.
- (d) Require combinations of any or all of the above.

Section V. Every person, firm or corporation who shall cause or permit any waters or wastes to enter or pass into the public sewerage system upon request of the Linden Roselle Sewerage Authority or of the Borough of Roselle Fire Department, shall make a written report disclosing its wastes and waste-producing operations and its conveying and treatment facilities and furnishing such other pertinent information as may be requested. Such report shall be made from time to time as may be requested from time to time and shall be submitted without delay and not later than within 15 days of the request.

Section VI. Every person, firm or corporation who shall cause or permit any waters or wastes to enter or pass into the public sewerage system shall make written report to the Linden Roselle Sewerage Authority upon increasing the rate of flow of waters or wastes or upon changing the process, products or nature of the waters or wastes.

Section VII. No person, firm or corporation shall hereafter cause or permit any industry to be connected to the sewerage system of the Borough of Roselle without first obtaining a permit from the Linden Roselle Sewerage Authority.

Section VIII. Design and installation of plants and equipment for pretreatment or equalization of waste flows shall be subject to review and approval of the Linden Roselle Sewerage Authority and subject to the requirements of all applicable codes, ordinances and laws. Pretreatment or flow-equalizing facilities, where provided,

shall be maintained continuously in satisfactory and effective operation by the person, firm or corporation at his or its expense.

Section IX. No person, firm or corporation shall hereafter cause or permit any new connection to be made to the public sewerage system which will allow the entrance therein of storm water drainage from ground surface, roofs, cellars or any other sewers.

Section X. Consent is hereby given to the Linden Roselle Sewerage Authority to the exercise of the right to enter the premises of any private, public, commercial or industrial establishment using the sewerage facilities of the Borough of Roselle and to inspect, measure, sample, test and observe wastes and waste-producing operations and facilities and the conveying and treatment facilities on such premises.

Section XI. The Linden Roselle Sewerage Authority, at its own election, or upon request of a user approved by the Linden Roselle Sewerage Authority, will install one or more metering and sampling stations consisting of one or more manholes or similar structures having suitable devices for metering and sampling. Such installation shall be installed and maintained at the expense of the user. Persons, firms or corporations who will connect to the public sewerage system after date of this ordinance and who will discharge Industrial Wastes to said sewerage system shall install metering or sampling stations or both prior to use of the public sewerage system unless such requirement is waived after investigation and determination by the Linden Roselle Sewerage Authority that the same are presently unneeded. When it is determined by the Linden Roselle Sewerage Authority that the same are needed, the said user shall install the required devices. The Linden Roselle Sewerage Authority shall have the right at any time to test, set and replace the meters or other devices in the stations and to remove meters and devices of the Linden Roselle Sewerage Authority. The person, firm or corporation shall repair or replace metering and sampling installations as may be required. The Linden Roselle Sewerage Authority, at its option, may determine wastewater volumes contributed by a person, firm or corporation discharging Industrial Wastes to the public sewerage system, from

metered water consumption records of the water utility furnishing water to said person, firm or corporation or by any means permitted by law.

Section XII. The measurements, tests and analyses of the characteristics of the Wastewaters referred to herein shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewaters", published by the American Public Health Association, whenever applicable.

Section XIII. It shall be unlawful for any person, firm or corporation to cause or permit sewage or other polluting matter to flow into or be placed or to fall or to move into the waters of the Interstate Sanitation District contrary to the requirements and provisions of the Tri-State Compact from and after the effective date of this ordinance.

ARTICLE III

ENFORCEMENT AND PENALTIES

Section I. The Police, Fire and Building Departments of the Borough of Roselle, and each of them, as well as the Linden Roselle Sewerage Authority, are hereby authorized and empowered to enforce the provisions of this ordinance and the Linden Roselle Sewerage Authority is moreover authorized to use any and all methods of enforcement and of accomplishing the objects herein stated now or hereafter authorized by law.

Section II. (a) Any person, firm or corporation convicted of the violation of any of the provisions of this ordinance shall be subject to a penalty of imprisonment for a term not exceeding ninety (90) days, or by a fine not exceeding Two Hundred (\$200.00) Dollars, or both.

(b) Every day in which any violation of any of the provisions of this ordinance is continued shall be a separate offense subject to a separate penalty.

Section III. In the event any section or part of any section of this ordinance shall be construed to be unconstitutional or invalid for any reason, such adjudication

shall not invalidate the remaining portions of this ordinance and such portions shall continue in full force and effect.

Section IV. This ordinance shall take effect in the manner provided by law and thereupon Ordinance No. 844 bearing the same title as the within ordinance shall be and hereby is repealed and the reference in Section 2-3 of Revised Ordinances of Roselle to Ordinance No. 844 shall be amended to read, Ordinance No. 1134.

PASSED:

1968.


MAY 19 1966

APPROVED:

1965.


Mayor

ATTEST:


Borough Clerk

PASSED ORDINANCE
NO. 1434

BOROUGH OF ROSELLE
UNION COUNTY
NEW JERSEY

NOTICE IS HEREBY
GIVEN THAT the following
Ordinance was passed and
adopted on second and final
hearing duly held by the
Mayor and Council of the
Borough of Roselle, Union
County, New Jersey, at a
regular meeting held in the
Borough Hall, Chestnut
Street, Roselle, New Jersey on
the 12th day of April 1978.

MARJORY GRAY

Borough Clerk

AN ORDINANCE TO
FURTHER AMEND
ORDINANCE 1134, AN
ORDINANCE TO FIX
AND PRESCRIBE
REGULATIONS,
CONDITIONS AND
RESTRICTIONS AS TO
CONNECTION WITH
AND USE OF SEWERS
IN THE BOROUGH OF
ROSELLE AND
PRESCRIBING
PENALTIES FOR
VIOLATIONS.

BE IT ORDAINED BY THE
MAYOR AND COUNCIL OF
THE BOROUGH OF
ROSELLE that:

SECTION 1: Article II,
Section 1 (1), of Ordinance No.
1134 entitled "AN
ORDINANCE TO FIX AND
PRESCRIBE

REGULATIONS,
CONDITIONS AND
RESTRICTIONS AS TO
CONNECTION WITH AND
USE OF SEWERS IN THE
BOROUGH OF ROSELLE
AND PRESCRIBING
PENALTIES FOR
VIOLATIONS" is hereby
revised to read as follows:

"(1) pH shall not be less
than 6.0 nor more than 9.0."

SECTION 11. The within
ordinance shall take effect in
the manner prescribed by law.
The Specialist, April 20, 1978

APPENDIX C

EPA PRETREATMENT STANDARDS

(40 CFR 403; 46 FR 9439, Jan. 28, 1981; Revised through July 1, 1991; amended at 57 FR 5347, Feb. 13, 1992; 58 FR 9386, Feb. 19, 1993; 58 FR 18015, April 7, 1993; 60 FR 33931, June 29, 1995; 60 FR 54768, Oct. 25, 1995; 61 FR 15566, April 8, 1996; 62 FR 38406, July 17, 1997; 64 FR 42552, Aug. 4, 1999)

[Editor's note: Part 403 was originally promulgated at 43 FR 27746, June 26, 1978.]

TITLE 40—PROTECTION OF ENVIRONMENT

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

Authority: 33 U.S.C. 1251 *et seq.*

[Amended at 61 FR 15660, April 8, 1996; revised at 62 FR 38414, July 17, 1997]

[Editor's note: The EPA June 4, 1986, amended Part 403 by changing the term "Enforcement Division Director" to read "Water Management Division Director" (51 FR 20430).]

§403.1 Purpose and applicability.

(a) This part implements sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(h)(5) and 301(i)(2), 304(e) and (g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act as amended by the Clean Water Act of 1977 (Pub. L. 95-217) or "The Act". It establishes responsibilities of Federal, State, and local government, industry and the public to implement National Pre-

treatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge.

(b) This regulation applies:

(1) to pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined below in §403.3;

(2) to POTWs which receive wastewater from sources subject to National Pretreatment Standards;

(3) to States which have or are applying for National Pollutant Discharge Elimination System (NPDES) programs approved in accordance with section 402 of the Act; and

(4) to any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which Discharge to a sewer which is not connected to a POTW Treatment Plant.

(c) [Removed]

[§403.1(c) removed at 60 FR 33931, June 29, 1995]

§403.2 Objectives of general pretreatment regulations.

By establishing the responsibilities of government and industry to implement National Pretreatment Standards this regulation fulfills three objectives:

(a) to prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including

interference with its use or disposal of municipal sludge;

(b) to prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and

(c) to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

§403.3 Definitions.

For the purposes of this part:

(a) Except as discussed below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR part 401 shall apply to this regulation.

(b) The term "Act" means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, *et seq.*

(c) The term "Approval Authority" means the Director in an NPDES State with an approved State pretreatment program and the appropriate Regional Administrator in a non-NPDES State or NPDES State without an approved State pretreatment program.

(d) The term "Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in this regulation (§§403.8 and 403.9) and which has been approved by a Regional Administrator or State Director in accordance with §403.11 of this regulation.

(e) The term "Director" means the chief administrative officer of a State or Interstate water pollution control agency with an NPDES permit program ap-

[Sec. 403.3(e)]

proved pursuant to section 402(b) of the Act and an approved State pretreatment program.

(f) The term "Water Management Division Director" means one of the Directors of the Water Management Divisions within the Regional offices of the Environmental Protection Agency or this person's delegated representative.

(g) The term "Indirect Discharge" or "Discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act.

(h) The term "Industrial User" or "User" means a source of Indirect Discharge.

(i) The term "Interference" means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes; use or disposal; and

(2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA); and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

(j) The term "National Pretreatment Standard," "Pretreatment Standard," or "Standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to §403.5.

(k) (1) The term "New Source" means any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, *provided that*:

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

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

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

(2) Construction on a site at which an existing source is located results in a mod-

ification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (k)(1)(ii), or (k)(1)(iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

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

(i) Begun, or caused to begin as part of a continuous onsite construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

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

(l) The terms "NPDES Permit" or "Permit" means a permit issued to a POTW pursuant to section 402 of the Act.

(m) The term "NPDES State" means a State (as defined in 40 CFR 122.2) or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act.

[Sec. 403.3(m)]

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

(o) The term "Publicly Owned Treatment Works" or "POTW" means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

(p) The term "POTW Treatment Plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

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

(r) The term "Pretreatment requirements" means any substantive or procedural requirement related to Pretreat-

ment, other than a National Pretreatment Standard, imposed on an Industrial User.

(s) The term "Regional Administrator" means the appropriate EPA Regional Administrator.

(t) *Significant Industrial User.*

(1) Except as provided in paragraph (i)(2) of this section, the term Significant Industrial User means:

(i) All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and

(ii) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority as defined in 40 CFR 403.12(a) 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 (in accordance with 40 CFR 403.8(f)(6)).

(2) Upon a finding that an industrial user meeting the criteria in paragraph (i)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in 40 CFR 403.12(a)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant industrial user.

(u) The term "Submission" means:

(1) A request by a POTW for approval of a Pretreatment Program to the EPA or a Director;

(2) A request by a POTW to the EPA or a Director for authority to revise the discharge limits in categorical Pretreatment Standards to reflect POTW pollutant removals; or

(3) A request to the EPA by an NPDES State for approval of its State pretreatment program.

§403.4 State or local law.

Nothing in this regulation is intended to affect any Pretreatment Requirements, including any standards or prohibitions, established by State or local law as long

as the State or local requirements are not less stringent than any set forth in National Pretreatment Standards, or any other requirements or prohibitions established under the Act or this regulation. States with an NPDES permit program approved in accordance with section 402(b) and (c) of the Act, or States requesting NPDES programs, are responsible for developing a State pretreatment program in accordance with §403.10 of this regulation.

§403.5 National pretreatment standards: Prohibited discharges.

(a) (1) *General prohibitions.* A User may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference. These general prohibitions and the specific prohibitions in paragraph (b) of this section apply to each User introducing pollutants into a POTW whether or not the User is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.

(2) *Affirmative Defenses.* A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in paragraph (a)(1) of this section and the specific prohibitions in paragraphs (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this section where the Users can demonstrate that:

(i) It did not know or have reason to know that its Discharge, alone or in conjunction with a discharge or discharges from other sources, would cause Pass Through or Interference; and

(ii) (A) A local limit designed to prevent Pass Through and/or Interference, as the case may be, was developed in accordance with paragraph (c) of this section for each pollutant in the User's Discharge that caused Pass Through or Interference, and the User was in compliance with each such local limit directly prior to and during the Pass Through or Interference; or

(B) If a local limit designed to prevent Pass Through and/or Interference, as the case may be, has not been developed in accordance with paragraph (c) of this section for the pollutant(s) that caused the Pass Through or Interference, the User's Discharge directly prior to and during the Pass Through or Interference did not change substantially in nature or constituents from the User's prior discharge activ-

[Sec. 403.5(a)(2)(ii)(B)]

ity when the POTW was regularly in compliance with the POTW's NPDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.

(b) *Specific prohibitions.* In addition, the following pollutants shall not be introduced into a POTW:

(1) Pollutants which create a fire or explosion hazard in the POTW including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21.

(2) Pollutants which will cause corrosive structural damage to the POTW, but in no case Discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges;

(3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference;

(4) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.

(5) Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40°C (104°F) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits.

(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quality that may cause acute worker health and safety problems;

(8) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(c) *When specific limits must be developed by POTW.*

(1) Each POTW developing a POTW Pretreatment Program pursuant to §403.8 shall develop and enforce specific limits to implement the prohibitions listed in paragraphs (a)(1) and (b) of this section. Each POTW with an approved pretreat-

ment program shall continue to develop these limits as necessary and effectively enforce such limits.

(2) All other POTW's shall, in cases where pollutants contributed by User(s) result in Interference or Pass-Through, and such violation is likely to recur, develop and enforce specific effluent limits for Industrial User(s), and all other users; as appropriate, which, together with appropriate changes in the POTW Treatment Plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's NPDES permit or sludge use or disposal practices.

(3) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(d) *Local limits.* Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with paragraph (c) above, such limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act.

(e) EPA enforcement actions under section 309(f) of the Clean Water Act.

If, within 30 days after notice of an Interference or Pass Through violation has been sent by EPA to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, EPA may take appropriate enforcement action under the authority provided in section 309(f) of the Clean Water Act.

(f) [Removed]

[§403.5(f) removed at 60 FR 33931, June 29, 1995]

§403.6 National pretreatment standards: Categorical standards.

National Pretreatment Standards specifying quantities or concentrations of pollutants or pollutant properties which may be Discharged to a POTW by existing or new Industrial Users in specific industrial subcategories will be established as separate regulations under the appropriate subpart of 40 CFR chapter I, subchapter N. These Standards, unless specifically noted otherwise, shall be in addition to all

applicable pretreatment standards and requirements set forth in this part.

(a) *Category Determination Request*

(1) *Application Deadline.* Within 60 days after the effective date of a Pretreatment Standard for a subcategory under which an Industrial User may be included, the Industrial User or POTW may request that the Water Management Division Director or Director, as appropriate, provide written certification on whether the Industrial User falls within that particular subcategory. If an existing Industrial User adds or changes a process or operation which may be included in a subcategory, the existing Industrial User must request this certification prior to commencing discharge from the added or changed processes or operation. A New Source must request this certification prior to commencing discharge. Where a request for certification is submitted by a POTW, the POTW shall notify any affected Industrial User of such submission. The Industrial User may provide written comments on the POTW submission to the Water Management Division Director or Director, as appropriate, within 30 days of notification.

(2) *Contents of Application.* Each request shall contain a statement:

(i) Describing which subcategories might be applicable; and

(ii) Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

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.

(3) *Deficient requests.* The Water Management Division Director or Direc-

[Sec. 403.6(a)(3)]

tor will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the Water Management Division Director or Director that their requests are deficient and, unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the Water Management Division Director or the Director, the request for a determination shall be denied.

(4) Final decision.

(i) When the Water Management Division Director or Director receives a submittal he or she will, after determining that it contains all of the information required by paragraph (2) of this section, consider the submission, any additional evidence that may have been requested, and any other available information relevant to the request. The Water Management Division Director or Director will then make a written determination of the applicable subcategory and state the reasons for the determination.

(ii) Where the request is submitted to the Director, the Director shall forward the determination described in this paragraph to the Water Management Division Director who may make a final determination. The Water Management Division Director may waive receipt of these determinations. If the Water Management Division Director does not modify the Director's decision within 60 days after receipt thereof, or if the Water Management Division Director waives receipt of the determination, the Director's decision is final.

(iii) Where the request is submitted by the Industrial User or POTW to the Water Management Division Director or where the Water Management Division Director elects to modify the Director's decision, the Water Management Division Director's decision will be final.

(iv) The Water Management Division Director or Director, as appropriate, shall send a copy of the determination to the affected Industrial User and the POTW. Where the final determination is made by the Water Management Division Director, he or she shall send a copy of the determination to the Director.

