

**ORDINANCE 2020-07-016**

**AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON AMENDING BELLINGHAM MUNICIPAL CODE CHAPTER 15.14 REGARDING PRETREATMENT OF INDUSTRIAL WASTEWATER**

**WHEREAS**, the City of Bellingham owns and operates a “publicly owned treatment works,” commonly known as Post Point, with the capacity to treat industrial, commercial and residential wastewater at the rate of 34.3 million gallons per day; and

**WHEREAS**, City Council adopted Ordinance No. 2019-11-032 to establish an industrial wastewater pretreatment program in accordance with state and federal law; and

**WHEREAS**, the purpose of this ordinance is to correct certain scrivener’s errors contained in the original enactment and to make other technical corrections and changes to better align the program with the City’s programmatic goals and state and federal requirements.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLINGHAM DOES HEREBY ORDAIN THAT:**

**Section 1.** Bellingham Municipal Code Chapter 15.14 is amended as set forth below. Amendments are shown in strikethrough/underline format.

**Chapter 15.14  
PRETREATMENT**

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**Article I. General Provisions**

**15.14.010 Purpose and Policy**

A. This ~~Chapter~~chapter sets forth uniform requirements for users of the ~~City's~~city's publicly owned treatment works ("POTW") and enables the ~~City~~city to comply with all applicable state and federal

laws, including the Clean Water Act (33 USC 1251 et seq.) and the General Pretreatment Regulations (40 CFR Part 403).

B. The objectives of this Chapterchapter are:

1. To prevent the introduction of pollutants into the POTW that will interfere with the operations of the POTW.
2. To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into receiving waters or the atmosphere, or otherwise be incompatible with the POTW.
3. To enable the Citycity to comply with its National Pollutant Discharge Elimination System permit conditions, biosolids use and disposal requirements, and any other applicable federal, Statestate, or tribal regulations.
4. To protect POTW personnel who may be affected by wastewater, wastewater solids, and biosolids in the course of their employment and to protect the general public.
5. To improve the opportunity to recycle and reclaim wastewater and biosolids from the POTW.
6. To promote strategies to reduce the amounts of pollutants generated by users, thereby reducing the associated hazards to the POTW and the receiving waters.

C. This Chapterchapter shall apply to all users of the POTW. The Citycity may enter into interlocal agreements with other jurisdictions to establish the City'scity's authority to enforce the requirements of this Chapterchapter on users that are discharging to the POTW from facilities located outside Citycity limits.

D. This Chapterchapter authorizes the issuance of wastewater discharge approvals; authorizes 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.

#### **15.14.011 Administration**

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

#### **15.14.012 Definitions**

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

**“Accessible”** when applied to required pretreatment monitoring or treatment equipment, means direct access without the necessity of removing any panel, door, vehicle, equipment, materials, or other similar obstruction.

**“Accredited Lab”** means a laboratory certified by the Department of Ecology (or recognized by the Department of Ecology) in accordance with WAC 173-50 to perform the specific test or measurement.

**“Act, the”** means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq.

**“Administrative fine”** means a punitive monetary charge unrelated to treatment cost, which is assessed by the director rather than a court.

**“AKART”** means all known, available, and reasonable methods of prevention, control, and treatment. AKART shall represent the most current methodology that may reasonably be required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term “best management practices” is considered a subset of the AKART requirement.

**“Authorized representative of the user”** means

1. If the user is a corporation:
  - a. The president, secretary, treasurer, or a vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
  - b. The manager of one or more manufacturing, production, or operating facilities, provided the manager is: (i) 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 recommendation; (ii) is authorized to initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; (iii) 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 (iv) is authorized to sign documents on behalf of the corporation, in accordance with corporate procedures.
2. If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively; or
3. If the user is a federal, state, or local governmental facility:
  - a. An administrator or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her authorized designee.
4. The individuals described in paragraphs 1 through 3 above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the

discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the director.

**“Average daily flow”** means the arithmetical mean of the total daily (24-hour) process wastewater flow over a 1-year period. This mean shall be calculated based on days when a discharge occurs.

**“Batch discharge”** means an extraordinary release or discharge, either accidental or intentional, occurring in one or more discrete discharge episodes where a tank, vessel, reservoir, or other similar container is drained or partially drained at a rapid rate over a short time period. A batch discharge may, or may not, result in a slug load.

**“Best management practices (BMPs)”** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs are a subset of AKART.

**“Biochemical oxygen demand (BOD)”** means the quantity of oxygen utilized in the biochemical oxidation of organic matter amenable to measurement by the methods described in *Standard Methods for the Examination of Water and Wastewater*, current edition; under standard laboratory procedures for 5 days at 20°C, expressed as a concentration in milligrams per liter (mg/L).

**“Biosolids”** means sewage sludge solids separated from the bulk wastewater at the POTW.

**“Boiler blowdown water”** means a periodic or continuous discharge of small volume used for the purpose of scale and/or biological growth control used in some heating boiler units.

**“Business day”** means Monday through Friday, excluding official holidays observed by the City of Bellingham through the closure of City Hall.

**“Bypass”** means the intentional diversion of waste streams from any portion of the pretreatment or treatment process.

**“Categorical pretreatment standard”** means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Act (33 USC 1317) that applies to a specific category of users and that appears in 40 CFR Chapter I, Subchapter N, Parts 405–471.

**“Categorical user”** means a user covered by any categorical pretreatment standard.

~~**“Chemical oxygen demand (COD)”** means a measure of the oxygen consuming capacity of inorganic and organic matter present in wastewater amenable to measurement by the methods described in *Standard Methods for the Examination of Water and Wastewater*, current edition. COD is expressed as the amount of oxygen consumed from a chemical oxidant in mg/L during a specific test.~~

**“City”** means the City of Bellingham, Washington.

**“Cooling blowdown water”** means a periodic or continuous discharge of small volume used for the purpose of scale and/or biological growth control used in some cooling units.

**“Color”** means the optical density at the visual wave length of maximum absorption, relative to distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.

**“Composite sample”** means the sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time representative of the period of regulated activity. These individual samples are combined into a single sample for analysis.

**“Dangerous waste”** means those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, extremely hazardous, or mixed waste.

**“Day”** means a calendar day.

**“Daily maximum”** means highest allowable discharge of a pollutant over a calendar day or equivalent 24-hour period. Where daily limits are expressed in units of mass, compliance is the product of the daily concentration and the flow over the same period. A limit may also be expressed as a minimum (e.g., a minimum pH level).

**“Director”** means the City’s public works director or his or her designee.

**“Discharge monitoring report (DMR)”** means a report submitted by a permittee (usually monthly or quarterly), which gives the results of the monitoring tests performed.

**“Domestic wastewater”** means the liquid and water borne wastes derived from ordinary living processes, free from industrial wastes, and of such character to permit satisfactory disposal, without special treatment, into the POTW.

**“Domestic user”** means any person who contributes, causes, or allows the contribution of wastewater into the POTW that is of a similar volume and/or chemical makeup as that of a residential dwelling unit. Discharges from a residential dwelling unit typically include up to 100 gallons per capita per day at 250-235 mg/L of BOD and 270 mg/L of TSS.

**“Engineering Report”** means a document that examines the technical and administrative aspects of an industrial wastewater process or facility. The report shall contain the applicable information as detailed in WAC 173-240-130.

**“Environmental Protection Agency (EPA)”** means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division director, or other duly-authorized official of said agency.

**“Existing source”** means any user that discharges wastewater to the POTW from a facility, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards that will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

**“Existing user”** means any non-categorical user that is discharging wastewater to the POTW prior to the effective date of this ~~Chapter~~chapter.

**“Fats, oils and grease (FOG)”** means those components of wastewater amenable to measurement by the methods described in *Standard Methods for the Examination of Water and Wastewater*, current edition. The term “Fats, oils and grease” shall include polar and nonpolar fats, oils, and grease and other components extracted from wastewater by these methods.

**“Grab sample”** means an individual sample that is taken from a ~~waste water~~wastewater stream over a period of time not exceeding 15 minutes on a one-time basis without regard to the flow volume in the ~~waste water~~wastewater stream. Grab sampling should be used for pollutants that have a short holding time such as phenol or pH.

**“Grease interceptor (GI)”** means a device designed to capture and retain fats, oils, grease and solids, and includes gravity grease interceptors, hydromechanical grease interceptors, and grease removal devices an interceptor of at least 750-gallon capacity to serve 1 or more fixtures and which shall be remotely located.

~~“Grease trap” means a device designed to retain grease from 1 to a maximum of 4 fixtures.~~

**“Hazardous waste”** means those solid wastes designated by 40 CFR Part 261 as hazardous waste.

**“High-strength waste”** means any waters or wastewater having a concentration of BOD or ~~TOSTSS~~TSS in excess of ~~300 mg/L that of domestic users~~, or having a concentration of fats, oils and grease in excess of 100 mg/L.

**“Indirect discharge or discharge”** means the introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act. The discharge into the POTW is normally by means of pipes, conduits, pumping stations, force mains, and appliances appurtenant thereto.

**“Industrial waste”** means any and all liquid or ~~water-borne~~waterborne waste from industrial or commercial processes, except domestic sewage.

**“Interceptor”** means a device designed and installed so as to separate and retain deleterious or undesirable matter from normal wastes and permit normal liquid wastes to discharge by gravity.

**“Interference”** means a discharge that alone or in conjunction with a discharge or discharges from other sources, either: (1) inhibits or disrupts the POTW, its treatment processes or operations; (2) inhibits or disrupts its biosolids (sludge) processes, use or disposal; or (3) is a cause of a violation of the ~~City’s~~City’s NPDES permit or of the prevention of sewage biosolids use or disposal in compliance with any of the following statutory/-regulatory provisions or permits issued thereunder: Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any ~~State~~state regulations contained in any ~~State~~state sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

**“Lower explosive limit (LEL)”** means the minimum concentration of a combustible gas or vapor in air which will ignite if an ignition source is present. lowest percentage at which a flash will occur or a flame will travel when methane vapor is mixed with air and the source of ignition is present. The LEL of methane in air is 5.3 percent (5.3%).

**“Liquid waste”** means the discharge from any fixture, appliance, or appurtenance in connection with a plumbing system that does not receive fecal matter.

**“Local Limits”** means effluent limitations developed for users by the director to specifically protect the POTW from the potential of pass through, interference, vapor toxicity, explosions, sewer corrosion, and intended biosolids uses. Such limits shall be based on the POTW’s site-specific flow and loading capacities, receiving water and or receiving land considerations, and reasonable treatment expectations for non-domestic wastewater. See Section 15.14.023 of this ~~Chapter~~chapter for a full list of local limits.

**“Maximum allowable discharge limit”** means the maximum concentration (or loading) of a pollutant allowed to be discharged at any time.

**“Medical wastes”** means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical fluids/wastes, potentially contaminated laboratory wastes, unneutralized sterilants and dialysis wastes.

**“Monthly average”** means the arithmetic mean of the monitoring sample results collected during a calendar month or specified 30-day period.

**“NAICS Code - North American industrial Classification System Code”** means a classification pursuant to the *North American industrial Classification System Manual* issued by the United States Office of Management and Budget, current edition.

**“National Pollutant Discharge Elimination System (NPDES)”** means the national program under Section 402 of the Act for regulation of discharges of pollutants from a point source to waters of the United States. Discharges are illegal unless authorized by an NPDES permit. The authority for issuing these permits has been delegated to the ~~State~~state. NPDES permits issued by ~~State~~state permit writers are NPDES ~~State/state~~ permits issued under both federal and state law.

**“New source”** means:

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

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

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

- c. The production or wastewater generating processes of the facility are substantially independent of an existing source at the same site. In determining whether the production or wastewater generating process of the facility are substantially independent of an existing source at the same site, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
2. Construction on a site at which an existing source is located results in a modification rather than a new source, if the construction does not create a new facility meeting the criteria contained (1)(b) or (c) of this section but otherwise alters, replaces, or adds to existing process or production equipment.
3. Construction of a new source has "commenced" for purposes of this section if the owner or operator has:
  - a. Begun, or caused to begin as part of a continuous on-site construction program:
    - i. Any placement, assembly, or installation of facilities or equipment; or
    - ii. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - b. Entered into a binding contractual obligation for the purchase of facilities or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that 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.
4. Users must provide documentation sufficient to conclusively substantiate their claimed status as an "existing source" with their initial wastewater discharge approval application. If categorized by the director as a "new source", users may not assert "existing source" status in subsequent permit renewals.

**"New user"** means a non-categorical user that plans to discharge a new source of wastewater into the POTW after the effective date of this ~~Chapter~~chapter. This "new source of wastewater" may be from either a new facility or an existing facility. Any person that buys or leases an existing facility that is discharging nondomestic wastewater will be considered an "existing user" if no significant changes in facility operation are made and wastewater characteristics are not expected to change.

**"Noncategorical user"** means a user not covered by any categorical pretreatment standard.

**"Noncontact cooling water"** means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product. Noncontact cooling water may be generated from any use, such as air conditioning, heat exchangers, cooling or refrigeration, to which the only pollutant added is heat and minor amounts of scale, corrosion, or biological growth inhibitors that do not interfere with POTW operation. Noncontact cooling water is subject to pretreatment standards and requirements.

**“Non-significant categorical industrial user”** means a user determined by the director to discharge no more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, noncontact cooling water and boiler blowdown water, unless specifically included in the pretreatment standard) and the following conditions are met:

1. The user, prior to City's/city's determination, has consistently complied with all applicable categorical pretreatment standards and requirements;
2. The user annually submits the certification statement required in Section 15.14.059.3 of this Chapter/chapter (and 40 CFR 403.12(q)), together with any additional information necessary to support the certification statement; and
3. The user never discharges any untreated concentrated wastewater.

**“Oil/water separator”** means a device that separates oil and settleable solids from water.

**“Pass through”** means a discharge that exits the POTW into waters of the United States in quantities or concentrations that, 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/city's NPDES permit (including an increase in the magnitude or duration of a violation).

**“Permittee”** means a person or user issued a wastewater discharge permit or discharge approval.

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

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

**“Pharmaceutical hazardous waste”** means prescribed or over-the-counter substances used for medical purposes that meet a listing or exhibit a characteristic described in 40 CFR 261 and 266. In addition, waste pharmaceuticals may also be hazardous because they exhibit one or more of the four characteristics of hazardous waste: ignitability, corrosivity, reactivity and toxicity.

