

# City of Las Cruces®

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 5

Ordinance/Resolution# 12-020

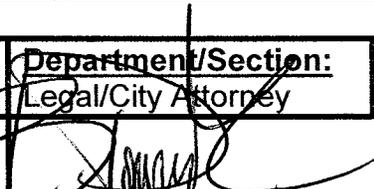
For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)

For Meeting of August 1, 2011  
(Adoption Date)

**TITLE:** A RESOLUTION RESCINDING RESOLUTION NO. 09-161 AND APPROVING A NEW AGREEMENT AUTHORIZING THE HOLY CROSS RETREAT TO CONNECT TO THE CITY WASTEWATER SYSTEM.

**PURPOSE(S) OF ACTION:**

To authorize the Holy Cross Retreat ("Retreat") to connect to the City's wastewater system.

<b>COUNCIL DISTRICT:</b> N/A		
<b>Drafter/Staff Contact:</b> Marcia B. Driggers	<b>Department/Section:</b> Legal/City Attorney	<b>Phone:</b> 541-2128
<b>City Manager Signature:</b> 		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

The City Council must authorize the connection of properties located outside of the City limits to the City's water and/or wastewater systems. Representatives on behalf of the Retreat, which is located outside of the City limits, first contacted the City in October 2008 for permission to connect the Retreat to the City's wastewater system via the gravity sewer line adjacent to the Dove Crossing subdivision.

The Utilities Board recommended that the Council approve the request for the Retreat to connect to the City's wastewater system in Board Resolution 08-09-038. An Agreement was thereafter finalized and approved by the Council in Resolution 09-161; however, the Retreat declined to sign the Agreement because it did not provide for both privately owned and City owned Project infrastructure and because of other technical concerns raised by the Retreat's engineer. There were additional issues as to an equitable way to calculate the wastewater development impact fees. The Agreement approved in Council Resolution 09-161 was re-drafted and submitted to Retreat representatives for approval.

Because of hydrogen sulfide concerns with other institutional wastewater customers outside of the City limits, the revised Agreement was further revised by City staff to address compliance with the City's Liquid Waste Disposal Ordinance and Interceptor and Grease Trap Ordinance, and to reference the future adoption of hydrogen sulfide performance standards.

The attached Agreement is acceptable to City staff and has been approved and signed by Father James Kent, President of The Custody of Our Lady of Guadalupe, Inc.

(Continue on additional sheets as required)

**SUPPORT INFORMATION:**

1. Resolution.
2. Attachment "A". 2011 Agreement Authorizing the Holy Cross Retreat to Connect to the City Wastewater System.
3. Attachment "B". Map of area showing existing and proposed wastewater infrastructure.

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>  N/A – The Retreat will pay for all Project costs including connection fees.	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the Fund.
<b>Does this action create any revenue?</b>  The Retreat would become a new City wastewater customer and would pay all applicable charges and monthly bills to a fund and in an amount to be determined.	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: In the amount of \$ _____ for FY _____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

N/A
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**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

(Continue on additional sheets as required)

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Agreement as drafted.
2. Vote "No"; this will not approve the Agreement as drafted which means that the Holy Cross Retreat will continue to provide for its own wastewater disposal through septic tanks.
3. Vote to "Amend"; this could cause amendments to the Agreement which would have to be approved by the Retreat.
4. Vote to "Table"; this could delay construction of the Project by the Retreat.

**REFERENCE INFORMATION:**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution No. 09-161.
2. Las Cruces Utilities Board Resolution No. 08-09-038.

(Continue on additional sheets as required)

**RESOLUTION NO. 12-020****A RESOLUTION RESCINDING RESOLUTION NO. 09-161 AND APPROVING A NEW AGREEMENT AUTHORIZING THE HOLY CROSS RETREAT TO CONNECT TO THE CITY WASTEWATER SYSTEM.**

The City Council is informed that:

**WHEREAS**, representatives on behalf of the Holy Cross Retreat (“Retreat”), located south of the City limits at 600 Holy Cross Drive, requested authorization from the City to connect the Retreat to the City’s wastewater utility system thereby eliminating septic tanks at the Retreat; and

**WHEREAS**, the City’s Utilities Board recommended approval of the Retreat connecting to the City’s wastewater utility system in Board Resolution No. 08-09-038; and

**WHEREAS**, City staff prepared an Agreement Authorizing the Retreat to Connect to the City’s Wastewater System, which Agreement (“2009 Agreement”) was approved in Council Resolution No. 09-161; and

**WHEREAS**, the Retreat representatives declined to sign the 2009 Agreement approved in Resolution No. 09-161 because of technical concerns raised by the Retreat’s engineer; and

**WHEREAS**, those technical concerns have been resolved and the 2009 Agreement has been substantially modified and rewritten; and

**WHEREAS**, Resolution No. 09-161 should be rescinded because the resolution approved an Agreement that was never signed by Retreat representatives and was never fully executed; and

**WHEREAS**, staff recommends approval of the 2011 Agreement Authorizing the Holy Cross Retreat to connect to the City's Wastewater System, which Agreement has been approved and executed by an authorized representative of the Retreat.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT** Resolution No. 09-161 is rescinded.

**(II)**

**THAT** the 2011 Agreement authorizing the Holy Cross Retreat to connect to the City Wastewater System is approved.

**(III)**

**THAT** City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

**DONE AND APPROVED** on this \_\_\_\_ day of \_\_\_\_\_, 2011.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

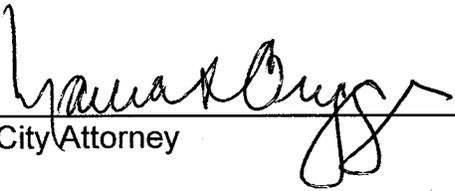
VOTE:

Mayor Miyagishima: \_\_\_\_\_  
Councillor Silva: \_\_\_\_\_  
Councillor Connor: \_\_\_\_\_  
Councillor Pedroza: \_\_\_\_\_  
Councillor Small: \_\_\_\_\_  
Councillor Sorg: \_\_\_\_\_  
Councillor Thomas: \_\_\_\_\_

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

*Asst*  \_\_\_\_\_  
City Attorney

**AGREEMENT AUTHORIZING THE HOLY CROSS RETREAT  
TO CONNECT TO THE CITY WASTEWATER SYSTEM**

**THIS** Agreement is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2011, between the **City of Las Cruces** ("City"), a New Mexico municipal corporation, and **The Custody of Our Lady of Guadalupe, Inc.**, the owner of the Holy Cross Retreat ("Retreat") by its authorized representative.

**Background**

1. Authorized representatives of the Holy Cross Retreat, which is located south of the City limits at 600 Holy Cross Road, have requested authorization from the City Council to connect the Retreat to the City's wastewater system.
2. The City's Utilities Board has recommended approval of the Retreat connecting to the City's wastewater system.
3. The City Council previously adopted Resolution No. 09-161 which approved a prior version of this Agreement. That version was not accurate, therefore it needs to be replaced with this Agreement subject to Council approval.

**Conditions**

1. The City will allow the Retreat at its sole expense to connect to the City's wastewater system at a manhole located at the western end of Karen Drive.
2. The infrastructure for the wastewater connection project ("Project") will be designed by a professional engineer licensed in the state of New Mexico on behalf of the Retreat based on a design recommended and approved by the City's Utilities Department staff.
3. A portion of the Project will be known as the Retreat Portion and will be designed, constructed, and thereafter owned and maintained by the Retreat at its sole expense. The Retreat Portion of the Project will not necessarily be designed to City standards but the design plans will be approved by the City's Utilities Department. The construction of the Retreat Portion of the Project may be permitted by Doña Ana County and the City of Las Cruces. The Retreat Portion of the Project will include gravity wastewater collection lines that will convey wastewater from multiple buildings within the Retreat property to a lift station located within the Retreat property. The lift

station will transport the wastewater northerly to a City owned manhole generally located at the western end of Karen Drive.

4. For wastewater billing purposes, the Retreat will purchase and install a magnet flow meter to measure the wastewater flow from the Retreat. The City will approve the model and design of the magnet flow meter and meter installation. After the completion of this Project, the City will assume ownership and maintenance of the flow meter. The Retreat will give the City access to the flow meter for reading and maintenance. The City may, at its expense, install Supervisory Control And Data Acquisition (SCADA) equipment near the flow meter for automatic data transfer. The power source to operate the flow meter and SCADA equipment will originate from the Retreat's package lift station.

5. The City reserves the right to inspect the privately owned and maintained Retreat Portion of the Project, and to require that maintenance be completed. If the Retreat fails to timely complete the maintenance requested by the City, the City reserves the right to disconnect the Retreat from the City's wastewater system.

6. The other portion of the Project will be known as the City Portion and will be designed by a professional engineer licensed in the state of New Mexico in accordance with City standards. Once the City Portion of the Project has been inspected and accepted by the City, it will thereafter be operated and maintained by the City. The City Portion of the Project will consist of a connection to a City owned manhole located at the western end of Karen Drive.

7. The Retreat will provide the City with accurate as-built drawings for both portions of the Project prior to the City accepting ownership of the City Portion of the Project. In accordance with NMSA 1978, § 3-26-1 (1994), the jurisdiction of the City extends to territory outside of the City limits occupied by its wastewater facilities, which include the City Portion of the Project.