(5) *Requests for hearing and/or legal decision.* Within 30 days following the

date of receipt of notice of the final determination as provided for by paragraph (a)(4)(iv) of this section, the Requester may submit a petition to reconsider or contest the decision to the Regional Administrator who shall act on such petition expeditiously and state the reasons for his or her determination in writing.

(b) *Deadline for Compliance with Categorical Standards.* Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR chapter I, subchapter N. Direct dischargers with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in §403.3(k). New Sources shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.

(c) (1) *Concentration and mass limits.* Pollutant discharge limits in categorical Pretreatment Standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, State or Federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical Pretreatment Standards shall apply to the effluent of the process regulated by the Standard, or as otherwise specified by the standard.

(2) When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day of effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

(3) A Control Authority calculating equivalent mass-per-day limitations under paragraph (c)(2) of this section shall calculate such limitations by multiplying the limits in the Standard by the Industrial User's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the Industrial User's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

(4) A Control Authority calculating equivalent concentration limitations under paragraph (c)(2) of this section shall calculate such limitations by dividing the mass limitations derived under paragraph (c)(3) of this section by the average daily flow rate of the Industrial User's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the Industrial User's actual long-term average flow rate, such as the average daily flow rate during the representative year.

(5) Equivalent limitations calculated in accordance with paragraphs (c)(3) and (c)(4) of this section shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act and this part. Industrial Users will be required to comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(6) Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production of flow figure shall be used in calculating both types of equivalent limitations.

(7) Any Industrial User operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Control Authority within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Control Authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based

[Sec. 403.6(c)(7)]

on the original estimate of the long term average production rate.

(d) *Dilution Prohibited as Substitute for Treatment.* Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Control Authority (as defined in §403.12(a)) may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.

(e) *Combined wastestream formula.* Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the Control Authority, as defined in §403.12(a), or by the Industrial User with the written concurrence of the Control Authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the Control Authority or Industrial User shall calculate both an alternative daily maximum value using the daily maximum value(s) specified in the appropriate categorical Pretreatment Standard(s) and an alternative consecutive sampling day average value using the monthly average value(s) specified in the appropriate categorical Pretreatment Standard(s). The Industrial User shall comply with the alternative daily maximum and monthly average limits fixed by the Control Authority until the Control Authority modifies the limits or approves an Industrial User modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An Industrial User must immediately report any such material or significant change to the Control Authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.

(1) *Alternative limit calculation.* For purposes of these formulas, the "average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be esti-

mated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

(i) *Alternative concentration limit.*

$$C_T = \left(\frac{\sum_{i=1}^N C_i F_i}{\sum_{i=1}^N F_i} \right) \left(\frac{F_T - F_D}{F_T} \right)$$

where

C_T = the alternative concentration limit for the combined wastestream.

C_i = the categorical Pretreatment Standard concentration limit for a pollutant in the regulated stream i .

F_i = the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from: (a) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (b) sanitary wastestreams where such streams are not regulated by a Categorical Pretreatment Standard; or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the *NRDC v. Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons (see Appendix D of this part):

(1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(4) The wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

F_T = The average daily flow (at least a 30-day average) through the combined treatment facility (includes F_i , F_D and unregulated streams).

N = The total number of regulated streams.

(ii) *Alternative mass limit.*

$$M_T = \left(\frac{\sum_{i=1}^N M_i}{\sum_{i=1}^N F_i} \right) \left(\frac{F_T - F_D}{F_T} \right)$$

where

M_T = the alternative mass limit for a pollutant in the combined wastestream.

M_i = the categorical Pretreatment Standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

F_i = the average flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from: (a) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Author-

[Sec. 403.6(e)(1)(ii)]

ity can make its determination; or (b) sanitary wastestreams where such streams are not regulated by a categorical Pretreatment Standard; or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the *NRDC v. Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons (see Appendix D of this part):

- (1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));
- (2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));
- (3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or
- (4) The wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

F_T = The average flow (at least a 30-day average) through the combined treatment facility (includes F_i , F_D and unregulated streams).

N = The total number of regulated streams.

(2) *Alternate limits below detection limit.* An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

(3) *Self-monitoring.* Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of §403.12(g).

(4) *Choice of monitoring location.* Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the Industrial User may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable Pretreatment Standards. If the Industrial User chooses to monitor the segregated process wastestream, it shall apply the applicable categorical Pretreatment Standard. If the User chooses to monitor the combined wastestream, it shall apply an

alternative discharge limit calculated using the combined wastestream formula as provided in this section. The Industrial User may change monitoring points only after receiving approval from the Control Authority. The Control Authority shall ensure that any change in an Industrial User's monitoring point(s) will not allow the User to substitute dilution for adequate treatment to achieve compliance with applicable Standards.

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

[§403.6 amended at 58 FR 18015, April 7, 1993]

§403.7 Removal credits.

(a) Introduction—

(1) *Definitions.* For the purpose of this section:

(i) "Removal" means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the POTW.

(ii) "Sludge Requirements" shall mean the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA) (including Title II more commonly referred to as the Resource Conservation Recovery Act (RCRA) and State regulations contained in any State sludge management plan prepared pursuant to subtitle D of SWDA); the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

(2) *General.* Any POTW receiving wastes from an Industrial User to which a categorical Pretreatment Standard(s) applies may, at its discretion and subject to the conditions of this section, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical Pretreatment Standard(s). The POTW may grant a removal credit equal to or, at its discretion, less than its consistent removal rate. Upon being granted a

removal credit, each affected Industrial User shall calculate its revised discharge limits in accordance with paragraph (a)(4) of this section. Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical Pretreatment Standard if the categorical Pretreatment Standard so specifies.

(3) *Conditions for authorization to give removal credits.* A POTW is authorized to give removal credits only if the following conditions are met:

(i) *Application.* The POTW applies for, and receives, authorization from the Approval Authority to give a removal credit in accordance with the requirements and procedures specified in paragraph (e) of this section.

(ii) *Consistent removal determination.* The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with paragraph (b) of this section.

(iii) *POTW local pretreatment program.* The POTW has an approved pretreatment program in accordance with and to the extent required by part 403; provided, however, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in paragraph (d) of this section.

(iv) *Sludge requirements.* The granting of removal credits will not cause the POTW to violate the local, State and Federal Sludge Requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW can demonstrate to the Approval Authority that even though it is not presently in compliance with applicable Sludge Requirements, it will be in compliance when the Industrial User(s) to whom the removal credit would apply is required to meet its categorical Pretreatment Standard(s) as modified by the removal credit. If granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal credits, the additional sludge management costs will not be eligible for BPA grant assistance. Removal credits may be made available for the following pollutants.

(A) For any pollutant listed in appendix G section I of this part for the use or disposal practice employed by the POTW, when the requirements in 40 CFR part 503 for that practice are met.

[Sec. 403.7(a)(3)(iv)(A)]

(B) For any pollutant listed in appendix G section II of this part for the use or disposal practice employed by the POTW when the concentration for a pollutant listed in appendix G section II of this part in the sewage sludge that is used or disposed does not exceed the concentration for the pollutant in appendix G section II of this part.

(C) For any pollutant in sewage sludge when the POTW disposes all of its sewage sludge in a municipal solid waste landfill unit that meets the criteria in 40 CFR part 258.

[§403.7(a)(3)(iv) Revised at 58 FR 9386, Feb. 19, 1993].

(v) *NPDES permit limitations.* The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW can demonstrate to the Approval Authority that even though it is not presently in compliance with applicable limitations and conditions in its NPDES permit, it will be in compliance when the Industrial User(s) to whom the removal credit would apply is required to meet its categorical Pretreatment Standard(s); as modified by the removal credit provision.

(4) *Calculation of revised discharge limits.* Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1 - r}$$

where

x=pollutant discharge limit specified in the applicable categorical Pretreatment Standard

r=removal credit for that pollutant as established under paragraph (b) of this

section (percentage removal expressed as a proportion, i.e., a number between 0 and 1)

y=revised discharge limit for the specified pollutant (expressed in same units as x)

(b) *Establishment of Removal Credits; Demonstration of Consistent Removal*

(1) *Definition of Consistent Removal.* "Consistent Removal" shall mean the average of the lowest 50 percent of the removal measured according to paragraph (b)(2) of this section. All sample data obtained for the measured pollutant during the time period prescribed in paragraph (b)(2) of this section must be reported and used in computing Consistent Removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject to approval by the Approval Authority. If the substance is not measurable in the influent, the data may not be used. Where the number of samples with concentrations equal to or above the limit of measurement is between 8 and 12, the average of the lowest 6 removals shall be used. If there are less than 8 samples with concentrations equal to or above the limit of measurement, the Approval Authority may approve alternate means for demonstrating Consistent Removal. The term "measurement" refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(2) *Consistent Removal Data.* Influent and effluent operational data demonstrating Consistent Removal or other information, as provided for in paragraph (b)(1) of this section, which demonstrates Con-

sistent Removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

(i) *Representative Data; Seasonal.* The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.

(ii) *Representative Data; Quality and Quantity.* The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate Consistent Removal as provided for in paragraph (b)(1) of this section.

(iii) *Sampling Procedures: Composite.*

(A) The influent and effluent operational data shall be obtained through 24-hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow-proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(B) (1) Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include no-workdays as well as

[Sec. 403.7(b)(2)(iii)(B)(7)]

workdays. If the Approval Authority determines that this schedule will not be most representative of the actual operation of the POTW Treatment Plant, an alternative sampling schedule will be approved.

(2) In addition, upon the Approval Authority's concurrence, a POTW may utilize an historical data base amassed prior to the effective date of this section provide that such data otherwise meet the requirements of this paragraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.

(C) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

(iv) *Sampling Procedures: Grab.* Where composite sampling is not an appropriate sampling technique, a grab sample(s) shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one detention period. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes.

(v) *Analytical methods.* The sampling referred to in paragraphs (b)(2)(i) through (iv) of this section and an analy-

sis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

(vi) *Calculation of removal.* All data acquired under the provisions of this section must be submitted to the Approval Authority. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or, where such data cannot be obtained, Removal may be demonstrated using other data or procedures subject to concurrence by the Approval Authority as provided for in paragraph (b)(1) of this section.

(c) *Provisional credits.* For pollutants which are not being discharged currently (i.e., new or modified facilities, or production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. Within 18 months after the commencement of discharge of pollutants in question, consistent removal must be demonstrated pursuant to the requirements of paragraph (b) of this section. If, within 18 months after the commencement of the discharge of the pollutant in question, the POTW cannot demonstrate consistent removal pursuant to the requirements of paragraph (b) of this section, the authority to grant provisional removal credits shall be terminated by the Approval Authority and all Industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed

the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.

(d) *Exception to POTW Pretreatment Program Requirement.* A POTW required to develop a local pretreatment program by §403.8 may conditionally give removal credits pending approval of such a program in accordance with the following terms and conditions:

(1) All Industrial Users who are currently subject to a categorical Pretreatment Standard and who wish conditionally to receive a removal credit must submit to the POTW the information required in §403.12(b)(1) through (7) (except new or modified industrial users must only submit the information required by §403.12(b)(1) through (6)), pertaining to the categorical Pretreatment Standard as modified by the removal credit. The Industrial Users shall indicate what additional technology, if any, will be needed to comply with the categorical Pretreatment Standard(s) as modified by the removal credit.

(2) The POTW must have submitted to the Approval Authority an application for pretreatment program approval meeting the requirements of §§403.8 and 403.9 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's NPDES permit, but in no case later than July 1, 1983, where no permit deadline exists;

(3) The POTW must:

(i) Compile and submit data demonstrating its consistent removal in accordance with paragraph (b) of this section;

(ii) Comply with the conditions specified in paragraph (a)(3) of this section; and

(iii) Submit a complete application for removal credit authority in accordance with paragraph (e), of this section;

(4) If a POTW receives authority to grant conditional removal credits and the Approval Authority subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in paragraphs (d)(2) and (3) of this section, the authority to grant conditional removal credits shall be terminated by the Approval Authority and all industrial Users to whom the revised discharge limits had been applied

[Sec. 403.7(d)(4)]

shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.

(5) If a POTW grants conditional removal credits and the POTW or the Approval Authority subsequently makes a final determination, after appropriate notice, that the Industrial User(s) failed to comply with the conditions in paragraph (d)(1) of this section, the conditional credit shall be terminated by the POTW or the Approval Authority for the non-complying Industrial User(s) and the Industrial User(s) to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority. The conditional credit shall not be terminated where a violation of the provisions of this paragraph results from causes entirely outside of the control of the Industrial User(s) or the Industrial User(s) had demonstrated substantial compliance.

(6) The Approval Authority may elect not to review an application for conditional removal credit authority upon receipt of such application, in which case the conditionally revised discharge limits will remain in effect until reviewed by the Approval Authority. This review may occur at any time in accordance with the procedures of §403.11, but in no event later than the time of any pretreatment program approval or any NPDES permit reissuance thereunder.

(e) *POTW application for authorization to give removal credits and Approval Authority review—*

(1) *Who must apply.* Any POTW that wants to give a removal credit must apply for authorization from the Approval Authority.

(2) *To whom application is made.* An application for authorization to give removal credits (or modify existing ones) shall be submitted by the POTW to the Approval Authority.

(3) *When to apply.* A POTW may apply for authorization to give or modify removal credits at any time.

(4) *Contents of the Application.* An application for authorization to give removal credits must be supported by the following information:

(i) *List of pollutants.* A list of pollutants for which removal credits are proposed.

(ii) *Consistent Removal Data.* The data required pursuant to paragraph (b) of this section.

(iii) *Calculation of revised discharge limits.* Proposed revised discharge limits for each affected subcategory of Industrial Users calculated in accordance with paragraph (a)(4) of this section.

(iv) *Local Pretreatment Program Certification.* A certification that the POTW has an approved local pretreatment program or qualifies for the exception to this requirement found at paragraph (d) of this section.

(v) *Sludge Management Certification.* A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in paragraph (a)(3)(iv) of this section.

(vi) *NPDES Permit Limit Certification.* A certification that the granting of removal credits will not cause a violation of the POTW's NPDES permit limits and conditions as required in paragraph (a)(3)(v) of this section.

(5) *Approval Authority Review.* The Approval Authority shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of §403.11 and shall, in no event, have more than 180 days from public notice of an application to complete review.

(6) *EPA review of State removal credit approvals.* Where the NPDES State has an approved pretreatment program, the Regional Administrator may agree in the Memorandum of Agreement under 40 CFR 123.24(d) to waive the right to review and object to submissions for authority to grant removal credits. Such an agreement shall not restrict the Regional Administrator's right to comment upon or object to permits issued to POTW's except to the extent 40 CFR 123.24(d) allows such restriction.

(7) Nothing in these regulations precludes an Industrial User or other interested party from assisting the POTW in

preparing and presenting the information necessary to apply for authorization.

(f) *Continuation and withdrawal of authorization—*

(1) *Effect of authorization.*

(i) Once a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical Pretreatment Standard it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate the sludge requirements identified in paragraph (a)(3)(iv) of this section or its NPDES permit limits and conditions as required by paragraph (a)(3)(v) of this section. If a POTW elects at a later time to extend removal credits to a certain categorical Pretreatment Standard, industrial subcategory or one or more Industrial Users that initially were not granted removal credits, it must notify the Approval Authority.

(2) *Inclusion in POTW permit.* Once authority is granted, the removal credits shall be included in the POTW's NPDES Permit as soon as possible and shall become an enforceable requirement of the POTW's NPDES permit. The removal credits will remain in effect for the term of the POTW's NPDES permit, provided the POTW maintains compliance with the conditions specified in paragraph (f)(4) of this section.

(3) *Compliance monitoring.* Following authorization to give removal credits, a POTW shall continue to monitor and report on (at such intervals as may be specified by the Approval Authority, but in no case less than once per year) the POTW's removal capabilities. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW's compliance report.

(4) *Modification or withdrawal of removal credits—*

(i) *Notice of POTW.* The Approval Authority shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (f)(3) of this section or other relevant information available to it, the Approval Authority determines:

(A) That one or more of the discharge limit revisions made by the POTW, of the POTW itself, no longer meets the requirements of this section, or

[Sec. 403.7(f)(4)(i)(A)]

(B) That such discharge limit revisions are causing a violation of any conditions or limits contained in the POTW's NPDES Permit.

(ii) *Corrective action.* If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW or the affected Industrial Users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the Approval Authority shall either withdraw such discharge limits or require modifications in the revised discharge limits.

(iii) *Public notice of withdrawal or modification.* The Approval Authority shall not withdraw or modify revised discharge limits unless it shall first have notified the POTW and all Industrial Users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an opportunity is provided for a hearing. Following such notice and withdrawal or modification, all Industrial Users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical Pretreatment Standards, as appropriate, and shall achieve compliance with such limits within a reasonable time (not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s) as may be specified by the Approval Authority).