**“Pollutant”** means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage biosolids, munitions, medical wastes, pharmaceutical hazardous waste, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, ~~cellar~~ dirt, agricultural and industrial wastes, and the characteristics of the wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, ~~COD~~, toxicity, or odor).

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

**“Pretreatment requirements”** means any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

**“Pretreatment standards”** means the Prohibited Discharge Standards described in Section 15.14.020 of this Chapterchapter, the Federal Categorical Pretreatment Standards described in Section 15.14.021 of this Chapterchapter, the Washington State Pretreatment Standards described in Section 15.14.022 of this Chapterchapter, and the Local Limits described in Section 15.14.023 of this Chapterchapter.

**“Process wastewater”** means industrial waste minus cooling water/noncontact cooling water.

**“Prohibited discharge standards”** means absolute prohibitions against the discharge of certain substances; these prohibitions appear in Sections 15.14.020 of this Chapterchapter.

**“Publicly Owned Treatment Works (POTW)”** means a “treatment works” as defined by Section 212 of the Act (33 USC 1292) that is owned by the Citycity. This definition includes all devices, facilities, orand systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances that convey wastewater to a treatment plant.

**“Septic tank waste”** means any domestic and/or residential sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

**“Sewage”** means human excrement and gray water (household showers, dishwashing operations, food preparation, etc.).

**“Sewer” (or “collection system”)** means any pipe, conduit, ditch, or other device used to collect and transport wastewater from the generating source.

**“Shall” or “may”** mean the following:

1. “Shall” is mandatory.
2. “May” is permissive.

**“Significant industrial user (SIU)”** means:

1. Any user that is subject to categorical pretreatment standards (unless exempted under paragraph 3 of this definition); or
2. Any user that meets any one of the following three criteria (unless exempted under paragraph 4 of this definition):
  - a. Discharges an average of twenty-five thousand gallons per day (25,000 gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);
  - b. Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant;  
or

c. Is designated as such by the director on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

3. The City may determine that a user who is subject to categorical pretreatment standards is nevertheless not a significant industrial user, upon finding that such user never discharges more than 100 gallons per day of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:

a. The user, prior to the City's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;

b. The user annually submits the certification statement required in Section 15.14.059.3 of this Chapter (and 40 CR 403.12(q)), together with any additional information necessary to support the certification statement; and

c. The user never discharges any untreated concentrated wastewater.

4. The director may determine that a user meeting the criteria in part 2 of this definition is nevertheless not a significant industrial user upon finding that such user has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

**“Slug load”** means any discharge at a flow rate or concentration that could cause a violation of pretreatment standards or any discharge of a nonroutine, episodic nature, including but not limited to, an accidental spill or a noncustomary batch discharge, or any discharge greater than or equal to five (5) times the amount or concentration allowed by permit or this Chapter.

**“State”** means the State of Washington.

**“Stormwater”** means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

**“Total suspended solids (TSS)”** means 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 and is amenable to measurement by the methods described in *Standard Methods for the Examination of Water and Wastewater*, current edition.

**“Total toxic organics”** means the sum of specific organic compounds found above a specified concentration in the process wastewater discharged from selected categorical dischargers.

**“Toxic pollutant”** means one of the pollutants, or a combination of those pollutants, listed as toxic in regulations promulgated by EPA under Section 307 (33 USC 1317) of the Act, or other pollutants as may be promulgated.

**“Toxicity test”** means a chronic and/or acute whole effluent testing performed in accordance with and as a requirement of NPDES Permit No. WA0023744.

“**Treatment Plant**” means that portion of the POTW that is designed to provide treatment of wastewater.

“**Treatment plant effluent**” means the discharge from the POTW into waters of the United States.

“**User**” or “**industrial user**” means any non-domestic source of wastewater discharged to the POTW. This excludes “domestic users” as defined herein.

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

“**Wastewater discharge approval**” means an authorization or equivalent control document issued by the director to users discharging wastewater to the POTW. The approval may contain appropriate pretreatment standards and requirements as set forth in this ~~Chapter~~chapter. The term includes wastewater discharge permits and conditional discharge authorization letters.

“**Zero Discharge**” means a categorical user that operates its processes so that no industrial waste is discharged to the POTW.

#### 15.14.013 Abbreviations

The following abbreviations shall have the designated meanings:

AKART	<del>A</del> all known available and reasonable methods of prevention, control, and treatment
ASPP	<del>Accidental spill prevention plan</del>
BMC	Bellingham Municipal Code
BMP	<del>B</del> est management practices
BOD	<del>F</del> ive-day biochemical oxygen demand
CFR	Code of Federal Regulations
COD	<del>C</del> hemical oxygen demand
CIU	<del>c</del> ategorical industrial user
ECY	Washington Department of Ecology
EPA	US Environmental Protection Agency
FOG	<del>F</del> ats, oils, and grease
GI	<del>G</del> rease <del>i</del> nterceptor
GPD	gallons per day
IU	industrial <del>U</del> ser
L	liter
LEL	<del>L</del> ower explosive limit
MAIL	<del>Maximum Allowable industrial Loading</del>
mg	milligrams
mg/L	milligrams per liter
NAICS	North American <del>i</del> ndustrial Classification System
NOV	<del>N</del> otice of <del>V</del> iolation
NPDES	National Pollutant Discharge Elimination System
NSCIU	<del>n</del> onsignificant <del>c</del> ategorical industrial user
O&M	<del>O</del> peration and maintenance
POTW	<del>P</del> ublicly <del>O</del> wned <del>T</del> reatment <del>W</del> orks

RCRA	Resource Conservation and Recovery Act
RCW	Revised Code of Washington
SIU	<u>S</u> ignificant industrial <u>U</u> ser
SWDA	Solid Waste Disposal Act (42 USC 6901, et seq.)
TSS	<u>T</u> otal <u>S</u> suspended <u>S</u> olids
ug/L	<u>M</u> icrograms per liter
USC	United States Code
WAC	Washington Administrative Code

## Article **2II**. General Requirements

### 15.14.020 Prohibited Discharge Standards

A. General Prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater that 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 federal, state, or local pretreatment standards or requirements.

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

1. Pollutants that create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees Fahrenheit (or 60 degrees Celsius) using the test methods specified in 40 CFR 261.21. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromides, carbides, hydrides, sulfides, and any other substances that the city, the state, or the EPA has notified the user is a fire hazard or hazard to the system in quantities that violate the explosivity standards herein at the point of entry to the collection system.
2. Any liquid, solids, or gases that by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time shall two (2) successive readings on a combustible gas detection meter, at the point of discharge into the system (or at any point in the system), be more than five percent (5%) nor any single reading over ten percent (10%) of the lower explosive limit (LEL) of the meter.
3. Wastewater having a pH less than 5.05 or more than 11.0, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the collections system, and/or the POTW.
4. Any solids, fats, oils, greases, waxes, slurries, or viscous substances in such character or quantity that will cause obstruction of the flow in a sewer or interference with the operation of the POTW including, but not limited to: any garbage or putrescible material with particles greater than one-quarter inch (1/4 inch) in any dimension. Specifically prohibited substances in amounts that produce interference include, but are not limited to, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, fibrous tissues, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt

residues, residues from refining or processing of fuel oil, lubricating oil and mud, or glass grinding or polishing wastes.

5. Any used oil and grease, including but not limited to petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will may cause interference or pass through, unless authorized by the director.

6. Pollutants, including oxygen-demanding pollutants (BOD, ~~COD~~ glycol, etc.), released in a discharge at a flow rate and/or pollutant concentration that, either singly or by interaction with other pollutants, will may cause interference with or pass through, unless authorized by the POTW director.

7. Wastewater having a temperature that will inhibit biological activity in the treatment plant resulting in interference, but in no case shall liquid or vapor be discharged having in such quantities that causes the temperature exceeding of the POTW to exceed 104 degrees Fahrenheit (or 40 degrees Celsius) unless the director approves alternate temperature limits.

8. Pollutants that 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 or contribute to a violation of air emission standards. The POTW will not accept a waste stream that contains pollutants regulated under the National Emission Standard for Hazardous Air Pollutant Standard (NESHAP) as described in 40 CFR 63.

9. Trucked or hauled pollutants (including domestic sewage or septic tank waste) unless authorized by the director, and at discharge points designated by the director in accordance with BMC 15.12.210.

10. Noxious or malodorous liquids, gases, solids, or other wastewater that, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, prevent entry into the sewers for maintenance or repair, create a toxic effect in the receiving waters of the POTW, or exceed the limitation set forth in a categorical pretreatment standard.

11. Wastewater with excessive color or turbidity that imparts color, as determined by the director, that cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, that consequently imparts color to the treatment plant's effluent.

12. Wastewater containing any radioactive wastes or isotopes except as specifically approved by the director in compliance with applicable State state or federal regulations.

13. The following are prohibited, except as specifically authorized by the director under extraordinary circumstances, such as lack of direct discharge alternatives due to combined sewer service or need to augment sewage flows due to septic conditions (as required under WAC 173-216-050):

- a. Noncontact cooling water in significant volumes;
- b. Stormwater and other direct inflow sources;

- c. Wastewaters significantly affecting system hydraulic loading that do not require treatment or would not be afforded a significant degree of treatment by the system. This includes, but is not limited to stormwater, surface water, ground water, artesian well water, roof runoff, subsurface drainage and unpolluted wastewater, unless specifically authorized by the director.
14. Any sludges, screenings, or other residues from the pretreatment of industrial or commercial wastes or from industrial or commercial processes, except as authorized by the director.
15. Medical ~~(including pharmacologic)~~ wastes, except as ~~specifically~~ authorized by the director; provided, however, that the director shall not authorize the discharge of pharmaceutical hazardous waste or U.S. Drug Enforcement Administration controlled substances.
16. Any wastewater containing pathogenic or genetically modified wastes which, in sufficient quantity, either singly or by interaction with other substances after discharge and upon exposure, either directly from the environment or indirectly by ingestion or other exposure pathways, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutation, biological disruption, or physiological malfunctions in humans or animals.
17. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
18. Firefighting foams, Detergents, surface-active agents, or other substances in amounts that may cause excessive foaming in the collection system or at the POTW; unless authorized by the director.
19. Hazardous wastes, except as authorized by the director pursuant to Section 15.14.055 of this ~~Chapter~~chapter.
20. Dangerous wastes, except as authorized by the director pursuant to Section 15.14.055 of this ~~Chapter~~chapter.
21. Persistent pesticides and/or pesticides regulated by the Federal Insecticide Fungicide Rodenticide Act.
22. Any slug load as defined in this ~~Chapter~~chapter, or any pollutant, including oxygen demanding pollutants, released in a single extraordinary discharge episode of such volume or strength as to cause interference to the POTW.
23. Any substance that may cause the effluent or treatment residues, sludges, or scums of the POTW to be unsuitable for reclamation and reuse, or to interfere with the reclamation process. In no case shall a substance be discharged to the POTW cause the POTW to be in noncompliance with the sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used.
24. Any wastewater, that in the reasonable opinion of the director, can cause harm either to the sewers, sewage treatment process, or equipment; have an adverse effect on the receiving

stream; or can otherwise endanger life, limb, public property, or constitute a nuisance, unless allowed under special agreement by the director (except that no special waiver shall be given from categorical pretreatment standards).

25. Any other substance which, in the reasonable opinion of the director, may be harmful to the structure, equipment, personnel, process, or operation of the POTW.

26. Antifreeze, glycol or a coolant solution as used in a vehicle or motorized equipment, unless authorized by the director.

27. An enzyme, chemical, or other agent that allows fat, oil, grease, or a solid to pass through a pretreatment facility.

28. Site remediation or construction wastewater, except as may be approved in writing by the director when the discharge will not cause pass through or interference with the POTW.

29. Wastewater that contains, or has contained, glutaraldehyde or ortho-phthalaldehyde unless it has been completely de-activated ~~with sodium bisulfite or sodium hydroxide~~, has a pH of between 6.0 and 11.5 standard units, and does not contain any drain clogging solids. Documentation of the quantity in gallons, pH, date and time of discharge and the initials of the technician performing the neutralization must be recorded and made available for inspection upon request.

C. Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they are likely to be discharged to the POTW unless the user has in place an Accidental Spill Prevention Plan ~~(ASPP)~~/Slug Control Plan.

D. Cost Reimbursement.

1. The party responsible for the prohibited discharge of wastewater or pollutants to the POTW or the environment shall be responsible for all cleanup, response or repair costs related to the discharge including, but not limited to, costs incurred by the City for identification, hazard assessment, and containment.

2. A party may be required to perform cleanup as a result of:

- a. Illegal disposal of hazardous materials or pollutants;
- b. Improper handling of hazardous materials or pollutants at any site;
- c. Spills of hazardous materials or pollutants into the POTW or the environment; or
- d. Discharge of hazardous materials or pollutants during a fire or other accident.

3. For the purposes of this section, reimbursement costs include those costs that are eligible, reasonable, necessary, and allocable to the incident, including, but not limited to, the following:

- a. Disposable materials and supplies provided, consumed, or expended specifically for the purpose of the response;
- b. Compensation for employee time and effort devoted specifically to the response;
- c. Rental or leasing costs of equipment used specifically for the response;
- d. Replacement costs for equipment owned by the City that is contaminated beyond reuse or repair;
- e. Decontamination of equipment that was used during the response;
- f. Costs of special technical service specifically required for the response;
- g. Any other special services or equipment specifically required for the response; and/or
- h. Laboratory costs for the purpose of analyzing samples taken during the response.

**15.14.021 Federal Categorical Pretreatment Standards**

A. The federal categorical pretreatment standards found in 40 CFR Chapter I, Subchapter N, Parts 405 – 471 are incorporated herein by reference as if set forth in full in this Chapter.

B. Upon promulgation of a federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent, shall supersede the local limit imposed in this Chapter. If the local limit imposed in this Chapter is more stringent than the federal standard, then the local limit shall supersede the federal limit.

C. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent concentration or mass limits. The user must supply appropriate actual or projected long term production rates for the unit of production specified in order to facilitate this process (See 40 CFR 403.6(c)(2)).

D. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the director shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e). The director may allow wastewater subject to a categorical pretreatment standard to be mixed with other wastewaters prior to treatment. In such cases, the user shall identify all categorical waste streams and provide sufficient information on each non-categorical waste stream to determine whether it should be considered dilute for each pollutant. Absent information showing that non-categorical waste streams contain the pollutant in question at levels above that of the supply water, such waste streams shall be considered dilute.

E. When a categorical pretreatment standard is expressed only in terms of pollutant concentrations, a user may request that the City convert the limits to equivalent mass limits. The City may establish equivalent mass limits if the industrial user meets all of the conditions set forth below:

1. To be eligible for equivalent mass limits, the user must submit information with its permit application or permit modification request which:

- a. Shows it has a pretreatment system which has consistently met all applicable pretreatment standards and maintained compliance without using dilution;
- b. Describes the water conserving practices and technologies it employs, or will employ, to substantially reduce water use during the term of its permit;
- c. Includes the facility's actual average daily flow rate for all waste streams from continuous ~~effluent~~ flow metering;
- d. Determines an appropriate unit of production, and provides the present and long-term average production rates for this unit of production;
- e. Shows that long term average flow and production is representative of current operating conditions;
- f. Shows that its daily flow rates, production levels, or pollutant levels do not vary so much that equivalent mass limits would be inappropriate; and
- g. Shows the daily and monthly average pollutant allocations currently provided based on the proposed unit of production.

2. A user subject to equivalent mass limits must:

- a. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
- b. Maintain and effectively operate and record the facility's flow by continuous ~~effluent~~ flow monitoring;
- c. Continue to record the facility's production rates;
- d. Notify the director if production rates are expected to vary by more than twenty percent (20%) from the baseline production rates submitted according to Section 15.14.021(~~FE~~)(1) of this ~~Chapter~~chapter. The director may reassess and revise equivalent limits as necessary to reflect changed conditions; and
- e. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to Section 15.14.021(~~FE~~)(1) of this ~~Chapter~~chapter so long as it discharges under an equivalent mass limit.

3. Equivalent mass limits:

- a. Will not exceed the product of the actual average daily flow from the regulated process or processes of the user, the applicable concentration-based daily maximum standard, the applicable concentration-based monthly average standard, and combined with the appropriate unit conversion factor;

b. May be reassessed and the permit revised upon notification of a revised production rate, as necessary to reflect changed conditions at the facility; and

c. May be retained in subsequent permits if the user's production basis and other information submitted in Section 15.14.021(FE)(1) are verified in their reapplication. The user must also be in compliance with any NPDES permit provision regarding the prohibition of bypass.

F. The director may convert the mass limits of the categorical pretreatment standards of 40 CFR Parts 414 (organic chemicals), 419 (petroleum refining), and 455 (pesticide formulating, packaging and repackaging) to concentration limits in permits for such users. In such cases, the director will document the basis and the determination that dilution is not being substituted for treatment in ~~the~~ permit fact sheet.

G. The director is obliged under federal regulations to make the documentation of how any equivalent limits were derived (concentration to mass limits or vice versa) publicly available.

H. Once incorporated into its permit, the user must comply with the equivalent limits in lieu of the ~~Categorical~~categorical pretreatment standards from which they were derived.

I. The same production and flow estimates shall be used in calculating equivalent limits for the monthly (or multiple day average) and the maximum day.

J. Users subject to permits with equivalent mass or concentration limits calculated from a production-based standard shall notify the director if production will significantly change. This notification is required within two (2) business days after the user has a reasonable basis to know that that production will significantly change in the next calendar month. Users who fail to notify the director of such anticipated changes must meet the more stringent of the equivalent limits or the user's prior limits.

#### **15.14.022 State Pretreatment Standards**

~~A. State pretreatment standards and requirements, contained in Chapter 173-216 WAC, were developed under authority of the Water Pollution Control Act, Chapter 90.48 RCW, and are hereby incorporated by reference. State requirements and limitations on discharges to the POTW shall be met by all users who are subject to such requirements and limitations whenever they are more stringent than the federal or local pretreatment standards and requirements.~~

~~B. Any person who constructs or modifies or proposes to construct or modify any wastewater treatment facility must first comply with the regulations for submission of plans and reports for construction of wastewater facilities, in accordance with Chapter 173-240 WAC. The authority to review and approve such plans is described under RCW 90.48.110. Unless and until the City is delegated the authority to review and approve such plans under RCW 90.48.110, users with non-domestic discharges shall request approval for such plans through ECY. To provide conformance with this requirement, proof of the approval of such plans and one copy of each approved plan shall be provided to the director before commencing any such construction or modification.~~

#### **15.14.023 Local Limits**

A. The city has developed numeric limits for the pollutants listed in Table 15.14.023. Pollutants for which no numeric limits are provided may be considered in the future. The director may set limits for other pollutants not listed below. ~~The director, and if so~~ shall provide public notice and an opportunity to respond/comment to interested parties pursuant to 40 CFR 403.5(c)(3).

B. A user shall not discharge or allow the discharge to the POTW of wastewater containing the following individually identified specific pollutants in concentrations, solution, or suspension that exceed the following (instantaneous) limits:

**Table 15.14.023**

<b>Material</b>	<b>Maximum Allowable Discharge Concentration (mg/L)</b>
Arsenic (As)	0.5
Cadmium (Cd)	0.5
Copper (Cu)	5.7
Chromium (Cr) <sup>1</sup>	4.5
Cyanide (CN)	0.7
Lead (Pb)	1.5
Mercury (Hg)	0.07
Nickel (Ni)	3.3
Selenium (Se)	0.9
Silver (Ag)	0.7
Zinc (Zn)	6.2
Oil and Grease ( <del> )</del> (as petroleum or mineral oil products)	100
pH	Between 5.50 to 11.0
<b>Conventional Surcharge Pollutants:</b>	
Biochemical Oxygen Demand (BOD) <sup>2</sup>	See Note 2 below.
Total Suspended Solids (TSS) <sup>2</sup>	See Note 2 below.

**Footnotes:**

1. The chromium limit applies to the total concentration of both trivalent (Cr III) and hexavalent (Cr VI) chromium species. The Cr VI concentration may not exceed 2 mg/L of the total Chromium concentration. Sampling and analysis requirements for Cr VI will be determined by the director on a case by case basis.
2. BOD and TSS limits will be set by individual wastewater discharge permits.

C. The director may impose mass limitations in addition to (or in place of) the concentration-based limits in Table 15.14.023.

D. The local limits in Table 15.14.023 apply ~~at the point of discharge from the user's facility to the POTW; provided that the director may apply local limits prior to the point of discharge as needed to account for any mixing of flows that occurs prior to that point immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated or manufacturing process if no pretreatment exists or as determined by the city and/or contained in the user's discharge permit.~~

E. Users discharging pollutants in excess of the concentration limits in Table 15.14.023 are in violation of this ~~Chapter~~chapter, unless they have a wastewater discharge permit which defines the limitation differently based on a non-uniform distribution approach or mass limit. Such users may be subject to surcharges as established by the director.

F. All concentrations for metallic substances indicated in Table 15.14.023 are for "total" metal unless indicated otherwise. The director may impose mass limitations in addition to (or in place of) the concentration-based limitations indicated in Table 15.14.023.

G. Local limits are subject to review and update per the conditions in 40 CFR 403.5(c)(1).

H. Where a user is subject to a categorical pretreatment standard and a local limit for a given pollutant, the more stringent provision shall control.

I. Total toxic organics. A person may not discharge or allow the discharge of wastewater containing total toxic organics as listed in 40 CFR 433.11(e) and 40 CFR 469.22 and .26 to the POTW in excess of an instantaneous maximum allowable limit of 2.0 milligrams per liter.

J. Compliance Determination – Assignment of Limits.

1. The director may determine compliance with the local limits or the total toxic organics based on the analysis of:
  - a. A grab sample; or
  - b. A combination of grab samples, time composite samples, or flow composite samples.

K. If necessary to protect the POTW, the director may issue a permit, order, or rule that assigns the local limits or the total toxic organics limit as:

1. Instantaneous maximum allowable limits;
2. Daily average limits;
3. Daily maximum limits;
4. Monthly average limits; or
5. Limits of other sampling duration or averaging period.

L. Users shall be subject to "instantaneous limits" (determined by grab sample) equal to or twice the "daily maximum" concentration established in Table 15.14.023 for any pollutant for which a

composite sample is required in a permit. This provision is inapplicable to users without permits or without the permit requirement to collect a composite sample for the analyte in question.

M. The director shall use the individual wastewater discharge approval process to establish ceiling limits for compatible pollutants and appropriate discharge limits for all other pollutants not listed in this section. This includes, but is not limited to, pollutants subject to regulation under the Resource Conservation and Recovery Act, volatile or semi-volatile organics, halogenated or brominated compounds, aromatic hydrocarbons, polymers, surfactants, and pesticides.

N. The director may establish and require best management Practices (BMPs) for any category of user or type of industrial process which creates a non-domestic waste stream. Such requirements may be applied either in lieu of or in addition to the local limits of this section. BMPs may also include alternative limits which may be applied at the end of a specific process or treatment step instead of at the combined effluent.

#### **15.14.024 Deadline for Compliance with Applicable Pretreatment Standards**

A. Existing sources and existing users shall comply with applicable categorical pretreatment standards and local limits within the shortest time feasible, not to exceed three (3) years from the effective date of the applicable standard or limit or such shorter compliance time as may be specified in the applicable standard or limit. The director may specify compliance deadlines, consistent with the previous sentence, in any wastewater discharge permit or conditional discharge authorization letter.

B. New sources and new users shall comply with applicable pretreatment standards within the shortest time feasible, not to exceed ninety (90) days from the beginning of discharge or such shorter time period as may be imposed in a wastewater discharge permit or conditional discharge authorization letter. New sources and new users shall install, have in operating condition, and start up all pretreatment equipment required to meet applicable pretreatment standards before beginning to discharge.

#### **15.14.025 City's Right of Revision**

The City may establish, by ordinance or in wastewater discharge approvals, more stringent standards or requirements for any discharges to the POTW.

#### **15.14.026 Special Agreement**

The director may enter into special agreements with users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a categorical pretreatment standard or federal pretreatment requirement. However, the user may request a net gross adjustment to a categorical pretreatment standard in accordance with 40 CFR 403.15. They may also request a variance from the categorical pretreatment standard from the EPA or ECY in accordance with 40 CFR 403.13.

#### **15.14.027 Dilution**

A user shall not 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 an applicable pretreatment standard or requirement unless expressly authorized by an applicable

pretreatment standard or requirement. The director may impose mass limitations on users that may be using dilution to meet applicable pretreatment standards or requirements or in other cases when the imposition of mass limitations is appropriate.

#### **15.14.028 User Surveys.**

The ~~City~~city is obligated under federal law to identify all users potentially subject to the pretreatment program, and the character and volume of pollutants discharged by such users. To satisfy this requirement, all sources of non-domestic discharges to the POTW must, upon request of the director, periodically complete an industrial user survey form in a format approved by the director. Users shall fully disclose the information requested and sign the completed form in accordance with Section 15.14.043 of this ~~Chapter~~chapter. Proper completion of survey requirements is a condition of initial and continued discharge to the POTW. Users failing to fully comply with survey requirements within thirty (30) days shall be subject to all enforcement measures authorized under this ~~Chapter~~chapter including termination of service. The director is authorized to prepare several forms for this purpose and require completion of the particular form which the director determines appropriate to provide the information needed to categorize each ~~User~~user. The director is authorized to categorize each user, provide written notice of a user's categorization and what it means, and revise this categorization at any time.

### **Article III. Pretreatment of Wastewater**

#### **15.14.030 Pretreatment Facilities**

A. AKART. Users shall provide all known, available, and reasonable methods of prevention, control, and treatment (AKART) as required to comply with this ~~Chapter~~chapter and shall achieve compliance with all applicable pretreatment standards and requirements set out in this ~~Chapter~~chapter within the time limitations specified by the EPA, the ~~State~~state, or the director, whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to the director shall be installed, operated, and maintained at the user's expense.

B. The use of hot water, enzymes, bacteria, chemicals or other agents or devices for the purpose of causing the contents of a pretreatment device to be discharged into the sanitary sewer system is prohibited.

C. Design Review/Approval of Pretreatment Facilities.

1. Facilities required to pretreat waste or wastewater before discharge to the POTW must submit complete sets of plans and specifications for the pretreatment system as specified by the director. All such plans shall describe the proposed pretreatment method, process, or technology, including products, chemicals, agents, or devices used for pretreatment as well as operating procedures.

2. All plans and specifications shall be prepared ~~under the supervision of a professional engineer licensed~~ in accordance with Chapter 18.43 RCW and in accordance with the requirements for approval of industrial wastewater facilities contained in Chapter 173-240 WAC. ~~All copies of these documents submitted for review shall bear the seal of the professional engineer under whose supervision the documents were prepared.~~

3. No construction or installation shall begin until the director has approved in writing the plans and specifications and O&M manual for the proposed pretreatment system. Approval is ~~strictly~~ related to the hydraulic capacity and wastewater system compatibility and does not constitute any assurances that the treatment system will perform effectively to reduce pollutants. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the city under the provisions of this chapter.

D. Inspection of Construction of Pretreatment Facilities.

1. During the construction of all pretreatment facilities, including private sewers that directly or indirectly connect to the public system, the director shall have access thereto for inspection purposes and if considered advisable by the director, may require an inspector on the job continuously. At no time shall sewers be backfilled or covered until the department has been notified and has given proper inspection and approval. If the work is not approved, it shall be repaired or removed and reconstructed, whichever is directed by the director. All costs of inspection and testing shall be borne by the owner/user.

2. A person may not discharge wastewater to the POTW from or through a pretreatment facility until the facility's construction, installation, and connection to the POTW has been inspected and approved by the director.

3. The director may require a pretreatment facility, process, device, agent or product to be tested prior to use or commencement of discharge to the POTW.

4. Within ninety (90) days after the completion of the wastewater pretreatment facility, the discharger shall furnish as-built drawings and its operations and maintenance procedures to the director. Any subsequent significant changes in the pretreatment facility or method of operation shall be reported to and approved by the director prior to the initiation of the changes.