8. The Retreat will obtain any necessary utility easements, access agreements, permits and/or licenses for the wastewater extension project from any third party such as Doña Ana County or private property owners. Any such easements,

permits or licenses for the City Portion of the Project will be assigned and transferred by the Retreat to the City prior to the City accepting ownership of the City Portion of the Project. Any such easements, permits or licenses for the Retreat Portion of the Project will remain in the name of the Retreat.

9. The lift station is designed for 5000 gallons per day with a peaking factor of 3; therefore, for determining the applicable City wastewater utility rate for the Retreat, the average daily rate is estimated to be 5000 GPD. The applicable wastewater utility rate will be the large commercial rate and the volume of wastewater will be based on monthly readings of the magnet flow meter by City staff. The rate will be adjusted periodically hereafter by the City Council. There is also an out of City limits wastewater surcharge previously approved by the City Council which would apply to the Retreat.

10. The Retreat receives water service from unmetered wells on the property; therefore, the City's applicable wastewater development impact fee cannot be calculated based on water meter size. Therefore, the fee will be initially based on a 1 ½ inch water meter. That fee will be \$4667 or whatever the wastewater development impact fee is for a 1 ½ inch water meter at the time of connection. The Retreat will pay the entire amount of that fee prior to connection to the City's wastewater system. However, after the City has collected one year of direct flow measurement data, the actual wastewater impact fee will be calculated, and the Retreat will be billed for any additional wastewater impact fee owed or will be refunded for any impact fee overpayment.

11. The Retreat will pay all of the normal connection and service line charges assessed by the City for comparable City property in effect at the time of connection to the City's wastewater utility system.

12. The Retreat is responsible for complying with LCMC 1997, §§ 28-186 through 28-199 entitled "Liquid Waste Disposal Ordinance", LCMC 1997, §§ 28-220 through 28-225 entitled "Interceptor and Grease Trap Ordinance", and any amendments thereto. Copies of those sections are attached as Exhibit "A" and

Exhibit "B". The Retreat is also responsible for complying with any Las Cruces Utilities Board resolution which may be hereafter approved establishing performance standards for hydrogen sulfide (also known as H<sub>2</sub>S) odor control.

13. The Retreat will be responsible for paying additional wastewater development impact fees if expansions to the current Retreat facility occur in the future. Any future wastewater development impact fee assessment will be based on the wastewater development impact fee effective at that time.

14. As a condition for accepting wastewater outside of the City limits and in accordance with Chapter 28, as amended, of the 1997 Las Cruces Municipal Code, the City shall be authorized:

A. To disconnect or refuse to connect wastewater utility service to the Retreat for any of the following reasons:

- (1) Failure to meet applicable provisions of City or County wastewater ordinances;
- (2) Violations of the regulations pertaining to municipal wastewater utility service;
- (3) Nonpayment of any City utility bill;
- (4) Willful or negligent waste of wastewater due to improper or imperfect pipes, fixtures, appliances, or otherwise on the Retreat's side of the connection to the City's wastewater system;
- (5) Tampering with any meter, seal or other equipment controlling or regulating City wastewater utility service;
- (6) Theft or diversion and/or use of wastewater utility service without payment.

B. To file a utility lien on the Retreat for nonpayment.

C. To pursue any other collection remedies in accordance with applicable law.

15. No third party will connect to the Retreat Portion of the Project without City Council approval.

16. The Agreement may be assigned by the Retreat only with the written consent of the City Manager, which consent will not be unreasonably withheld by the City.

17. This Agreement includes all of the understanding between the parties concerning the wastewater extension project. No prior understandings, whether verbal or otherwise, of the parties or their agents will be enforceable unless included in this Agreement.

18. This Agreement will not be altered or amended except by instrument in writing executed by the Parties or their successors or assigns.

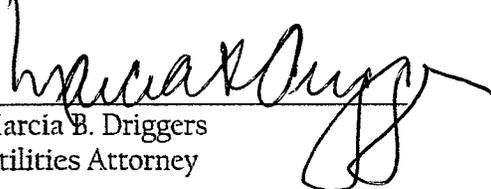
19. This Agreement must be approved by City Council resolution before it is binding upon the City.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

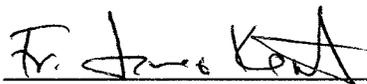
CITY OF LAS CRUCES

By: \_\_\_\_\_  
Robert Garza  
City Manager

PREPARED AND APPROVED BY:

  
\_\_\_\_\_  
Marcia B. Driggers  
Utilities Attorney

THE CUSTODY OF OUR LADY OF  
GUADALUPE, INC.

By:   
\_\_\_\_\_  
Father James Kent, President

**Sec. 28-125. Chemical toilets.**

The prohibitions and requirements of this article notwithstanding, chemical toilets may be used at construction sites and designated recreation areas upon approval by the city manager. (Code 1988, § 29-155)

**Secs. 28-126—28-155. Reserved.****ARTICLE IV. GAS\*****Sec. 28-156. Connections.**

Gas service connections shall be made in such a manner and with material prescribed by the city manager. (Code 1988, § 29-201)

**Sec. 28-157. City inspection.**

Subject to constitutional limitations, the city upon permission of the owner or occupant shall have free access at proper hours to all parts of buildings to which gas is supplied from the city gas system for the purpose of inspecting the condition of pipes and fixtures therein and the manner in which gas is being used. (Code 1988, § 29-202)

**Secs. 28-158—28-185. Reserved.****ARTICLE V. LIQUID WASTE DISPOSAL ORDINANCE†****Sec. 28-186. General provisions.**

(a) *Purpose and policy.* This article sets forth uniform requirements for users of the publicly owned treatment works (POTWs) for the City of Las Cruces and enables the city to comply with all

\*State law reference—Gas utility, NMSA 1978, § 3-25-1 et seq.

†Editor's note—Ord. No. 2488, §§ I, II, adopted Dec. 1, 2008, repealed Art. V, §§ 28-186—28-238, and supplied provisions for a new Art. V, §§ 28-186—28-199, to read as set out herein. Former Art. V, §§ 28-186—28-238, pertained to industrial liquid waste disposal and derived from Code 1988, §§ 29-301—29-314, 29-326—29-338; Ord. No. 1619, § 1, adopted Jun 2, 1997; Ord. No. 1679, § 1, adopted June 15, 1998; and Ord. No. 1815, § I, adopted July 17, 2000.

applicable state and federal laws, including the Clean Water Act (33 United States Code [USC] section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the Code of Federal Regulations [CFR] Part 403). The city owns and operates two POTWs: the Jacob Hands Wastewater Treatment Facility with the main municipal collection system, and the West Mesa Industrial Park Wastewater Treatment Facility with the West Mesa collection system. The objectives of this ordinance are:

- A. To prevent the introduction of pollutants into the POTWs that will interfere with their operation;
- B. To prevent the introduction of pollutants into the POTW that will pass through the publicly owned treatment works, inadequately treated, into receiving waters or onto the application site, or otherwise be incompatible with the publicly owned treatment works;
- C. To protect both POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
- D. To promote pollution prevention by industrial users, as well as, reuse and recycling of industrial wastewater and sludge from the POTWs;
- E. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the POTWs; and
- F. To enable the city to comply with its National Pollutant Discharge Elimination System (NPDES) permit conditions, sludge use and disposal requirements, and any other federal or state laws to which each POTW is subject.

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

(b) *Administration.* Except as otherwise provided herein, the utilities director shall administer, implement, and enforce the provisions of this article. Any powers granted to, or duties imposed upon, the utilities director may be delegated by the utilities director to a duly authorized, or designated, representative.

(c) *Abbreviations.* The following abbreviations, when used in this article, shall have the designated meanings:

BOD - Biochemical Oxygen Demand  
 BMP - Best Management Practice  
 BMR - Baseline Monitoring Report  
 CFR - Code of Federal Regulations  
 CIU - Categorical Industrial User  
 COD - Chemical Oxygen Demand  
 EPA - U.S. Environmental Protection Agency  
 gpd - gallons per day  
 IU - Industrial User  
 mg/l - milligrams per liter  
 NPDES - National Pollutant Discharge Elimination System  
 NSCIU - Non-Significant Categorical Industrial User  
 POTW - Publicly Owned Treatment Works  
 RCRA - Resource Conservation and Recovery Act  
 SIU - Significant Industrial User  
 SNC - Significant Noncompliance  
 TSS - Total Suspended Solids  
 USC - United States Code

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

*Act or "the Act."* The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC section 1251 et seq.

*Approval authority.* The administrator of EPA Region 6, Dallas, TX.

*Authorized or duly authorized representative of the user.*

- (1) If the user is a corporation:
  - (a) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
  - (b) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual user discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (2) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.
- (3) If the user is a federal, state, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
- (4) The individuals described in paragraphs (1) through (3), above, may designate a duly authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for

environmental matters for the company, and the written authorization is submitted to the city.

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

**Best management practices (BMPs)** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in subsection 28-187(a)A and B [40 CFR 403.5(a)(1) and (2)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

**Categorical pretreatment standard or categorical standard.** Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 USC section 1317) that apply to a specific category of users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

**Categorical industrial user (CIU).** An industrial user subject to a categorical Pretreatment Standard or categorical standard.