(g) *Removal credits in State-run pretreatment programs under §403.10(e).* Where an NPDES State with an approved pretreatment program elects to implement a local pretreatment program in lieu of requiring the POTW to develop such a program (as provided in §403.10(e)), the POTW will not be required to develop a pretreatment program as a precondition to obtaining authorization to give removal credits. The POTW will, however, be required to comply with the other conditions of paragraph (a)(3) of this section.

(h) *Compensation for overflow.* "Overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW Treatment Plant. POTWs which at least once annually overflow untreated wastewater to receiving waters may claim Consistent Removal of a pollutant only by complying with either paragraph (h)(1) or (h)(2) of this section. However, this subsection shall not

apply where Industrial User(s) can demonstrate that Overflow does not occur between the Industrial User(s) and the POTW Treatment Plant.

(1) The Industrial User provides containment or otherwise ceases or reduces Discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an Overflow event can reasonably be expected to occur at the POTW or at a sewer to which the Industrial User is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the Approval Authority evidence that:

(i) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an Overflow event can reasonably be expected to occur, Discharges from the regulated processes which contain pollutants for which an allowance is requested;

(ii) The POTW has identified circumstances in which an Overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that Industrial Users will learn of an impending Overflow in sufficient time to contain, cease or reduce Discharging to prevent untreated Overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in paragraph (h)(1)(iii) of this section, to insure that Industrial Users are containing, ceasing or reducing operations during POTW System Overflow; and

(iii) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, State Director or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all Discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an Overflow event was reasonably expected to occur; or,

(2) (i) The Consistent Removal claimed is reduced pursuant to the following equation:

$$r_c = r_m \cdot 8760 \cdot Z / 8760$$

Where:

r_m = POTW's Consistent Removal rate for that pollutant as established under paragraphs (a)(1) and (b)(2) of this section.

r_c = removal corrected by the Overflow factor

Z = hours per year that Overflow occurred between the Industrial User(s) and the POTW Treatment Plant, the hours either to be shown in the POTW's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular Industrial User's Discharge Overflows between the Industrial User and the POTW Treatment Plant; and

(ii) After July 1, 1983, Consistent Removal may be claimed only where efforts to correct the conditions resulting in untreated Discharges by the POTW are underway in accordance with the policy and procedures set forth in "PRM 75-34" or "Program Guidance Memorandum-61" (same document) published on December 16, 1975, by EPA Office of Water Program Operations (WH-546). (See Appendix A.) Revisions to discharge limits in categorical Pretreatment Standards may not be made where efforts have not been committed to by the POTW to minimize pollution from Overflows. At minimum, by July 1, 1983, the POTW must have completed the analysis required by PRM 75-34 and be making an effort to implement the plan.

(iii) If, by July 1, 1983, a POTW has begun the PRM 75-34 analysis but due to circumstances beyond its control has not completed it, Consistent Removal, subject to the approval of the Approval Authority, may continue to be claimed according to the formula in paragraph (h)(2)(i) of this section as long as the POTW acts in a timely fashion to complete the analysis, and makes an effort to implement the non-structural cost-effective measures identified by the analysis; and so long as the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement any other cost-effective Overflow controls identified in the analysis should Federal funds become available, so applies for such funds, and proceeds with the required construction in an expeditious manner. In addition, Consistent Re-

[Sec. 403.7(iii)(2)(iii)]

moval may, subject to the approval of the Approval Authority, continue to be claimed according to the formula in paragraph (h)(2)(i) of this section where the POTW has completed and the Approval Authority has accepted the analysis required by PRM 75-34 and the POTW has requested inclusion in its NPDES permit of an acceptable compliance schedule providing for timely implementation of cost-effective measures identified in the analysis. (In considering what is timely implementation, the Approval Authority shall consider the availability of funds, cost of control measures, and seriousness of the water quality problem.)

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

[§403.7 amended at 58 FR 18015, April 7, 1993]

§403.8 POTW pretreatment programs: Development by POTW.

[§403.8 amended at 58 FR 18015, April 7, 1993]

(a) *POTWs required to develop a pretreatment program.* Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than 5 million gallons per day (mgd) and receiving from Industrial Users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program unless the NPDES State exercises its option to assume local responsibilities as provided for in §403.10(e). The Regional Administrator or Director may require that a POTW with a design flow of 5 mgd or less develop a POTW Pretreatment Program if he or she finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent interference with the POTW or Pass Through.

(b) *Deadline for Program Approval.* A POTW which meets the criteria of paragraph (a) of this section must receive approval of a POTW Pretreatment Program no later than 3 years after the reissuance or modification of its existing NPDES permit but in no case later than July 1, 1983. POTWs whose NPDES permits are modified under section 301(h) of the Act

shall have a Pretreatment Program within three (3) years as provided for in 40 CFR part 125, subpart G. POTWs identified after July 1, 1983 as being required to develop a POTW Pretreatment Program under paragraph (a) of this section shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Approval Authority of such identification. The POTW Pretreatment Program shall meet the criteria set forth in paragraph (f) of this section and shall be administered by the POTW to ensure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

(c) *Incorporation of approved programs in permits.* A POTW may develop an appropriate POTW Pretreatment Program any time before the time limit set forth in paragraph (b) of this section. The POTW's NPDES Permit will be reissued or modified by the NPDES State or EPA to incorporate the approved Program as enforceable conditions of the Permit. The modification of a POTW's NPDES Permit for the purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedure in §403.11 shall be deemed a minor Permit modification subject to the procedures in 40 CFR 122.63.

[§403.8(c) revised at 60 FR 33931, June 29, 1995; 62 FR 38414, July 17, 1997]

(d) *Incorporation of compliance schedules in permits.* [Reserved]

[§403.8(d) removed and reserved at 60 FR 33931, June 29, 1995]

(e) *Cause for reissuance or modification of Permits.* Under the authority of section 402(b)(1)(C) of the Act, the Approval Authority may modify, or alternatively, revoke and reissue a POTW's Permit in order to:

(1) Put the POTW on a compliance schedule for the development of a POTW Pretreatment Program where the addition of pollutants into a POTW by an Industrial User or combination of Industrial Users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(2) Coordinate the issuance of a section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW Pretreatment Program;

(3) Incorporate a modification of the permit approved under section 301(h) or 301(i) of the Act;

(4) Incorporate an approved POTW Pretreatment Program in the POTW permit; or

(5) Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(6) Incorporate the removal credits (established under §403.7) in the POTW permit.

(f) *POTW pretreatment program requirements.* A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(1) *Legal authority.* The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307(b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

(i) 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 permit;

(ii) Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;

(iii) Control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under 40 CFR 403.3(i) this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:

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

[Sec. 403.8(f)(1)(iii)(A)]

(B) Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(C) Effluent limits based on applicable general pretreatment standards in part 403 of this chapter, categorical pretreatment standards, local limits, and State and local law;

(D) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in part 403 of this chapter, categorical pretreatment standards, local limits, and State and local law;

(E) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

(iv) Require

(A) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and

(B) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in §403.12;

(v) Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under §403.12(m) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;

(vi) (A) Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunc-

tive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTW's shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements.

[§403.8(f)(1)(vi)(A) revised at 60 FR 33931, June 29, 1995]

(B) Pretreatment Requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vi)(A) of this section, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or these regulations. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Approval Authority shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the Approval Authority believes to be insufficient.

(vii) Comply with the confidentiality requirements set forth in §403.14.

(2) *Procedures.* The POTW shall develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. At a minimum, these procedures shall enable the POTW to:

(i) Identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or Director upon request;

(ii) Identify the character and volume of pollutants contributed to the POTW by the Industrial Users identified under para-

graph (f)(2)(i) of this section. This information shall be made available to the Regional Administrator or Director upon request;

(iii) Notify Industrial Users identified under paragraph (f)(2)(i) of this section, of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act. Within 30 days of approval pursuant to 40 CFR 403.8(f)(6), of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

(iv) Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in §403.12;

(v) Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each Significant Industrial User at least once a year. Evaluate, at least once every two years, whether each such Significant Industrial User needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. The results of such activities shall be available to the Approval Authority upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

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

(B) Description of stored chemicals;

(C) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 40 CFR 403.5(b), with procedures for follow-up written notification within five days;

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

[Sec. 403.8(f)(2)(v)(D)]

vents), and/or measures and equipment for emergency response;

(vi) Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under §403.12, or indicated by analysis, inspection, and surveillance activities described in paragraph (f)(2)(v) of this section. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

(vii) Comply with the public participation requirements of 40 CFR part 25 in the enforcement of national pretreatment standards. These procedures shall include provision for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at anytime during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

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

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

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

(D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under

paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;

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

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

(G) Failure to accurately report non-compliance;

(H) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

(3) *Funding.* The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs (f)(1) and (2) of this section. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the Pretreatment Program requirements described in this section, and (ii) a limited aspect of the Program does not need to be implemented immediately (see §403.9(b)).

(4) *Local limits.* The POTW shall develop local limits as required in §403.5(c)(1), or demonstrate that they are not necessary.

(5) The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

(i) Describe how the POTW will investigate instances of noncompliance;

(ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

(iii) Identify (by title) the official(s) responsible for each type of response;

(iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8(f)(1) and (f)(2).

(6) The POTW shall prepare and maintain a list of its industrial users meeting the criteria in §403.3(b)(1). The list shall identify the criteria in §403.3(u)(1) applicable to each industrial user and, for industrial users meeting the criteria in §403.3(b)(ii), shall also indicate whether the POTW has made a determination pursuant to §403.3(b)(2) that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the Approval Authority pursuant to §403.9 as a non-substantial modification pursuant to §403.18(d). Modifications to the list shall be submitted to the Approval Authority pursuant to §403.12(i)(1).

[§403.8(f)(6) revised at 62 FR 38414, July 17, 1997]

§403.9 POTW pretreatment programs and/or authorization to revise pretreatment standards: Submission for approval.

[§403.9 amended at 58 FR 18015, April 7, 1993]

(a) *Who approves Program.* A POTW requesting approval of a POTW Pretreatment Program shall develop a program description which includes the information set forth in paragraphs (b)(1) through (4) of this section. This description shall be submitted to the Approval Authority which will make a determination on the request for program approval in accordance with the procedures described in §403.11.

(b) *Contents of POTW program submission.* The program description must contain the following information:

(1) A statement from the City Solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carry out the programs described in §403.8. This statement shall:

(i) Identify the provision of the legal authority under §403.8(f)(1) which provides the basis for each procedure under §403.8(f)(2);

(ii) Identify the manner in which the POTW will implement the program requirements set forth in §403.8, including the means by which Pretreatment Standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, etc.); and,

[Sec. 403.9(b)(1)(ii)]

(iii) Identify how the POTW intends to ensure compliance with Pretreatment Standards and Requirements, and to enforce them in the event of noncompliance by Industrial Users;

(2) A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the Program. This Submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW Pretreatment Program if approved;

(3) A brief description (including organization charts) of the POTW organization which will administer the Pretreatment Program. If more than one agency is responsible for administration of the Program the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth; and

(4) A description of the funding levels and full- and part-time manpower available to implement the Program;

(c) *Conditional POTW program approval.* The POTW may request conditional approval of the Pretreatment Program pending the acquisition of funding and personnel for certain elements of the Program. The request for conditional approval must meet the requirements set forth in paragraph (b) of this section except that the requirements of paragraph (b) of this section, may be relaxed if the Submission demonstrates that:

(1) A limited aspect of the Program does not need to be implemented immediately;

(2) The POTW had adequate legal authority and procedures to carry out those aspects of the Program which will not be implemented immediately; and

(3) Funding and personnel for the Program aspects to be implemented at a later date will be available when needed. The POTW will describe in the Submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Approval Authority will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW Pretreatment Program and any removal allowances granted to the POTW, may be modified or withdrawn.

(d) *Content of removal allowance submission.* The request for authority to re-

vise categorical Pretreatment Standards must contain the information required in §403.7(d).

(e) *Approval authority action.* Any POTW requesting POTW Pretreatment Program approval shall submit to the Approval Authority three copies of the Submission described in paragraph (b), and if appropriate, (d) of this section. Within 60 days after receiving the Submission, the Approval Authority shall make a preliminary determination of whether the Submission meets the requirements of paragraph (b) and, if appropriate, (d) of this section. If the Approval Authority makes the preliminary determination that the Submission meets these requirements, the Approval Authority shall:

(1) Notify the POTW that the Submission has been received and is under review; and

(2) Commence the public notice and evaluation activities set forth in §403.11.

(f) *Notification where submission is defective.* If, after review of the Submission as provided for in paragraph (e) of this section, the Approval Authority determines that the Submission does not comply with the requirements of paragraph (b) or (c) of this section, and, if appropriate, paragraph (d), of this section, the Approval Authority shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify any defects in the Submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of paragraphs (b), (c) of this section, and, if appropriate, paragraph (d) of this section.

(g) *Consistency with water quality management plans.*—

(1) In order to be approved the POTW Pretreatment Program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR parts 130, 131, as revised, where such 208 plan includes Management Agency designations and addresses pretreatment in a manner consistent with 40 CFR part 403. In order to assure such consistency the Approval Authority shall solicit the review and comment of the appropriate 208 Planning Agency during the public comment period provided for in §403.11(b)(1)(ii) prior to approval or disapproval of the Program.

(2) Where no 208 plan has been approved or where a plan has been approved but lacks Management Agency designations and/or does not address pretreatment in a manner consistent with this regulation, the Approval Authority shall nevertheless solicit the review and comment of the appropriate 208 planning agency.

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

§403.10 Development and submission of NPDES State pretreatment programs.

(a) *Approval of State Programs.* No State NPDES program shall be approved under section 402 of the Act after the effective date of these regulations unless it is determined to meet the requirements of paragraph (f) of this section. Notwithstanding any other provision of this regulation, a State will be required to act upon those authorities which it currently possesses before the approval of a State Pretreatment Program.

(b) [Reserved]

[§403.10(b) removed and reserved at 60 FR 33931, June 29, 1995]

(c) *Failure to request approval.* Failure of an NPDES State with a permit program approved under section 402 of the Act prior to December 27, 1977, to seek approval of a State Pretreatment Program and failure of an approved State to administer its State Pretreatment Program in accordance with the requirements of this section constitutes grounds for withdrawal of NPDES program approval under section 402(c)(3) of the Act.

[§403.10(c) revised at 60 FR 33931, June 29, 1995]

(d) [Reserved]

[§403.10(d) removed and reserved at 60 FR 33931, June 29, 1995]

(e) *State Program in lieu of POTW Program.* Notwithstanding the provision of §403.8(a), a State with an approved Pretreatment Program may assume responsibility for implementing the POTW Pretreatment Program requirements set forth in §403.8(f) in lieu of requiring the POTW to develop a Pretreatment Program. However, this does not preclude POTW's from independently developing Pretreatment Programs.

(f) *State Pretreatment Program requirements.* In order to be approved, a request for State Pretreatment Program Approval must demonstrate that the State

[Sec. 403.10(f)]

Pretreatment Program has the following elements:

(1) *Legal authority.* The Attorney General's Statement submitted in accordance with paragraph (g)(1)(i) of this section shall certify that the Director has authority under State law to operate and enforce the State Pretreatment Program to the extent required by this part and by 40 CFR 123.27. At a minimum, the Director shall have the authority to:

(i) Incorporate POTW Pretreatment Program conditions into permits issued to POTW's; require compliance by POTW's with these incorporated permit conditions; and require compliance by Industrial Users with Pretreatment Standards;

(ii) Ensure continuing compliance by POTW's with pretreatment conditions incorporated into the POTW Permit through review of monitoring reports submitted to the Director by the POTW in accordance with §403.12 and ensure continuing compliance by Industrial Users with Pretreatment Standards through the review of self-monitoring reports submitted to the POTW or to the Director by the Industrial Users in accordance with §403.12;

(iii) Carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorporated into the POTW Permit; and carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the Industrial User, whether the Industrial User is in compliance with Pretreatment Standards;

(iv) Seek civil and criminal penalties, and injunctive relief, for noncompliance by the POTW with pretreatment conditions incorporated into the POTW Permit and for noncompliance with Pretreatment Standards by Industrial Users as set forth in §403.8(f)(1)(vi). The Director shall have authority to seek judicial relief for noncompliance by Industrial Users even when the POTW has acted to seek such relief (e.g., if the POTW has sought a penalty which the Director finds to be insufficient);

(v) Approve and deny requests for approval of POTW Pretreatment Programs submitted by a POTW to the Director;

(vi) Deny and recommend approval of (but not approve) requests for Fundamentally Different Factors variances submit-

ted by Industrial Users in accordance with the criteria and procedures set forth in §403.13; and

(vii) Approve and deny requests for authority to modify categorical Pretreatment Standards to reflect removals achieved by the POTW in accordance with the criteria and procedures set forth in §§403.7, 403.9 and 403.11.

