**AN ORDINANCE ADOPTING THE 2016 AMENDMENTS TO THE SANITARY SEWERY SYSTEM PRETREATMENT REGULATIONS AND PERMITS ORDINANCE CODIFIED IN DIVISION 2 OF ARTICLE VI OF CHAPTER 25 OF THE FORT SMITH CODE OF ORDINANCES**

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**WHEREAS,** it is necessary to amend sections of the Sanitary Sewer System Pretreatment Regulations and Permits Ordinance to provide clarity, to comply with Federal and State requirements and to remove conflicts with other provisions of the Municipal Code; and,

**WHEREAS,** three (3) copies of 2016 Amendments to the Sanitary Sewer System Pretreatment Regulations and Permits Ordinance have been on file in the Office of the City Clerk of the City of Fort Smith for inspection and review by the public prior to the passage of this Ordinance;

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH THAT:**

**SECTION 1:** The 2016 Amendments to the Sanitary Sewer System Pretreatment Regulations and Permits Ordinance are hereby adopted.

**SECTION 2:** The codifier of the Municipal Code shall codify the 2016 Amendments by substituting the 2016 Amendments for the existing sections of Division 2 of Article VI of Chapter 25 of the Fort Smith Municipal Code.

**SECTION 3:** It is hereby found and determined that the adoption of the 2016 Amendments to the Sanitary Sewer System Pretreatment Regulations and Permits Ordinance is necessary to alleviate an emergency created by incomplete regulations which could adversely

affect the City's protection of the health, safety and welfare of the inhabitants of the City. Therefore, it is determined that the 2016 Amendments should be, and are, hereby adopted effective as of the date of approval of this Ordinance.

**PASSED AND APPROVED THIS 19th DAY OF April, 2016.**

**APPROVED:**

**Mayor**

**ATTEST:**

**City Clerk**

**Approved as to form:**

**Publish One Time**

# 2016 Amendments to the Sanitary Sewer System Pretreatment Regulation and Permits Ordinance Codified in Division 2, Article VI of Chapter 25 of the Fort Smith Municipal Code

DIVISION 2. - PRETREATMENT REGULATIONS AND PERMITS

Sec. 25-206. - General Provisions.

(a) This division sets forth uniform standards and requirements for users of the Publicly Owned Treatment Works (POTW) for the City of Fort Smith, Arkansas, and enables the City to comply with all applicable federal and state laws, including Clean Water Act (33 United States Code (U.S.C.) §1251 et seq.) and the General Pretreatment Regulations (40 CFR 403). The objectives of this ordinance are:

(1) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;

(2) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;

(3) To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

(4) To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;

(5) To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and

(6) To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.

This ordinance shall apply to all Users of the Publicly Owned Treatment Works. The ordinance authorizes the issuance of individual wastewater discharge permits or general permit; 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, City Administrator shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon City Administrator may be delegated by City Administrator to a duly authorized City employee.

(c) Abbreviations

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

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| BOD | Biochemical Oxygen Demand |
| BMP | Best Management Practice |
| BMR | Baseline Monitoring Report |

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| 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 |
| NAICS | North American Industry Classification System |
| NPDES | National Pollutant Discharge Elimination System |
| POTW | Publicly Owned Treatment Works |
| RCRA | Resource Conservation and Recovery Act |
| SIU | Significant Industrial User |
| SIC | Standard Industrial Classification |
| SNC | Significant Noncompliance |
| TSS | Total Suspended Solids |
| U.S.C. | United States Code |

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

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

(2) *Approval Authority*. Refers to the Director of Arkansas Department of Environmental Quality (ADEQ) or a delegated representative.

(3) *Authorized or Duly Authorized Representative of the User*.

a. If the User is a corporation:

i. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

ii. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit or general permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.

c. If the User is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

d. The individuals described in paragraphs a. through c., above, may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Control Authority.

(4) *Biochemical Oxygen Demand or BOD*. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at twenty (20) degrees centigrade, usually expressed as a concentration (e.g., mg/L).

(5) *Best Management Practices or BMPs* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 25-207 (a) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMPs may also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent limits.

(6) *Categorical Pretreatment Standard or Categorical Standard*. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. § 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

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

(8) *City*. The City of Fort Smith, Arkansas.

(9) *City Administrator*. The person designated by the City to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this division. The term includes a Duly Authorized Representative of the City Administrator.

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

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

(12) *Control Authority*. The City Administrator for Fort Smith, Arkansas, or his or her designated agent.

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

(14)*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.

(15)*Domestic waste.* Liquid and water-carried waste generated by a typical household or waste comprised of waste equivalent to that generated by a typical household. This does not include waste from commercial or industrial processes whether generated at a household or other premises.

(16)*Fats, Oils, and Greases or FOG*. Any fats, oil and grease, weather petroleum-based, mineral-oil-based, animal-based or vegetable-based.

(17)*Environmental Protection Agency or 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.

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

(19)*Garbage.* Solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

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

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

(22)*Industrial user.* A source of indirect discharge.

*(23)Industrial wastes.* The liquid wastes from industrial manufacturing processes, trade or business, as distinct from sanitary sewage.

(24)*Inspector.* The person or persons duly authorized by the Control Authority to inspect and approve the installation of the building sewers and their connections to the public sewer system.

(25)*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.

(26)*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.

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

(28)*May.* Discretionary or permissive.

(29)*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.

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

(31)*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.