E. Pretreatment Facilities for fats oil & grease (FOG): Users who operate restaurants, cafes, lunch counters, cafeterias, bars or clubs, hotels, hospitals, retirement homes, assisted living centers, grocery stores, factories, school kitchens, butcher shops, or other establishments where food (polar) grease may be introduced to the sewer system, must install, operate, and maintain an approved grease interceptor (GI)/oil water separator, approved by the director, to prevent the discharge of fat waste, oil, and grease. Presence of a type-1 vent hood is sufficient grounds to be included in this section.

1. GI Design. All industrial waste streams containing FOG within restaurants, commercial kitchens, or other FOG-generating facilities shall be directed into an appropriately sized GI. No sanitary waste shall be conveyed to the GI. GIs shall be designed, sized, constructed, and installed in accordance with city standards and the Uniform Plumbing Code (UPC). A sampling port/box that will accommodate the collection of valid oil and grease samples shall be included on all GI installations.

2. GI Installation. GI shall be installed such that they are easily accessible for inspection, cleaning, and the removal of FOG and solid material. An accessible GI shall meet the following minimum criteria: the edge of the GI shall be flush with any edge of an overhead obstruction; and the overhead clearance shall be at least equal to the overall depth of the GI. GI access

covers should be located such that the influent and effluent sanitary "T" and compartment walls are accessible at all times for proper cleaning and inspection.

3. Fats, Oil, and Grease Sources. All fixtures, equipment, and drain lines located in a facility's food preparation and cleanup areas, which are sources of FOG, shall be connected to a GI. Dishwashers and food grinders may only be directed to GIs per director or manufacturer instructions. Dishwashers or other fixtures discharging emulsifying agents, such as detergents, should be located such that their potential to adversely impact the GI operation is minimized. The following types of equipment or fixtures have been identified as potential sources of FOG and shall be connected to a GI per director or manufacturer's instructions: pre-rinse and/or pre-wash sinks or sinks in dishwashing areas; two or three compartment sinks; wok stoves; self-cleaning stove ventilation/exhaust hood; kitchen floor drains; floor drains; floor sinks; mop sinks; food prep sinks; and hand sinks. The City requires that all drain lines have permanently fixed screens with maximum 1/4-inch openings to prevent the pass-through of larger solids into the GI and/or wastewater collection system. Commercial food service discharges using food grinders or garbage disposals are required to install/maintain a solids interceptor prior to the GI.

#### **15.14.031 Additional Pretreatment Measures**

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

B. When determined necessary by the director, each user discharging into the POTW shall install and maintain, on his property and at his expense, a suitable storage and flow-control facility to ensure equalization of discharge flow. The director may require the facility to be equipped with alarms and a rate-of-discharge controller, the regulation of which shall be determined by the director. A wastewater discharge approval may be issued solely for flow equalization.

C. Grease, oil, and sand interceptors shall be provided when, in the opinion of the director, 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 domestic users. All interception units shall be of type and capacity approved by the director and shall be so located as to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at his expense.

D. Users with the potential to discharge flammable substances will be required to install and maintain an approved combustible gas detection meter.

E. Best Management Practices (BMPs). Users shall be subject to BMPs required by categorical pretreatment standards, state or local laws, or to meet local limits. The director may establish additional BMPs for particular groups of users. BMPs may include, but are not limited to, types or methods of pretreatment technology to be used, methods of source control, minimum maintenance requirements, spill prevention practices, or other requirements as deemed necessary.

F. The Director may immediately halt or prevent any discharge of pollutants to the wastewater collection system which reasonably appear to present an imminent endangerment to the health or welfare of persons, the environment, or operation of the POTW and/or collection system. In such cases, the director will provide the User advance notice if possible, but shall not delay a response to imminent endangerment. Any User causing the Director to exercise this action shall be responsible for reimbursement of all related costs to the City.

G. The director, based on the determination that such devices are necessary for implementation of pretreatment requirements, may require a User to install, operate, and maintain on their property or in an easement and at their expense any of the following devices:

1. A sampling facility, accessible to the director;
2. Sampling equipment, approved by the director;
3. Flow and/or pH monitoring equipment approved by the director;
4. A suitable storage or flow equalization tank;
5. A grease, oil, and/or grit and sand interceptor approved by the director;
6. A combustible gas detection meter approved by the director;
7. A dental amalgam separator approved by the director.

H. Users installing any of the devices in (1) – (7) above shall demonstrate that they are of the type and capacity approved by the director, must meet applicable building and plumbing codes, and conform to any separate requirements established by the City such as BMPs. Users shall locate these units in areas that are easily accessible for cleaning by the User and inspection by the director. Users shall be responsible for all cleaning, repair and/or calibration (per manufacturer's recommendations) of such devices. Users may be required to maintain records and/or submit reports to the director to show units are being maintained and in working order.

#### **15.14.032 Accidental Spill Prevention/Slug Control Plans**

A. The director may require any user to develop and implement an accidental spill prevention/slug control plan at user's expense. The plan shall be submitted with ninety (90) days of the director's written notice to the user that such plan is required. At a minimum, accidental spill prevention/slug discharge control plans shall provide the following information:

1. Description of discharge practices, including nonroutine batch discharges;
2. Description of stored chemicals and quantity;
3. Procedures for immediately notifying the POTW of any accidental spill or slug discharge. Such notification must also be given for any discharge that would violate any of the standards in Sections 15.14.021 through 15.14.023 of this Chapter; 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.

B. Users shall implement the accidental spill prevention/slug discharge control plan after such plan has been reviewed and approved by the director. The director's review and approval does not relieve the user of the responsibility to modify its facility as necessary to meet the requirements of this section.

C. Users shall notify the director immediately upon the occurrence of any accidental or slug discharge of substances regulated by this ~~Chapter~~chapter. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, and corrective actions. Any affected user shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the ~~City~~city on account thereof under state or federal law.

D. Within five (5) days following an accidental discharge, the user shall submit to the director a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability that may be imposed under this ~~Chapter~~chapter or other applicable law.

E. Users shall instruct their employees, who are in a position to cause or discover such a discharge, on emergency notification procedures. Such instruction shall be documented and provided to the ~~City~~city upon request.

#### Article IV. Wastewater Discharge Approval

##### 15.14.040 Wastewater Discharge Approval – Requirement

A. Significant industrial users shall not discharge wastewater to the POTW without first obtaining a wastewater discharge permit.

B. The director may require any other user to obtain a wastewater discharge permit, as necessary to carry out the purposes of this ~~Chapter~~chapter.

C. The director may issue a conditional discharge authorization letter to any user that is not required to obtain a wastewater discharge permit in order to impose appropriate discharge conditions upon such user, including, but not limited to, requiring such user to implement pretreatment and/or best management practices, as necessary to carry out the purposes of this ~~Chapter~~chapter. The director may also issue a conditional discharge authorization letter to allow prohibited discharges, subject to appropriate conditions.

D. The conditions and discharge limitations contained in wastewater discharge permits and conditional discharge authorization letters shall be based on federal, state, county, and city

regulations and on the results of analysis of the type, concentration, quantity, and frequency of discharge, including the geographical relationship of the point of discharge to the POTW. The conditions and discharge limitations shall be reevaluated upon expiration of the written discharge approval and may be revised from time to time as required by county, state, or federal regulations and requirements, or to meet any emergency. Obtaining a written discharge approval shall not relieve a user of the obligation to comply with all federal and Statestate pretreatment standards or requirements, or with any other requirements of federal, state, and local law.

E. Any violation of the terms and conditions of a wastewater discharge permit or conditional discharge authorization letter shall be deemed a violation of this Chapterchapter and subjects the user to the sanctions set forth herein.

#### **15.14.041 Wastewater Discharge Permit – Application Deadlines**

A. Existing Connections. Significant industrial users that are discharging wastewater into the POTW prior to the effective date of this Chapterchapter and that wish to continue such discharges shall, upon receipt of written notice from the director, apply for a wastewater discharge permit. Application is due within thirty (30) days of such notification. Extensions of time for submittal of an application may be granted by the director, not to exceed a total of sixty (60) days. The director may authorize significant industrial users that are already permitted by ECY to continue discharging to the POTW pursuant to such permit by reissuing such permit under a new permit number and cover page identifying the city as the issuer and administrator of the permit.

B. New Connections. Significant industrial users that desire to begin discharging wastewater to the POTW after the effective date of this Chapterchapter shall apply for a wastewater discharge permit at least ninety (90) days prior to the anticipated start-up date. A discharge permit must be obtained prior to commencing discharge.

C. Substantial Change in Use of Existing Connection. Any person with an existing wastewater discharge approval proposing to make a change in an existing waste discharge, which will substantially change the volume of flow or the characteristics of the waste or establish a new point of discharge, shall apply for a new wastewater discharge approval thirty (30) days prior to making the change. Substantial changes may include, but are not limited to, a twenty-percent (20%) increase in the authorized daily maximum flow, addition of a new process, product, or manufacturing line that will increase or decrease the concentration of pollutants in the waste stream or require modification in the operation of the pretreatment system, addition of new pretreatment equipment, or alteration of a sample site.

#### **15.14.042 Wastewater Discharge Permit– Application Contents**

A. Application for wastewater discharge permits shall be made to the director, in writing, and shall include the information required in paragraph (C) of this Sectionsection.

B. Applicants that are subject to categorical pretreatment standards shall comply with all baseline reporting requirements contained in Section 15.14.050 of this Chapterchapter prior to discharge permit issuance or commencement of discharge, whichever comes first, unless the specific conditions of a discharge permit establishes an alternate deadline.

C. Wastewater discharge permit applications shall include the following information and shall be submitted in a form approved by the director:

1. Identifying Information. The applicant shall submit the name and address of the facility including the name of the operator and owners:

2. Permits. The applicant shall submit a list of any environmental control permits held by or for the facility.

3. Description of Operations. The applicant shall submit a brief description of the nature, average rate of production, and the NAICS of the operation(s) carried out by such user, including a list of all raw materials and chemicals used or stored at the facility that are, or could accidentally or intentionally be, discharged to the POTW; number and type of employees; hours of operation; each product produced by type, amount, process or processes, and rate of production; type and amount of raw materials processed (average and maximum per day) and the time and duration of discharges. This description must also include a schematic process diagram that indicates points of discharge to the POTW from the regulated or manufacturing processes. Submittals must also include site plans, floor plans, mechanical and plumbing plans and details necessary to show all sewers, sewer connections, inspection manholes, sampling ~~chambers~~stations and appurtenances by size, location, and elevation.

4. Flow Measurement.

a. Applicants that are subject to categorical pretreatment standards shall submit information showing the measured average daily flow and maximum daily flow, in gallons per day, to the POTW from each of the following:

i. Regulated or manufacturing process streams; and

ii. Other streams as necessary to allow use of the combined waste stream formula of 40 CFR 403.6(e).

b. Applicants that are not subject to categorical pretreatment standards shall submit information showing the measured average daily flow and maximum daily flow, in gallons per day, to the POTW from each of the following:

i. Total process flow, treatment plant flow, total plant flow, or individual manufacturing process flow as required by the director. The director may allow verifiable estimates of these flows where justified by cost or feasibility considerations.

c. Applicants who have not yet commenced operations shall submit estimates of the flow measurements required under this paragraph (C)(4).

5. Measurements of Pollutants.

a. Applicants that are subject to categorical pretreatment standards shall provide the following information:

- i. The applicant shall identify the applicable pretreatment standards for each regulated or manufacturing process. The director may require additional sampling to characterize the waste stream<sup>1</sup>;
  - ii. In addition, the applicant shall submit the results of sampling and analysis identifying the nature and concentration (or mass) where required by the categorical pretreatment standard or as required by the director of regulated pollutants (including standards contained in Sections 15.14.021 through 15.14.023 of this ~~Chapter~~chapter, as appropriate) in the discharge from each regulated or manufacturing process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in Article VI of this ~~Chapter~~chapter. Screening for certain VOCs may be required by the director to prevent the release of gases and fumes into the collection system to protect worker safety<sup>1</sup>;
  - iii. The applicant shall take a minimum of one representative sample taken downstream from pretreatment facilities if such exist, or downstream of the regulated process(es) to compile that data necessary to comply with the requirements of this paragraph<sup>1</sup>; and
  - iv. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) for a categorical user covered by a categorical pretreatment standard this adjusted limit along with supporting data shall be submitted as part of the application.
- b. Applicants that are not subject to categorical pretreatment standards shall provide the following information:
- i. The applicant shall identify the applicable pretreatment standards for its wastewater discharge. The director may require additional sampling to characterize the waste stream<sup>1</sup>;
  - ii. The applicant shall submit the results of sampling and analysis identifying the nature and concentration (or mass where required by the director) of regulated pollutants contained in Sections 15.14.021 through 15.14.024023 of this ~~Chapter~~chapter, as appropriate in the discharge. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in Article VI of this ~~Chapter~~chapter;
  - iii. The applicant shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph<sup>1</sup>;

- iv. Where the director developed alternate concentration or mass limits because of dilution this adjusted limit along with supporting data shall be submitted as part of the application.
  - v. Screening for certain VOCs may be required by the director to prevent the release of gases and fumes into the collection system to protect worker safety.
- c. Applicants who have not commenced operations shall submit estimates of the pollutant measurements required under this paragraph (C)(5).

6. Certification. A statement, reviewed by an authorized representative of the applicant and certified as outlined in Section 15.14.043 of this ~~Chapter~~chapter, indicating whether applicable pretreatment standards are being met on a consistent basis, and, if not, whether additional pretreatment and/or O&M are required for the applicant to meet applicable pretreatment standards. Applicants who have not yet commenced operations shall identify the pretreatment and/or O&M that it intends to use to meet applicable pretreatment standards.

7. Compliance Schedule. If additional pretreatment and/or O&M are required to meet applicable pretreatment standards, the applicant shall propose the shortest schedule by which the applicant will provide such additional pretreatment and/or O&M. The proposed schedule shall conform to the requirements of Sections 15.14.024 and 15.14.053 of this ~~Chapter~~chapter.