(2) *Procedures.* The Director shall have developed procedures to carry out the requirements of sections 307 (b) and (c), and 402(b)(1), 402(b)(2), 402(b)(8), and 402(b)(9) of the Act. At a minimum, these procedures shall enable the Director to:

(i) Identify POTW's required to develop Pretreatment Programs in accordance with §403.8(a) and notify these POTW's of the need to develop a POTW Pretreatment Program. In the absence of a POTW Pretreatment Program, the State shall have procedures to carry out the activities set forth in §403.8(f)(2);

(ii) Provide technical and legal assistance to POTW's in developing Pretreatment Programs;

(iii) Develop compliance schedules for inclusion in POTW Permits which set forth the shortest reasonable time schedule for the completion of tasks needed to implement a POTW Pretreatment Program. The final compliance date in these schedules shall be no later than July 1, 1983;

(iv) Sample and analyze;

(A) Influent and effluent of the POTW to identify, independent of information supplied by the POTW, compliance or noncompliance with pollutant removal levels set forth in the POTW permit (see §403.7); and

(B) The contents of sludge from the POTW and methods of sludge disposal and use to identify, independent of information supplied by the POTW, compliance or noncompliance with requirements applicable to the selected method of sludge management;

(v) Investigate evidence of violations of pretreatment conditions set forth in the POTW Permit by taking samples and acquiring other information as needed. This data acquisition shall be performed with sufficient care as to produce evidence admissible in an enforcement proceeding or in court;

(vi) Review and approve requests for approval of POTW Pretreatment Programs and authority to modify categorical

Pretreatment Standards submitted by a POTW to the Director; and

(vii) Consider requests for Fundamentally Different Factors variances submitted by Industrial Users in accordance with the criteria and procedures set forth in §403.13.

(3) *Funding.* The Director shall assure that funding and qualified personnel are available to carry out the authorities and procedures described in paragraphs (f)(1) and (2), of this section.

(g) *Content of State Pretreatment Program submission.* The request for State Pretreatment Program approval will consist of:

(1) (i) A statement from the State Attorney General (or the Attorney for those State agencies which have independent legal counsel) that the laws of the State provide adequate authority to implement the requirements of this part. The authorities cited by the Attorney General in this statement shall be in the form of lawfully adopted State statutes or regulations which shall be effective by the time of approval of the State Pretreatment Program; and

(ii) Copies of all State statutes and regulations cited in the above statement;

(iii) States with approved Pretreatment Programs shall establish Pretreatment regulations by November 16, 1989, unless the State would be required to enact or amend statutory provision, in which case, such regulations must be established by November 16, 1990.

(2) A description of the funding levels and full- and part-time personnel available to implement the program; and

(3) Any modifications or additions to the Memorandum of Agreement (required by 40 CFR 123.24) which may be necessary for EPA and the State to implement the requirements of this part.

(h) *EPA Action.* Any approved NPDES State requesting State Pretreatment Program approval shall submit to the Regional Administrator three copies of the Submission described in paragraph (g) of this section. Upon a preliminary determination that the Submission meets the requirements of paragraph (g) the Regional Administrator shall:

(1) Notify the Director that the Submission has been received and is under review; and

(2) Commence the program revision process set out in 40 CFR 123.62. For purposes of that section all requests for

[Sec. 403.10(h)(2)]

approval of State Pretreatment Programs shall be deemed substantial program modifications. A comment period of at least 30 days and the opportunity for a hearing shall be afforded the public on all such proposed program revisions.

(i) *Notification where submission is defective.* If, after review of the Submission as provided for in paragraph (h) of this section, EPA determines that the Submission does not comply with the requirements of paragraph (f) or (g) of this section EPA shall so notify the applying NPDES State in writing. This notification shall identify any defects in the Submission and advise the NPDES State of the means by which it can comply with the requirements of this part.

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

[§403.10 amended at 58 FR 18015, April 7, 1993]

§403.11 Approval procedures for POTW pretreatment programs and POTW granting of removal credits.

The following procedures shall be adopted in approving or denying requests for approval of POTW Pretreatment Programs and applications for removal credit authorization:

(a) *Deadline for review of submission.* The Approval Authority shall have 90 days from the date of public notice of any Submission complying with the requirements of §403.9(b) and, where removal credit authorization is sought with §§403.7(e) and 403.9(d), to review the Submission. The Approval Authority shall review the Submission to determine compliance with the requirements of §403.8 (b) and (f), and, where removal credit authorization is sought, with §403.7. The Approval Authority may have up to an additional 90 days to complete the evaluation of the Submission if the public comment period provided for in paragraph (b)(1)(ii) of this section is extended beyond 30 days or if a public hearing is held as provided for in paragraph (b)(2) of this section. In no event, however, shall the time for evaluation of the Submission exceed a total of 180 days from the date of public notice of a Submission meeting the requirements of §403.9(b) and, in the case of a removal credit application, §§403.7(e) and 403.9(b).

(b) *Public notice and opportunity for hearing.* Upon receipt of a Submission the Approval Authority shall commence its review. Within 20 work days after making a determination that a Submission meets the requirements of §403.9(b) and, where removal allowance approval is sought, §§403.7(d) and 403.9(d), the Approval Authority shall:

(1) Issue a public notice of request for approval of the Submission;

(i) This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the Submission. Procedures for the circulation of public notice shall include:

(A) Mailing notices of the request for approval of the Submission to designated 208 planning agencies, Federal and State fish, shellfish and wildfish resource agencies (unless such agencies have asked not to be sent the notices); and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and

[§403.11(b)(1)(i)(A) revised at 62 FR 38414, July 17, 1997]

(B) Publication of a notice of request for approval of the Submission in a newspaper(s) of general circulation within the jurisdiction(s) served by the POTW that meaningful public notice.

[§403.11(b)(1)(i)(B) revised at 62 FR 38414, July 17, 1997]

(ii) The public notice shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the Submission.

(iii) All written comments submitted during the 30 day comment period shall be retained by the Approval Authority and considered in the decision on whether or not to approve the Submission. The period for comment may be extended at the discretion of the Approval Authority; and

(2) Provide an opportunity for the applicant, any affected State, any interested State or Federal agency, person or group of persons to request a public hearing with respect to the Submission.

(i) This request for public hearing shall be filed within the 30 day (or extended) comment period described in paragraph (b)(1)(ii) of this section and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.

(ii) The Approval Authority shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the Submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.

(iii) Public notice of a hearing to consider a Submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the Submission under paragraph (b)(1)(i)(B) of this section. In addition, notice of the hearing shall be sent to those persons requesting individual notice.

(c) *Approval authority decision.* At the end of the 30 day (or extended) comment period and within the 90 day (or extended) period provided for in paragraph (a) of this section, the Approval Authority shall approve or deny the Submission based upon the evaluation in paragraph (a) of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the Approval Authority makes a determination to deny the request, the Approval Authority shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the Approval Authority may allow the requestor additional time to bring the Submission into compliance with applicable requirements.

(d) *EPA objection to Director's decision.* No POTW pretreatment program or authorization to grant removal allowances shall be approved by the Director if following the 30-day (or extended) evaluation period provided for in paragraph (b)(1)(ii) of this section and any hearing held pursuant to paragraph (b)(2) of this section the Regional Administrator sets forth in writing objections to the approval of such Submission and the reasons for such objections. A copy of the Regional Administrator's objections shall be provided to the applicant, and each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and may convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or au-

[Sec. 403.11(d)]

thorization to grant removal allowances 90 days after the date the objections are issued.

(e) *Notice of decision.* The Approval Authority shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the Submission. In addition, the Approval Authority shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the Submission was published. The Approval Authority shall identify in any notice of POTW Pretreatment Program approval any authorization to modify categorical Pretreatment Standards which the POTW may make, in accordance with §403.7, for removal of pollutants subject to Pretreatment Standards.

(f) *Public access to submission.* The Approval Authority shall ensure that the Submission and any comments upon such Submission are available to the public for inspection and copying.

§403.12 Reporting requirements for POTW's and industrial users.

(a) *Definition.* The term "Control Authority" as it is used in this section refers to:

(1) The POTW if the POTW's Submission for its pretreatment program (§403.3(t)(1)) has been approved in accordance with the requirements of §403.11; or

(2) the Approval Authority if the Submission has not been approved.

(b) *Reporting requirements for industrial users upon effective date of categorical pretreatment standard-baseline report.* Within 180 days after the effective date of a categorical Pretreatment Standard, or 180 days after the final administrative decision made upon a category determination submission under §403.6(a)(4), whichever is later, existing Industrial Users subject to such categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraph (b)(1)(7) of this section. At least 90 days prior to commencement of discharge, New sources, and sources that become Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall be required to submit to the Control Authority a report which contains

the information listed in paragraphs (b)(1)-(5) of this section. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested of the information requested in paragraphs (b)(4) and (5) of this section:

[§403.12(b) introductory text amended at 60 FR 33931, June 29, 1995]

(1) *Identifying information.* The User shall submit the name and address of the facility including the name of the operator and owners;

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

(3) *Description of operations.* The User shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram which indicates points of Discharge to the POTW from the regulated processes.

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

(i) Regulated process streams; and

(ii) Other streams as necessary to allow use of the combined wastewater formula of §403.6(e). (See paragraph (b)(5)(v) of this section.)

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

(5) *Measurement of pollutants.*

(i) The user shall identify the Pretreatment Standards applicable to each regulated process;

(ii) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations;

(iii) A minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained

through flow-proportional composite sampling techniques where feasible. The Control Authority may waive flow-proportional composite sampling for any Industrial User that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged;

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

(v) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastewater formula of §403.6(e) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with §403.6(e), this adjusted limit along with supporting data shall be submitted to the Control Authority;

(vi) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator;

(vii) The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

(viii) The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representa-

[Sec. 403.12(b)(5)(viii)]

tive of normal work cycles and expected pollutant Discharges to the POTW;

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

(7) *Compliance schedule.* If additional pretreatment and/or O and 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 and M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.

(i) Where the Industrial User's categorical Pretreatment Standard has been modified by a removal allowance (§403.7), the combined wastestream formula (§403.6(e)), and/or a Fundamentally Different Factors variance (§403.13) at the time the User submits the report required by paragraph (b) of this section, the information required by paragraphs (b)(6) and (7) of this section shall pertain to the modified limits.

(ii) If the categorical Pretreatment Standard is modified by a removal allowance (§403.7), the combined wastestream formula (§403.6(e)), and/or a Fundamentally Different Factors variance (§403.13) after the User submits the report required by paragraph (b) of this section, any necessary amendments to the information requested by paragraphs (b)(6) and (7) of this section shall be submitted by the User to the Control Authority within 60 days after the modified limit is approved.

(c) *Compliance schedule for meeting categorical Pretreatment Standards.* The following conditions shall apply to the schedule required by paragraph (b)(7) of this section:

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

Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

(2) No increment referred to in paragraph (c)(1) of this section shall exceed 9 months.

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

(d) *Report on compliance with categorical pretreatment standard deadline.* Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in paragraphs (b)(4)-(6) of this section. For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in §403.6(c), this report shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period.

(e) *Periodic reports on continued compliance.*

(1) Any Industrial User subject to a categorical Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the

Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are to be submitted.

(2) Where the Control Authority has imposed mass limitations on Industrial Users as provided for by §403.6(d), the report required by paragraph (c)(1) of this section shall indicate the mass of pollutants regulated by Pretreatment Standards in the Discharge from the Industrial User.

(3) For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in §403.6(c), the report required by paragraph (c)(1) shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by paragraph (c)(1) shall include the User's actual average production rate for the reporting period.

(f) *Notice of potential problems, including slug loading.* All categorical and non-categorical Industrial Users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by §403.5(b), by the Industrial User.

(g) *Monitoring and analysis to demonstrate continued compliance.*

(1) The reports required in paragraphs (b), (d), and (e) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This

[Sec. 403.12(g)(1)]

sampling and analysis may be performed by the Control Authority in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the User will not be required to submit the compliance certification required under §§403.12(b)(6) and 403.12(d). In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.

(2) If sampling performed by an Industrial User indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation, except the Industrial User is not required to resample if:

(i) The Control Authority performs sampling at the Industrial User at a frequency of at least once per month, or

(ii) The Control Authority performs sampling at the User between the time when the User performs its initial sampling and the time when the User receives the results of this sampling.

(3) The reports required in paragraph (e) of this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

(4) All analyses shall be performed in accordance with procedures established by the Administrator pursuant to section 304(h) of the Act and contained in 40 CFR part 136 and amendments thereto, or with any other test procedures approved by the Administrator. (See, §§136.4 and 136.5.) Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR part 136 does not include sampling or analytical techniques for the pollutants in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using val-

idated, analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

(5) If an Industrial User subject to the reporting requirement in paragraph (e) of this section monitors any pollutant more frequently than required by the Control Authority, using the procedures prescribed in paragraph (g)(4) of this section, the results of this monitoring shall be included in the report.

(h) *Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards.* The Control Authority shall require appropriate reporting from those Industrial Users with discharges that are not subject to categorical Pretreatment Standards. Significant Noncategorical Industrial Users shall submit to the Control Authority at least once every six months (on dates specified by the Control Authority), a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. These reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator. This sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

(i) *Annual POTW reports.* POTWs with approved Pretreatment Programs shall provide the Approval Authority with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in

the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, and shall include, at a minimum, the following:

(1) An updated list of the POTW's Industrial Users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which Industrial Users are subject to categorical pretreatment Standards and specify which Standards are applicable to each Industrial User. The list shall indicate which Industrial Users are subject to local standards that are more stringent than the categorical Pretreatment Standards. The POTW shall also list the Industrial Users that are subject only to local Requirements.

(2) A summary of the status of Industrial User compliance over the reporting period;

(3) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period;

[§403.12(i)(3) amended at 62 FR 38414, July 17, 1997]

(4) A summary of changes to the POTW's pretreatment program that have not been previously reported to the Approval Authority; and

[New §403.12(i)(4) added at 62 FR 38414, July 17, 1997]

(5) Any other relevant information requested by the Approval Authority.

[Former §403.12(i)(4) redesignated as new (5) at 62 FR 38414, July 17, 1997]

(j) *Notification of changed discharge.* All Industrial Users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under 40 CFR 403.12(p).

(k) *Compliance schedule for POTW's.* The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW Pretreatment Program required by §403.8.

[Sec. 403.12(k)]

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW Pretreatment Program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

(2) No increment referred to in paragraph (h)(1) of this section shall exceed nine months;

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

(l) *Signatory requirements for industrial user reports.* The reports required by paragraphs (b), (d), and (e) of this section shall include the certification statement as set forth in §403.6(a)(2)(ii), and shall be signed as follows:

(1) By a responsible corporate officer, if the Industrial User submitting the reports required by paragraphs (b), (d) and (e) of this section is a corporation. For the purpose of this paragraph, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) 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) By a general partner or proprietor if the Industrial User submitting the reports required by paragraphs (b), (d) and (e) of this section is a partnership or sole proprietorship respectively.

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

(i) The authorization is made in writing by the individual described in paragraph (l)(1) or (l)(2);

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

(iii) the written authorization is submitted to the Control Authority.

(4) If an authorization under paragraph (l)(3) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (l)(3) of this section must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

(m) *Signatory requirements for POTW reports.* Reports submitted to the Approval Authority by the POTW in accordance with paragraph (h) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(n) *Provisions governing fraud and false statements.* The reports and other documents required to be submitted or maintained under this section shall be subject to:

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

(2) The provisions of section 309(c)(4) of the Act, as amended, governing false statements, representation or certification; and

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

(o) *Record-keeping requirements.*

(1) Any Industrial User and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

(i) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods used; and

(v) The results of such analyses.

(2) Any Industrial User or POTW subject to the reporting requirements established in this section shall be required to retain for a minimum of 3 years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the Director and the Regional Administrator (and POTW in the case of an Industrial User). This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or POTW or when requested by the Director or the Regional Administrator.

(3) Any POTW to which reports are submitted by an Industrial User pursuant to paragraphs (b), (d), (e), and (h) of this section shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Director and the Regional Administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the POTW Pretreatment Program or when requested by the Director or the Regional Administrator.

(p) (1) The Industrial User 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 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and con-

[Sec. 403.12(p)(1)]

centration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12(j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12(b), (d), and (e).

(2) Dischargers are exempt from the requirements of paragraph (p)(1) of this section during a calendar month in which they discharge no more than fifteen 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 kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification.

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

(3) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the 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.

(4) In the case of any notification made under paragraph (p) of this section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous waste generated to the degree it has determined to be economically practical.