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

(33)*New Source*.

a. 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:

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

   ii. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or

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

b. 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 paragraph a. ii., or a. iii. above but otherwise alters, replaces, or adds to existing process or production equipment.

c. Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:

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

1. any placement, assembly, or installation of facilities or equipment; or

2. significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

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

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

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

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

(37)*Person*. Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

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

*(39)Pharmaceutical drug, also referred to as medicine, medication or medicament.* Any chemical substance intended for use in the medical diagnosis, cure, treatment, or prevention of disease.

(40)*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).

(41)*Pollution Prevention (P2).* Waste reduction prior to recycling, treatment, or disposal. Pollution prevention means "source reduction," as defined under the Pollution Prevention Act, and other practices that reduce or eliminate the creation of pollutants through: Increased

efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation

(42)*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.

(43)*Pretreatment Requirements*. Any substantive or procedural requirement related to pretreatment imposed on a User, other than a Pretreatment Standard.

(44)*Pretreatment Standards or Standards*. Pretreatment Standards shall mean prohibited discharge standards, categorical Pretreatment Standards, narrative BMPs and Local Limits.

(45)*Prohibited Discharge Standards or Prohibited Discharges*. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 25-207(a) of this ordinance.

(46)*Properly shredded garbage.* The wastes from the preparation, cooking, dispensing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (½) inch in dimension.

(47)*Publicly Owned Treatment Works or POTW*. A treatment works, as defined by section 212 of the Act (33 U.S.C. § 1292), which is owned by the City. This definition includes any devices or systems used in the storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

(48)*Sanitary sewer.* A sewer in which sewage is carried, and to which storm, surface and groundwaters are not intentionally admitted.

(49)*Septic Tank Waste*. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

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

(51)*Shall.* Mandatory.

(52)*Significant Industrial User (SIU).* Except as provided in paragraph c. of this definition, a Significant Industrial User is:

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

b. An Industrial User that:

i. Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);

ii. Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

iii. Is designated as such by the 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.

c. Upon a finding that a User meeting the criteria in paragraph b. of this definition 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.

(53)*Slug Load or Slug Discharge*. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 25-207(a) of this ordinance. 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.

(54)*Standard Industrial Classification (SIC) Code.* A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

(55)*Storm drain (sometimes termed "storm sewer").* A sewer, which carries storm and surface water and drainage, but excludes sewage and untreated industrial wastes, other than noncontact cooling water.

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

(57)*Surcharge.* A service charge in addition to the normal monthly rate which shall be assessed to the industrial users who discharge into the city system wastewater having a BOD concentration in excess of 250 milligrams per liter or a TSS concentration in excess of 250 milligrams per liter.

(58)*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.

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

(60)*User or Industrial User*. Any person or entity, who contributes, causes or permits the contribution of wastewater into the city's POTWs.

(61) *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.

(62) *Wastewater Treatment Plant or Treatment Plant.* That portion of the POTW which is designed to provide treatment of municipal sewage and compatible industrial waste.

Sec. 25-207. - General sewer use requirements.

(a) Prohibited discharge standards.

(1) *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.

(2) *Specific prohibitions.* No user shall introduce or cause to be introduced, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW, or will have an adverse effect on the receiving stream, or will violate any of the provisions of this article. These general provisions apply to all users of the city's POTWs whether or not the user is subject to National Categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or requirements. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

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

b. Wastewater having a pH less than six (6.0) or more than eleven (11.0), or otherwise causing corrosive structural damage to the POTW or equipment;

c. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in Interference [but in no case solids greater than one-half inch (1/2") in any dimension];

d. Pollutants, including chlorine and 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;

e. Wastewater having a temperature greater than one hundred fifty (150) degrees F (sixty-five (65) degrees C), or which will inhibit biological activity in the treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed one hundred four (104) degrees F (forty (40) degrees C);

f. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through;

g. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

h. Trucked or hauled pollutants, except at discharge points designated by the Control Authority in accordance with Section 25-208(d) of this ordinance;

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

j. Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating [the City's] NPDES permit;

k. Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations;

l. Storm Water, surface water, ground water, roof runoff, subsurface drainage, non-contact cooling water, swimming pool filter backwash, swimming pool water, condensate, deionized water, or unpolluted industrial process waters into any sanitary sewer but such waters shall be discharged into such sewers as are specifically designated as storm sewer or into a natural outlet. The discharge into any storm sewer or into natural outlet of any waters, which may have a deleterious effect upon the receiving stream, is prohibited.

m. Sludges, screenings, or other residues from the pretreatment of industrial wastes;

n. Medical Wastes or pharmaceutical drugs (also referred to as medicine or medication), except as specifically authorized by Control Authority in an individual wastewater discharge permit;

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

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

q. Fats, oils, or greases of animal or vegetable origin in concentrations greater than one hundred (100) mg/L;

r. Any substance that may cause the POTW's effluent, or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in non-compliance with sludge use or disposal criteria, guidelines, or regulations developed under Section 405 of the ACT, any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or Arkansas State criteria applicable to the sludge management method being used;

s. In no case shall a slug load have a flow rate or concentration or quantities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times

the average twenty-four (24) hour concentration, quantities, or flow during normal operation;

t. Non-flushable wipes, non-dispersible wipes, and non-biodegradable wipes including, but not limited to, baby wipes, paper towels, dusting wipes, cleaning wipes, and disposable mop heads.

(3) *Rejection or control of waste discharge*. If any waters or wastes are discharged or are proposed to be discharged into the public sewers, which waters contain the substances or possess the characteristics enumerated in the preceding subsections and which, in the judgment of the Control Authority may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Control Authority may (1) reject the wastes, (2) require pretreatment to an acceptable condition for discharge in the public sewers, and/or (3) require control over the quantities and rates of discharge.