**City.** The City of Las Cruces or the city council of Las Cruces.

**Chemical oxygen demand (COD).** A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

**Control authority.** The City of Las Cruces.

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

**Daily maximum limit.** The maximum allowable discharge limit of a pollutant during a calendar day. Where daily maximum limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where daily maximum limits are expressed in terms of a concentration, the daily discharge is

the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

**End of pipe.** The point where waste water is discharged to the POTW.

**Environmental Protection Agency (EPA).** The U.S. Environmental Protection Agency or, where appropriate, the regional water management division director, the regional administrator, or other duly authorized official of said agency.

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

**Grab sample.** A sample that is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

**Indirect discharge or discharge.** The introduction of pollutants into the POTW from any non-domestic source.

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

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

**Local limit.** Specific discharge limits developed and enforced by the city upon industrial or com-

mercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

*Medical waste.* Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

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

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

*New source.*

- (1) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Act that will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
  - (a) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
  - (b) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - (c) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
  - (a) Begun, or caused to begin, as part of a continuous onsite construction program:
    - (i) Any placement, assembly, or installation of facilities or equipment; or
    - (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - (b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

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

*Pass through.* A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunc-

tion with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's NPDES permit, including an increase in the magnitude or duration of a violation.

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

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

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

*Pretreatment.* The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

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

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

*Prohibited discharge standards or prohibited discharges.* Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 28-187(a) of this article.

*Publicly owned treatment works (POTW).* A treatment works, as defined by section 212 of the Act (33 USC section 1292), which is owned by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment facility.

*Septic tank waste.* Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

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

*Significant industrial user (SIU).* Except as provided in paragraphs (3) and (4) of this subsection, a significant industrial user is:

- (1) An industrial user subject to categorical pretreatment standards; or
- (2) An industrial user that:
  - (a) Discharges an average of 25,000 gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
  - (b) Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment facility; or
  - (c) Is designated as such by the city on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
- (3) The City of Las Cruces may determine that an industrial user subject to categorical pretreatment standards is a non-significant categorical industrial user rather than a categorical 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 spe-

cifically included in the pretreatment standard) and the following conditions are met:

- (a) The industrial user, prior to city's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;
  - (b) The industrial user annually submits the certification statement required in subsection 28-191(n)B [see 40 CFR 403.12(q)], together with any additional information necessary to support the certification statement; and
  - (c) The industrial user never discharges any untreated concentrated wastewater.
- (4) Upon a finding that a user meeting the criteria in subsection (2) of this part has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the city may at any time, on its own initiative or in response to a petition received from an industrial user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

*Slug load or slug discharge.* Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in subsection 28-187(a). 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 POTW's regulations, local limits or permit conditions.

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

*Utilities director.* The person designated by the city to supervise the operation of the POTW, and who is charged with certain duties and responsi-

bilities by this chapter. The term also means a duly authorized, or designated, representative of the utilities director.

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

*User or commercial user or industrial user.* A source of indirect discharge.

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

*Wastewater treatment facility (WWTF).* That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

(Ord. No. 2488, § II(1), 12-1-08)

#### **Sec. 28-187. General sewer use requirements.**

##### *(a) Prohibited discharge standards.*

A. *General prohibitions.* No user shall introduce, or cause to be introduced, into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements.

B. *Specific prohibitions.* No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

- (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;

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- (2) Waste water having a pH less than 5.0 or more than 12.0 standard units, or otherwise causing corrosive structural damage to the POTW or equipment;
- (3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than one-half-inch or 13 millimeters in any dimension;
- (4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
- (5) Wastewater having a temperature greater than 140 degrees F (60 degrees C), or which will inhibit biological activity in the treatment facility resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment facility to exceed 104 degrees F (40 degrees C);
- (6) Petroleum oil, non-biodegradable 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 quantity that may cause acute worker health and safety problems;
- (8) Trucked or hauled pollutants, except at discharge points designated by utilities director in accordance with subsection 28-188(d);
- (9) Noxious or malodorous liquids, gases, solids, or other waste water which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
- (10) Waste water which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment facility's effluent, thereby violating the city's NPDES permit;
- (11) Waste water containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations;
- (12) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, de-ionized water, non-contact cooling water, and unpolluted waste water, unless specifically authorized by utilities director;
- (13) Sludges, screenings, or other residues from the pretreatment of industrial wastes, as well as unusual concentrations of inert suspended solids;
- (14) Medical wastes, except as specifically authorized by utilities director in an individual user discharge permit;
- (15) Waste water causing, alone or in conjunction with other sources, the treatment facility's effluent to fail toxicity test;
- (16) Detergents, surface-active agents, or other substances which that might cause excessive foaming in the POTW.

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

(b) *National categorical pretreatment standards.* Users must comply with the categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471.

- A. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in waste water, the utilities director

- may impose equivalent concentration or mass limits in accordance with subsection (b)D. [40 CFR 403.6(c)]
- B. When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the utilities director may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users. [40 CFR 403.6(c)(2)]
- C. When waste water subject to a categorical pretreatment standard is mixed with waste water not regulated by the same standard, the utilities director shall impose an alternate limit in accordance with 40 CFR 403.6(e).
- D. When a categorical pretreatment standard is expressed only in terms of pollutant concentrations, an industrial user may request that the city convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the utilities director. The city may establish equivalent mass limits only if the industrial user meets all the conditions set forth in subsection (b)D(1) below. [40 CFR 403.6(c)(5)]
- (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 individual user discharge permit;
  - 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 waste streams, 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 the 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
  - 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 Utilities director whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in subsection (b)D(1)c. of this section. Upon notification of a revised production rate, the utilities director will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

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- d. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to subsections (b)D(1)a. and b. of this section so long as it discharges under an equivalent mass limit.
- (3) When developing equivalent mass limits, the utilities director:
- a. Will 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. Upon notification of a revised production rate, will reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and
  - c. May retain the same equivalent mass limit in subsequent individual wastewater discharger 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 subsection (f). The industrial user must also be in compliance with subsection 28-198(c) regarding the prohibition of bypass.]
- E. The utilities director may convert the mass limits of the categorical pretreatment standards of 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users. The conversion is at the discretion of the utilities director. The utilities director will document how the equivalent limits were derived for any changes from concentration to mass limits, or vice versa, and make this information publicly available. [40 CFR 403.6(c)(7)]
- F. Once included in its permit, the industrial user must comply with the equivalent limitations developed in this subsection (b) in lieu of the promulgated categorical standards from which the equivalent limitations were derived. [40 CFR 403.6(c)(7)]
  - G. Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four-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. [40 CFR 403.6(c)(8)]
  - H. Any industrial user operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based standard shall notify the utilities director within two 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 utilities director of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long term average production rate. [40 CFR 403.6(c)(9)]
- (c) *State pretreatment standards [Reserved].*
- (d) *Local limits.*
- A. The utilities director is authorized to establish local limits pursuant to 40 CFR 403.5(c).

- B. The following pollutant limits are established to protect against pass through and interference. No person shall discharge waste water containing in excess of the following daily maximum limits as total amount:

Main POTW	Municipal	West Mesa POTW
0.069 mg/l Arsenic (As)		395 mg/l Chloride
0.026 mg/l Cadmium (Cd)		
31.3 mg/l Chromium (Cr)		
1.67 mg/l Copper (Cu)		
0.29 mg/l Cyanide (CN, WAD)		
0.46 mg/l Lead (Pb)		
0.028 mg/l Mercury (Hg)		
0.063 mg/l Molybdenum (Mo)		
0.704 mg/l Nickel (Ni)		
0.168 mg/l Selenium (Se)		
0.858 mg/l Silver (Ag)		
3.53 mg/l Zinc (Zn)		

The above limits apply at the end of pipe (point where waste water is discharged to the POTW). All concentrations for metallic substances are for total metal unless indicated otherwise. The utilities may impose mass limitations in addition to the concentration-based limitations above.

- C. The utilities director may develop best management practices (BMPs), by ordinance or in individual user discharge permits to implement local limits and the requirements of subsection (a).

(e) *The city's right of revision.* The City of Las Cruces reserves the right to establish, by ordinance or in individual user discharge permits, more stringent standards or requirements on discharges to the POTW consistent with the purpose of this article.

(f) *Dilution.* No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The utilities director may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate. (Ord. No. 2488, § II(2), 12-1-08)

#### Sec. 28-188. Pretreatment of wastewater.

(a) *Pretreatment facilities.* Users shall provide wastewater treatment as necessary to comply with this chapter and shall achieve compliance with all categorical pretreatment standards and requirements, local limits, and the prohibitions set out in subsection 28-187(a) within the time limitations specified by EPA, the state, or the utilities director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained in proper order at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the utilities director for review, and shall be acceptable to the utilities director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the city under the provisions of this article.

#### (b) *Additional pretreatment measures.*

- A. Whenever deemed necessary, the utilities director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this article.
- B. The utilities director may require any person discharging into the POTW to in-

stall and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual user discharge permit may be issued solely for flow equalization.