8. Any other information as may be deemed necessary by the director to evaluate the application. Incomplete or inaccurate applications will not be processed and will be returned to the applicant for supplement and/or revision.

9. Information required to establish any periodic sampling and reporting waiver requested pursuant to 15.14.052(E).

**15.14.043 Wastewater ~~discharge~~Discharge Permit – Signatory and Certification Requirement**

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

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

B. For users with an active monitoring waiver approved by the director, the user must certify on all reports the following statement:

Based on my inquiry of the person(s) directly responsible for managing compliance with the pretreatment standard under 40 CFR 403, I certify that, to the best of my knowledge and belief, that there has been no increase in the level of [list waived pollutant] in the wastewaters due to the activities at [identify facility] since filing of the last periodic report under 40 CFR 403.12(e)(1).

#### **15.14.044 Wastewater Discharge Permit – Application Review and Decision**

A. **Completeness Review.** The director shall review the wastewater discharge permit application to determine if it is complete. The director shall notify the applicant in writing if any additional information is required and indicate a deadline for the provision of such information. If the applicant fails to provide the requested information by the deadline, the application may be deemed to have been withdrawn.

B. **Public Notice.**

1. **Publication.** Persons applying for a new wastewater discharge permit, or a permit renewal or modification which allows a new or increased pollutant loading, shall publish notice for each application in the format provided by the Citycity to inform and seek comments from interested and potentially interested persons. Notice shall be published once each week for two (2) consecutive weeks, at applicants' expense, in a newspaper of general circulation in the City of Bellingham. The notice shall meet the following requirements:

- a. The name and address of the applicant and facility/activity to be permitted;
- b. A brief description of the activities or operations which result in the discharge;
- c. A brief description of the discharge points;
- d. A statement of any tentative determination to issue or deny the permit;
- e. A brief description of the procedures for the formulation of final determinations;
- f. The address and phone number of the office of the director where persons can obtain additional information;
- g. The dates of the comment period (which shall be at least 30 days); and
- h. How and where to submit comments or have any other input into the permitting process, including requesting a public meetinghearing on the permit application and appealing a permit. The notice shall state that the deadline for requesting a public hearing, which shall be no less than 30 days from the last date of publication of the notice.

2. **Additional Public Notice.** The department may require the applicant to provide additional public notice, including:

- a. Mailing the notice to persons who have expressed an interest in being notified;
  - b. Mailing the notice to other state agencies and local governments with a regulatory interest in the proposal;
  - c. Posting the notice on the premises.
3. The applicant shall provide the department with an affidavit of publication.
  4. The director may assume responsibility for the public notice requirements for any person.
  5. The director shall consider and respond to public input as appropriate prior to issuance of a wastewater discharge permit. ~~The director shall arrange a public meeting if there is interest.~~

C. Public Hearing.

1. Any interested person may request a public hearing with respect to permit applications for which notice is required pursuant to this section. Any such request for a public hearing shall be filed within the time period prescribed in subpart B of this section and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted.
2. The department shall hold a hearing if it determines there is a significant public interest.
3. Any hearing held pursuant to this subsection shall be held at a time and place deemed appropriate by the department.
4. Public notice of any hearing held pursuant to this section shall be circulated at least as widely as was the notice of the application.
5. Procedures for the circulation of public notice for hearings held shall include at least the following:
  - a. Notice shall be published, at the applicant's expense, in at least one newspaper of general circulation within the area of the discharge;
  - b. Notice shall be sent to all persons who received a copy of the notice given under subpart B of this section;
  - c. Notice shall be mailed to any person upon request;
  - d. Notice shall be given at least thirty (30) days in advance of the hearing.
6. The contents of public notice of any hearing held pursuant to this section shall include at least the following:
  - a. Name, address, and phone number of the office of the department holding the public hearing;

- b. The purpose of the hearing;
- c. Name and address of the applicant;
- d. A brief description of the point(s) of discharge;
- e. Information regarding the time and location for the hearing;
- f. A brief description of the nature of the hearing;
- g. A concise statement of the issues raised by the persons requesting the hearing, when applicable;
- h. A brief reference to the public notice issued for each application, including identification number and date of issuance; and
- i. Address and phone number of premises at which interested persons may obtain information.

D. Director's Decision. After receipt of a complete wastewater discharge permit application, and following the expiration of the 30-day notice period required under paragraph (B) of this ~~Section~~section, and following any public hearing conducted pursuant to this section, the director shall determine whether or not to issue a wastewater discharge permit. The director may deny any application for a wastewater discharge permit or require additional safeguards, reports (including plans under Chapter 173-240 WAC), or information. The director may deny the application when the applicant's discharge will not comply with this ~~Chapter~~chapter or will create a public nuisance. The director may also deny an application to protect public health and welfare.

DE. Reconsideration. The director shall provide notice of the issuance of a wastewater discharge permit to the applicant and members of the public or other governmental agencies who indicated in their public comment that they wished to be notified upon permit issuance. —Any person, including the applicant, may petition the director to reconsider the terms of a wastewater discharge permit within thirty (30) days of notice of its issuance, subject to the following:

1. Failure to submit a timely petition for reconsideration shall be deemed to be a waiver of the administrative appeal;
2. In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit;
3. The effectiveness of the wastewater discharge permit shall not be stayed by the filing of a petition for reconsideration;
4. If the director fails to act within forty-five (45) days, a request for reconsideration shall be deemed to be denied; and
5. The director's decision on a petition for reconsideration is subject to administrative appeal to the Hearing Examiner, except as otherwise provided herein.

#### 15.14.045 Wastewater Discharge Approval – Contents

A. Duration (Term). Wastewater discharge approvals (including wastewater discharge permits and conditional discharge authorization letters) shall be issued by the director for a specified time period, not to exceed five (5) years, and shall indicate a specific date upon which it will expire. Wastewater discharge approvals may be extended or renewed by the director on his or her own initiative or upon application by the user.

B. Conditions. Wastewater discharge approvals shall include such conditions as are reasonably deemed necessary by the director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, protect against damage to the collection system and the POTW, and ensure compliance with this ~~Chapter~~chapter. Conditions of an authorization may include, but shall not be limited to, discharge limitations and standards, spill control measures, accidental spill prevention plans, slug control plans, monitoring requirements, maintenance requirements, installation of monitoring equipment, record-keeping requirements, reporting requirements, federal and state requirements, installation of sampling sites, flow restrictions, engineering reports, solvent management plans, implementation of BMPs, and special studies to evaluate discharge limits or compliance status.

C. Wastewater discharge permits shall contain the following conditions (at the director's discretion, such conditions may also be included in any conditional discharge authorization letter):

1. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years, subject to extension and/or renewal by the director.;
2. A statement that the wastewater discharge permit is nontransferable without prior notification to and approval from the director, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.;
3. Applicable pretreatment standards and requirements, including any special state or EPA requirements. These may include but are not limited to effluent limits, flow regulation or equalization, best management practices, and requirements to apply AKART.;
4. Self-monitoring, sampling, reporting, notification, submittal of technical reports, compliance schedules, implementation of BMPs, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law.;
5. Requirement for immediate notification to the director where self-monitoring results indicate noncompliance.;
6. Requirement to report a bypass or the upset of a pretreatment facility.;
7. Requirement for the significant industrial user who reports noncompliance to repeat the sampling and analysis and submit results to the director within thirty (30) days after becoming aware of the violation.;
8. A statement of applicable civil, criminal, and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.

D. Wastewater discharge approvals may contain, but need not be limited to, the following conditions:

1. Fees and charges to be paid upon initial permit issuance. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW.;
2. Limits on the average and/or maximum rate of discharge, time of discharge, constituents and characteristics and/or requirements for flow regulation and equalization.;
3. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.;
4. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges. Requirements for reporting the occurrence of a spill or slug load.;
5. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.;
6. Requirements for installation and maintenance of inspection and/or sampling facilities and equipment.;
7. A statement that compliance with the wastewater discharge approval does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those that become effective during the term of the wastewater discharge approval.;
8. Any special agreements the director chooses to continue or develop between the ~~City~~city and user. Special conditions as the director may reasonably require under particular circumstances, including but not limited to, sampling locations, frequency of sampling, number of samples, sample types, and standards for tests and reporting schedule.;
9. Requirements to pay charges or fees for discharge to the POTW including high strength charges.;
10. Any monitoring/activity which has been conditionally waived by the director ~~Article per~~ Articles II and V of this Chapter, chapter, and/or any monitoring which has been conditionally waived by the director according to Section 15.14.052(E), but which automatically applies at any time the conditions of the waiver are not met. In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the user's operation, the user must immediately notify the director.
11. Other conditions as deemed appropriate by the director to ensure compliance with this ~~Chapter~~chapter, and state and federal laws, rules and regulations.;
12. Requirement for submission of special technical reports or discharge reports, not otherwise prescribed by this ~~Chapter~~chapter.

E. Inspection. The permit shall indicate whether Citycity inspection is required to ensure compliance with the wastewater discharge approval prior to commencement of discharge to the POTW.

#### **15.14.046 Wastewater Discharge Permit – Modification**

A. The director may modify the wastewater discharge permit for good cause including, but not limited to, the following:

1. To incorporate any new or revised federal, Statestate, or local pretreatment standards or requirements<sub>;</sub>
2. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance<sub>;</sub>
3. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge<sub>;</sub>
4. Information indicating that the permitted discharge poses a threat to the City'scity's POTW, Citycity personnel, or the receiving waters<sub>;</sub>
5. Violation of any terms or conditions of the wastewater discharge permit<sub>;</sub>
6. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting<sub>;</sub>
7. Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13<sub>;</sub>
8. To correct typographical or other errors in the wastewater discharge permit<sub>;</sub>
9. To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

#### **15.14.047 Wastewater Discharge Permit– Transfer**

A. Wastewater discharge permits are issued to a specific user for a specific operation and are not assignable to another user without the prior written approval of the director<sub>;</sub> and are not transferable to any other location.

B. Wastewater discharge permits may be reassigned or transferred to a new owner and/or operator only if the permittee gives at least ninety (90) days advance notice to the director and the director approves the wastewater discharge permit transfer. The notice to the director must include a written certification by the new owner and/or operator that:

1. States that the new owner and/or operator have 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 and accepts full responsibility for complying with the existing wastewater discharge permit.

C. Provided that the above occurs and that there were no significant changes to the manufacturing operation or wastewater discharge, the new owner will be considered an existing user and be covered by the existing limits and requirements in the previous owner's discharge permit. Failure to provide advance notice of a transfer renders the wastewater discharge permit voidable as of the date of facility transfer.

#### **15.14.048 Wastewater Discharge Permit – Revocation**

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

1. Failure to notify the director of significant changes to the wastewater prior to the changed discharge<sub>;</sub>
2. Failure to provide prior notification to the director of changed conditions;
3. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application<sub>;</sub>
4. Falsifying self-monitoring reports<sub>;</sub>
5. Tampering with monitoring equipment<sub>;</sub>
6. Refusing to allow the director timely access to the facility premises and records<sub>;</sub>
7. Failure to meet discharge limitations<sub>;</sub>
8. Failure to pay fees or fines<sub>;</sub>
9. Failure to pay sewer service rates and charges<sub>;</sub>
10. Failure to meet compliance schedules<sub>;</sub>
11. Failure to complete a wastewater survey or the wastewater discharge permit application<sub>;</sub>
12. Failure to provide advance notice of the transfer of a permitted facility<sub>;</sub>
13. If the Citycity has to invoke its emergency provision as cited in Section 15.14.107 of this Chapter.chapter;
14. Violation of any pretreatment standard or requirement<sub>;</sub>
15. Violation of any terms of the wastewater discharge permit<sub>;</sub>
16. Violation of any provision of this Chapter.chapter; and/or
17. Violation of any terms of an order of the director issued under this Chapterchapter.

B. Wastewater discharge permits shall be revocable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are automatically revoked upon the issuance of a new wastewater discharge approvals to that user.

#### **15.14.049 Wastewater Discharge Permit – Duty to Reapply**

If the holder of a wastewater discharge permit wishes to continue discharging after the expiration date of the permit, an application shall be filed for renewal of the permit at least 180 days prior to the expiration date. Applications for renewal approvals shall be processed in accordance with the requirements of this section, with the exception of the public notice requirement. An industrial user whose existing waste discharge permit has expired and has submitted its complete application for permit renewal in the time specified herein shall be deemed to have an effective waste discharge permit until the director issues or denies the new waste discharge permit. An industrial user whose existing waste discharge permit has expired and who failed to submit its reapplication in the time period specified herein will be deemed to be discharging without a waste discharge permit. The director may extend the wastewater discharge permit upon finding that the interests of this ~~Chapter~~chapter are best served by such extension.

### **Article V. Reporting Requirements**

#### **15.14.050 Baseline Monitoring Report**

A. Existing Source. Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing sources that are subject to such standard, shall submit to the director a baseline monitoring report containing the information identified in paragraph (C) of this ~~Section~~section.

B. New Source. At least ninety (90) days prior to commencement of discharge, new sources, shall submit to the director a baseline monitoring report that contains the information identified in paragraph (C) of this ~~Section~~section.

C. The baseline monitoring report shall include the information described Section 15.14.042(C) of this ~~Chapter~~chapter.

D. If the categorical pretreatment standard is modified by a removal allowance (40 CFR 403.7), the combined waste stream formula (40 CFR 403.6(e)), and/or a fundamentally different factors variance (40 CFR 403.13) after the user submits the baseline monitoring report required by this ~~Section~~section, then any necessary amendments to the certification statement and/or compliance schedule contained in the original baseline monitoring report shall be submitted by the user to the director within sixty (60) days after the modified limit was approved.

#### **15.14.051 Initial Compliance Report**

A. Within ninety (90) days following the date for final compliance by the significant industrial user with applicable pretreatment standards and requirements set forth in this ~~Chapter~~chapter or in a wastewater discharge permit, or within thirty (30) days following commencement of the introduction of wastewater into the POTW by a new source or new users considered by the director to fit the definition of a significant industrial user, the affected user shall submit to the

director a report containing the information outlined in Section 15.14.042(C)(4) through (C)(6) of this ~~Chapter~~chapter.