(4) 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*. The Federal Categorical Pretreatment Standards set forth in 40 CFR Chapter 1, Subchapter N, Parts 405 through 471 are hereby incorporated. In cases where this division imposes more stringent requirements, or where no EPA guidelines exist, the provisions of this section shall apply.

Upon promulgation of the Federal Categorical Pretreatment Standards for a particular subcategory of user, the federal standard, if more stringent than limitations imposed under this division for sources in that subcategory, shall immediately supersede the specific limitations imposed under this division.

(1) Where a categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Control Authority may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

(2) When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, the Control Authority shall impose an alternate limit using the combined wastestream formula in accordance with 40 CFR 403.6(e).

(c) *Local limits*. To protect against pass through and interference, no Industrial User may discharge or cause to be discharged into the POTW any wastewater pollutant concentration exceeding the Technically Based Local Limits (TBLLs) developed from time to time by the City as required by City of Fort Smith's tracking NPDES permit No. AR0021750, 40 CFR 403.5 (c) and approved by the Approval Authority. TBLLs based on calculated Maximum Allowable Industrial Loadings are located in the City's Pretreatment Program, Section 4. At the discretion of the Control Authority, TBLLs may be imposed and shall apply at the "monitoring point" described in the individual industrial wastewater discharge permits. All concentration limits for metals shall be in terms of "total" metals unless otherwise indicated. At the discretion of the Control Authority, mass limitations may be imposed in addition to or in place of concentration based TBLLs. The Control Authority may also develop BMPs in individual wastewater discharge permits, to implement specific pollutant limitations. Such BMPs shall be considered Local Limits and Pretreatment

Standards. When new Local Limits are implemented or revised, the Control Authority will provide individual notice to parties who have requested such notice and an opportunity to respond, as set forth by 40 CFR 403.5 (c)(3).

(d) *City's Right of Revision.* The City reserves the right to establish, by ordinance or in individual wastewater discharge permits or in general permits, more stringent standards or requirements on discharges to the POTW consistent with the purpose of this ordinance.

(e) *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 the limitations contained in the Federal Categorical Pretreatment Standards, or in any other pollutant-specific limitation developed by the city or state. The Control Authority 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.

Sec. 25-208. - Pretreatment of Wastewater.

(a) *Pretreatment Facilities.* Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all categorical Pretreatment Standards, Local Limits, and the prohibitions set out in Section 25-207(a) of this ordinance within the time limitations specified by EPA, the State, or the Control Authority, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the User's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Control Authority for review, and shall be acceptable to the Control Authority 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 Control Authority under the provisions of this ordinance.

(b) *Additional Pretreatment Measures*

(1) Whenever deemed necessary, the Control Authority 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 wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the User's compliance with the requirements of this ordinance.

(2) The Control Authority may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual wastewater discharge permit or a general permit may be issued solely for flow equalization.

(3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the Control Authority, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the Control Authority, shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired by the User at their expense.

(4) FOG Control Devices. Facilities generating fats, oils, or greases as a result of food manufacturing, processing, preparation, or food service are not subject to the pretreatment requirements of this division; however such facilities shall comply with all applicable requirements for FOG Control Devises.

(5) Sampling and measurement manhole. When required by the Control Authority, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the Control Authority. The manhole shall be installed by the owner at the owner's expense and shall be maintained by the owner so as to be safe and accessible at all times.

(6) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(7) Upon a finding by the Control Authority of the necessity for proper operation of the wastewater facility of an IU the IU shall have a licensed wastewater treatment operator on duty at all times when treating and discharging regulated wastewater to the POTW. Said operator shall meet the license or level of operator qualifications deemed necessary for proper treatment per Arkansas Pollution Control and Ecology Commission's Regulation #3.

(c) *Accidental Discharge/Slug Discharge Control Plans*. The Control Authority shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control Slug Discharges. The Control Authority may require any User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control Slug Discharges. Alternatively, the Control Authority may develop such a plan for any User. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

(1) Description of discharge practices, including nonroutine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the Control Authority of any accidental or Slug Discharge, as required by Section 25-212(f) of this ordinance; and

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

(d) *Hauled Wastewater*. Hazardous waste will not be accepted by truck or liquid waste hauler at the POTW.

(1) Septic tank waste may be introduced into the POTW only at locations designated by the Control Authority, and at such times as are established by the Control Authority. Such waste shall not violate Section 25-207 of this division or any other requirements established by the

Control Authority. The Control Authority shall require septic tank waste haulers to obtain individual septic tank truck discharge permits.

(2) The Control Authority may require haulers of industrial waste to obtain individual wastewater discharge permits. The Control Authority may require generators of hauled industrial waste to obtain individual wastewater discharge permits. The Control Authority also may prohibit the disposal of hauled industrial waste which are known or reasonably suspected to contain pollutants which could result in pass through or interference. The discharge of hauled industrial waste is subject to all other requirements of this ordinance.

If the industrial waste is from a categorical user, the hauled wastewater must include analytical reports proving it meets the required limitations of its respective category.

(3) Domestic waste haulers and industrial waste haulers may discharge loads only at locations designated by the Control Authority. No load may be discharged without prior consent of the Control Authority. The Control Authority may collect samples of each hauled load to ensure compliance with applicable Standards. The Control Authority may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(4) Domestic waste haulers and industrial waste haulers must provide a to the Control Authority waste-tracking form 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.