- C. Grease, oil, and sand interceptors shall be provided when, in the opinion of the utilities director, they are necessary for the proper handling of waste water containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the utilities director, and shall comply with the city's Interceptor Ordinance No. [2489]. Interceptors shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and maintained in accordance with the ordinance by the user at their expense.
- D. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(c) *Accidental discharge/slug discharge control plans.* The utilities director shall evaluate whether each user needs an accidental discharge/slug discharge control plan or other action to control slug discharges. The utilities director may require any user to develop, submit for approval, and implement such a plan, or take such other action(s) that may be necessary to control slug discharges. Alternatively, the utilities director may develop such a plan for any user. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

- A. Description of discharge practices, including non-routine batch discharges;
- B. Description of stored chemicals;
- C. Procedures for immediately notifying the utilities director of any accidental or slug discharge, as required by subsection 28-191(f); and
- D. Procedures to prevent adverse impact from any accidental or slug discharge. Such

procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(d) *Hauled wastewater.*

- A. Hauled waste water of a type authorized by the utilities director may be introduced into the POTW only at locations designated, and at such times as are established by the utilities director. Such waste shall not violate section 28-187 or any other requirements established by the city. The utilities director may require wastewater haulers to obtain individual user discharge permits or registration, and pay fees.
- B. The disposal of hauled industrial waste water containing hazardous wastes or pollutants in toxic amounts is prohibited. The discharge of hauled industrial waste is subject to all other requirements of this article.
- C. Industrial waste haulers may discharge loads only at locations designated by the utilities director, and no load may be discharged without prior consent. The utilities director may collect samples of each hauled load to ensure compliance with this article. Utilities director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- D. Industrial waste haulers must provide a waste-tracking manifests for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type

of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

- E. The utilities director is authorized to charge fees for disposal of approved hauled wastes, and costs for any sampling and analysis of hauled loads that are needed to ensure compliance with this article.

(Ord. No. 2488, § II(3), 12-1-08)

**Sec. 28-189. Significant user discharge permits.**

(a) *Wastewater analysis.* When requested by the utilities director, a user must submit information on the nature and characteristics of its wastewater within 30 days of the request. The utilities director is authorized to periodically require a user to update this information.

(b) *Requirement for a significant user discharge permit.*

- A. No significant industrial user shall discharge wastewater into the POTW without first obtaining an individual significant user discharge permit from the utilities director.
- B. The utilities director may require other users to obtain individual significant user discharge permits as necessary to carry out the purposes of this article.
- C. Any violation of the terms and conditions of a significant user discharge permit is a violation of this article, and subjects the permittee to the sanctions set out in sections 28-195 through 28-197. Obtaining a significant user discharge permit does not relieve the permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state, and local law.

(c) *Discharge permits for new connections.* All significant industrial users or other users that are required to obtain an individual significant user discharge permit must obtain such permit prior to the beginning or recommencing discharging into the POTW. An application for the significant user discharge permit, in accordance with

subsection (e), must be filed at least 60 days prior to the date upon which any discharge will begin or commence.

(d) *Contents of application for a significant user discharge permit.*

- A. All users required to obtain a significant user discharge permit must submit a permit application. The utilities director may require users to submit all or some of the following information as part of the permit application:

(1) *Identifying information.*

- a. The name and address of the facility, including the name of the operator and owner.
- b. Contact information, description of activities, facilities, and plant production processes on the premises;

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

(3) *Description of operations.*

- a. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such user. This description shall include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.
- b. Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
- c. Number and type of employees, hours of operation, and proposed or actual hours of operation;

- d. Type and amount of raw materials processed (average and maximum per day);
  - e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
- (4) Time and duration of discharges;
- (5) Location(s) for monitoring all wastes covered by the permit;
- (6) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula, if applicable, set out in subsection 28-187(b)C (40 CFR 403.6(e)).
- (7) *Measurement of pollutants.*
- a. The categorical pretreatment standards applicable to each regulated process and any new categorically regulated processes for existing sources.
  - b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the utilities director, of regulated pollutants in the discharge from each regulated process.
  - c. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.
  - d. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in subsection 28-191(j). Where the standard requires compliance with a BMP or pollution prevention alternative, the user shall submit documentation as required by the utilities director or the applicable standards to determine compliance with the standard.
- e. Sampling must be performed in accordance with procedures set out in subsection 28-191(k).
- (8) Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on subsection 28-191(d)B [40 CFR 403.12(e)(2)].
- (9) Any other information as may be deemed necessary by the utilities director to evaluate the permit application.
- B. Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.
- (e) *Application signatories and certifications.*
- A. All significant user discharge permit applications, user reports, and certification statements must be signed by an authorized representative of the user, and contain the certification statement in subsection 28-191(n)A.
  - B. If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this section must be submitted to the utilities director prior to or together with reports to be signed by an authorized representative.
  - C. A facility determined to be a non-significant categorical industrial user by utilities director pursuant to subsection 28-186(d) [significant industrial user definition, subparagraph (3)] must annu-

ally submit the signed certification statement in subsection 28-191(n)B. [40 CFR 403.3(v)(2)]

(f) *Decisions regarding a significant user discharge permit.* The utilities director will evaluate the data furnished by the user and may require additional information. Within five business days of receipt of a complete permit application, the utilities director will determine whether to issue an individual significant user discharge permit. The utilities director may deny any application for an individual significant user discharge permit.

(Ord. No. 2488, § II(4), 12-1-08)

**Sec. 28-190. Issuance of significant user discharge permits.**

(a) *Duration of individual significant user discharge permits.* An individual significant user discharge permit shall be issued for a specified time period, but not to exceed five years from the effective date of the permit. Each individual significant user discharge permit will indicate a specific date upon which it will expire.

(b) *Contents of individual significant user discharge permits.* An individual significant user discharge permit shall include such conditions as are deemed necessary by the utilities director to prevent pass through or interference, protect the quality of the water body receiving the treatment facility's effluent, protect worker health and safety, facilitate sludge management and enable beneficial use, and protect against damage to the POTW.

**A. Individual significant user discharge permits must contain:**

- (1) A statement that indicates the significant user discharge permit issuance date, expiration date and effective date;
- (2) A statement that the significant user discharge permit is nontransferable without prior notification to the city in accordance with subsection (e), and provisions for furnishing the new owner or operator with a copy of the existing significant user discharge permit;

- (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, but are not limited to, an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, sample type, chain of custody, QA/QC documentation, flow measurement and documentation of calibration, etc.
- (5) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the discharge in accordance with subsection 28-191(d)B. [CFR 403.12(e)(2).]
- (6) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule, which may not extend the time for compliance beyond that allowed by applicable federal, state, or local law;
- (7) Requirements to control slug discharge, if determined by the utilities director to be necessary;
- (8) Any grant of a monitoring waiver by the utilities director (subsection 28-191(d)B) must be included as a condition in the user's permit.

**B. Individual significant user discharge permits may contain, but need 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, or construction of appropriate containment devices, designed to

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reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

- (3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges;
- (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
- (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;
- (7) A statement that compliance with the significant user discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the significant user discharge permit; and
- (8) Other conditions as deemed appropriate by utilities director to ensure compliance with this article, and state and federal laws and regulations.

(c) *Permit appeals.* Any person, including the user, may petition the utilities director to reconsider the terms of an individual significant user discharge permit. For the user this petition must be submitted no later than 30 days prior to the effective date of its issuance.

- A. In its petition, the appealing party must indicate the specific permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the individual significant user discharge permit.

- B. The effectiveness of the individual significant user discharge permit shall not be stayed pending the appeal.
- C. If the utilities director fails to act within 30 days, or notify the user of an extension of time for reconsideration, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider, not to issue, or not to modify an individual significant user discharge permit shall be considered final administrative actions for purposes of judicial review.
- D. Aggrieved parties seeking judicial review of the final administrative decision regarding individual user discharge permit must do so by filing a complaint with the state district court in Las Cruces, New Mexico.

(d) *Permit modification.* The utilities director may modify an individual user 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 user's operation, processes, or wastewater volume or character since the time of the individual significant user discharge permit issuance;
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- D. Information indicating that the permitted discharge poses a threat to the city's POTW, personnel, the receiving waters, or beneficial use of sludge;
- E. Violation of any terms or conditions of the individual user discharge permit;
- F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
- G. Revision of a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;

- H. To correct typographical or other errors in the individual user discharge permit; or
- I. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with subsection (e).

(e) *Transfer of a significant user discharge permit.* Individual significant user discharge permits may be transferred to a new owner or operator only if the permittee gives at least 30 days' advance notice to the utilities director and utilities director approves the individual significant user discharge permit transfer. The notice to the utilities 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 facility's 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 individual significant user discharge permit.

Failure to provide advance notice of a transfer renders the individual significant user discharge permit void as of the date of facility transfer.

(f) *Revocation of individual significant user discharge permits.* Utilities director may revoke an individual significant user discharge permit for good cause, including, but not limited to, the following reasons:

- A. Failure to notify the utilities director of significant changes to the characteristics and/or volume of waste water prior to the changed discharge;
- B. Failure to provide prior notification to the utilities director of changed conditions pursuant to subsection 28-191(e);
- C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- D. Falsifying self-monitoring reports and certification statements;
- E. Tampering with monitoring equipment;

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

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

(g) *Re-issuance of a significant user discharge permit.* A user with an expiring individual user discharge permit shall apply for individual user discharge permit re-issuance by submitting a complete permit application, in accordance with subsection 28-189(e), a minimum of 60 days prior to the expiration of the user's existing individual wastewater discharge permit.