Appendix—Hazardous Waste Authorities: Notifications under 40 CFR 403.12(p)

Environmental Protection Agency

Region I

Director, Waste Management Division
Environmental Protection Agency,
John F. Kennedy Building, Boston,
Massachusetts 02203

Region II

Region II

Director, Air & Waste Management Division,
Environmental Protection Agency,
26 Federal Plaza, New York, New
York 10278

Region III

Director, Hazardous Waste Management
Division, Environmental Protection
Agency, 841 Chestnut Street, Philadelphia,
Pennsylvania 19107

Region IV

Director, Waste Management Division,
Environmental Protection Agency 345
Courtland St. N.E., Atlanta, Georgia
30365

Region V

Director, Waste Management Division,
Environmental Protection Agency, 230
South Dearborn Street, Chicago, Illinois
60604

Region VI

Director, Hazardous Waste Management
Division, Environmental Protection
Agency, 1445 Ross Avenue, Suite
1200, Dallas, Texas 75202.

Region VII

Director, Waste Management Division,
Environmental Protection Agency, 726
Minnesota Avenue, Kansas City, Kansas
66101

Region VII

Director, Hazardous Waste Management
Division, Environmental Protection
Agency, One Denver Place, 999 18th
St., Suite 500, Denver, Colorado
80202-2405

Region IX

Director, Hazardous Waste Management
Division, Environmental Protection
Agency, 1235 Mission Street, San
Francisco, California 94103

Region X

Director, Hazardous Waste Division, Environmental Protection Agency, 1200
6th Avenue, Seattle, Washington
98101

States

Alabama

Chief, Land Division, Alabama Department
of Environmental Management,
1751 Federal Drive, Montgomery, Alabama
36130

Alaska

Chief, Solid and Hazardous Waste Management Program, Division of Environmental Quality, Department of Environmental Conservation, 3200 Hospital Drive, P.O. Box O, Juneau, Alaska 99811-1800

Arizona

Assistant Director, Office of Waste and Water Quality Management, Arizona Department of Environmental Quality, 2005 N. Central Avenue, Room 304, Phoenix, Arizona 85004

Arkansas

Chief, Hazardous Waste Division, Arkansas Department of Pollution Control and Technology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209

California

Chief, Deputy Executive Officer, California Waste Management Board, 1020 9th Street/Suite 300, Sacramento, California 95314

Colorado

Director, Waste Management Division, Colorado Department of Health, 4210 E. 11th Avenue, Denver, Colorado 80230

Connecticut

Chief, Bureau of Waste Management, Connecticut Department of Environmental Protection, Hazardous Materials Management Unit, 165 Capital Avenue, Hartford, Connecticut 06106

Delaware

Director, Division of Air & Waste Management, Department of Natural Resources and Environmental Control, P.O. Box 1401, 89 King's Highway, Dover, Delaware 19903

[Sec. 403.12(p), Appendix]

District of Columbia

Chief, Pesticides and Hazardous Materials Division/Superfund; Department of Consumer and Regulatory Affairs, 614 H Street NW., Room 505, Washington, DC 20001

Florida

Director, Division of Waste Management, Underground Storage Tanks, Department of Environmental Regulations, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

Georgia

Chief, Land Protection Branch, Industrial and Hazardous Waste Management Program, Floyd Towers East/Room 1154, 205 Butler Street, SE., Atlanta, Georgia 30334

Hawaii

Manager, Solid and Hazardous Waste Branch, Hawaii Department of Health, Hazardous Waste Program, P.O. Box 3378, Honolulu, Hawaii 96301

Idaho

Chief, Hazardous Material Bureau, Department of Health and Welfare, Idaho State House, 450 W. State Street, Boise, Idaho 83720

Illinois

Manager, Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9278

Indiana

Assistant Director, Indiana Department of Environmental Management, 105 S. Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46225

Iowa

Chief, Air Quality and Solid Waste Protection, Department of Water, Air, and Waste Management, 900 East Grand Avenue, Henry A. Wallace Building, Des Moines, Iowa 50319-0034

Kansas

Director, Bureau of Waste Management, Department of Health and Environment, Forbes Field, Building 321, Topeka, Kansas 66620

Kentucky

Director, Division of Waste Management, Department of Environmental Protec-

tion, Cabinet for Natural Resources and Environmental Protection, 18 Reilly Road, Frankfort, Kentucky 40601

Louisiana

Assistant Secretary Hazardous Waste Division, Office of Solid Waste and Hazardous Waste, Louisiana Department of Environmental Quality, P.O. Box 44307, N. Fourth Street, Baton Rouge, Louisiana 70804

Maine

Director, Bureau of Solid Waste Management, Department of Environmental Protection, State House #17, Augusta, Maine 04383

Maryland

Director, Hazardous and Solid Waste Management Administration, Maryland Department of the Environment, 201, W. Preston Street, Room 212, Baltimore, Maryland 21201

Massachusetts

Director, Division of Solid and Hazardous Waste, Massachusetts Department of Environmental Quality Engineering, One Winter Street, 5th Floor, Boston, Massachusetts 02108

Michigan

Chief, Technical Services Section, Waste Management Division, Department of Natural Resources, Box 30038, Lansing, Michigan 48900

Minnesota

Director, Solid and Hazardous Waste Division, Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155

Mississippi

Director, Division of Solid Waste Management Bureau of Pollution Control, Department of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209

Missouri

Director, Waste Management Program, Department of Natural Resources, Jefferson Building, 205 Jefferson Street (13th-14th floors), P.O. Box 176, Jefferson City, Missouri 65102

Montana

Chief, Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Room B-201, Helena, Montana 59620

Nebraska

Chief, Hazardous Waste Management Section, Department of Environmental Control, State House Station, P.O. Box 98477, Lincoln, Nebraska 68509

Nevada

Director, Waste Management Program, Division of Environmental Protection, Department of Conservation and Natural Resources, Capitol Complex, 201 South Fall Street, Carson City, Nevada 89710

New Hampshire

Chief, Division of Public Health Services, Office of Waste Management Department of Health and Welfare, Health and Welfare Building, 6 Hazen Drive, Concord, New Hampshire 03301

New Jersey

Assistant Commissioner Division of HQ Waste Management, Department of Environmental Protection, 401 East State Street, Trenton, New Jersey 03625

New Mexico

Chief, Groundwater and Hazardous Waste Bureau, Environmental Improvement Division, New Mexico Health and Environment Department, P.O. Box 968, Santa Fe, New Mexico 87504-0968

New York

Director, Division of Hazardous Substance Regulation, Department of Environmental Conservation, 50 Wolfe Road, Room 209, Albany, New York 12233

North Carolina

Head, Solid and Hazardous Waste Management Branch, Division of Health Services, Department of Human Resources, P.O. Box 2091, Raleigh, North Carolina 27602

North Dakota

Director, Division of Hazardous Waste Management, Department of Health, 1200 Missouri Avenue, Room 302, Bismarck, North Dakota 58502-5520

Ohio

Chief, Division of Solid and Hazardous Waste Management, Ohio Environmental Protection Agency, 1800 Watermark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149

[Sec. 403.12(p), Appendix]

Oklahoma

Chief, Waste Management Service, Oklahoma State Department of Health, P.O. Box 53551, 1000 Northeast 10th Street, Oklahoma, Oklahoma 73152

Oregon

Director, Hazardous and Solid Waste Division, Department of Environmental Quality, 811 Southwest 6th Avenue, Portland, Oregon 97204

Pennsylvania

Director, Bureau of Waste Management, Pennsylvania Department of Environmental Resources, P.O. Box 20663/Fulton Building, Harrisburg, Pennsylvania 17120

Rhode Island

Director, Solid Waste Management Program, Department of Environmental Management, 204 Canon Building, 75 Davis Street, Providence, Rhode Island 02908

South Carolina

Chief, Bureau of Solid Waste Management, Hazardous Waste Management, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201

South Dakota

Director, Office of Air Quality and Solid Waste, Department of Water and Natural Resources, 523 E. Capitol, Foss Building, Room 416, Pierre, South Dakota 57501

Tennessee

Director, Division of Solid Waste Management, Tennessee Department of Public Health, 701 Broadway, Customs House, 4th Floor, Nashville, Tennessee

Texas

Director, Hazardous and Solid Waste Division, Texas Water Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711-3087

Vermont

Chief, Waste Management Division, Agency of Environmental Conservation, 103 South Main Street, Waterbury, Vermont 05678

Virginia

Executive Director, Division of Technical Services, Virginia Department of Waste Management, Monroe Building,

11th Floor, 101 North 14th Street, Richmond, Virginia 23219

Washington

Manager, Solid and Hazardous Waste Management Division Department of Ecology, Mail Stop PV-11 Olympia, Washington, 98504

West Virginia

Chief, Waste Management Division, Department of Natural Resources, 1260 Greenbrier Street, Charleston, West Virginia 25311

Wisconsin

Director, Bureau of Solid Waste, Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707

Wyoming

Supervisor, Solid Waste Management Program, Department of Environmental Quality, 122 West 25th Street, Herschler Building, Cheyenne, Wyoming 82002

American Samoa

Director, Solid Waste Division, Environmental Quality Commission, Government of American Samoa, Pago Pago, American Samoa 96799

Guam

Director, Hazardous Waste Management Program, Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910

Commonwealth of Northern Mariana Islands

Chief, Division of Environmental Quality, Department of Public Health and Environmental Services, Commonwealth of the Northern Mariana Islands, Office of the Governor, Saipan, Mariana Islands 96950

Puerto Rico

President, Environmental Quality Board, Santurce, Puerto Rico 00910-1488

Virgin Islands

Director, Department of Conservation and Cultural Affairs, P.O. Box 4399, Charlotte, St. Thomas, Virgin Islands 00801

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

[§403.12 amended at 58 FR 18015, April 7, 1993]

§403.13 Variances from categorical pretreatment standards for fundamentally different factors.

(a) *Definition.* The term "Requester" means an Industrial User or a POTW or other interested person seeking a variance from the limits specified in a categorical Pretreatment Standard.

(b) *Purpose and scope.* In establishing categorical Pretreatment Standards for existing sources, the EPA will take into account all the information it can collect, develop and solicit regarding the factors relevant to pretreatment standards under section 307(b). In some cases, information which may affect these Pretreatment Standards will not be available or, for other reasons, will not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the limits in categorical Pretreatment Standards, making them either more or less stringent, as they apply to a certain Industrial User within an industrial category or subcategory. This will only be done if data specific to that Industrial User indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to an Industrial User are fundamentally different from the factors considered during development of a categorical Pretreatment Standard applicable to that User and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical Pretreatment Standard, may request a fundamentally different factors variance under this section or such a variance request may be initiated by the EPA.

(c) Criteria—

(1) *General criteria.* A request for a variance based upon fundamentally different factors shall be approved only if:

(i) There is an applicable categorical Pretreatment Standard which specifically controls the pollutant for which alternative limits have been requested; and

(ii) Factors relating to the discharge controlled by the categorical Pretreatment Standard are fundamentally different from the factors considered by EPA in establishing the Standards; and

(iii) The request for a variance is made in accordance with the procedural requirements in paragraphs (g) and (h) of this section.

[Sec. 403.13(c)(1)(iii)]

(2) *Criteria applicable to less stringent limits.* A variance request for the establishment of limits less stringent than required by the Standard shall be approved only if:

(i) The alternative limit requested is no less stringent than justified by the fundamental difference;

(ii) The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under §403.5;

(iii) The alternative limit will not result in a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Pretreatment Standards; and

(iv) Compliance with the Standards (either by using the technologies upon which the Standards are based or by using other control alternatives) would result in either:

(A) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or

(B) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.

(3) *Criteria applicable to more stringent limits.* A variance request for the establishment of limits more stringent than required by the Standards shall be approved only if:

(i) The alternative limit request is no more stringent than justified by the fundamental difference; and

(ii) Compliance with the alternative limit would not result in either:

(A) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or

(B) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.

(d) *Factors considered fundamentally different.* Factors which may be considered fundamentally different are:

(1) The nature or quality of pollutants contained in the raw waste load of the User's process wastewater;

(2) The volume of the User's process wastewater and effluent discharged;

(3) Non-water quality environmental impact of control and treatment of the User's raw waste load;

(4) Energy requirements of the application of control and treatment technology;

(5) Age, size, land availability, and configuration as they relate to the User's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

(6) Cost of compliance with required control technology.

(e) *Factors which will not be considered fundamentally different.* A variance request or portion of such a request under this section may not be granted on any of the following grounds:

(1) The feasibility of installing the required waste treatment equipment within the time the Act allows;

(2) The assertion that the Standards cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed in paragraph (d) of this section;

(3) The User's ability to pay for the required waste treatment; or

(4) The impact of a Discharge on the quality of the POTW's receiving waters.

(f) *State or local law.* Nothing in this section shall be construed to impair the right of any state or locality under section 510 of the Act to impose more stringent limitations than required by Federal law.

(g) *Application deadline.*

(1) Requests for a variance and supporting information must be submitted in writing to the Director or to the Administrator (or his delegate), as appropriate.

(2) In order to be considered, a request for a variance must be submitted no later than 180 days after the date on which a categorical Pretreatment Standard is published in the Federal Register.

[§403.13(g)(2) amended at 60 FR 33931, June 29, 1995]

(3) Where the User has requested a categorical determination pursuant to §403.6(a), the User may elect to await the results of the category determination before submitting a variance request under this section. Where the User so elects, he or she must submit the variance request within 30 days after a final decision has been made on the categorical determination pursuant to §403.6(a)(4).

(h) *Contents submission.* Written submissions for variance requests, whether

made to the Administrator (or his delegate) or the Director, must include:

(1) The name and address of the person making the request;

(2) Identification of the interest of the Requester which is affected by the categorical Pretreatment Standard for which the variance is requested;

(3) Identification of the POTW currently receiving the waste from the Industrial User for which alternative discharge limits are requested;

(4) Identification of the categorical Pretreatment Standards which are applicable to the Industrial User;

(5) A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;

(6) The alternative discharge limits proposed by the Requester for each pollutant or pollutant parameter identified in paragraph (h)(5) of this section;

(7) A description of the Industrial User's existing water pollution control facilities;

(8) A schematic flow representation of the Industrial User's water system including water supply, process wastewater systems, and points of Discharge; and

(9) A Statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the Pretreatment Standard.

(i) *Deficient request.* The Administrator (or his delegate) or the Director will only act on written requests for variances that contain all of the information required. Persons who have made incomplete submissions will be notified by the Administrator (or his delegate) or the Director that their requests are deficient and unless the time period is extended, will be given up to thirty days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the Administrator (or his delegate) or the Director, the request for a variance shall be denied.

(j) *Public notice.* Upon receipt of a complete request, the Administrator (or his delegate) or the Director will provide notice of receipt, opportunity to review the submission, and opportunity to comment.

[Sec. 403.13(j)]

(1) The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice shall include mailing notices to:

(i) The POTW into which the Industrial User requesting the variance discharges;

(ii) Adjoining States whose waters may be affected; and

(iii) Designated 208 planning agencies, Federal and State fish, shellfish and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists.

(2) The public notice shall provide for a period not less than 30 days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.

(3) Following the comment period, the Administrator (or his delegate) or the Director will make a determination on the request taking into consideration any comments received. Notice of this final decision shall be provided to the requester (and the Industrial User for which the variance is requested if different), the POTW into which the Industrial User discharges and all persons who submitted comments on the request.

(k) *Review of requests by state.*

(1) Where the Director finds that fundamentally different factors do not exist, he may deny the request and notify the requester (and Industrial User where they are not the same) and the POTW of the denial.

(2) Where the Director finds that fundamentally different factors do exist, he shall forward the request, with a recommendation that the request be approved, to the Administrator (or his delegate).

(l) *Review of requests by EPA.*

(1) Where the Administrator (or his delegate) finds that fundamentally different factors do not exist, he shall deny the request for a variance and send a copy of his determination to the Director, to the POTW, and to the requester (and to the Industrial User, where they are not the same).

(2) Where the Administrator (or his delegate) finds that fundamentally different factors do exist, and that a partial or full variance is justified, he will approve

the variance. In approving the variance, the Administrator (or his delegate) will:

(i) Prepare recommended alternative discharge limits for the Industrial User either more or less stringent than those prescribed by the applicable categorical Pretreatment Standard to the extent warranted by the demonstrated fundamental different factors;

(ii) Provide the following information in his written determination:

(A) The recommended alternative discharge limits for the Industrial User concerned;

(B) The rationale for the adjustment of the Pretreatment Standard (including the reasons for recommending that the variance be granted) and an explanation of how the recommended alternative discharge limits were derived;

(C) The supporting evidence submitted to the Administrator (or his delegate); and

(D) Other information considered by the Administrator (or his delegate) in developing the recommended alternative discharge limits;

(iii) Notify the Director and the POTW of his or her determination; and

(iv) Send the information described in paragraphs (i)(2) (i) and (ii) of this section to the Requestor (and to the Industrial User where they are not the same).

(m) *Request for hearing.*

(1) Within 30 days following the date of receipt of the notice of the decision of the Administrator's delegate on a variance request, the requester or any other interested person may submit a petition to the Regional Administrator for a hearing to reconsider or contest the decision. If such a request is submitted by a person other than the Industrial User the person shall simultaneously serve a copy of the request on the Industrial User.