(5) Any waste not deemed domestic by the City will be handled on a case by case basis at the discretion of the Control Authority.

Sec. 25-209. - Septic Tank Truck Discharge Permit

(a) All persons owning vacuum or "septic tank" pump trucks, or other liquid transport trucks, who wish to discharge septic tank, portable toilet, seepage pit, interceptor or cesspool contents, industrial liquid waste or other liquid wastes to the POTW shall first have a valid Septic Tank Truck Discharge Permit. All applicants for the Septic Tank Truck Discharge Permit shall complete the application form, pay the appropriate permit fee, receive a copy of this division governing discharge of wastes to sewer and shall agree, in writing, to abide by this division and all other applicable environmental regulations.

(b) Trucks hauling industrial waste shall discharge only after reporting the source and composition of the waste to the POTW at the authorized discharge site. The Control Authority may deny discharge rights in the event the waste is in violation of the provisions of this division. Trucks hauling only septic tank, portable toilet, seepage pit, interceptor or cesspool contents are exempted from the above reporting requirement. However, discharge of these wastes is also restricted to a site(s) authorized by the Control Authority.

(c) Additionally, the septic tank truck hauler must maintain a daily log of operations, which shall include the date and time of the pumping event, name of business or individual requesting service, exact physical address, estimated or measured volume, type of waste discharged, and discharge ticket number. The approximate volume of each load is to be logged at the time of

service in this log. At the end of each quarter, (March, June, September and December) copies of such log are to be forwarded to the Control Authority by the 15th day of the following month (April, July, October and January).

Sec. 25-210. - Individual Wastewater Discharge Permit and General Permit Application

(a) *Wastewater Analysis*. When requested by the Control Authority, a User must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The Control Authority is authorized to prepare a form for this purpose and may periodically require Users to update this information.

(b) Individual Wastewater Discharge Permit and General Permit Requirement

(1) No Significant Industrial User shall discharge wastewater into the POTW without first obtaining an individual wastewater discharge permit or a general permit from the Control Authority, except that a Significant Industrial User that has filed a timely application pursuant to Section 25-210 (c) of this division may continue to discharge for the time period specified therein.

(2) The Control Authority may require other Users to obtain individual wastewater discharge permits or general permits as necessary to carry out the purposes of this ordinance.

(3) Any violation of the terms and conditions of an individual wastewater discharge permit or a general permit shall be deemed a violation of this division and subjects the wastewater discharge permittee to the sanctions set out in Sections 25-216 through 25-217 of this division. Obtaining an individual wastewater discharge permit or a general permit does not relieve a permittee of its obligation to comply with all Federal and State Pretreatment Standards or Requirements or with any other requirements of Federal, State, and local law.

(c) *Individual Wastewater Discharge and General Permitting: Existing Connections*. Any User required to obtain an individual wastewater discharge permit or a general permit who was discharging wastewater into the POTW prior to the effective date of this ordinance and who wishes to continue such discharges in the future, shall, within ninety (90) days after said date, apply to the Control Authority for an individual wastewater discharge permit or a general permit in accordance with Section 25-210 (e) of this ordinance, and shall not cause or allow discharges to the POTW to continue after one hundred eighty (180) days of the effective date of this ordinance except in accordance with an individual wastewater discharge permit or a general permit issued by the Control Authority.

(d) *Individual Wastewater Discharge and General Permitting: New Connections*. Any User required to obtain an individual wastewater discharge permit or a general permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this individual wastewater discharge permit or general permit, in accordance with Section 25-210 (e), must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

(e) Individual Wastewater Discharge and General Permit Application Contents

(1) All Users required to obtain an individual wastewater discharge permit or a general permit must submit a permit application. Users that are eligible may request a general permit under

Section 25-210 (f). The Control Authority may require Users to submit all or some of the following information as part of a permit application:

a. Identifying Information.

   i. The name and address of the facility, including the name of the operator and owner.

   ii. Contact information, description of activities, facilities, and plant production processes on the premises;

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

c. Description of Operations.

   i. A comprehensive description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and the SIC code(s) of the operation(s) carried out by such User. The process description shall include the facility's treatment processes. A qualified professional must certify to the accuracy of this process narrative.

   ii. A comprehensive schematic process diagram, which indicates points of discharge to the POTW from the regulated processes through treatment to an identified discharge/sampling point. A qualified professional must certify to the accuracy of this schematic.

   iii. NAICS codes of all manufacturing processes being conducted at the facility

   iv. Types of wastes generated, and a list of all raw materials and chemicals (not trade names) used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;

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

   vi. Each product produced by type, amount, process or processes, and rate of production.

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

   viii. Comprehensive site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, chemical storage areas, and appurtenances by size, location, and elevation, and all points of discharge.

d. Time and duration of discharges;

e. The location for monitoring all wastes covered by the permit;

f. Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in Section 25-208(b)(2) (40 CFR 403.6(e)).

g. Measurement of Pollutants.

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

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

iii. Instantaneous, Daily Maximum, and long-term average concentrations, or mass, where required, shall be reported.

iv. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 25-212(j) of this ordinance. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable Standards to determine compliance with the Standard.

v. Sampling must be performed in accordance with procedures set out in Section 25-212(k) of this division.

h. Pollution Prevention (P2) activities such as source reduction, waste minimization, environmental management systems, water and energy conservation.

i. Any request to be covered by a general permit based on Section 25-210(f).

j. Any other information as may be deemed necessary by the Control Authority to evaluate the permit application.