(h) *Regulation of wastewater received from other jurisdictions.*

- A. If another user located outside the city's municipal boundaries, contributes wastewater to the POTW, the utilities director shall enter into an inter-agency agreement with the contributing user.
- B. Prior to entering into an agreement required by subsection A above, the utilities director shall request the following information from the contributing user:
  - (1) A description of the quality and volume of wastewater discharged to the POTW by the contributing user;

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- (2) An inventory of all industrial and commercial users located within the contributing user's jurisdictional boundaries that are discharging to the POTW; and
- (3) Such other information as the utilities director may deem necessary.
- C. An inter-agency agreement, as required by subsection A, above, shall contain the following conditions:
- (1) A requirement for the contributing user to abide by this article;
- (2) A requirement for the contributing user to submit a revised user inventory on at least an annual basis;
- (3) A provision specifying which pretreatment implementation activities, including individual user discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing user; which of these activities will be conducted by the utilities director; and which of these activities will be conducted jointly by the contributing user and the utilities director;
- (4) A requirement for the contributing user to provide the utilities director with access to all information that the contributing user obtains as part of its pretreatment activities;
- (5) Limits on the nature, quality, and volume of the contributing user's wastewater at the point where it discharges to the POTW;
- (6) Requirements for monitoring the contributing user's discharge;
- (7) A provision ensuring the utilities director access to the facilities of dischargers located within the contributing user's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the utilities director; and
- (8) A provision specifying remedies available for breach of the terms of the inter-municipal agreement;
- (9) The utilities director has the right to take action to impose and enforce this article directly against the user or dischargers located within the user's jurisdictional boundaries.
- (Ord. No. 2488, § II(5), 12-1-08)

**Sec. 28-191. Reporting requirements.***(a) Baseline monitoring reports.*

- A. Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the utilities director a report which contains the information listed in subsection B, below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the utilities director a report which contains the information listed in subsection B, below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- B. Users described above shall submit the information set forth below.
- (1) All information required in subsections 28-189(d)A(1)a, (d)A(2), (d)A(3)a, and (e)A(6). [40 CFR 403.12(b)(1)-(7)]
- (2) Measurement of pollutants.
- a. The user shall provide the information required in subsections 28-189(d)A(7) a. through d.

- b. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection.
  - c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR 403.6(e) to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the control authority;
  - d. Sampling and analysis shall be performed in accordance with subsection (j);
  - e. The utilities director may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;
  - f. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.
- (3) *Compliance certification.* A statement, reviewed by the user's authorized representative as defined in subsection 28-186(d) 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.

- (4) *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in subsection (b).
- (5) *Signature and report certification.* All baseline monitoring reports must be certified in accordance with subsection (n)A and signed by an authorized representative as defined in subsection 28-186(d).

(b) *Compliance schedule progress reports.* The following conditions shall apply to the compliance schedule required by subsection (a)B(4):

- 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 months;
- C. The user shall submit a progress report to the utilities director no later than 14 days

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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 months elapse between such progress reports to utilities director.

(c) *Reports 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 user subject to such pretreatment standards and requirements shall submit to the utilities director a report containing the information described in subsection 28-189(d)A (6) and (7) and (a)B(2) of this section. For users subject to equivalent mass or concentration limits established in accordance with the procedures in section 28-187(b) [40 CFR 403.6(c)], this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with subsection (n)A. All sampling will be done in conformance with subsection (k).

(d) *Periodic compliance reports.*

- A. Except as specified in subsection (d)C, all significant industrial users must, at a frequency determined by the utilities director submit no less than twice per year reports indicating the nature, concentration of pollutants in the discharge which are limited by pretreatment standards and the measured, or estimated, average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a best management practice (BMP) or pollution prevention alternative, the user

must submit documentation required by the utilities director or the pretreatment standard necessary to determine the compliance status of the user.

- B. The utilities director may authorize a categorical industrial user 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. [40 CFR 403.12(e)(2)]. This authorization is subject to the following conditions:
- (1) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.
  - (2) The monitoring waiver is valid only for the duration of the effective period of the individual user discharge permit, but in no case longer than five years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent individual user discharge permit. See subsection 28-189(d)A(8).
  - (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.
  - (4) The request for a monitoring waiver must be signed in accordance with subsection 28-186(d)C, and include the certification statement in subsection (n)A (40 CFR 403.6(a)(2)(ii)).

- (5) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.
  - (6) Any grant of the monitoring waiver by the utilities director must be included as a condition in the user's significant user discharge permit. The reasons supporting the waiver and any information submitted by the user in its request for the waiver must be maintained by the utilities director for three years after expiration of the waiver.
  - (7) Upon approval of the monitoring waiver and revision of the user's permit by the utilities director, the industrial user must certify on each report with the statement in subsection (n)C below, that there has been no increase in the pollutant in its waste stream due to activities of the industrial user.
  - (8) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the user's operations, the user must immediately: Comply with the monitoring requirements of subsection (d)A, or other more frequent monitoring requirements imposed by the utilities director, and notify the utilities director.
  - (9) This provision does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.
- C. The utilities director may reduce the requirement for periodic compliance reports [see subsection (d)A (40 CFR 403.12(e)(1))] to a requirement to report no less frequently than once a year, unless required more frequently in the pretreatment stan-

dard or by the EPA/state, where the industrial user's does not exceed any of the following:

- (1) Total categorical wastewater flow does not exceed 0.01 percent of the POTW's design dry-weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches,
- (2) Total categorical wastewater flow does not exceed for 0.01 percent of the design dry-weather organic treatment capacity of the POTW; and
- (3) Total categorical wastewater flow does not exceed 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed in accordance with subsection 28-187(d).

Reduced reporting is not available to industrial users that have in the last two years been in significant noncompliance, as defined in section 28-194. In addition, reduced reporting is not available to an industrial user with daily flow rates, production levels, or pollutant levels that vary so significantly that, in the opinion of the utilities director, decreasing the reporting requirement for this industrial user would result in data that are not representative of conditions occurring during the reporting period.

- D. All periodic compliance reports must be signed and certified in accordance with subsection (n)A.
- E. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order

shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

- F. If a user subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the utilities director, using the procedures prescribed in subsection (k), the results of this monitoring shall be included in the report. [40 CFR 403.12(g)(6)]

(e) *Reports of changed conditions.* Each user must notify the utilities director of any significant changes to the user's operations or system, such as facility expansion, production changes or process modifications, which might alter the nature, quality, or volume of its wastewater at least 90 days before the change.

- A. The utilities director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under subsection 28-189(d).
- B. The utilities director may issue an individual significant user discharge permit under subsection 28-190(g), or modify an existing significant user discharge permit under subsection 28-190(d), in response to changed conditions or anticipated changed conditions.

(f) *Reports of potential problems.*

- A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, a slug discharge or slug load, that might cause potential problems for the POTW, the user shall immediately telephone and notify the utilities director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- B. Within five business days following such discharge, the user shall, unless waived

by the utilities director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this article.

- C. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in subsection A, above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.
- D. Significant industrial users are required to notify the utilities director immediately of any changes at its facility affecting the potential for a slug discharge.

(g) *Reports from un-permitted users.* All users, not required to obtain an individual significant user discharge permit, shall provide appropriate reports when the utilities director makes such a request.

(h) *Notice of violation/repeat sampling and reporting.* If sampling performed by a user indicates a violation, the user must notify the utilities director within 24 hours of becoming aware of the violation. The user then must repeat the sampling and analysis, and submit the results of the repeat analysis to the utilities director within 30 days after becoming aware of the violation. City will also conduct sampling and analyses within 30 days. If sampling performed by the city indicates a violation, the user must conduct sampling and analysis and submit the results of the repeat analysis to utilities director within 30 days of notification by the utilities director; the city will repeat the sampling and analyses within 30 days. The results from both sources will be used to

evaluate whether the user is in continued non-compliance or whether they have returned to compliance.

(i) *Notification of the discharge of hazardous waste.* The discharge to the POTW of hazardous wastes which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261, is prohibited. Any user who commences the discharge of a hazardous waste must desist and notify the POTW as soon as the prohibited discharge is known. This provision does not create a right to discharge any substance that is not otherwise permitted to be discharged by this article, an individual user permit, or any applicable federal or state law.

(j) *Analytical requirements.* All pollutant analyses, including sampling techniques, to be submitted as part of an individual significant user discharge permit application or report shall be performed in accordance with the methods approved in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods proposed by the utilities director and approved by EPA.

(k) *Sample collection.* Samples collected to satisfy reporting requirements in the individual significant user discharge permit must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

A. Except as indicated in subsections B and C below, the user must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the utilities director. Where time-proportional composite sampling or grab sampling is authorized by the city, the samples must be representative of the discharge. Using pro-

ocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the city, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits. [40 CFR 403.12(g)(3)]

- B. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- C. For sampling required in support of baseline monitoring and 90-day compliance reports required in subsections (a) and (c) [40 CFR 403.12(b) and (d)], a minimum of four grab samples must be used for pH, temperature, 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 utilities director may authorize a lower minimum. For the reports required by subsection (d) (40 CFR 403.12(e) and 403.12(h)), the industrial user is required to collect the number of grab samples necessary to assess and assure compliance by with applicable pretreatment standards and requirements. [40 CFR 403.12(g)(4)]

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

(m) *Recordkeeping.* Users subject to the reporting requirements of this article shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this chapter, any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with best management practices established under subsection 28-187(d)C. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the utilities director.

(n) *Certification statements.* Certification must be provided with all applications for individual user discharge permits and with all SIU reports required by the individual user discharge permit or by any applicable federal or state law.