B. For users subject to equivalent mass or concentration limits established by the director in accordance with procedures established in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

C. In cases where applicable pretreatment standards and requirements include compliance with BMPs, the user shall submit documentation required by the director in the wastewater discharge approval to determine the compliance status of the user.

#### **15.14.052 Periodic Compliance Report**

A. All wastewater discharge permit holders that perform self-monitoring shall submit to the director a report indicating the nature of the effluent over the previous reporting period. Reports shall be submitted no less than twice annually as specified in the permit.

1. The report shall include a record of the concentrations (and mass if specified in the wastewater discharge permit) of the pollutants listed in the wastewater discharge permit that were measured and a record of all flow measurements (average and maximum) taken at the designated sampling locations, and shall also include any additional information required by this ~~Chapter~~chapter or the wastewater discharge permit. Production data shall be reported if required by the wastewater discharge permit. Both daily maximum and average concentration (or mass, where required) shall be reported.

2. If a user sampled and analyzed more frequently than was required by the director or by this ~~Chapter~~chapter, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge during the reporting period.

3. Any user subject to equivalent mass or concentration limits established by the director or by unit production limits specified in the applicable categorical pretreatment standards, shall report production data as outlined in Section 15.14.051(B) of this ~~Chapter~~chapter.

4. In cases where applicable pretreatment standards and requirements include compliance with BMPs, the user shall submit documentation required by the director in the Discharge Approval to determine the compliance status of the user.

5. Zero discharge users shall submit periodic reports as required by the director stating that no process waste has been discharged to the POTW.

6. If the director calculated limits to factor out dilution flows or nonregulated flows, the user will be responsible for providing flows from the regulated process flows, dilution flows and nonregulated flows.

7. Flows shall be reported on the basis of actual measurement; provided, however, that the director may accept reports of average and maximum flows estimated by verifiable techniques if the director determines that an actual measurement is not feasible.

8. Sampling shall be representative of the user's daily operations and shall be taken in accordance with the requirements specified in Article VI of this ~~Chapter~~chapter.

B. The director may require reporting by users if information or data is needed to establish a sewer charge, determine the treatability of the effluent, or determine any other factor that is related to the operation and maintenance of the POTW.

C. The director may require self-monitoring by the user or, if requested by the user, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this section. If the director agrees to perform such periodic compliance monitoring, the user will be charged for such monitoring, based upon the costs incurred by the City for the sampling and analyses. Any such charges shall be added to the normal sewer charge and shall be payable as part of the utility bills. The director is under no obligation to perform periodic compliance monitoring for a user.

D. The director reserves the right to require users to submit reports electronically at such time as the City implements the ability to handle electronic reporting per State and federal rules pertaining to electronic reporting. Before this time, users that chose to send electronic (digital) reports to the City to satisfy the requirements of this section must meet all State and federal signature requirements. The director may still require reporting in traditional format.

E. The director may authorize wastewater discharge permit holders to forego periodic sampling and reporting of a pollutant regulated by a categorical pretreatment standard if such user has demonstrated to the director's reasonable satisfaction through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge or is present only at background levels from intake water without any increase in the pollutant due to the user's activities. Any waiver granted pursuant hereto must comply with the requirements of 40 CFR 403.12(e). Waivers granted pursuant hereto do not extend to baseline monitoring reports required under Section 15.14.050 or initial compliance reports required under Section 15.14.051. In addition, waivers granted pursuant hereto do not supersede or authorize the user to forego certification processes or requirements specifically established in a categorical pretreatment standard.

#### **15.14.053 Compliance Schedule for Meeting Pretreatment Standards**

Compliance schedules submitted by applicants and/or approved by the director pursuant to this ~~Chapter~~chapter (including under Section 15.14.042(C)) shall conform to the following requirements:

A. The schedule shall contain increments of progress in the form of milestone 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 (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

B. No increment referred to in paragraph (A) of this section shall exceed 9 months. In no event shall more than nine (9) months elapse between such progress reports to the director.

C. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the director including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports.

#### **15.14.054 Notification of Significant Production or Discharge Change**

A. Any user subject to a discharge permit shall notify the director within two (2) business days after the user has a reasonable basis to know that its manufacturing process/production or wastewater will significantly change within the next calendar month in terms of the nature, quality, volume, the potential for a slug discharge, pretreatment modifications, a new point of discharge, and/or the listed or characteristic hazardous wastes for which the user has submitted initial notification under 40 CFR 403.12(p). For this section, a significant change shall be defined as a twenty-percent (20%) change as defined in Section 15.14.041(C) of this ~~Chapter~~chapter. In such conditions:

1. The director may require the user to submit any information needed to evaluate the changed condition. The director may also require a new or revised wastewater discharge permit application under Article IV of this ~~Chapter~~chapter;
2. The director may issue, reissue, or modify a wastewater discharge permit applying procedures of this ~~Chapter~~chapter in response to the user's notice under Article V of this ~~Chapter~~chapter.

B. Any user not providing a notice of such anticipated change will be required to comply with the existing limits contained in its wastewater discharge permit.

#### **15.14.055 Hazardous/Dangerous Waste Notification**

A. Any user that proposes to discharge any volume of hazardous waste as defined in 40 CFR 261 (listed or characteristic wastes) or dangerous waste as defined Chapter 173-303 WAC, or any facility that proposes to discharge any amount of acutely hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), is required to provide a request in writing to the director. Discharging such waste without the director's approval as provided herein is prohibited. The request shall be provided with the initial wastewater discharge approval application and repeated with each subsequent re-application. Any user, who the director has determined to be exempt from this requirement pursuant to Chapter 173-303 WAC shall comply with the requirements contained herein within thirty (30) days of becoming aware of a discharge of hazardous or dangerous wastes in a calendar month or the discharge of acutely hazardous wastes to the ~~City~~city sewer system. Such notification shall include:

1. The name of the hazardous waste as set forth in 40 CFR Part 261 or the dangerous waste as set forth in WAC 173-303;
2. The EPA/State Hazardous/Dangerous waste and/or Site ID number;
3. The type of discharge (continuous, batch, or other); and

4. The estimated quantity of discharge of the hazardous, dangerous, or acutely hazardous waste.

B. If a user discharges such waste to the sewer system, the notification shall also contain the following information to the extent it is known or readily available to the industrial user:

1. An identification of the hazardous or dangerous constituents contained in the wastes;
2. An estimation of the mass and concentration of such constituents in the waste streams discharged during that calendar month; and
3. An estimation of the mass of constituents in the waste streams expected to be discharged during the following 12 months.

C. For any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous or dangerous waste discharged to the degree it has determined to be economically practical and shall describe that program and reductions obtained through its implementation.

D. Any industrial user shall notify the EPA Regional Waste Management Division Director, and ~~state hazardous~~ the Washington State Department of Ecology waste authorities, in writing, of the discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous or dangerous waste under 40 CFR Part 261 and meets the reporting criteria specified at 40 CFR 403.12(p). Notification to the Washington State Department of ~~ECY~~ Ecology and EPA is the responsibility of the industrial user and shall be made as required under 40 CFR 403.12(p). The industrial user shall copy the city on all notifications made to the Department of Ecology and EPA.

E. The discharge of any waste which classifies as a dangerous waste per Chapter 173-303 WAC and/or 40 CFR Part 261 is prohibited per Section 15.14.020(B)(20) of this ~~Chapter~~ chapter, except as authorized by the director pursuant to Section 15.14.~~065055~~ (A)-(D) of this ~~Chapter~~ chapter. Wastewater which would be a dangerous waste even if excluded from regulation under the Domestic Sewage Exclusion (WAC 173-303-071) must be identified within each wastewater discharge approval application and subsequent re-application.

F. Whenever the EPA/ECY publishes final rules identifying additional hazardous or dangerous wastes or new characteristics of hazardous or dangerous waste, a user shall notify the director of the discharge of such a substance within 90 days of the effective date of such regulations.

G. This reporting does not replace or render unnecessary the requirement for any other EPA approvals and reporting that may need to occur or be required for the user per other federal, ~~State~~ state, or local laws. These notification requirements do not apply to pollutants already reported under the self-monitoring requirements.

#### **15.14.056 Report of Potential Problems**

A. Any user shall notify the ~~City~~ city by telephone at (360) 778-7850 immediately in the event of an accidental or nonroutine discharge that may cause potential problems to the POTW, including any slug loadings. The notification shall include the location of the discharge, type of waste,

concentration and volume (if known), and corrective action taken by the user. Any user who discharges a "slug" (or slugs) of pollutants shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed by the director or on the Citycity under Statestate or federal law.

B. If required by the director, the user shall, within five (5) days following such discharge, submit a detailed written report describing the cause(s) of the discharge and the measures taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any penalties, or other liability that may be imposed pursuant to this Chapterchapter.

C. Employers shall document that all employees who may cause or discover such a discharge are advised of the emergency notification procedure and this documentation may be requested by the Citycity during a facility inspection.

#### **15.14.057 Notice of Violations – Repeat Sampling and Reporting**

If sampling performed by a user indicates a violation, the user shall notify the director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling within five (5) days and submit the results of the repeat analysis to the director within thirty (30) days after becoming aware of the violation, except the user is not required to resample if:

1. The Citycity performs sampling of the user at a frequency of at least once per month;  
or
2. The Citycity performs sampling of the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

#### **15.14.058 Infiltration and Inflow Evaluation**

Users shall provide flow data at specific intervals upon request of the director in the assessment of potential infiltration or inflow impacting the wastewater collection system.

#### **15.14.059 Record Keeping**

A. Users subject to the reporting requirements of this Chapterchapter shall retain for three (3) years, and make available for inspection and copying upon city request, all records of information obtained pursuant to any monitoring activities required by this Chapterchapter and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records include, but are not limited to, data reports and the chain of custody and quality control information associated with all sampling events.

B. Records shall include at a minimum:

1. The date, time and exact place of monitoring;
2. The name of the person(s) taking the samples;

3. The dates analyses were performed; who performed the analyses; the analytical techniques or methods used;

4. The results of such analyses.

C. Users are encouraged to retain quality control information provided by the laboratory as it is of value in the event that the sample data is called into question.

D. Users shall also retain records of BMP compliance (if applicable to the users Discharge Approval), including procedural review, inspection, analysis results and/or maintenance records as required by the Discharge Approval.

E. 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 POTW, or where the user has been specifically notified of a longer retention period by the director.

#### **15.14.059.1 Timing**

Written reports will be deemed to have been submitted on the date postmarked. For reports that 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.

#### **15.14.059.2 Total Toxic Organic Reporting**

Categorical users that are required by federal, state, or local laws to eliminate and/or reduce the levels of toxic organics discharged into the sewer system must follow the categorical pretreatment standards for that industry. Those users must also sample, as part of the initial application requirements, for the organics listed under the total toxic organic limit that are reasonably expected to be present; provided, however, that such users may submit a statement that no toxic organics are used at the facility and/or develop a solvent management plan in lieu of continuously monitoring for total toxic organics, if authorized by the director. If allowed to submit a statement or develop a solvent management plan, the user must annually submit a certification statement as part of its self-monitoring report that there has been no dumping of concentrated toxic organic into the wastewater and that it is implementing a solvent management plan as approved by the director. The director may require the development and implementation of a solvent management plan in addition to monitoring for total toxic organics.

#### **15.14.059.3 Annual Certification of Non-significant Categorical Users**

Annual Certification for Non-Significant Categorical Users. A facility determined by the director to meet the definition of a non-significant categorical user as defined by Section 15.14.012 of this ~~Chapter~~chapter must complete the below statement and submit it to the director annually. The statement must be signed by an authorized representative of the user as defined by Section 15.14.012 of this ~~Chapter~~chapter.

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR \_\_\_\_\_,

I certify that, to the best of my knowledge and belief that during the period from \_\_\_\_\_ to \_\_\_\_\_ [months, days, year]:

- (a) The facility described as \_\_\_\_\_ [facility name] met the definition of a non-significant categorical user as defined in Bellingham Municipal Code Section 15.14.012;
- (b) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and
- (c) The facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based upon the following information: \_\_\_\_\_.

## Article VI. Sampling and Analytical Requirements

### 15.14.060 Sampling Requirements for Users

A. The director will determine on a case-by-case basis the required sampling intervals, the number of samples required and whether the user will be able to composite the individual grab samples. The frequency of monitoring shall be as prescribed within the permit. At a minimum, except for zero discharge users, users with approved waivers, and NSCIUs, users shall sample their discharge at least twice per year. Samples with a short holding time (pH, volatile organics, etc.) or samples that cannot be sampled with a composite sampler (fats, oil & grease) will need to be collected via grab sampling at specified intervals. For pollutants with a holding time that allows it, twenty-four (24) hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The director may waive flow-proportional composite sampling for any user that demonstrates that flow proportional is not feasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent from the regulated discharge.

B. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated or manufacturing process if no pretreatment exists or as determined by the director and/or contained in the user's wastewater discharge permit. For categorical users, if other wastewaters are mixed with the regulated wastewater prior to pretreatment the user shall measure the flows and concentrations necessary to allow use of the combined waste stream formula of 40 CFR 403.6(e) in order to evaluate compliance with the applicable categorical pretreatment standards. For other SIUs, for which the director has adjusted its local limits to factor out dilution flows, the user shall measure the flows and concentrations necessary to evaluate compliance with the adjusted pretreatment standard(s).

C. All sample results 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 from the user. If a user sampled and analyzed more frequently than what was required in its wastewater discharge approval, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge as part of its self-monitoring report.

D. Where a treated regulated process waste stream is combined prior to treatment with wastewaters other than those generated by the regulated process, the industrial user may monitor either the segregated process waste stream or the combined waste stream for the purpose of determining compliance with applicable Pretreatment Standards. If the industrial user chooses to monitor the segregated process waste stream, it shall apply the applicable categorical Pretreatment Standard. If the user chooses to monitor the combined waste stream, it shall apply an alternative discharge limit calculated using the combined waste stream formula as provided in 40 CFR 403.6(e). The industrial user may change monitoring points only after receiving approval from the director. The director shall ensure that any change in an industrial user's monitoring point(s) will not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable Standards.

#### 15.14.061 Analytical Requirements

A. All pollutant analyses, including sampling techniques, shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard, or approved by the director. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.