(2) Incomplete or inaccurate applications will not be processed and will be returned to the User for revision.

(f) Wastewater Discharge Permitting: General Permits

(1) At the discretion of the Control Authority, the Control Authority may use general permits to control SIU discharges to the POTW if the following conditions are met. All facilities to be covered by a general permit must:

a. Involve the same or substantially similar types of operations;

b. Discharge the same types of wastes;

c. Require the same effluent limitations;

d. Require the same or similar monitoring; and

e. In the opinion of the Control Authority, are more appropriately controlled under a general permit than under individual wastewater discharge permits.

(2) To be covered by the general permit, the SIU must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the

location for monitoring all wastes covered by the general permit, and any other information the POTW deems appropriate.

(3) The Control Authority will retain a copy of the general permit, documentation to support the POTW's determination that a specific SIU meets the criteria in Section 25-210(f)(1)(a.) to (e.) and applicable State regulations, and a copy of the User's written request for coverage for three (3) years after the expiration of the general permit.

(4) The Control Authority may not control an SIU through a general permit where the facility is subject to production-based categorical Pretreatment Standards or categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for IUs whose limits are based on the Combined Wastestream Formula (Section 25-208(b)(2)).

(g) Application Signatories and Certifications

(1) All wastewater discharge permit applications, User reports and certification statements must be signed by an Authorized Representative of the User and contain the following certification statement:

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

(2) 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 Control Authority prior to or together with any reports to be signed by an Authorized Representative.

(h) *Individual Wastewater Discharge and General Permit Decisions.* The Control Authority will evaluate the data furnished by the User and may require additional information. Within ninety (90) days of receipt of a complete permit application, the Control Authority will determine whether to issue an individual wastewater discharge permit or a general permit. The Control Authority may deny any application for an individual wastewater discharge permit or a general permit.

Sec. 25-211. - Individual Wastewater Discharge Permit and General Permit Issuance Process

(a) I*ndividual Wastewater Discharge and General Permit Duration.* An individual wastewater discharge permit or a general permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. An individual wastewater discharge permit or a general permit may be issued for a period less than five (5) years, at the discretion of the Control Authority. Each individual wastewater discharge permit or a general permit will indicate a specific date upon which it will expire.

(b) Individual Wastewater Discharge Permit and General Permit Contents. An individual wastewater discharge permit or a general permit shall include such conditions as are deemed reasonably necessary by the Control Authority to prevent Pass Through or Interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, protect the public, facilitate sludge management and disposal, and protect against damage to the POTW.

(1) Individual wastewater discharge permits and general permits must contain:

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

b. A statement that the wastewater discharge permit is nontransferable without prior notification to the Control Authority in accordance with Section 25-211(e) of this ordinance, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

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

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

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

f. Requirements to control Slug Discharge, if determined by the Control Authority to be necessary.

(2) Individual wastewater discharge permits or general permits may contain, but need not be limited to, the following conditions:

a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

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

c. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;

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

e. The unit charge or schedule of User charges and fees for the management of the wastewater discharged to the POTW;

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

g. A statement that compliance with the individual wastewater discharge permit or the general permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the individual wastewater discharge permit or the general permit;

h. Other conditions as deemed appropriate by the Control Authority to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations; and

i. A licensed wastewater operator as deemed necessary on duty at all times of treatment and discharge of regulated wastewater discharge to the City's collection system (per Section 25-208(b)(7)).

(c) *Permit Appeal Process*: A permittee may petition the Control Authority to reconsider the terms of a wastewater discharge permit or a general permit within thirty (30) days of notice of issuance of the discharge permit.

(1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(2) In its petition, the appealing party must indicate the individual wastewater discharge permit or a general permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the individual wastewater discharge permit or a general permit.

(3) The effectiveness of the individual wastewater discharge permit or a general permit shall not be stayed pending the appeal.

(4) If the Control Authority fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider an individual wastewater discharge permit or a general permit, not to issue an individual wastewater discharge permit or a general permit, or not to modify an individual wastewater discharge permit or a general permit shall be considered final administrative actions for purposes of judicial review.

(d) Permit Modification

(1) The Control Authority may modify an individual wastewater 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 wastewater discharge permit issuance;

c. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

d. Information indicating that the permitted discharge poses a threat to the City's POTW, City personnel, the receiving waters or to the POTW's beneficial use of biosolids;

e. Violation of any terms or conditions of the individual wastewater discharge permit;

f. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

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

h. To correct typographical or other errors in the individual wastewater 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 Section 25-211(e).

(2) The Control Authority may modify a general 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. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

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

d. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 25-211(e).

(e) *Individual Wastewater Discharge Permit and General Permit Transfer*. Individual wastewater discharge permits or coverage under general permits may be transferred to a new owner or operator only if the permittee gives at least thirty (30) days advance notice to the Control Authority and the Control Authority approves the individual wastewater discharge permit or the general permit coverage transfer. The notice to the Control Authority must include a written certification by the new owner or operator which:

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

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

(3) Acknowledges full responsibility for complying with the existing individual wastewater discharge permit or general permit.

Failure to provide advance notice of a transfer renders the individual wastewater discharge permit or coverage under the general permit void as of the date of facility transfer.