A. *Certification of permit applications, user reports and initial monitoring waiver.* The following certification statement is required to be signed and submitted by users submitting permit applications in accordance with subsection 28-189(g); users submitting baseline monitoring reports under subsection (a)B(5) [40 CFR 403.12 (l)]; users submitting reports on compliance with the categorical pretreatment standard deadlines under subsection (c) [40 CFR 403.12(d)]; users submitting periodic compliance reports required by subsections (d)A—D [40 CFR 403.12(e) and (h)], and users submitting an initial request to forego sampling of a pollutant on the basis of subsection (d)B(4) [40 CFR 403.12(e)(2)(iii)]. The following certification statement must be signed by an authorized representative as defined in subsection 28-186(d)C:

I certify under penalty of law that this document and all attachments

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

- B. *Annual certification for non-significant categorical industrial users.* A facility determined to be a non-significant categorical industrial user by the utilities director pursuant to subsection 28-186(d) and 28-189(e)C [40 CFR 403.3(v)(2)] must annually submit the following certification statement signed in accordance with the signatory requirements in subsection 28-186(d) [40 CFR 403.120(l)]. This certification must accompany an alternative report required by the utilities director:

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

- (a) The facility described as \_\_\_\_\_ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in section 28-186(d); [See 40 CFR 403.3(v)(2)]
- (b) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c)

the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based on the attached information.

- C. *Certification of pollutants not present.* Users that have an approved monitoring waiver based on subsection (d)B must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the user. [40 CFR 403.12(e)(2)(v)]

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 28-191(d)A.

(Ord. No. 2488, § II(6), 12-1-08)

**Sec. 28-192. Compliance monitoring.**

(a) *Right of entry: Inspection and sampling.* The utilities director shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this article and any individual user discharge permit or order issued hereunder. Users shall allow the utilities director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- A. Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so

that, upon presentation of suitable identification, the utilities director shall be permitted to enter without delay for the purposes of performing specific responsibilities.

- B. The utilities director shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.
- C. The utilities director may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. Devices used to measure wastewater flow shall be calibrated at least once every 12 months, or more frequently, to ensure their accuracy. Devices which monitor water quality shall be calibrated at a frequency which is recommended by the manufacturer and which is appropriate for the wastewater characteristics. Calibration requirements will be specified in the individual user discharge permit.
- D. Location of the monitoring facility shall provide ample room in or near the monitoring facility to allow accurate sampling and preparation of samples and analysis. Whether constructed on public or private property, the monitoring facilities should be provided in accordance with the utilities director requirements and all applicable local construction standards and specifications, and such facilities shall be constructed and maintained in such manner so as to enable the utilities director to perform independent monitoring activities.
- E. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the utilities director and shall not be replaced. The costs of clearing such access shall be born by the user.

[F]. Unreasonable delays in allowing the utilities director access to the user's premises shall be a violation of this article.

(b) *Search warrants.* If the utilities director has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article, or individual user discharge permit, or order issued hereunder, or to protect the overall public health, safety and welfare of the community, utilities director may seek issuance of a search warrant from the state district court in Las Cruces, New Mexico.  
(Ord. No. 2488, § II(7), 12-1-08)

#### Sec. 28-193. Confidential information.

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

CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

(Ord. No. 2488, § II(8), 12-1-08)

#### Sec. 28-194. Publication of users in significant noncompliance.

The utilities director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the Las Cruces Utilities Department, a list of the users which, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall be applicable to all significant industrial users (or any other industrial user) that violates one or more of the following criteria:

- A. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits as defined in section 28-187; [See 40 CFR 403.3(l)]
- B. Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the numeric pretreatment standard or requirement including instantaneous local limits, as defined by section 28-187, multiplied by 1.2 for metal pollutants; multiplied by 1.4 for conventional pollutants; [See 40 CFR 403.3(l)]
- C. Any other violation of a pretreatment standard or requirement as defined by section 28-187 (Daily maximum, long-term average, instantaneous local limit, or narrative standard) that utilities director determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public; [See 40 CFR 403.3(l)]

- D. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the utilities director's exercise of its emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in an individual user discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide within 45 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report noncompliance; or
- H. Any other violation(s), which may include a violation of best management practices, which utilities director determines will adversely affect the operation or implementation of the local pretreatment program.

(Ord. No. 2488, § II(9), 12-1-08)

**Sec. 28-195. Administrative enforcement remedies.**

In addition to the response procedures provided for in this article, the utilities director shall authorize and implement an Enforcement Response Guide to be included in its industrial pretreatment program. Whenever the city finds that any user has violated, or is violating, this article, the individual user discharge permit, or any applicable federal or state law, the Enforcement Response Guide will be used to provide city staff with guidelines as to how the control authority will investigate and respond to instances of user noncompliance, and for enforcement action to be taken against the violator. The actions in the enforcement response reflect the type, severity, and frequency of the violation.

(a) *Notification of violation.* When the utilities director finds that a user has violated, or continues to violate, any provision of this article, an individual user discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, utilities director may serve upon that user a written notice of violation. Within ten business days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the utilities director. Submission of such a plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the utilities director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(b) *Consent orders.* The utilities director may enter into consent orders, assurances of compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents shall include specific action to be taken by the user to correct the noncompliance within a time period specified by the document or a compliance schedule. Such documents shall have the same force and effect as the administrative orders issued pursuant to subsections (d) and (e) and shall be judicially enforceable.

(c) *Show cause hearing.* Utilities director may order a user which has violated, or continues to violate, any provision of this article, an individual user discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, to appear before the utilities director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least five days prior to the hearing. Such notice may be served on any authorized representative of the user as defined in subsection 28-186(d) and required by

subsection 28-189(e)A. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

(d) *Compliance orders.* When the utilities director finds that a user has violated, or continues to violate, any provision of this article, an individual user discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the utilities director may issue an administrative order to the user responsible for the discharge directing the user to take specified actions and to come into compliance within 30 days, or a specified time as defined in a compliance schedule. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

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

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

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

(f) *Administrative fines.*

- A. When the utilities director finds that a user has violated, or continues to violate, any provision of this article, an individual user discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the utilities director may fine such user in an amount not to exceed \$500.00 per day per violation. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.
- B. Unpaid charges, fines, and penalties shall, after 30 calendar days, be assessed an additional penalty of ten percent of the unpaid balance, and interest shall accrue thereafter at a rate of one percent per month. A lien against the user's property may be sought for unpaid charges, fines, and penalties.
- C. Users desiring to dispute such fines must file a written request for the utilities director to reconsider the fine along with full payment of the fine amount within ten business days of being notified of the fine. Where a request has merit, the utilities director may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The utilities director may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.
- D. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

(g) *Emergency suspensions.* The utilities director may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial

endangerment to the health or welfare of persons. The utilities director may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

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

- B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit to the utilities director a detailed written statement within five business days, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence. This statement shall be submitted at least five days prior to the date of any show cause or termination hearing under subsections (c) or (h).

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

(h) *Termination of discharge.* In addition to the provisions in subsection 28-190(f), any user who violates the following conditions may be subject to discharge termination:

- A. Violation of conditions in the individual user discharge permit;

- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
- E. Violation of the pretreatment standards in section 28-187.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under subsection (c) why the proposed action should not be taken. Exercise of this option by the utilities director shall not be a bar to, or a prerequisite for, taking any other action against the user. (Ord. No. 2488, § II(10), 12-1-08)

#### Sec. 28-196. Judicial enforcement remedies.

(a) *Injunctive relief.* When the utilities director finds that a user has violated, or continues to violate, any provision of this article, an individual user discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the utilities director may petition the state district court through the city's attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the individual user discharge permit, order, or other requirement imposed by this chapter on activities of the user. The utilities director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

#### (b) *Civil penalties.*

- A. A user who has violated, or continues to violate, any provision of this ordinance, an individual user discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the city for a maximum

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civil penalty not to exceed \$500.00 per violation per day. In the case of a monthly or other long-term average discharge limit, penalties may accrue for each day during the period of the violation.

- B. The utilities director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.
- C. In determining the amount of civil liability, the court should take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
- D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(c) *Criminal prosecution.*

- A. A user who willfully or negligently violates any provision of this article, an individual user discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$500.00 per day per violation [Max. allowed by Municipal Ordinance], or imprisonment for not more than six months, or both.
- B. A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of not more than \$500.00 per day per violation, or be subject to imprisonment for not more than 90 days, or both. [Max. allowed by Municipal Ordinance] This penalty shall be in addition to any other

cause of action for personal injury or property damage available under state law.

- C. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this chapter, individual user discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine of not more than \$500.00 per violation per day, or imprisonment for not more than 90 days, or both [Max. allowed by Municipal Ordinance].
- D. In the event of a second conviction, a user shall be punished by a fine of not more than \$500.00 per violation per day, or imprisonment for not more than 90 days, or both [Max. allowed by Municipal Ordinance].

(d) *Remedies nonexclusive.* The remedies provided for in this article are not exclusive. The utilities director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the utilities director may take other action against any user when the circumstances warrant. Further, the utilities director is empowered to take more than one enforcement action against any noncompliant user. (Ord. No. 2488, § II(11), 12-1-08)

**Sec. 28-197. Supplemental enforcement action.**

(a) *Payment of outstanding fees and penalties.* Utilities director may decline to issue or reissue an individual user discharge permit to any user who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this chapter, a previous individual user discharge permit, or order issued hereunder.