B. All analyses performed to establish compliance and used in compliance reporting shall be performed by a laboratory ~~accredited by ECY in accordance with WAC 173-50. Laboratories must be accredited for the analyses for which they are performing, registered or accredited under the provisions of Chapter 173-50 WAC, except for flow, temperature, settleable solids, conductivity, pH, turbidity, and internal process control parameters.~~ However, if the laboratory analyzing samples for conductivity, pH, and turbidity must otherwise be accredited, it shall be accredited for these parameters as well.

C. To ensure that the reported data is valid for determining compliance with requirements, all data shall have a reporting limit no greater than 25 percent of the regulatory limit included in this ~~Chapter~~chapter or applicable ~~State~~state or federal regulation (e.g., for lead, with a ~~regulatory~~local limit of 1.54.89 mg/L, the reporting limit shall be no greater than 0.380.47 mg/L).

#### 15.14.062 City Monitoring of User's Wastewater

The Citycity will follow the same procedures as outlined in Sections 15.14.070 and 15.14.071 of this ~~Chapter~~chapter.

### Article VII. Compliance Monitoring

#### 15.14.070 ~~Director~~ Inspection and Sampling

A. Continued connection and use of the POTW shall be contingent on the right of the director to inspect and sample all discharges into the system. The director shall have the right to enter the facilities of any user for the purpose of the enforcement of this ~~Chapter~~chapter, and to determine that any wastewater discharge approval or order issued hereunder, is being met and whether the user is complying with all requirements thereof. Users shall allow the director ready access to all parts of the premises for the purposes of inspection, photographing, video recording, sampling, records examination and copying, and the performance of any additional duties. Entry will not be

conditioned on the director signing any type of release, confirmation, consent, acknowledgement, or other type of agreement. If safety training needs to occur to be on site, the user shall coordinate this with the director for this to occur within fifteen (15) days of the director's request.

B. Right of entry and inspection.

1. Existing Systems. The person authorized by the director may, during reasonable hours and upon notification to the person with a right to possession, enter any building or premises in the discharge of its official duties to examine or copy records or inspect, photograph, video record, investigate, measure or test the wastes discharged or the private sewer connected, directly or indirectly, to the public system as per 40 CFR Section 403.14(o) and to utilize existing sewer lateral cleanouts for the purpose of inspecting, maintaining, or cleaning blockages in the public sewer system.

2. Inspection of Construction of Sewer System Works.

a. During the construction of all sewer system works, including private sewers that directly or indirectly connect to the public system, the director shall have access thereto for inspection purposes and if considered advisable by the director, may require an inspector on the job continuously. At no time shall sewers be backfilled or covered until the department has been notified and has given proper inspection and approval. If the work is not approved, it shall be repaired or removed and reconstructed, whichever is directed by the director.

b. All costs of inspection and testing shall be borne by the owner or subcontractor.

3. Premises of industrial and commercial dischargers.

a. Upon showing proper credentials, persons authorized by the director, when necessary for the performance of their duties, shall have the right to enter the industrial or commercial user's premises during scheduled, unscheduled, announced, or unannounced inspections. Such authorized personnel shall have access to any facilities and records necessary for determining compliance including, but not limited to, the ability to photograph, video record, copy any records, inspect any monitoring equipment, and sample any wastewater subject to regulation under this ~~Chapter~~ chapter. Notwithstanding any provision of law, persons authorized by the director may enter an industrial or commercial user's premises at any time if the director determines that an imminent hazard to persons or property exists on or as a result of activities conducted on the industrial user's premises.

b. The director may inspect the process areas of an industrial or commercial user, inspect chemical and waste storage areas, and inspect, photograph, video record, sample and monitor wastewater production activities to determine compliance with the provisions herein and any permit or order issued herein. Inspections may include but are not limited to visual observations of the pretreatment and monitoring facilities, review of the measures undertaken by the industrial user to minimize risks for slug discharges, spills, and discharges that would violate any limitations and specific prohibitions, and inspections of any hazardous waste storage areas.

c. Persons authorized by the director may witness any sampling or sampling procedures required of any industrial or commercial user as part of a self-monitoring program or an industrial wastewater discharge approval.

**BC.** Where a user has security measures in force that require proper identification and clearance before entry into its premises, the user shall make necessary arrangements so that, upon presentation of suitable identification, the director will be permitted to enter without delay for the purposes of performing specific responsibilities.

**CD.** The director shall have the right to set up on the user's property, or require installation of such devices, as are necessary to conduct sampling and/or metering of the user's operations.

**DE.** 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 director and shall not be replaced. The costs of clearing such access shall be borne by the user.

**EF.** Unreasonable delays in allowing the director access to the user's premises shall be a violation of this ~~Chapter~~chapter.

#### **15.14.071 Monitoring Facilities**

A. As described in Section 15.14.031(G)(1)-(3) of this ~~Chapter~~chapter users may be required to operate at their own expense a monitoring facility to allow inspection, sampling, and flow measurements of wastewater discharge to the POTW. Each monitoring facility shall be situated in a location approved by the director.

B. There shall be ample room in or near such sampling facility to allow accurate sampling, flow measurement, and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user. All monitoring facilities shall be constructed and maintained in accordance with all applicable city standards and specifications.

C. The director may require the user to install monitoring equipment as necessary. All devices used to measure wastewater flow and quality shall be calibrated annually to ensure their accuracy, or more frequently as determined by the director. Required equipment may include flow meters, pH meter, sampling equipment, and other monitoring equipment as required by the director. The user shall provide at a minimum a 24-inch-diameter inspection and sampling manhole.

#### **15.14.072 Search Warrants**

If the director has been refused access to a building, structure or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ~~Chapter~~chapter, or that there is a need to inspect as part of a routine inspection program of the ~~City~~city designed to verify compliance with this ~~Chapter~~chapter or any wastewater discharge approval or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the director shall seek issuance of a search and/or seizure warrant from a court of competent jurisdiction. Such warrant shall be served by the director and may be served in the in the company of a uniformed police officer of the city.

### 15.14.073 Vandalism

No person shall willfully or negligently break, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, appurtenance or equipment, or other part of the POTW. Any person found in violation of this requirement shall be subject to the sanctions set out in this ~~Chapter~~chapter.

## Article VIII. Information Requests

### 15.14.080 Confidential Information

A. Except as provided below, information provided or obtained under this ~~Chapter~~chapter or the city's pretreatment program ~~implanted~~implemented pursuant hereto will be available to the public. Users may have certain information, however, withheld as confidential in accordance with the following requirements and procedures:

1. When a user submits information to the Director, or provides information to inspectors, users may request that specific information be maintained as confidential. Users must promptly identify the specific information in writing, and describe why the release would divulge information, processes, or methods of production entitled to protection as trade secrets or confidential business information under applicable ~~State~~state or Federal laws. A user submitting information or data to the director for which the user intends to claim whole or partial confidentiality shall mark those specific pages and sections of information or data asserted to be confidential with a conspicuous and legible marking indicating "CONFIDENTIAL."””
2. Upon receipt of such statement of confidentiality, the information marked "CONFIDENTIAL" shall be filed separately and shall not be disclosed except as provided for under this ~~Section~~section;
3. Upon receipt of a public disclosure request for information marked "CONFIDENTIAL", the director shall within five (5) business days of receipt notify the user of the public disclosure request and inform such user in writing that the information will be disclosed unless the user obtains a court order directing that the information not be disclosed within thirty (30) days of receipt of the public disclosure request. The director shall include a copy of the written notification to the user in the initial response to the public disclosure request required under state law<sub>;</sub>
4. Unless the court orders the withholding of the information claimed to be confidential, the director shall provide such information to the person making the public disclosure request.

B. Information held as confidential may not be withheld from governmental agencies for uses related to the NPDES program or Pretreatment Program, or in enforcement proceedings involving the person furnishing the report.

C. Information which may not be held confidential includes but is not limited to the following: the name and address of applicant, the description of proposal, the proposed receiving water, receiving water quality and effluent data.

D. In no case shall the city, the director or city employee be liable to a user for public disclosure of any information, including information disclosed contrary to the provisions of this section.

### **Article IX. Public Notification Requirement**

#### **15.14.090 Publication of Users in Significant Noncompliance**

The director shall publish annually, in "The Bellingham Herald" or other newspaper of general circulation in Bellingham, a list of the users that, during the previous twelve (12) months were in significant noncompliance with applicable pretreatment standards and requirements. The term "significant noncompliance" shall mean:

1. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of wastewater measurements taken for the same pollutant parameter during a six (6) month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits as defined by 40 CFR 403.3(l);
2. Technical review criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits as defined by 40 CFR 403.3(l), multiplied by the TRC (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
3. Any other violation of a pretreatment standard or requirement as defined by [Sections 15.14.104 and 15.14.105 PMC 14.06.021 through 14.06.027](#) that the director determines has caused, alone or in combination with other discharges, interference or pass through including endangering the health of city personnel or the general public;
4. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or that has resulted in the city's exercise of its emergency authority to halt or prevent such a discharge;
5. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge approval or enforcement order for starting construction, completing construction, or attaining final compliance;
6. Failure to provide, within forth-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;
7. Failure to accurately report noncompliance; or
8. Any other violation, which may include a violation of BMPs, that the director determines will adversely affect the operation or implementation of the local pretreatment program.

### **Article X. Administrative Enforcement Remedies**

#### **15.14.100 Administrative Enforcement Remedies**

The director is authorized to implement and enforce pretreatment program requirements as required by 40 CFR 403.8. The authority to enforce this ~~Chapter~~chapter and state and federal pretreatment regulations is vested in the director and his/her designees.

#### **15.14.101 Notification of Violation**

A. Authorization. When the director finds that a user has violated, or continues to violate, any provision of this ~~Chapter~~chapter, including a wastewater discharge approval, order or any pretreatment standard or requirement, the director may serve upon that user a written notice of violation. The director may select any means of service that is reasonable under the circumstances.

B. Contents.

1. The notice of violation shall contain:

a. Statement of the specific violations that the director asserts has occurred.

2. The notice of violation may contain the following elements:

a. Factual findings adequately describing the basis upon which the director asserts a violation has occurred;

b. Compliance measures and/or schedule for compliance;

c. Administrative fines;

d. Any other provision or enforcement measure as deemed appropriate by the director.

C. Within seven (7) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation.

D. The director may also take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

#### **15.14.102 Consent Orders**

A. The director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 15.14.~~104~~114 and 15.14.~~105~~115 of this ~~Chapter~~chapter and shall be judicially enforceable.

B. Use of a consent order shall not be a bar against, or prerequisite for, taking any other action against the user.

#### **15.14.103 Show Cause Hearing**

A. The director may order a user that has violated, or continues to violate, any provision of this ~~Chapter~~chapter, including a wastewater discharge approval, order or any pretreatment standard or requirement, to appear before the director and show cause why a proposed enforcement action should not be taken.

B. The show cause order specify the time and place for the show cause 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.

C. The show cause order shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user.

D. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

#### **15.14.104 Compliance Orders**

A. When the director finds that a user has violated, or continues to violate, any provision of this ~~Chapter~~chapter, including a wastewater discharge approval, order or any pretreatment standard or requirement, the director may issue a compliance order to the user responsible for the discharge directing that the user come into compliance within a time specified in the compliance order.

B. Compliance orders may require users to refrain from certain activities, install additional pretreatment equipment, increase self-monitoring, and/or use best management practices to minimize the amount of pollutants discharged to the sewer.

C. If the user does not come into compliance within the time specified in the compliance order, sewer service may be discontinued.

D. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

#### **15.14.105 Cease and Desist Orders**

A. When the director finds that a user has violated, or continues to violate, any provision of this ~~Chapter~~chapter, including a wastewater discharge approval, order or pretreatment standard or requirement, or that the user's past violations are likely to recur, the director 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.

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

#### **15.14.106 Administrative Fines**

A. When the director finds that a user has violated or continues to violate any provision of this ~~Chapter~~chapter, including a wastewater discharge approval, order or pretreatment standard or requirement, the director may fine such user in an amount not to exceed ten thousand dollars (\$10,000). Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines may be assessed for each day during the period of violation. Said Administrative fines shall constitute a sewer service surcharge, and upon assessment, shall be subject to collection in the same manner as all other sewer utility rates, charges, and penalties.

B. The director ~~may~~may add the costs of any emergency response, additional monitoring, investigation and administrative costs related to the non-compliance to the amount of the fine.

C. The director will consider the economic benefit enjoyed by a user as a result of the non-compliance in cases where there appears to have been a monetary benefit from not complying. In such cases, the director shall ensure that fines, to the maximum amount allowable, exceed the benefit to the user from the non-compliance. Economic benefit may include and is not necessarily limited to:

1. The cost benefit resulting from the delay or avoidance of capital costs that would have been incurred for compliance;
2. The cost benefit resulting from the delay or avoidance of operation and maintenance costs that would have been incurred for compliance including the cost of labor, utilities, chemicals, supplies, replacement parts, overhead, monitoring, permit fees, and other fixed or variable costs for the period of violations(s);
3. A reasonable investment rate of return on the cost benefit calculated in (1) and (2) above over the period of violations(s); and
4. The value of a competitive advantage derived by the user attributable to the user's non-compliance over the period of violations(s) including increased profits or market share compared to competitors in compliance.

D. Unless other arrangements have been made with, and authorized by the director, unpaid charges, fines, and penalties shall accrue interest thereafter until paid at the rate of one (1) percent per month. After 90 days, if charges, fines, and penalties have not been paid, the director may revoke the user's wastewater discharge approval.

E. Users seeking judicial review of administrative fines must do so by filing a Petition for Review in the Whatcom County Superior Court within 30 days of the decision of the director.

F. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

#### **15.14.107 Emergency Suspensions**

A. The director may immediately suspend a user's discharge (or threatened discharge) when it reasonably appears to present a substantial danger to the health or welfare of persons. In such cases the director will attempt to first provide informal notice to the user.

B. The director may also immediately suspend a user's discharge (after informal notice and opportunity to respond) that threatens to interfere with the operation of the POTW, or that presents or may present an endangerment to the environment.

C. 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 director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals.

D. The director shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the director that the period of endangerment has passed, unless the termination proceedings in Section 15.14.108 of this ~~Chapter~~chapter are initiated against the user.