(2) If the Regional Administrator declines to hold a hearing and the Regional Administrator affirms the findings of the Administrator's delegate the requester may submit a petition for a hearing to the Environmental Appeals Board (which is described in §1.25 of this title) within 30 days of the Regional Administrator's decision.

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

[§403.13 amended at 58 FR 18015, April 7, 1993]

§403.14 Confidentiality.

(a) *EPA authorities.* In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

(b) *Effluent data.* Information and data provided to the Control Authority pursuant to this part which is effluent data shall be available to the public without restriction.

(c) *State or POTW.* All other information which is submitted to the State or POTW shall be available to the public at least to the extent provided by 40 CFR 2.302.

§403.15 Net/Gross calculation.

Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section.

(a) *Application.* Any Industrial User wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraphs (b) and (c) of this section are met.

(b) *Criteria.*

(1) The Industrial User must demonstrate that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the

[Sec. 403.15(b)(2)]

User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this section.

(4) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

(c) The applicable categorical pretreatment standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis.

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

[§403.15 amended at 58 FR 18015, April 7, 1993]

§403.16 Upset provision.

(a) *Definition.* 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) *Effect of an upset.* 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) *Conditions necessary for a demonstration of upset.* 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 workman-like manner and in compliance with applicable operation and maintenance procedures;

(3) The Industrial User has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the Upset (if this information is provided orally, a written submission must be provided within five 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) *Burden of proof.* In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.

(e) *Reviewability of agency consideration of claims of upset.* In the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that non-compliance was caused by an Upset. No determinations made in the course of the review constitute final Agency action subject to judicial review. 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) *User responsibility in case of upset.* 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.

§403.17 Bypass.

[§403.17 amended at 58 FR 18015, April 7, 1993]

(a) Definitions.

(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 production.

(b) *Bypass not violating applicable Pretreatment Standards or Requirements.* An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (c) and (d) of this section.

(c) Notice.

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

(2) An Industrial User shall submit oral notice of an anticipated bypass that exceeds applicable Pretreatment Standards to the Control Authority within 24 hours from the time the Industrial User 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 Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(d) Prohibition of bypass.

(1) Bypass is prohibited, and the Control Authority 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

[Sec. 403.17(d)(1)(ii)]

equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(iii) The Industrial User submitted notices as required under paragraph (c) of this section.

(2) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in paragraph (d)(1) of this section.

(Information collection requirements are approved by the Office of Management and Budget under control number 2040-0009)

§403.18 Modification of POTW Pretreatment Programs.

[§403.18 amended at 58 FR 18015, April 7, 1993; revised at 62 FR 38414, July 17, 1997]

(a) *General.* Either the Approval Authority or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW Pretreatment Program that differs from the information in the POTW's submission, as approved under §403.11.

(b) *Substantial modifications defined.* Substantial modifications include:

(1) Modifications that relax POTW legal authorities (as described in §403.8(f)(1)), except for modifications that directly reflect a revision to this Part 403 or to 40 CFR chapter I, subchapter N, and are reported pursuant to paragraph (d) of this section;

(2) Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to paragraph (d) of this section. Maximum Allowable Industrial Loading means the total mass of a pollutant that all Industrial Users of a POTW (or a subgroup of Industrial Users identified by the POTW) may discharge pursuant to limits developed under §403.5(c);

(3) Changes to the POTW's control mechanism, as described in §403.8(f)(1)(iii);

(4) A decrease in the frequency of self-monitoring or reporting required of industrial users;

(5) A decrease in the frequency of industrial user inspections or sampling by the POTW;

(6) Changes to the POTW's confidentiality procedures; and

(7) Other modifications designated as substantial modifications by the Approval Authority on the basis that the modification could have a significant impact on the operation of the POTW's Pretreatment Program; could result in an increase in pollutant loadings at the POTW; or could result in less stringent requirements being imposed on Industrial Users of the POTW.

(c) *Approval procedures for substantial modifications.*

(1) The POTW shall submit to the Approval Authority a statement of the basis for the desired program modification, a modified program description (see §403.9(b)), or such other documents the Approval Authority determines to be necessary under the circumstances.

(2) The Approval Authority shall approve or disapprove the modification based on the requirements of §403.8(f) and using the procedures in §403.11(b) through (f), except as provided in paragraphs (c)(3) and (4) of this section. The modification shall become effective upon approval by the Approval Authority.

(3) The Approval Authority need not publish a notice of decision under §403.11(e) provided. The notice of request for approval under §403.11(b)(1) states that the request will be approved if no comments are received by a date specified in the notice; no substantive comments are received; and the request is approved without change.

(4) Notices required by §403.11 may be performed by the POTW provided that the Approval Authority finds that the POTW notice otherwise satisfies the requirements of §403.11.

(d) *Approval procedures for non-substantial modifications.*

(1) The POTW shall notify the Approval Authority of any non-substantial modification at least 45 days prior to implementation by the POTW, in a state-

ment similar to that provided for in paragraph (c)(1) of this section.

(2) Within 45 days after the submission of the POTW's statement, the Approval Authority shall notify the POTW of its decision to approve or disapprove the non-substantial modification.

(3) If the Approval Authority does not notify the POTW within 45 days of its decision to approve or deny the modification, or to treat the modification as substantial under paragraph (b)(7) of this section, the POTW may implement the modification.

(e) *Incorporation in permit.* All modifications shall be incorporated into the POTW's NPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with 40 CFR 122.63(g).

Appendix A—Program Guidance Memorandum

U.S. Environmental Protection Agency
December 16, 1975.

Program Guidance Memorandum-61

Subject: Grants for Treatment and Control of Combined Sewer Overflows and Stormwater Discharges.

From: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546).

To: Regional Administrators, Regions I-X.

This memorandum summarizes the Agency's policy on the use of construction grants for treatment and control of combined sewer overflows and stormwater discharges during wet-weather conditions. The purpose is to assure that projects are funded only when careful planning has demonstrated they are cost-effective.

I. Combined Sewer Overflows

A. Background

The costs and benefits of control of various portions of pollution due to combined sewer overflows and by-passes vary greatly with the characteristics of the sewer and treatment system, the duration, intensity, frequency and areal extent of precipitation, the type and extent of development in the service area, and the characteristics, uses and water quality standards of the receiving waters. Decisions on grants for control of combined sewer overflows, therefore, must be made on a case-

[Part 403, Appendix A]

by-case basis after detailed planning at the local level.

Where detailed planning has been completed, treatment or control of pollution from wet-weather overflows and bypasses may be given priority for construction grant funds only after provision has been made for secondary treatment of dry-weather flows in the area. The detailed planning requirements and criteria for project approval follow.

B. Planning Requirements

Construction grants may be approved for control of pollution from combined sewer overflows only if planning for the project was thoroughly analyzed for the 20 year planning period:

1. Alternative control techniques which might be utilized to attain various levels of pollution control (related to alternative beneficial uses, if appropriate), including at least initial consideration of all the alternatives described in the section on combined sewer and stormwater control in "Alternative Waste Management Techniques and Best Practicable Waste Treatment" (Section C of Chapter III of the information proposed for comment in March 1974).

2. The costs of achieving the various levels of pollution control by each of the techniques appearing to be the most feasible and cost-effective after the preliminary analysis.

3. The benefits to the receiving waters of a range of levels of pollution control during wet-weather conditions. This analysis will normally be conducted as part of State water quality management planning, 208 areawide management planning, or other State, regional or local planning effort.

4. The costs and benefits of addition of advanced waste treatment processes to dry-weather flows in the area.

C. Criteria for Project Approval

The final alternative selected shall meet the following criteria:

1. The analysis required above has demonstrated that the level of pollution control provided will be necessary to protect a beneficial use of the receiving water even after technology based standards required by Section 301 of Pub. L. 92-500 are achieved by industrial point sources and at least secondary treatment is achieved for dry-weather municipal flows in the area.

2. Provision has already been made for funding of secondary treatment of dry-weather flows in the area.

3. The pollution control technique proposed for combined sewer overflow is a more cost-effective means of protecting the beneficial use of the receiving waters than other combined sewer pollution control techniques and the addition of treatment higher than secondary treatment for dry-weather municipal flows in the area.

4. The marginal costs are not substantial compared to marginal benefits.

Marginal costs and benefits for each alternative may be displayed graphically to assist with determining a project's acceptability under this criterion. Dollar costs should be compared with quantified pollution reduction and water quality improvements. A descriptive narrative should also be included analyzing monetary, social and environmental costs compared to benefits, particularly the significance of the beneficial uses to be protected by the project.

II. Stormwater Discharges

Approaches for reducing pollution from separate stormwater discharges are now in the early stages of development and evaluation. We anticipate, however, that in many cases the benefits obtained by construction of treatment works for this purpose will be small compared with the costs, and other techniques of control and prevention will be more cost-effective. The policy of the Agency is, therefore, that construction grants shall not be used for construction of treatment works to control pollution from separate discharges of stormwater except under unusual conditions where the project clearly has been demonstrated to meet the planning requirements and criteria described above for combined sewer overflows.

III. Multi-purpose Projects

Projects with multiple purposes, such as flood control and recreation in addition to pollution control, may be eligible for an amount not to exceed the cost of the most cost-effective single purpose pollution abatement system. Normally the Separable Costs-Remaining Benefits (SCRB) method should be used to allocate costs between pollution control and other purposes, although in unusual cases another method may be appropriate. For such cost allocation, the cost of the least cost pollution abatement alternative may be used as

a substitute measure of the benefits for that purpose. The method is described in "Proposed Practices for Economic Analysis of River Basin Projects," GPO, Washington, D.C., 1958, and "Efficiency in Government through Systems Analysis," by Roland N. McKean, John Wiley & Sons, Inc., 1958.

Enlargement of or otherwise adding to combined sewer conveyance systems is one means of reducing or eliminating flooding caused by wet-weather conditions. These additions may be designed so as to produce some benefits in terms of reduced discharge of pollutants to surrounding waterways. The pollution control benefits of such flood control measures, however, are likely to be small compared with the costs, and the measures therefore would normally be ineligible for funding under the construction grants program.

All multi-purpose projects where less than 100% of the costs are eligible for construction grants under this policy shall contain a special grant condition precluding EPA funding of non-pollution control elements. This condition should, as a minimum, contain a provision similar to the following:

"The grantee explicitly acknowledges and agrees that costs are allowable only to the extent they are incurred for the water pollution control elements of this project."

Additional special conditions should be included as appropriate to assure that the grantee clearly understands which elements of the project are eligible for construction grants under Pub. L. 92-500.

Appendix B—[Reserved]

[Appendix B removed and reserved at 60 FR 33931, June 29, 1995]

Appendix C—[Reserved]

[Appendix C removed and reserved at 60 FR 33931, June 29, 1995]

Appendix D—Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula

The following industrial subcategories are considered to have dilute wastestreams for purposes of the combined wastestream formula. They either were or could have been excluded from categorical pretreatment standards pursuant to

[Part 403, Appendix D]

paragraph 8 of the Natural Resources Defense Council, Inc., et al. v. Costle Consent Decree for one or more of the following four reasons: (1) The pollutants of concern are not detectable in the effluent from the industrial user (paragraph 8(a)(iii)); (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph 8(a)(iii)); (3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); or (4) the wastewater contains only pollutants which are compatible with the POTW (paragraph 8(b)(i)). In some instances, different rationales were given for exclusion under paragraph 8. However, EPA has reviewed these subcategories and has determined that exclusion could have occurred due to one of the four reasons listed above.

This list is complete as of October 9, 1986. It will be updated periodically for the convenience of the reader.

Auto and Other Laundries (40 CFR part 444)

Carpot and Upholstery Cleaning
Coin-Operated Laundries and Dry Cleaning
Diaper Services
Dry Cleaning Plants except Rug Cleaning
Industrial Laundries
Laundry and Garment Services, Not Elsewhere Classified
Linen Supply
Power Laundries, Family and Commercial
*Electrical and Electronic Components*¹ (40 CFR part 469)
Capacitors (Fluid Fill)
Carbon and Graphite Products
Dry Transformers
Ferrite Electronic Devices
Fixed Capacitors
Fluorescent Lamps
Fuel Cells
Incandescent Lamps
Magnetic Coatings
Mica Paper Dielectric
Motors, Generators, Alternators
Receiving and Transmitting Tubes
Resistance Heaters
Resistors

¹The Paragraph 8 exemption for the manufacture of products in the Electrical and Electronic Components Category is for operations not covered by Electroplating/Metal Finishing pretreatment regulations (40 CFR parts 413/433).

Switchgear
Transformer (Fluid Fill)
Metal Molding and Casting (40 CFR part 464)
Nickel Casting
Tin Casting
Titanium Casting
Gum and Wood Chemicals (40 CFR part 454)
Char and Charcoal Briquets
Inorganic Chemicals Manufacturing (40 CFR part 415)
Ammonium Chloride
Ammonium Hydroxide
Barium Carbonate
Calcium Carbonate
Carbon Dioxide
Carbon Monoxide and Byproduct Hydrogen
Hydrochloric Acid
Hydrogen Peroxide (Organic Process)
Nitric Acid
Oxygen and Nitrogen
Potassium Iodide
Sodium Chloride (Brine Mining Process)
Sodium Hydrosulfide
Sodium Hydrosulfite
Sodium Metal
Sodium Silicate
Sodium Thiosulfate
Sulfur Dioxide
Sulfuric Acid
Leather (40 CFR part 425)
Gloves
Luggage
Paving and Roofing (40 CFR part 443)
Asphalt, Concrete
Asphalt Emulsion
Linoleum
Printed Asphalt Felt
Roofing
Pulp, Paper, and Paperboard, and Builders' Paper and Board Mills (40 CFR parts 430 and 431)
Groundwood-Chemical-Mechanical
Rubber Manufacturing (40 CFR part 428)
Tire and Inner Tube Plants
Emulsion Crumb Rubber
Solution Crumb Rubber
Latex Rubber
Small-sized General Molded, Extruded and Fabricated Rubber Plants,²

²Footnote: Except for production attributed to lead-sheathed hose manufacturing operations.

Medium-sized General Molded, Extruded and Fabricated Rubber Plants²
Large-sized General Molded, Extruded and Fabricated Rubber Plants²
Wet Digestion Reclaimed Rubber
Pan, Dry Digestion, and Mechanical Reclaimed Rubber
Latex Dipped, Latex-Extruded, and Latex-Molded Rubber³
Latex Foam⁴
Soap and Detergent Manufacturing (40 CFR part 417)
Soap Manufacture by Batch Kettle
Fatty Acid Manufacture by Fat Splitting
Soap Manufacture by Fatty Acid Neutralization
Glycerine Concentration
Glycerine Distillation
Manufacture of Soap Flakes and Powders
Manufacture of Bar Soaps
Manufacture of Liquid Soaps
Manufacture of Spray Dried Detergents
Manufacture of Liquid Detergents
Manufacture of Dry Blended Detergents
Manufacture of Drum Dried Detergents
Manufacture of Detergent Bars and Cakes
Textile Mills (40 CFR part 410)
Apparel manufacturing
Cordage and Twine
Padding and Upholstery Filling
Timber Products Processing (40 CFR part 429)
Barking Process
Finishing Processes
Hardboard-Dry Process

Appendix E—Sampling Procedures

I. Composite Method

A. It is recommended that influent and effluent operational data be obtained through 24-hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. If discrete sampling is employed, at least 12 aliquots should be composited. Discrete sampling may be flow proportioned either by varying the

³Footnote: Except for production attributed to chromic acid form-cleaning operations.

⁴Footnote: Except for production that generates zinc as a pollutant in discharge.

[Part 403, Appendix E]

time interval between each aliquot or the volume of each aliquot. All composites should be flow proportional to either the stream flow at the time of collection of the influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

B. Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample is taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based on the average of the daily flows during the same month of the previous year.

II. Grab Method

If composite sampling is not an appropriate technique, grab samples should be taken to obtain influent and effluent operational data. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes. The collection of influent grab samples should precede the collection of effluent samples by approximately one detention period except that where the detention period is greater than 24 hours such staggering of the sam-

ple collection may not be necessary or appropriate. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based upon the average of the daily flows during the same month of the previous year. Grab sampling should be employed where the pollutants being evaluated are those, such as cyanide and phenol, which may not be held for an extended period because of biological, chemical or physical interaction which take place after sample collection and affect the results.

Appendix G to Part 403—Pollutants Eligible For A Removal Credit

[Appendix G added at 58 FR 9386, Feb. 19, 1993; revised at 60 FR 54768, Oct. 25, 1995]

I. Regulated Pollutants In Part 503 Eligible for a Removal Credit

Pollutants	Use or disposal practice		
	LA	SD	I
Arsenic	X	X	X
Beryllium			X
Cadmium	X		X
Chromium		X	X
Copper	X		
Lead	X		X
Mercury	X		X
Molybdenum	X		
Nickel	X	X	X
Selenium	X		
Zinc	X		
Total hydrocarbons			X ¹

Key:

LA—land application.