(b) *Water supply severance.* Whenever a user has violated or continues to violate any provision of this article, an individual user discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, city water service to the user may be severed. Service will recommence, at the user's expense, only after the user has satisfactorily demonstrated its ability to comply.

(Ord. No. 2488, § II(12), 12-1-08)

**Sec. 28-198. Affirmative defenses to discharge violations.**

(a) *Upset.*

- A. For the purposes of this section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (C), below, are met.
- C. A 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 user can identify the cause(s) of the upset;
  - (2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
  - (3) The user has submitted the following information to utilities director within 24 hours of becoming aware of the upset [if this information is

provided orally, a written submission must be provided within five days]:

- (a) A description of the indirect discharge and cause of noncompliance;
  - (b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
  - (c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Users shall have the opportunity for a determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- F. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.
- (b) *Prohibited discharge standards.* A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in subsection 28-187(a)(A) or the specific prohibitions in subsections 28-187(a)B(3) through (16), except (8), if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:
- A. A local limit exists for each pollutant discharged and the user was in compli-

ance with each limit directly prior to, and during, the pass through or interference; or

- B. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

(c) *Bypass.*

- A. For the purposes of this section,

- (1) Bypass means the intentional diversion of wastestreams from any portion of a 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. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsection C and D of this section.

C. *Bypass notifications.*

- (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the utilities director, at least ten business days before the date of the bypass, if possible.
- (2) A user shall submit oral notice to the utilities director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission

shall also be provided within five business days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The utilities director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

D. *Bypass.*

- (1) Bypass is prohibited, and the utilities director may take an enforcement action against a user for a bypass, unless
  - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - (c) The user submitted notices as required under subsection C of this section.
- (2) The utilities director may approve an anticipated bypass, after considering its adverse effects, if utilities director determines that it will meet the three conditions listed in subsection D(1) of this section.

(Ord. No. 2488, § II(13), 12-1-08)

**Sec. 28-199. Miscellaneous provisions.**

(a) *Pretreatment charges and fees.* The Las Cruces Utilities Board on behalf of the city may adopt reasonable fees for reimbursement of costs of setting up and operating the city's industrial pretreatment program, which may include:

- A. Fees for wastewater discharge permit applications including the cost of processing such applications;
- B. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports and certification statements submitted by users;
- C. Fees for reviewing and responding to accidental discharge procedures and construction;
- D. Fees for filing appeals;
- E. Fees to recover administrative and legal costs (not included in subsection [B]) associated with the enforcement activity taken by the utilities director to address IU noncompliance; and
- F. Other fees as the utilities board may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this ordinance and are separate from all other fees, fines, and penalties chargeable by the city.

(b) *Program implementation manuals.* On behalf of the city, the Las Cruces Utilities Board may adopt an Industrial Pretreatment Program Manual and any other manuals or documents that the utilities director requires to implement provisions of this article.

(c) *Severability.* If any provision of this article is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect. (Ord. No. 2488, § II(14), 12-1-08)

**Secs. 28-200—28-219. Reserved.**

**ARTICLE VI. INTERCEPTOR AND GREASE TRAP ORDINANCE\*****Sec. 28-220. Purpose.**

The purpose of the interceptor ordinance is to protect the publicly owned treatment works (POTW) owned [by] City of Las Cruces, and operated by Las Cruces Utilities, from blockages or other interferences which obstruct or reduce the designed flow of waste water in the collection system (sanitary sewer) from the user to the waste water treatment facility. Resultant sewer system overflows pose a threat to public health and safety. Further, odors from improperly maintained interceptors or grease traps may be objectionable and pose a public nuisance.

(Ord. No. 2489, § I(I), 12-1-08)

**Sec. 28-221. Applicability and prohibitions.**

(a) This article shall apply to all non-domestic users of the POTW as defined in section 28-222.

(b) Grease traps or interceptors shall not be required for residential users.

(c) Facilities generating fats, oils, or greases shall install, use, and properly maintain appropriate Interceptors when needed to prevent discharge in excessive amounts as described in subsection (d). These facilities include but are not limited to restaurants, food manufacturers, food processors, hospitals, hotels and motels, prisons, nursing homes, and any other facility preparing, serving, or otherwise making any foodstuff available for consumption. Interceptor requirements also apply to facilities whose liquid waste discharge contains, or may contain, motor oil, sand, metal fragments, and other pollutants that originate from activities such as manufacturing, vehicle or equipment repair, maintenance, or washing.

(d) No user may intentionally or unintentionally allow the direct or indirect discharge of any sand, petroleum oil, non-biodegradable cutting

\*Editor's note—Ord. No. 2488, §§ I, II, adopted Dec. 1, 2008, repealed Art. VI, §§ 28-266—28-295. Ord. No. 2489, § II, adopted Dec. 1, 2008, supplied provisions for a new Art. VI to read as set out herein. Former Art. VI, §§ 28-266—28-295, pertained to West Mesa Industrial Liquid Waste Disposal and derived from Ord. No. 1793, § I, adopted Apr. 17, 2000.

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- D. Fees for filing appeals;
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- F. Other fees as the utilities board may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this ordinance and are separate from all other fees, fines, and penalties chargeable by the city.

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oil, or any fats, oils, or greases of animal, plant, or petroleum origin into the POTW system in such amounts as to cause Interference with the sanitary sewer collection and treatment system, or to cause pollutants to pass through the treatment works into the environment.

(Ord. No. 2489, § I(II), 12-1-08)

### Sec. 28-222. Definitions.

*Discharge or indirect discharge.* The introduction of liquids or suspended solids into a POTW from any source.

*Fats, oils, and greases (FOG).* Organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CFR 136, as amended. All are also referred to herein as "grease" or "greases."

*Generator.* Any person who owns or operates an interceptor, or whose act or process produces an interceptor waste.

*Grease trap.* A type of interceptor with a rated flow of 50 gal/min or less that is located within a building (generally in the kitchen), and serves one to four fixtures. Grease traps often have internal removable diffusing baffles.

*Interceptor.* A device designed to use differences in specific gravities to separate and retain light-density liquids, waterborne fats, oils, greases, and high-density particles such as sand and suspended solids prior to the waste water entering the sanitary sewer collection system. An interceptor must be properly located outside of the building and protected from storm water drainage, and must be constructed, installed, and sized in accordance with the most current edition of the Uniform Plumbing Code accepted by the State of New Mexico. UPC defines an interceptor as "having two compartments, the inlet compartment of which comprises two-thirds of the total capacity, and has a minimum liquid volume of three hundred thirty-three (333) gallons."

*Interceptor waste.* Material collected in and from the interceptor in the sewer service line of a user, and includes solids resulting from dewatering, flotation, or settling processes.

*Interference.* A discharge which alone, or in conjunction with a discharge(s) from other source(s), that inhibits or disrupts POTW flows, operations, or treatment processes; its sludge treatment processes, beneficial use, or disposal; or otherwise causes a violation of the city's NPDES permit.

*pH.* The measure of the relative acidity or alkalinity of water, and is defined as the negative logarithm (base 10) of the hydrogen ion concentration.

*Publicly owned treatment works (POTW).* The sanitary sewer collection system and treatment works which is owned by a state or municipality as defined by section 502(4) of the Clean Water Act. This definition includes all devices and systems used in the collection, storage, treatment, reclamation and recycling of municipal sewage or industrial wastes of a liquid nature. It also includes all sewers, pipes and other conveyances that convey waste water 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. For purposes of this article, the terms "sanitary sewer system" and "POTW" may be used interchangeably.

*Sewer service line.* The pipe that extends from the POTW collection system to the user's application, building, or facility, and typically is located on the user's private property.

*Transporter or hauler.* A person who removes and hauls interceptor waste. Transporters must use approved waste disposal sites permitted by the U.S. Environmental Protection Agency, State of New Mexico Environmental Department, Dona Ana County, or approved by the Utilities Director.

*UPC.* The most current edition of the Uniform Plumbing Code accepted by the State of New Mexico.

*User.* Any person, including those located outside the jurisdictional limits of the city, who

contributes, causes, or permits the discharge of liquid waste into the POTW, including persons who contribute such liquid waste from mobile sources.

(Ord. No. 2489, § I(III), 12-1-08)

**Sec. 28-223. Installation and maintenance requirements.**

The Las Cruces Utilities Pollution Prevention Office (PPO) administers the city's interceptor program under the authority of the utilities director, and provisions of the interceptor and liquid waste ordinances.

(1) *Installations.*

- a. *Existing facilities.* Existing grease traps and interceptors must be operated and maintained in accordance to a cleaning interval established by the PPO. Inspections of interceptors will be conducted periodically to determine that the user is compliant with this ordinance, and that the internal plumbing of the interceptor is present and in good condition.
- b. *New facilities.* Generators which are newly proposed or constructed, or existing facilities which will be expanded or renovated to include a food service facility, where such facility did not previously exist, shall be required to design, install, operate and maintain an interceptor in accordance with locally adopted plumbing codes, UPC, and other applicable ordinances. Interceptors must be installed and inspected prior to issuance of the certificate of occupancy. It is only after completion of construction and issuance of the certificate of occupancy that PPO becomes responsible for implementation of this article.
- c. *Grease traps.* The PPO does not specify use and sizing, approve plans, or inspect installation of grease traps for new construction or renovations. Existing grease traps subsist (are grandfathered) only if it is deter-

mined by the PPO that the device maintains compliance with requirements of this article.