(f) *Individual Wastewater Discharge Permit and General Permit Revocation*. The Control Authority may revoke an individual wastewater discharge permit or coverage under a general permit for good cause, including, but not limited to, the following reasons:

(1) Failure to notify the Control Authority of significant changes to the wastewater prior to the changed discharge;

(2) Failure to provide prior notification to the Control Authority of changed conditions pursuant to Section 25-212(e) of this ordinance;

(3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

(4) Falsifying self-monitoring reports and certification statements;

(5) Tampering with monitoring equipment;

(6) Refusing to allow the Control Authority timely access to the facility premises and records;

(7) Failure to meet effluent limitations;

(8) Failure to pay fines;

(9) Failure to pay sewer charges;

(10) Failure to meet compliance schedules;

(11) Failure to complete a wastewater survey or the wastewater discharge permit application;

(12) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or

(13) Violation of any Pretreatment Standard or Requirement, or any terms of the wastewater discharge permit or the general permit or this ordinance.

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

(g) *Individual Wastewater Discharge Permit and General Permit Reissuance*. A User with an expiring individual wastewater discharge permit or general permit shall apply for individual wastewater discharge permit or general permit reissuance by submitting a complete permit application, in accordance with Section 25-210(e) of this ordinance, a minimum of ninety (90) days prior to the expiration of the User's existing individual wastewater discharge permit or general permit.

(h) Regulation of Waste Received from Other Jurisdictions

(1) If another municipality, or User located within another municipality, contributes wastewater to the POTW, the Control Authority shall enter into an intermunicipal agreement with the contributing municipality.

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

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

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

c. Such other information as the Control Authority may deem necessary.

(3) An intermunicipal agreement, as required by paragraph (1), above, shall contain the following conditions:

a. A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as this ordinance and Local Limits, including required Baseline Monitoring Reports (BMRs) which are at least as stringent as those set out in Section 25-207(c) of this ordinance. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the City's ordinance or Local Limits;

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

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

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

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

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

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

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

Sec. 25-212. - Reporting Requirements

(a) Baseline Monitoring Reports

(1) Within either one hundred eighty (180) days after the effective date of a categorical Pretreatment Standard, or the final administrative decision on a category determination

under 40 CFR 403.6(a)(4), whichever is later, existing Categorical Industrial Users currently discharging to or scheduled to discharge to the POTW shall submit to the Control Authority a report which contains the information listed in paragraph (2), below. At least ninety (90) days prior to commencement of their discharge, New Sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall submit to the Control Authority a report which contains the information listed in paragraph (2), below. A New Source shall report the method of pretreatment it intends to use to meet applicable categorical Standards. A New Source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

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

a. All information required in Section 25-210(e)(1)(a.), Section 25-210(e)(2), Section 25-210(e)(3)(a.), and Section 25-210(e)(1)(f.).

b. Measurement of pollutants.

i. The User shall provide the information required in Section 25-210(e)(1)(g.)(i.) through Section 25-210(e)(1)(g.)(iv.).

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

iii. 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;

iv. Sampling and analysis shall be performed in accordance with Section 25-212(j);

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

vi. 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.

c. *Compliance Certification*. A statement, reviewed by the User's Authorized Representative as defined in Section 25-206(d)(3) and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.

d. *Compliance Schedule*. If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards, the shortest schedule by which the User will provide such additional pretreatment and/or O&M must be provided.

The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule pursuant to this Section must meet the requirements set out in Section 25-212(b) of this ordinance.

e. Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 25-212(n)(1) of this ordinance and signed by an Authorized Representative as defined in Section 25-206(d)(3).

(b) *Compliance Schedule Progress Reports*. The following conditions shall apply to the compliance schedule required by Section 25-212(a)(2)(d.) of this ordinance:

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

(2) No increment referred to above shall exceed nine (9) months;

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

(4) In no event shall more than nine (9) months elapse between such progress reports to the Control Authority.

(c) *Reports on Compliance with Categorical Pretreatment Standard Deadline*. Within ninety (90) days following the date for final compliance with applicable categorical Pretreatment Standards, or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any User subject to such Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in Section 25-210(e)(1)(a.-g.) and 25-212(a)(2)(b.) of this ordinance. For Users subject to equivalent mass or concentration limits established in accordance with the procedures in Section 25-207(b)(1), 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 Section 25-212(n) of this ordinance. All sampling will be done in conformance with Section 25-212(k).

(d) Periodic Compliance Reports

(1) All Significant Industrial Users must, at a frequency determined by the Control Authority submit no less than twice per year (January thru June (report due in July) and July thru December (report due in January)) 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 Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User.

(2) All periodic compliance reports must be signed and certified in accordance with Section 25-212(n) of this ordinance.

(3) 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.

(4) 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 Control Authority, using the procedures prescribed in Section 25-212(k) of this ordinance, the results of this monitoring shall be included in the report.

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

(1) The Control Authority may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 25-210(e) of this ordinance.

(2) The Control Authority may issue an individual wastewater discharge permit or a general permit under Section 25-211(g) of this ordinance or modify an existing wastewater discharge permit or a general permit under Section 25-211(d) of this ordinance in response to changed conditions or anticipated changed conditions.

(3) For purposes of this requirement, significant changes include, but are not limited to, flow or production changes of +/- 20% and the discharge of any previously unreported pollutants.

(f) Reports of Potential Problems

(1) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the Control Authority of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.

(2) Within five (5) days following such discharge, the User shall, unless waived by the Control Authority, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.

(3) Significant Industrial Users are required to notify the Control Authority immediately of any changes at its facility affecting the potential for a Slug Discharge.

(g) *Reports from Unpermitted Users*. All Users not required to obtain an individual wastewater discharge permit or general permit shall provide appropriate reports to the Control Authority as the Control Authority may require.