SD—surface disposal site without a liner and leachate collection system.

I—firing of sewage sludge in a sewage sludge incinerator.

¹ The following organic pollutants are eligible for a removal credit if the requirements for total hydrocarbons in subpart E in 40 CFR Part 503 are met when sewage sludge is fired in a sewage sludge incinerator: Acrylonitrile, Aldrin/Dieldrin (total), Benzene, Benidine, Benzo(a)pyrene, Bis(2-chloroethyl)ether, Bis(2-ethylhexyl)phthalate, Bromodichloromethane, Bromoethane, Bromoform, Carbon tetrachloride, Chlordane, Chloroform, Chloromethane, DDD, DDE, DDT, Dibromochloromethane, Dibutyl phthalate, 1,2-dichloroethane, 1,1-dichloroethylene, 2,4-dichlorophenol, 1,3-dichloropropene, Diethyl phthalate, 2,4-dinitrophenol, 1,2-diphenylhydrazine, Di-n-butyl phthalate, Endosulfan, Endrin, Ethylbenzene, Heptachlor, Heptachlor epoxide, Hexachlorobutadiene, Alpha-hexachlorocyclohexane, Beta-hexachlorocyclohexane, Hexachlorocyclopentadiene, Hexachloroethane, Hydrogen cyanide, Isophorone, Lindane, Methylene chloride, Nitrobenzene, N-Nitrosodimethylamine, N-Nitrosodipropylamine, Pentachlorophenol, Phenol, Polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzo-p-dioxin, 1,1,2,2-tetrachloroethane, Tetrachloroethylene, Toluene, Toxaphene, Trichloroethylene, 1,2,4-Trichlorobenzene, 1,1,1-Trichloroethane, 1,1,2-Trichloroethane, and 2,4,6-Trichlorophenol.

II. ADDITIONAL POLLUTANTS ELIGIBLE FOR A REMOVAL CREDIT

[Milligrams per kilogram—dry weight basis]

Pollutant	Use or disposal practice			
	LA	Surface disposal		I
		Unlined ¹	Lined ²	
Arsenic			³ 100	
Aldrin/Dieldrin (Total)	2.7			
Benzene	³ 16	140	3400	
Benzo(a)pyrene	15	³ 100	³ 100	
Bis(2-ethylhexyl)phthalate		³ 100	³ 100	
Cadmium		³ 100	³ 100	
Chlordane	88	³ 100	³ 100	
Chromium (total)	³ 100		³ 100	
Copper		³ 46	100	1400
DDD, DDE, DDT (Total)	1.2	2000	2000	
2,4-Dichlorophenoxy-acetic acid		7	7	
Fluoride	730			
Heptachlor	7.4			
Hexachlorobenzene	29			

[Part 403, Appendix G]

II. ADDITIONAL POLLUTANTS ELIGIBLE FOR A REMOVAL CREDIT—Continued

[Milligrams per kilogram—dry weight basis]

Pollutant	Use or disposal practice			
	LA	Surface disposal		I
		Unlined ¹	Lined ²	
Hexachlorobutadiene	600			
Iron	³ 78			
Lead		³ 100	³ 100	
Lindane	84	³ 28	³ 28	
Malathion		0.63	0.63	
Mercury		³ 100	³ 100	
Molybdenum		40	40	
Nickel			³ 100	
N-Nitrosodimethylamine	2.1	0.088	0.088	
Pentachlorophenol	30			
Phenol		82	82	
Polychlorinated biphenyls	4.8	<50	<50	
Selenium		4.8	4.8	4.8
Toxaphene	10	³ 26	³ 26	
Trichloroethylene	³ 10	9500	³ 10	
Zinc		4500	4500	4500

¹ Active sewage sludge unit without a liner and leachate collection system.² Active sewage sludge unit with a liner and leachate collection system.³ Value expressed in grams per kilogram—dry weight basis.

Key: LA—land application.

I—incineration.

[Appendix G table II amended at 64 FR 42567, Aug. 4, 1999]

[Part 403, Appendix G]

II. ADDITIONAL POLLUTANTS ELIGIBLE FOR A REMOVAL CREDIT—Continued

[Milligrams per kilogram—dry weight basis]

Pollutant	Use or disposal practice			
	LA	Surface disposal		I
		Unlined ¹	Lined ²	
Hexachlorobutadiene	600			
Iron	³ 78			
Lead		³ 100	³ 100	
Lindane	84	³ 28	³ 28	
Malathion		0.63	0.63	
Mercury		³ 100	³ 100	
Molybdenum		40	40	
Nickel			³ 100	
N-Nitrosodimethylamine	2.1	0.088	0.088	
Pentachlorophenol	30			
Phenol		82	82	
Polychlorinated biphenyls	4.6	<50	<50	
Selenium		4.8	4.8	4.8
Toxaphene	10	³ 26	³ 26	
Trichloroethylene	³ 10	9500	³ 10	
Zinc		4500	4500	4500

¹ Active sewage sludge unit without a liner and leachate collection system.² Active sewage sludge unit with a liner and leachate collection system.³ Value expressed in grams per kilogram—dry weight basis.

Key: LA—land application.

I—incineration.

[Appendix G table II amended at 64 FR 42567, Aug. 4, 1999]

[Part 403, Appendix G]

APPENDIX D

APPENDIX D

ADOPTION AND MODIFICATIONS TO LRSA RULES AND REGULATIONS

ADOPTION OF LRSA RULES AND REGULATIONS/IMPLEMENTATION OF LRSA INDUSTRIAL PRETREATMENT PROGRAM – *DECEMBER 21, 1983*

MODIFICATION TO INCORPORATE STATE STATUTE N.J.S.A.58: 10.A-1, et seq. (MINIMUM MANDATORY CIVIL ADMINISTRATIVE PENALTIES) – *DECEMBER 16, 1992*

MODIFICATION TO ADOPT AN AMMONIA LIMIT – *MARCH 24, 1993*

MODIFICATION TO ADOPT A REVISED SULFIDE LIMIT – *SEPTEMBER 29, 1994*

MODIFICATION TO ADOPT A LIMIT FOR NON-AMMONIA TOXICITY – *OCTOBER 29, 1997*

MODIFICATION TO ADOPT THE LIMIT FOR CONTINUOUS PH MONITORING – *MARCH 25, 1998*

MODIFICATION TO ADOPT REVISIONS TO ENFORCEMENT PROCEDURES, AND PROVISIONS FOR THE ENFORCEMENT RESPONSE PLAN AND PERMIT ISSUANCE PROCESS – *SEPTEMBER 27, 2000*

MODIFICATION TO ADOPT REVISIONS TO TOXICITY PRETREATMENT LIMIT AND ENFORCEMENT RESPONSE PLAN – *APRIL 27, 2005*

MODIFICATION TO ADOPT PROVISIONS FOR THE GRACE PERIOD RULE – *JUNE 25, 2008*

MINOR MODIFICATION TO INCORPORATE THE PROVISIONS OF THE STREAMLINING RULE, SUBCHAPTER 19 OF THE NJPDES REGULATIONS (N.J.A.C. 7:14A) – *MARCH 01, 2010.*

MODIFICATION TO ADOPT REVISIONS TO TOXICITY PRETREATMENT LIMIT *JUNE 23, 2010*

THE LINDEN ROSELLE SEWERAGE AUTHORITY

WHEREAS, The Linden Roselle Sewerage Authority (LRSA) is required under federal regulation (40 CFR Part 403) to develop and implement an industrial pretreatment program in conformance with such regulations; and

WHEREAS, The Linden Roselle Sewerage Authority has retained the services of Camp Dresser & McKee Inc. (CDM) to develop said industrial pretreatment program; and

WHEREAS, the program developed by CDM has been submitted on an interim final basis on behalf of LRSA to the New Jersey Department of Environmental Protection and the U.S. Environmental Protection Agency for review and approval; and

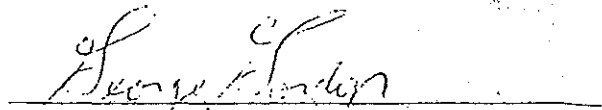
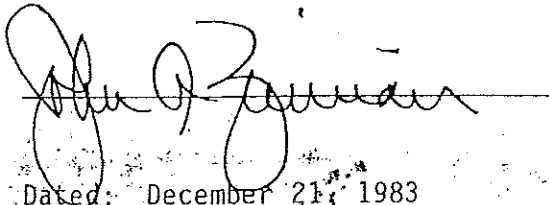
WHEREAS, approval of said program is contingent upon the Board's adoption of revised Rules and Regulations for LRSA which have been developed by CDM, reviewed by NJDEP and subsequently revised again by CDM so as to incorporate the State's comments;

NOW, THEREFORE, Be It Resolved by the Board of The Linden Roselle Sewerage Authority as follows:

1. The Linden Roselle Sewerage Authority does hereby adopt the revised Rules and Regulations.
2. The Chairman, George Gordon, is hereby authorized and directed to sign into effect said Rules and Regulations on behalf of the Authority.
3. A notice of this action shall be printed once in The Linden Leader and The Roselle Spectator.

ATTEST:

THE LINDEN ROSELLE SEWERAGE AUTHORITY


George Gordon, Chairman

Dated: December 21, 1983

SECTION 10.0 - EFFECTIVE DATE

These rules and regulations shall take effect immediately.

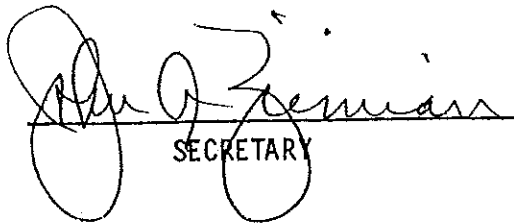
THE LINDEN ROSELLE SEWERAGE AUTHORITY



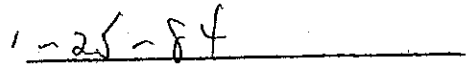
CHAIRMAN

ATTEST:

DATE:



SECRETARY



(SPH5/13)

New Jersey Department of Environmental Protection
Division of Water Resources
P.O. Box CN-029
Trenton, NJ 08625
(609) 292-4860

PUBLIC NOTICE

FEB 1 / 1984

NOTICE: APPROVAL OF INDUSTRIAL PRETREATMENT PROGRAM AND
ISSUANCE OF FINAL NJPDES PERMIT MODIFICATION

Notice is hereby given that:

Linden-Roselle Sewerage Authority
P.O. Box 124, South Wood Avenue
Linden, New Jersey 07036

has applied to the New Jersey Department of Environmental Protection (NJDEP) for approval of its Industrial Pretreatment Program which has been developed and submitted pursuant to Federal (40 CFR 403.9) and State (N.J.A.C. 7:14A-13.1(a)) regulations.

This notice is being given to inform the public that NJDEP has completed its review of the applicant's submission taking into consideration any comments received during the public comment period. The applicant's submission is in conformance with the requirements of 40 CFR 403.8(f) and is therefore approved pursuant to 40 CFR 403.11(c). The NJDEP has modified the applicant's NJPDES discharge permit(s) (NJ0024953) pursuant to 40 CFR 403.8(c) and 403.8(e)(4) to incorporate the approved Industrial Pretreatment Program conditions as enforceable conditions of the NJPDES permit(s).

The applicant's submission and any comments received as a result of the prior public notice are available to the public for inspection and copying at the offices of the NJDEP, Division of Water Resources, located at 1474 Prospect Street in the Township of Ewing, Mercer County, New Jersey. It is available for inspection, by appointment, between 8:30 a.m. and 4:00 p.m., Monday through Friday. Appointments for inspection may be scheduled by calling the Industrial Pretreatment Section at (609) 292-4860. A copying machine is available, for which a fee is charged at the authorized rate.

Arnold Schiffman
Administrator
Water Quality Management

WQM44-B3/PPN:1m1



3

State of New Jersey

JOHN W. GASTON JR., P.E.
DIRECTOR

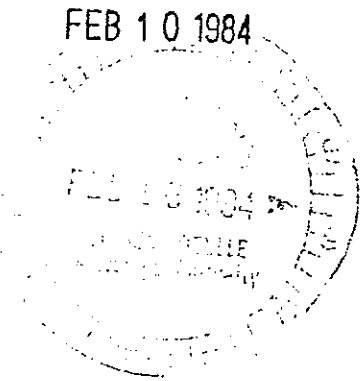
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES

DIRK C. HOFMAN, P.E.
DEPUTY DIRECTOR

CN 029
TRENTON, NEW JERSEY 08625

Mr. Jerome Frederick, Executive Director
Linden-Roselle Sewerage Authority
P.O. Box 124
Linden, New Jersey 07036

Re: Pretreatment Program/Approval of Program and
Issuance of Final Permit Modification
Linden-Roselle S.A. (NJ0024953)



Dear Mr. Frederick:

The NJDEP is pleased to notify you that it hereby approves your Industrial Pretreatment Program (IPP) which was developed pursuant to the federal "General Pretreatment Regulations" (40 CFR Part 403).

The Linden-Roselle Sewerage Authority submitted a request for approval of its IPP on October 14, 1983. The Department requested corrections to the program and these were submitted on November 7 and December 23, 1983 and January 20, 1984. The Department reviewed the above submittals, determined they were in conformance with 40 CFR 403.9(b), and issued a public notice of our receipt of a complete IPP submission. As a result of the public notice published on December 1, 1983, no significant comments on the Linden-Roselle Sewerage Authority IPP submission were received. It is in consideration of all information submitted that the Department has determined that the Linden-Roselle Sewerage Authority IPP submission is in conformance with the requirements of 40 CFR 403.8(f) and is therefore approvable.

The attached public notice of the Department's action approving the Linden-Roselle Sewerage Authority pretreatment program will be published in the same newspaper(s) in which the public notice of "Request for Approval of Pretreatment Program" was previously issued. The Department has modified your NJPDES discharge permit to incorporate the approved IPP. The failure to implement and/or properly operate the approved program will be enforceable as a violation of your NJPDES permit. Attached to this letter are the modified pages incorporating the program requirements that are made part of your NJPDES permit. The page numbers of the new and/or modified pages are 12, 13, and 14. The effective date of this modification is March 1, 1984. The modified pages should be attached to your copy of your NJPDES permit.

RESOLUTION

WHEREAS, the Linden Roselle Sewerage Authority (the Authority) proposed amendments to its Rules and Regulations on March 16, 1992 and July 27, 1992 in order to comply with Federal General Pretreatment Regulations 40CFR 403 and the New Jersey Water Pollution Control Act; and


WHEREAS, the Authority has complied with public notice and public participation requirements of Federal and State law and regulations; and

WHEREAS, the New Jersey Department of Environmental Protection and Energy on December 8, 1992 approved said amendments as submitted to it on September 3, 1992, and as revised and submitted on December 3, 1992..

NOW THEREFORE, BE IT RESOLVED, by the Linden Roselle Sewerage Authority that it adopts the amendments to its Rules and Regulations as submitted to the New Jersey Department of Environmental Protection and Energy (NJDEPE) on September 3, 1992 and December 3, 1992 and approved by the N.J.E.P.E. on December 8, 1992.

BE IT FURTHER RESOLVED, that the said amendments to the Authority's Rules and Regulations shall be effective on January 1, 1993, except that provisions requiring-self monitoring shall be effective on May 1, 1993

I certify that the foregoing is a true copy of a resolution adopted by the Linden Roselle Sewerage Authority at a meeting held on December 16, 1992.


Malvin M. Eckel, Secretary

LINDEN ROSELLE SEWERAGE AUTHORITY

RESOLUTION

WHEREAS, in accordance with an Administrative Consent Order entered into by the Authority and the New Jersey Department of Environmental Protection and Energy (NJDEPE), the Authority approved discharge limits for Ammonia as part of its Effluent Toxicity Reduction Plan for submission to and approval by the NJDEPE, and

WHEREAS, the NJDEPE on March 10, 1993 approved of those Ammonia limits as proposed;

NOW THEREFORE, BE IT RESOLVED that the Linden Roselle Sewerage Authority adopts ammonia discharge limits for users of its facilities as set forth in the letter of approval issued by NJDEP dated March 10, 1993 and as set forth in "Responses to Comments on Proposed Ammonia Pretreatment Limits" approved by the Authority on January 6, 1993; and as proposed by the Authority in November, 1992; and more specifically as follows:

1. The Authority's Rules and Regulations are hereby amended to include in Table 1 "Specific Pollutants - Maximum Permissible Concentration (mg/L)" a limit for Ammonia (NH^3N) of 22.2 (24 hr. average) which limit users shall comply with no later than March 25, 1995.
2. The Merck & Co. permit to discharge is hereby amended to incorporate a variance limit for Ammonia (NH^3N) of 106.4 milligrams per liter, which limit Merck & Co. shall comply with no later than March 25, 1995. Said limit may be adjusted upwards in the event sufficient evidence justifies such adjustment.
3. This resolution is effective immediately.