- d. All grease trap or interceptor waste shall be properly disposed at a facility in accordance with federal, state, and local regulations.

(2) *Cleaning and maintenance.*

- a. Grease traps and interceptors shall be maintained in an efficient operating condition at all times.
- b. Each interceptor pumped shall be fully evacuated unless the trap volume is greater than the tank capacity on the vacuum truck in which case the transporter shall arrange for additional transportation capacity so that the trap is fully evacuated within a 24-hour period.
- c. Grease traps and interceptors shall be cleaned as often as necessary to ensure that sediment and floating materials do not accumulate to impair the efficiency of the grease trap or interceptor, and to ensure no visible grease is observed at in the discharge to the sanitary sewer.
- d. Grease traps and interceptors shall be completely evacuated a minimum of every 90 days, or more frequently as determined by the PPO, and when:
  1. Twenty-five percent or more of the wetted height of the grease trap or interceptor, as measured from the bottom of the device to the invert of the outlet pipe, contains floating materials, sediment, oils or greases.
  2. Sulfide levels in the trap/interceptor are excessively sufficient to cause odor complaints and visible deterioration to the trap/interceptor internal metal or concrete material is evident.
  3. The liquid contents are at pH 5.5 standard units or less.

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4. Video surveillance in the collection system of the POTW determines that excessive grease has accumulated at the user's service line connection or in access downstream from the user's point of discharge.
  - e. Any person who owns or operates a grease trap or interceptor may submit to the PPO a request in writing for an exception to the 90-day pumping frequency of their grease trap or interceptor. The PPO may grant an extension for required cleaning frequency on a case-by-case basis when:
    1. The generator has demonstrated the specific trap or interceptor will produce an effluent, based on defensible consistent compliance of item (4) parameters listed above;
    2. In any event, a grease trap or interceptor shall be fully evacuated, cleaned, and inspected at least once every 120 days.
  - f. In the event of a spill, splash, spray or leak or other unauthorized or accidental discharge of waste during the collection, transport or disposal, the user or transporter shall take immediate action to contain and clean the discharged or spilled grease in order to protect human health, and the environment.
- (3) *Self-cleaning.* Cleaning of grease traps or interceptors by the user is prohibited.
- (4) *Manifest requirements.*
- a. Each pump-out of a grease trap or interceptor must be accompanied by a manifest to verify the maintenance and disposal for record keeping purposes.
  - b. Persons who generate, collect, and transport grease waste shall maintain a record of each individual collection and disposal. Such records shall be in the form of a manifest.
- The generator must maintain a file of manifests on site to be available on request during an inspection by PPO. The manifest shall include:
1. Name, address, telephone, and license/registration number of transporter;
  2. Name, signature, address, and phone number of the person who generated the waste and the date collected;
  3. Type and amount(s) of waste collected or transported;
  4. Name and signature(s) of responsible person(s) in the pathway generating to finally disposing the waste (chain of custody);
  5. Date and place where the waste was disposed;
  6. Identification (permit or site registration number, location, and operator) of the facility where the waste was disposed;
  7. Name and signature of facility on-site representative acknowledging receipt of the waste and the amount of waste received;
  8. The volume of the grease waste received; and
  9. A consecutive numerical tracking number to assist transporters, waste generators, and regulating authorities in tracking the volume of grease transported.
- c. Manifests shall be divided into five parts and records shall be maintained as follows:
1. One part of the manifest shall have the generator and transporter information completed

and be given to the generator at the time of waste pickup (billing invoice).

2. The remaining four parts of the manifest shall have all required information completely filled out and signed by the appropriate party before distribution of the manifest.
  3. One part of the manifest shall go to the receiving facility.
  4. One part shall go to the transporter, who shall retain a copy of all manifests showing the collection and disposition of waste.
  5. One part of the manifest shall be returned by the transporter to the person who generated the wastes within 15 days after the waste is received at the disposal or processing facility.
  6. One part of the manifest shall go to the PPO.
- d. Copies of manifests returned to the waste generator shall be retained for three years and be readily available for inspection by the PPO.
- (5) *Alternative treatment.*
- a. Use of grease trap and interceptor treatment products, including bacteria, designed to digest grease is strictly prohibited without prior written consent of the PPO. It is acknowledged that soap formulations used for general kitchen hygiene operations contain surfactants and degreasing agents. Normal use of dishwashing and cleaning products, and their incidental introduction to the grease trap or interceptor are exempted from these restrictions.
    1. The introduction of any surfactant, solvent, or emulsifier into a grease trap or interceptor is prohibited. Surfactants, solvents, and emulsifiers are

materials, which dissolve or suspend grease and enable it to pass from the trap into the collection system. Examples of such materials include, but are not limited to, enzymes, soap, diesel, kerosene, terpene, and organic solvents.

2. Bioremediation products may be used with written prior approval from the PPO only after the person has demonstrated to the satisfaction of the PPO that the product has met the following conditions:
  - (i) Laboratory testing which is appropriate for the specific type of grease trap or interceptor has shown, in that specific application, the product's efficacy to produce an effluent in compliance with this ordinance and not interfere with the proper function of the grease trap or interceptor.
  - (ii) The methods and results of testing shall be subject to technical review and approval by the PPO.
  - (iii) All costs shall be borne by the user whether or not the product is accepted for use.
  - (iv) Use of accepted grease trap or interceptor treatment products shall not relieve the user of minimum cleaning requirements set forth in this article.

(Ord. No. 2489, § I(IV), 12-1-08)

#### **Sec. 28-224. Inspection and sampling.**

(a) The PPO has the authority of inspection by delegation from the utilities director, and shall inspect the facilities of any user to ascertain compliance with the purpose and requirements of this article. Persons or occupants of premises where liquid waste is created or discharged shall

allow the PPO, or its representative, ready access at all times to all parts of the premises for the purposes of inspection, sampling, records examination or in the performance of any of its duties. The PPO shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring, and metering operations.

(b) Where a user has security measures in force which would require proper identification and clearance before entry into such user's premises, the user shall make necessary arrangements with their security guards so that, upon presentation of suitable identification, personnel from the PPO, or its representative, will be permitted to enter without delay for the purposes of performing their specific responsibilities.

(c) *Sampling ports (manholes).* The PPO may require any user, existing or new construction, to install a suitable sampling port in the service line to the application or building to facilitate observation, sampling, and measurement of wastes and flows. The sampling ports must be readily accessible to the PPO at all times.  
(Ord. No. 2489, § I(V), 12-1-08)

#### **Sec. 28-225. Schedule of penalties.**

(a) If the PPO determines that a generator is responsible for a blockage of a collection system line, the user shall be subject to a civil penalty of \$100.00 for the first violation, \$200.00 for a second violation, and \$500.00 for the third violation within a two-year period. Persistent violations shall result in an increase in penalty up to \$500.00/day and may also result in termination of services.

(b) Users violating provisions of this article shall be subject to a written warning for the first violation, a \$100.00 civil penalty for the second violation, a \$200.00 civil penalty for the third violation, and a \$500.00 civil penalty for the fourth violation within a two-year period. Persistent violations will result in up to \$500.00/day increase in civil penalty, and may result in termination of service.  
(Ord. No. 2489, § I(VI), 12-1-08)

#### **Secs. 28-226—28-300. Reserved.**

### **ARTICLE VII. WATER CONSERVATION\***

#### **Sec. 28-301. Title; purpose.**

This article shall be known as the Water Conservation Ordinance. This article shall both require and encourage all users of water within the city limits and all users of city-provided water outside of the city limits to reduce water consumption and waste.

(Ord. No. 2179, § I, 4-4-05)

#### **Sec. 28-302. Applicability.**

(a) The restrictions contained in this article shall apply to all users of city-provided water and to all users of water provided by water utility companies franchised by the city; however, the water wasting restrictions contained in subsection 28-304(b)(1) shall apply to all water users within the city limits.

(b) The outdoor vegetation watering restrictions in section 28-303 and section 28-309 shall not apply to users of irrigation water provided by Elephant Butte Irrigation District. The outdoor vegetation watering restrictions in section 28-303 and section 28-309 shall not apply to users of water provided by mutual domestic water companies or from domestic wells except when the city declares a level II or level III water emergency as provided in section 28-309.  
(Ord. No. 2179, § I, 4-4-05)

#### **Sec. 28-303. Outdoor vegetation watering restrictions.**

(a) All outdoor vegetation on residential and commercial properties located (i) on the even numbered side of the street shall be watered only on Tuesdays, Thursdays and Saturdays, and (ii) on the odd numbered side of the street shall be watered only on Wednesdays, Fridays and Sundays. For corner buildings or properties having

\***Editor's note**—Ord. No. 2179, § I, adopted Apr. 4, 2005, has been treated by the editor as repealing former Art. VII, §§ 28-301—28-308, and adding a new Art. VII, §§ 28-301—28-309. Former Art. VII pertained to similar subject matter, and derived from the Code of 1988, §§ 29-361—29-367, and Ord. No. 2019, adopted Aug. 4, 2003.

# SEWER SERVICE REQUEST - HOLY CROSS RETREAT