(h) *Notice of Violation/Repeat Sampling and Reporting*. If sampling performed by a User indicates a violation, the User must notify the Control Authority within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within thirty (30) days after becoming aware of the violation.

(i) Notification of the Discharge of Hazardous Waste

(1) Any User who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the User discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 25-212(e) of this ordinance. The notification requirement in this Section does not apply to pollutants already reported by Users subject to categorical Pretreatment Standards under the self-monitoring requirements of Sections 25-212(a), (c), and (d) of this ordinance.

(2) Dischargers are exempt from the requirements of paragraph (1), above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification.

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

(3) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the User must notify the Control Authority, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(4) In the case of any notification made under this Section, the User shall certify that it has a program in place (BMP) to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable Federal or State law.

(j) *Analytical Requirements*. All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Control Authority or other parties approved by EPA. All sample collection and analysis reports are required to include a complete chain of custody for the sample.

All independent laboratories performing analyses for Users, including, but not limited to, self-monitoring, periodic reports on continuing compliance, baseline monitoring reports and/or split sample verification, shall be certified by the ADEQ Laboratory Certification Program for the specific analysis being performed. The Control Authority reserves the right to reject any analysis performed by an independent laboratory that is not duly certified for a particular analysis.

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

(1) Except as indicated in paragraph (2) and (3) below, the User must collect wastewater samples using twenty-four (24) hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by [the City], the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four (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 Control Authority, as appropriate. In addition, grab samples may be required to show

compliance with Instantaneous Limits. All sample collection and analysis reports are required to include a complete chain of custody for the sample.

(2) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques. All sample collection and analysis reports are required to include a complete chain of custody for the sample.

(3) For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 25-212(a) and 25-212(c), a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by paragraphs Section 25-212(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. All sample collection and analysis reports are required to include a complete chain of custody for the sample.

(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 ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices established under Section 25-207(c). Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; a complete chain of custody for the sample; 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 (3) 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 Control Authority.

(n) Certification Statements

(1) Certification of Permit Applications, User Reports and Initial Monitoring Waiver—The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Section 25-210(g); Users submitting baseline monitoring reports under Section 25-212(a)(2)(e.); Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under Section 25-212(c); and Users submitting periodic compliance reports required by Section 25-212(d)(1). The following certification statement must be signed by an Authorized Representative as defined in Section 25-206(d)(3):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for

gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Sec. 25-213. - Compliance Monitoring

(a) Right of Entry: Inspection and Sampling. The Control Authority shall have the right to enter the premises of any User to determine whether the User is complying with all requirements of this ordinance and any individual wastewater discharge permit or general permit optional or order issued hereunder. Users shall allow the Control Authority ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

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

(2) The Control Authority shall have the right to set up on the User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the User's operations.

(3) The Control Authority may require the User to install monitoring equipment necessary to determine compliance with the previsions of this ordinance. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated annually by a certified technician to ensure their accuracy. Calibration records shall be made available to the Control Authority upon request.

(4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the User at the written or verbal request of the Control Authority and shall not be replaced. The costs of clearing such access shall be borne by the User.

(5) Unreasonable delays in allowing Control Authority access to the User's premises shall be a violation of this ordinance.

(b) *Search Warrants*. If the Control Authority 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 ordinance, 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 ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the Control Authority may seek issuance of a search warrant from the District Court of Sebastian County, Arkansas, Fort Smith Division.

Sec. 25-214. - Confidential Information

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

Sec. 25-215. - Publication of Users in Significant Noncompliance

The Control Authority shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users or any other Industrial User that violates paragraphs (c), (d) or (h) of this Section and shall mean:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six (6 ) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 25-206(d)(25);

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 25-206(d)(25) multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a Pretreatment Standard or Requirement as defined by Section 25-207 (Daily Maximum, long term average, Instantaneous Limit, or narrative standard) that the Control Authority determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

(d) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Control Authority's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or a general permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; or

(h) Any other violation(s), which may include a violation of Best Management Practices, which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

Sec. 25-216. - Administrative Enforcement Remedies

(a) *Notification of Violation*. When the Control Authority finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the Control Authority may serve upon that User a written Notice of Violation. Within five (5) 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 Control Authority. 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 Control Authority to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

(b) *Consent Orders*. The Control Authority may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such documents shall include specific action to be taken by the User to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 25-216(d) and 25-216(e) of this ordinance and shall be judicially enforceable.

(c) *Show Cause Hearing*. The Control Authority may order a User which has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, to appear before the Control Authority 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 hearing, 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 hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) business days prior to the hearing. Such notice may be served on any Authorized Representative of the User as defined in Section 25-205(d)(3) and required by Section 25-210(g). 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 Control Authority finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the Control Authority may issue an order to the User responsible for the discharge directing that the User come into compliance within a specified time. If the User does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders

also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.

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

(1) Immediately comply with all requirements; and

(2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

(3) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(f) Administrative Penalties

(1) When the Control Authority finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the Control Authority may issue administrative penalties to such User in an amount not to exceed one thousand dollars ($ 1,000.00). Such administrative penalties shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

(2) Users desiring to dispute such penalties must file a written request with the Control Authority to reconsider the fine within ten (10) working days of being notified of the penality. The Control Authority shall convene a hearing on the request. The hearing may be continued from session to session. The Control Authority shall issue a determination on the request within ten (10) working days after the completion of the hearing.

(3) Issuance of an administrative penalties order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(g) *Emergency Suspensions*. The Control Authority 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 Control Authority 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.