I certify the foregoing to be a true copy of a resolution adopted by the Linden Roselle Sewerage Authority at a meeting held on March 24, 1993.


Malvin M. Eckel, Secretary

LINDEN ROSELLE SEWERAGE AUTHORITY

RESOLUTION


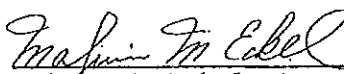
WHEREAS, the Linden Roselle Sewerage Authority approved new local limits for sulfides for submission to and approval by the New Jersey Department of Environmental Protection (NJDEP), and

WHEREAS, the NJDEP approved the said sulfide limits as proposed on August 30, 1994;

NOW THEREFORE, BE IT RESOLVED, that the Linden Roselle Sewerage Authority adopts sulfides discharge limits for users of its facilities as follows:

1. The Authority's Rules and Regulations are hereby amended to include in Table 1 "Specific Pollutants Maximum Permissible Concentration (mg/L)" a limit for Sulfides of 10, which shall replace the previous limit of 0.2.
2. This resolution is effective immediately.

I certify the foregoing to be a true copy of a Resolution adopted by the Linden Roselle Sewerage Authority at a meeting held on September 29, 1994.



Malvin M. Eckel, Secretary

LINDEN ROSELLE SEWERAGE AUTHORITY

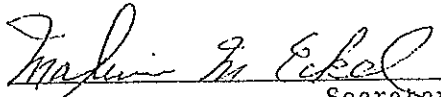
RESOLUTION

WHEREAS, in accordance with an Administrative Consent Order entered into by the Linden Roselle Sewerage Authority and the New Jersey Department of Environmental Protection (NJDEP) the Authority on April 24, 1997 approved Refractory Toxicity (RTA) Assessment pretreatment standards as part of its Effluent Toxicity Reduction Plan for submission to and approval by the NJDEP; and

WHEREAS, on August 29, 1997 the NJDEP approved of the RTA pretreatment standards; which approval is attached hereto and made a part hereof;

NOW THEREFORE, BE IT RESOLVED, by the Linden Roselle Sewerage Authority that the RTA pretreatment standards as proposed by the Authority and as approved by the NJDEP are hereby adopted by the Authority, and the Authority's Rules and Regulations are hereby amended to include said pretreatment standards as discharge limits for its users.

I certify the foregoing to be a true copy of a Resolution adopted by the Linden Roselle Sewerage Authority at a meeting held on September 24, 1997.


Secretary

LINDEN ROSELLE SEWERAGE AUTHORITY

RESOLUTION

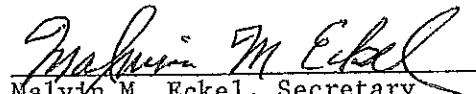
WHEREAS, the Linden Roselle Sewerage Authority has determined that its Rules and Regulations must be amended to modify discharge limits for corrosive wastes by modifying its pH limits where a user employs continuous pH monitoring; and

WHEREAS, such modification relaxing local limits for pH is a "non-substantial" modification under Federal and State regulations, permitting the same without public notice or prior approval by the New Jersey Department of Environmental Protection; (N.J.D.E.P.)

WHEREAS, the Authority has notified the N.J.D.E.P. of its intention to adopt such non-substantial modification to its Rules and Regulations;

NOW THEREFORE, BE IT RESOLVED, that the Rules and Regulations of the Linden Roselle Sewerage Authority are hereby amended at Section 2.11. as set forth in the amendment attached to this resolution and made a part hereof.

I certify the foregoing to be a true copy of a Resolution adopted by the Linden Roselle Sewerage Authority at a meeting held on March 25, 1998.


Malvin M. Eckel, Secretary

THE LINDEN ROSELLE SEWERAGE AUTHORITY

**RESOLUTION ADOPTING AMENDMENTS
TO ITS RULES AND REGULATIONS**

WHEREAS, the Linden Roselle Sewerage Authority (the LRSA) proposed amendments to its Rules and Regulations on July 27, 2000; and

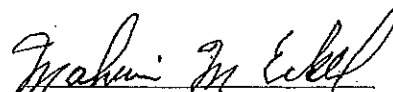
WHEREAS, the LRSA has complied with the Public Notice and Participation requirements of applicable Federal and State Law and Regulations; and

WHEREAS, said amendments have been approved by the New Jersey Department of Environmental Protection;

NOW THEREFORE, BE IT RESOLVED, by the Linden Roselle Sewerage Authority, that it adopts the amendments to Sections 4, 4A and 6 (Permits, Permit Appeals, Enforcement and Enforcement Procedures) of the Rules and Regulations as proposed on July 27, 2000 effective immediately; and

IT IS FURTHER RESOLVED, that a copy of this resolution together with the LRSA's Response to Comments be delivered to the Municipal Clerks of the City of Linden and Borough of Roselle, the N.J. Department of Environmental Protection, and all commentors filing written comments to said amendments, and that a copy of this Resolution be published once in the Leader Spectator.

I certify the foregoing to be a true copy of a Resolution adopted by the Linden Roselle Sewerage Authority at a meeting held on September 27, 2000.


Malvin M. Eckel, Secretary

LINDEN ROSELLE SEWERAGE AUTHORITY

**RESOLUTION ADOPTING AMENDMENTS
TO ITS RULES AND REGULATIONS**

WHEREAS, the Linden Roselle Sewerage Authority (the LRSA) proposed amendments to its Rules and Regulations revising Toxicity Limit definition and Toxicity Limit violation enforcement; and

WHEREAS, the LRSA has complied with the Public Notice and Participation requirements of applicable Federal and State Law and Regulations; and

WHEREAS, said amendments have been approved by the New Jersey Department of Environmental Protection;

NOW THEREFORE, BE IT RESOLVED, by the Linden Roselle Sewerage Authority, that it adopts the amendments to Sections 2 and 6 (Discharge Limitations, Enforcement and Enforcement Procedures) of the Rules and Regulations as proposed and as set forth in a memorandum dated April 18, 2005, attached.

IT IS FURTHER RESOLVED, that a copy of this resolution together with the LRSA's Response to Comments be delivered to the Municipal Clerks of the City of Linden and Borough of Roselle, the N.J. Department of Environmental Protection, and all commentors filing written comments to said amendments, and that a copy of this Resolution be published once in the Spectator Leader.

I certify that the foregoing is a true copy of a Resolution adopted by the Linden Roselle Sewerage Authority at a meeting held on April 27, 2005.


Thomas Colicchio, Secretary

**LINDEN ROSELLE SEWERAGE AUTHORITY
REVISIONS TO RULES AND REGULATIONS
SECTIONS 4, 4A, AND 6
RESPONSE TO COMMENTS**

Comments to the revisions were received from the Linden Industrial Association.

Comment 1:

The penalties are excessive considering the environmental harm resulting from the violation. Penalties are imposed for paperwork violations where no environmental harm is present.

Response:

The LRSA, as a delegated local agency, has been required by the NJDEP to adopt an Enforcement Response Plan and the penalty provisions and penalty matrix found at N.J.A.C. 7:148.1(f). See N.J.A.C. 7:14A-19.4

The LRSA has no discretion in this matter and must adopt the matrix as set forth.

We believe the comment to be incorrect in that the matrix and penalty setting provisions of the rules allow for a determination of the seriousness of the violation including the impact of the violation on the treatment plant and the environment. Where there is a low impact, the result can be a "minor" penalty, depending on the type of conduct.

Mandatory penalties in the rules are required by law.

We note that, other than mandatory penalties, any penalty is at the discretion of the Authority.

Comment 2:

The definition of "major" and "serious" violations are too broad.

Response:

See response to Comment No. 1. The LRSA has no discretion or ability to change the language contained in the rule but must adopt the regulation as set forth in N.J.A.C. 7:14A-19.1 et seq. See NJDEP response to comments at 29 NJR 1691 (May 5, 1997)

Comment 3:

The proposed regulations remove all flexibility in the enforcement program.

Response:

See response to Comment No. 1 and 2 above.

**RESPONSE TO COMMENTS TO THE
PROPOSED MODIFICATION TO THE LRSA RULES AND
REGULATIONS - SECTION 2.0 – PROHIBITIONS & LIMITATIONS
ON WASTEWATER DISCHARGE**

PSEG SERVICES CORPORATION

August 04, 2004

PSEG Services Corporation submitted comments to the proposed modification of the LRSA Rules and Regulations Section 2.0, pertaining to the Pretreatment Limit for Non-Ammonia Toxicity using the Refractory Toxicity Assessment Protocol (RTA).

Below are LRSA's responses to the comments, which were received on July 07, 2004.

Comment 1

References to penalties in Section 2 and, in particular the flow-chart, are inappropriate and should be stricken. The purpose of the proposed revisions to the LRSA Rules is to implement the refractory toxicity assessment (RFA) and the process by which one evaluates compliance. Any enforcement issues are to be prepared in accordance with Section 6 of the LRSA Rules, which derive from both the Water Pollution Control Act and the NJPDES rules. Any reference in Section 2 and/or the flow chart to the issuance of an Notice of Violation (NOV) or Administrative Consent Order (ACO) that imposes penalties and requires actions would prejudice any individual case of an exceedence, assuming one were to occur, and assume an enforcement mechanism that would be inappropriate to decide without reviewing the facts of each individual case. The impropriety of pre-determining enforcement mechanisms by rule is only exacerbated by its failure to include all procedural rights that a permittee may have in an individual case, such as the statutory and regulatory right to assert affirmative defenses or other procedural rights that a permittee might have. While a flow chart is not necessary for the purpose of implementing the RFA, if the LRSA feels that a flow chart would be beneficial to permittees, then it should simply outline the RFA process, and avoid any reference to penalties. Similarly, any reference to an ACO in Section 2.2 B(4)a concerning Toxicity Reduction Evaluation (TRE) should be removed.

Response to Comment 1

The comment is acknowledged. The Authority agrees that Section 2.2 of the LRSA Rules and Regulations should not supercede the Enforcement Procedures found in Section 6.0. The language in the Rules and Regulations has been modified to remove enforcement language from Section 2.2 (4)a. and inserted it into a new Section 6.5E (6) "Recommendations and Orders" and modified Section 6.9 the "Enforcement Response Plan". The flow chart supplied is to be used as a guideline. The intent is to outline and clarify the decision making process under Sections 2 and 6 of the LRSA Rules and Regulations.

Comment 2.

While LRSA has indicated that it has made these revisions to streamline toxicity monitoring and compliance for IU's, it has failed to address the special nature of two unique situations "Beneficial Reuse" applications and start-up.

First, in August of 2002 the New Jersey Department of Environmental Protection (NJDEP) approved a modification to LRSA's NJPDES permit authorizing the "Beneficial Reuse" of its effluent. In preparing the proposed revisions, LRSA has not acknowledged this modification nor has it considered its special needs in the application of the RTA protocol. PSEGSC has determined that there is no historical data available to evaluate the impacts of "Beneficial Reuse" on the LRSA system. In addition, PSEGSC notes that NJDEP has expressed its intent to increase the application of Beneficial Reuse and that subjecting permittees to the potential exposure of enforcement action is not compatible with this intent. Therefore, PSEGSC proposes that LRSA amend its Rules to provide for an exemption to its standard process for Beneficial Reuse permittees. This exemption would acknowledge the need for cooperative evaluation of the potential causes of an RTA exceedence and any subsequent actions to reduce the toxicity, without leading to a determination of non-compliance.

Second, in its revision to Section 2, LRSA outlines a stepwise approach to evaluating the results of the RFA test to determine compliance. PSEGSC notes that this stepwise approach does not address the particular uncertainty experienced during the start-up of a new discharge. PSEGSC proposes that LRSA include in its Rules additional flexibility that would allow for initial RTA testing and evaluation without the exposure to compliance action. This expanded process would involve mutual participation in conducting the testing protocol and result in LRSA's acceptance of the discharge as meeting requires of its permit. Once a new discharge has reached acceptance, application of the standard testing procedure and schedule would be initiated.

Response to Comment 2

The Linden Roselle Sewerage Authority does not agree with PSEG Services Corporation's Comment #2. The permit conditions given in Section E.8 (Reclaimed Water for Beneficial Reuse – Construction, Industrial and Maintenance Systems) allow beneficial reuse of certain types of reclaimed water, but this reuse does not exempt LRSA from meeting its effluent limitations. The Authority can only assume that LRSA pretreatment requirements will be the same for permittees involved in beneficial reuse as for other permitted industrial users. Therefore, the Authority does not believe that any "special needs" (per PSEGSC comment) apply to beneficial reuse permittees as compared to other permittees with respect to the refractory acute toxicity limit.

The Authority had a history of toxicity problems and has implemented a ten-year TRE plan to address this issue. The intent of the required RTA testing by the industries is to help insure the POTW's integrity and ability to remain in compliance with its own requirements. The Authority fully intends to maintain the monitoring requirements of all sidestreams. Any exceptions would endanger the integrity of the entire toxicity program. PSEG will be required to monitor for toxicity at the mudwell discharge and cooling tower return lines as conditioned in your permit. The Authority recognizes that any new stream required to monitor for toxicity within a specified time of start-up must reach a steady state. The steady state can vary depending upon the length of time of the shakedown period and other factors.

LINDEN ROSELLE SEWERAGE AUTHORITY

**RESOLUTION ADOPTING AMENDMENTS
TO ITS RULES AND REGULATIONS**

WHEREAS, the Linden Roselle Sewerage Authority (the LRSA) proposed amendments to its Rules and Regulations in order to include provisions for the Grace Period Rule as required under N.J.A.C. 7:14A-19.3(d); and

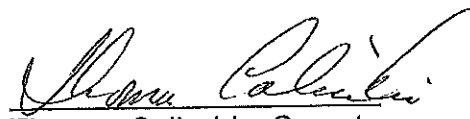
WHEREAS, the LRSA has complied with the Public Notice and Participation requirements of applicable Federal and State Law and Regulations; and

WHEREAS, said amendments have been approved by the New Jersey Department of Environmental Protection;

NOW THEREFORE, BE IT RESOLVED, by the Linden Roselle Sewerage Authority, that it adopts the amendments to the Rules and Regulations incorporating provisions for the Grace Period Rule as proposed and as set forth in a memorandum dated June 10, 2008, attached.

IT IS FURTHER RESOLVED, that the said amendments to the Authority's Rules and Regulations shall be effective on July 01, 2008.

I certify that the foregoing is a true copy of a Resolution adopted by the Linden Roselle Sewerage Authority at a meeting held on June 25, 2008.


Thomas Colicchio, Secretary

THE LINDEN ROSELLE SEWERAGE AUTHORITY

RESOLUTION #06-10

**ADOPTING AMMENDMENTS
TO ITS RULES AND REGULATIONS:**

WHEREAS, the Linden Roselle Sewerage Authority (the LRSA) has proposed amendments to its Rules and Regulations in order to include the provisions for the **Streamlining Rule** as required under N.J.A.C. Subchapter (7:14A); and


WHEREAS, the LRSA has complied with the necessary requirements in accordance with the applicable State and Federal regulations; and

WHEREAS, said amendments have been approved by the New Jersey Department of Environmental Protection; and

NOW THEREFORE, BE IT RESOLVED, by the Linden Roselle Sewerage Authority, that it adopts amendments to the Rules and Regulations incorporating provisions for the Streamlining Rule as proposed and as set forth in a memorandum dated January 15, 2010, attached.

IT IS FURTHER RESOLVED, that the said amendments to the Authority's Rules and Regulations shall be effective on March 01, 2010.

I certify the above to be a true copy of a Resolution adopted by the Linden Roselle Sewerage Authority at a meeting held on January 27, 2010.


Thomas Colicchio, Secretary

LINDEN ROSELLE SEWERAGE AUTHORITY

RESOLUTION #51-10

**ADOPTING TOXICITY MONITORING AMENDMENTS
TO ITS RULES AND REGULATIONS**

WHEREAS, the Linden Roselle Sewerage Authority (the LRSA) proposed amendments to its Rules and Regulations in order to revise the industrial toxicity pretreatment monitoring requirements; and

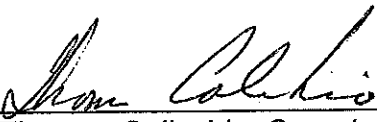
WHEREAS, the LRSA has complied with the Public Notice and Participation requirements of applicable Federal and State Law and Regulations; and

WHEREAS, said amendments have been approved by the New Jersey Department of Environmental Protection;

NOW THEREFORE, BE IT RESOLVED, by the Linden Roselle Sewerage Authority, that it adopts the amendments to the Rules and Regulations incorporating provisions for the industrial toxicity pretreatment monitoring requirements as proposed and as set forth in a memorandum dated June 01, 2010, attached.

IT IS FURTHER RESOLVED, that the said amendments to the Authority's Rules and Regulations shall be effective on August 01, 2010.

I certify that the foregoing is a true copy of a Resolution adopted by the Linden Roselle Sewerage Authority at a meeting held on June 23, 2010.


Thomas Colicchio, Secretary