E. When the director orders emergency suspension, all affected users shall submit a detailed written statement, describing the causes of the harmful or prohibited discharge and the measures taken to prevent any future occurrence. Users shall submit this report to the director prior to the date of any show cause hearing under Section 15.14.103 or termination hearing under Section 15.14.108 ~~Show Cause Hearing or termination hearing under Section 15.10.113, Show Cause Hearing, and Section 15.14.118~~, but in any case not more than 30 days after the suspension. This subpart shall not be interpreted as requiring a hearing prior to any emergency suspension under this section.

#### **15.14.108 Termination of Discharge**

A. Any user that violates the following conditions is subject to having the privilege of discharging to the POTW terminated:

1. Discharge of nondomestic wastewater without a wastewater discharge approval, when required under this ~~Chapter~~chapter;
2. Violation of wastewater discharge approval conditions;
3. Failure to accurately report the wastewater constituents and characteristics of its discharge;
4. Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge;

5. Refusal of reasonable access to the user's premises for the purpose of city inspection, monitoring or sampling;
6. Violation of the prohibited discharge standards of this ~~Chapter~~chapter;
7. Violation of the pretreatment standards of this ~~Chapter~~chapter;
8. Failure to timely pay fines, penalties and charges; and
9. Failure to complete a wastewater survey or wastewater discharge approval application.

B. The director shall notify the user of the proposed termination and provide the user with an opportunity to show cause why the proposed action should not be taken, in accordance with the show cause provisions contained in Section 15.14.~~103113~~ of this ~~Chapter~~chapter.

C. Termination of discharge is not be a bar to, or a prerequisite for, taking any other action against the user.

#### **15.14.109 Appeal Procedures**

A. Administrative Appeal to the Hearing Examiner. Any decision or determination made by the director in the administration of the provisions of this ~~Chapter~~chapter shall be final and conclusive unless the aggrieved party files a notice of appeal with the hearing examiner within thirty (30) days from the date of the director's written decision or determination. The filing fee shall be set by City Council by periodic resolution.

B. Judicial Review of Hearing Examiner's Decision.

1. Any party, including the ~~City~~city, the Washington State Department of ~~ECY~~Ecology, the United States Environmental Protection Agency, or the user/appellant, is entitled to review of the final determination of the hearing examiner in the Whatcom County Superior Court; provided, that any petition for review shall be filed no later than thirty (30) days after date of the hearing examiner's written decision.
2. Copies of the petition for review shall be served as in all civil actions.
3. The filing of the petition shall not stay enforcement of the final determination except by order of the superior court and on posting of a bond to be determined by the court naming the ~~City~~city as beneficiary.
4. The review shall be conducted by the court without a jury. The record shall be satisfied by a narrative report certified by the hearing examiner and no verbatim record of proceedings before the hearing examiner shall be required to be presented to the superior court.
5. The court may affirm the final determination or remand the matter for further proceedings before the hearing examiner; or the court may reverse the final determination if it was:
  - a. An erroneous interpretation of the law, after allowing for such deference as is due the construction of the law by a local jurisdiction with expertise;

- b. Not supported by evidence that is substantial when viewed in light of the whole record before the court;
- c. A clearly erroneous application of the law to the facts;
- d. Outside the authority or jurisdiction of the hearing examiner; or
- e. Violates the constitutional rights of the party seeking relief.

## Article XI. Judicial Enforcement Remedies

### 15.14.110 Injunctive Relief

A. When the director finds that a user has violated or continues to violate any provision of this ~~Chapter~~chapter, including a wastewater discharge approval, order or pretreatment standard or requirement, the director may petition the Whatcom County Superior Court for the issuance of a temporary or permanent injunction, as appropriate, that restrains or compels the specific performance of the wastewater discharge approval, order, or other requirement imposed by this ~~Chapter~~chapter on activities of the user.

B. The city may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation.

C. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user. Injunctive relief shall be nonexclusive to other remedies available to the ~~City~~city.

### 15.14.111 Civil Penalties

A. A user that has violated or continues to violate any provision of this ~~Chapter~~chapter, including a wastewater discharge approval, order or pretreatment standard or requirement shall be liable to the ~~City~~city for a maximum civil penalty of ten thousand dollars (\$10,000) 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.

B. The director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the ~~City~~city.

C. In determining the amount of civil liability, the Court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for taking any other action against a user.

E. Method of Collection. Court-ordered civil penalties or fines may be added to the user's next scheduled sewer service charge, and the ~~City~~city shall have such other collection remedies as required to collect sewer service charges or penalties. Any such assessment, penalty, or charges

shall constitute a lien against the individual user's property in the manner provided in state law for delinquent sewer charges. Court-ordered civil penalties or fines included within a judgment may also be collected in the manner provided under state law for the collection of judgments.

F. Failure to Pay Civil Penalty. A user's failure to pay such civil penalties shall constitute a violation of this ~~Chapter~~chapter and be grounds for termination of water/sewer utility services and revocation of the discharge permit or other equivalent control document.

#### **15.14.112 Criminal Prosecution**

A. A user who violates any provision of this ~~Chapter~~chapter, a wastewater discharge approval, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a gross misdemeanor, punishable by a fine of not more than five thousand dollars (\$5,000) and/or one (1) year in jail. Each day a violation occurs shall constitute a separate offense.

B. A user who introduces any substance into the POTW that causes personal injury or property damage shall, upon conviction, be guilty of a gross misdemeanor and be subject to a penalty of not more than five thousand dollars (\$5,000) and/or one (1) year in jail. Each day a violation occurs shall constitute a separate offense. This penalty shall be in addition to any other cause of action for personal injury or property damage available under ~~State~~state law.

C. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ~~Chapter~~chapter, wastewater discharge approval, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ~~Chapter~~chapter shall, upon conviction, be guilty of a gross misdemeanor, and punished by a fine of not more than five thousand dollars (\$5,000) and/or 1 year in jail. Each day a violation occurs shall constitute a separate offense. In addition, the user shall be subject to:

1. The provisions of 18 USC Section 1001 relating to fraud and false statements;
2. The provisions of Sections 309(c)~~(4)~~(4) of the Clean Water Act, as amended governing false statements, representation, or certification; and
3. The provision of Section 309(c)(6) of the Clean Water Act, regarding responsible corporate officers.

### **Article XII. Remedies Nonexclusive**

#### **15.14.120 Remedies ~~nonexclusive~~Nonexclusive**

The remedies provided in this ~~Chapter~~chapter are not exclusive. The ~~City~~city reserves the right to take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the ~~City's~~city's enforcement response plan. However, the ~~City~~city reserves the right to take other action against any user when the circumstances warrant. Further, the ~~City~~city is empowered to take more than one enforcement action against any noncompliant user. These actions may be taken concurrently.

## Article XIII. Supplemental Enforcement Action

### 15.14.130 Performance Bonds

The director may decline to issue or reissue a wastewater discharge approval to any user that has failed to comply with any provision of this ~~Chapter~~chapter, including a wastewater discharge approval, order or pretreatment standard or requirement, unless such user first files a satisfactory performance bond, payable to the ~~City~~city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance.

### 15.14.131 Financial Assurances

The director may decline to issue or reissue a wastewater discharge approval to any user that has failed to comply with any provision of this ~~Chapter~~chapter, including a wastewater discharge approval, order or pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to meet pretreatment requirements, and/or restore or repair damage to the POTW caused by its discharge.

### 15.14.132 Water Supply Severance

Whenever a user has violated or continues to violate any provision of this ~~Chapter~~chapter, including a wastewater discharge approval, order or pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply with the provisions of this ~~Chapter~~chapter.

### 15.14.133 Public Nuisances

A violation of any provision of this ~~Chapter~~chapter, including a wastewater discharge approval, order or pretreatment standard or requirement, is hereby declared a public nuisance and shall be corrected or abated as directed by the director.

### 15.14.134 Contractor Listing

Users who have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the city. Existing contracts for the sale of goods or services to the ~~City~~city held by a user found to be in significant noncompliance with pretreatment standards or requirements may be terminated at the discretion of the city.

### 15.14.135 Publication of Violations and/or Enforcement Actions:

The director may publish violations and/or enforcement actions at any time, where monetary fines may be inappropriate in gaining compliance, or in addition to monetary fines. Violations and/or enforcement actions may also be published when the director feels that public notice should be made, or at other appropriate times. The cost of such publications will be recovered from the user.

#### XIV. Affirmative Defenses to Discharge Violations

##### 15.14.140 Upset

A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with applicable pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

B. An upset shall constitute an affirmative defense to an action brought for noncompliance with applicable pretreatment standards if the requirements of part C of this section are met.

C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the user can identify the cause(s) of the upset;
2. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
3. The user has submitted the following information to the POTW and treatment plant operator 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):
  - a. A description of the indirect discharge and cause of noncompliance;
  - b. The period of noncompliance, including exact dates and times or, if not corrected, \_\_\_\_\_ the anticipated time the noncompliance is expected to continue; and
  - \_\_\_\_\_ c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

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

E. Users will have the opportunity for a judicial determination on any claim of upset only in a judicial enforcement action brought for noncompliance with applicable pretreatment standards.

F. Users shall control production of all discharges to the extent necessary to maintain compliance with applicable 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.

##### 15.14.141 Prohibited Unintentional Discharge Standards

Users shall have an affirmative defense to an enforcement action brought against it for noncompliance with the discharge prohibitions in Section 15.14.020(A) and (B) ~~(1), (3)-(7), (11)-~~

(15) and (26)-(29) through ( ) of this Chapterchapter if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the Citycity was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

#### 15.14.142 Bypass

A. For the purposes of this section, the following definitions apply:

1. "Bypass" means the intentional diversion of waste streams from any portion of a user's treatment facility.;
2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

B. A user may allow any bypass to occur that does not cause applicable 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 parts C and D of this section.

C. Notice:

1. If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW, at least ten (10) days before the date of the bypass, if possible.;
2. A user shall submit oral notice to the director 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 POTW may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

D.B. Enforcement Action:

1. Bypass is prohibited, and the POTW may take an enforcement action against a user for a bypass, unless:
  - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

- b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - c. The user submitted notices as required under part 3 of this section.
2. The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three conditions listed in subpart (D)(1) of this section.

#### Article XV. Miscellaneous Provisions

##### 15.14.150 Pretreatment Charges and Fees

A. The pretreatment program established in this ~~Chapter~~chapter safeguards the POTW and benefits all customers of the sewer utility. Program costs may be recouped in whole or in part from sewer service rates and charges established in Chapter 15.12 BMC. City Council may, by periodic resolution, adopt additional fees to offset the administrative costs of the program. Such administrative fees shall be based upon reasonable estimates of the cost of administering the program and need not achieve full cost recovery.

B. The fees authorized in this ~~Section~~section relate solely to the matters covered by this ~~Chapter~~chapter and are separate and in addition to all other rates and charges for sewer service, provided that the ~~City~~city may collect said fees in the same manner as sewer service rates and charges, including, but not limited to, the sewer lien procedures provided under 35.67 RCW.

C. Fees may include:

1. Fees for wastewater discharge approvals, including the cost of processing the application, the public notice process, issuing and administering the approval;
2. Fees for modifying or transferring approvals;
3. Fees for monitoring, inspection surveillance, and enforcement procedures including the cost of collecting and analyzing a user's discharge;
4. Fees for reviewing and responding to accidental spill procedures and construction;
5. Fees for preparing and executing enforcement action;
6. Fees for filing appeals; and
7. Other fees as City Council may deem necessary and appropriate to carry out the requirements contained herein.

D. All fees or charges will be collected by direct billing. Unless the director has been made aware of extenuating circumstances that would prevent prompt payment, all fees are payable within thirty (30) days of the billing. Fees past due will be considered a violation of this Chapterchapter. Users not paying fees within sixty (60) days of the billing period will be subject to termination of service.

#### **15.14.151 Severability**

Should any section, subsection, paragraph, sentence, clause, or phrase of this Chapterchapter or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Chapterchapter or its application to any other person or situation. City ~~council~~Council hereby declares that it would have adopted this Chapterchapter and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

#### **15.14.152 Conflicts/Repeal**

All other Chapterschapters and parts of other Chapterschapters inconsistent or conflicting with any part of this Chapterchapter are hereby repealed to the extent of the inconsistency or conflict.

#### **15.14.153 Nonliability**

A. It is expressly the purpose of this Chapterchapter to establish an industrial pretreatment program to comply with the city's NPDES permit requirements and 40 CFR Part 403, and to provide for and promote the health, safety, and welfare of the general public. It is not the intent of this Chapterchapter to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms or requirements of this Chapterchapter.

B. It is the specific intent of this Chapterchapter to place the obligation of complying with these regulations upon the applicant or discharger and no provision nor any term used in this Chapterchapter is intended to impose any duty whatsoever upon the city or any of its officers, employees or agents, except as provided under the Act or other related statutes of the United States or Washington State.

C. Nothing contained in this Chapterchapter is intended to be nor shall be construed to create or form the basis for any tort liability on the part of the city or its officers, employees or agents, for any injury or damage resulting from the failure of an applicant or discharger to comply with the provisions of this Chapterchapter, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement of this Chapterchapter, or inaction on the part of the city related in any manner to the implementation or the enforcement of this Chapterchapter by its officers, employees or agents.

#### **15.14.154 Savings**

The enactments of this Chapterchapter shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal that may be in existence on the effective date of this Chapterchapter.

**15.14.155 Right to Request Interpretation or Ruling**

Any user or any interested party shall have the right to request an interpretation or ruling by the director on any matter addressed by this ~~Chapter~~chapter. The request must be in writing and must be addressed to the director. The director shall provide a prompt written response. A request pursuant to this section shall not stay or otherwise affect enforcement proceedings.

**Article XVI. Program Manual**

**15.14.160 Adoption of Program Manual**

The director may adopt a program manual further describing the requirements of this chapter and the procedures to be used in carrying out the requirements of this chapter.

**PASSED** by City Council this 6<sup>th</sup> day of July, 2020.

  
\_\_\_\_\_  
Gene Knutson, Council President

**APPROVED** by me this 14 day of July, 2020.

  
\_\_\_\_\_  
Seth Fleetwood, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Andy Asbjornsen, Finance Director

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Office of the City Attorney

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