(1) Any User notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a User's failure to immediately comply voluntarily with the suspension order, the Control Authority 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 Control Authority may allow the User to recommence its discharge when the User has demonstrated to the satisfaction of the Control Authority that the period of endangerment has passed, unless the termination proceedings in Section 25-216(h) of this ordinance are initiated against the User.

(2) A User that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Control Authority prior to the date of any show cause or termination hearing under Sections 25-216(c) or 25-216(h) of this ordinance.

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 Section 25-211(f) of this ordinance, any User who violates the following conditions is subject to discharge termination:

(1) Violation of individual wastewater discharge permit or general permit conditions;

(2) Failure to accurately report the wastewater constituents and characteristics of its discharge;

(3) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

(4) Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring, or sampling; or

(5) Violation of the Pretreatment Standards in Section 25-207 of this ordinance.

Such User will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 25-216(c) of this ordinance why the proposed action should not be taken. Exercise of this option by the Control Authority shall not be a bar to, or a prerequisite for, taking any other action against the User.

Sec. 25-217. - Judicial Enforcement Remedies

(a) *Injunctive Relief.* When the Control Authority finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the Control Authority may petition the Circuit Court of Sebastian County, Arkansas, Fort Smith Division 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 wastewater discharge permit, the general permit, order, or other requirement imposed by this ordinance on activities of the User. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a User.

(b) Civil Penalties.

(1) A User who has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement shall be liable to the City for a maximum civil penalty of one thousand dollars ($1,000) per violation, per day. In the case of a monthly or other long term average discharge limit, penalties shall accrue for each day during the period of the violation.

(2) Any action to collect an assessed civil penalty may be initiated in a court of competent jurisdiction only after a majority vote of the Board of Directors to pursue such action.

(3) In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration 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.

(4) 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.

(1) A User who willfully or negligently violates any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement shall, upon conviction, be guilty of a misdemeanor, and shall be subject to a fine of at least one thousand dollars ($1,000) per violation, per day.

(2) 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 fine of at least one thousand dollars ($1,000) per violation, per day.

(3) A User who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, individual wastewater discharge permit, or general 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 at least one thousand dollars ($1,000) per violation, per day.

(4) Such action may be initiated in a court of competent jurisdiction only after a majority vote of the Board of Directors to pursue such action.

(d) *Remedies Nonexclusive*. The remedies provided for in this ordinance are not exclusive. The Control Authority may take any, all, or any combination of these actions against a noncompliant User. Enforcement of pretreatment violations will generally be in accordance with Control Authority's Enforcement Response Plan. However, the Control Authority may take other action against any User when the circumstances warrant. Further, the Control Authority is empowered to take more than one enforcement action against any noncompliant User.

(e) *Water Supply Severance*. Whenever a User has violated or continues to violate any provision of this ordinance, an individual wastewater discharge permit, a general permit, or order issued

hereunder, or any other Pretreatment Standard or Requirement, water service to the User may be severed following notice and a hearing as provided in section 25-216(c).

Sec. 25-218. - Affirmative Defenses to Discharge Violations

(a) Upset

(1) For the purposes of this Section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

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

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

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

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

c. The User has submitted the following information to the Control Authority within twenty-four (24) hours of becoming aware of the upset if this information is provided orally, a written submission must be provided within five (5) days:

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

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

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

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

(4) 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 Section 25-207(a)(1) of this ordinance or the specific prohibitions in Sections 25-207(a)(2)(c.) through 25-207(a)(2)(t.) of this ordinance if it can prove that it did not know, or have reason to know, that its discharge,

alone or in conjunction with discharges from other sources, would cause Pass Through or Interference and that either:

(1) A Local Limit exists for each pollutant discharged and the User was in compliance with each limit directly prior to, and during, the Pass Through or Interference; or

(2) No Local Limit exists, but the discharge did not change substantially in nature or constituents from the User's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of Interference, was in compliance with applicable sludge use or disposal requirements.

(c) Bypass

(1) For the purposes of this Section,

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

b. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

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

(3) Bypass Notifications

a. If a User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, at least ten (10) business days before the date of the bypass, if possible.

b. A User shall submit oral notice to the Control Authority of an unanticipated bypass that exceeds applicable Pretreatment Standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case by case basis if the oral report has been received within twenty-four (24) hours.

(4) Bypass Prohibited; Exceptions

a. Bypass is prohibited, and the Control Authority may take an enforcement action against a User for a bypass, unless:

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

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

iii. The User submitted notices as required under paragraph (C) of this section.

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

Sec. 25-219. - Miscellaneous Provisions

(a) Pretreatment Charges and Fees. The Control Authority may adopt fees for reimbursement of costs of setting up and operating the city's pretreatment program which may include:

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

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

In the event that the Control Authority determines that an outside laboratory should be utilized for the analysis of any parameter, the actual cost of analysis by the outside laboratory shall be borne by the industrial user.

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

(4) Fees for filing appeals;

(5) Fees to recover administrative and legal costs (not included in Section 25-219(a)) associated with the enforcement activity taken by the Control Authority to address IU noncompliance; and

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

(b) Surcharge

(1) Any significant industrial user generating discharge which exhibits none of the characteristics of wastes prohibited in Section 25-207 but which has an average concentration of total suspended solids (TSS) or biochemical oxygen demand (BOD) surcharge parameters in excess of 250 mg/L the allowed strengths during a twenty-four (24) hour period, may be required to obtain a discharge permit. Such discharge may, however, be accepted by the POTW for treatment in accordance with High Strength Surcharge requirements and costs as defined in the City's current rate ordinance(s).

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

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

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