

NEENAH-MENASHA SEWERAGE COMMISSION

ORDINANCE NO. 2020-1

AN ORDINANCE TO REPEAL AND REPLACE EXISTING NMSC INDUSTRIAL PRETREATMENT RULES AND REGULATIONS OF THE NEENAH-MENASHA SEWERAGE COMMISSION (ENACTED PURSUANT TO ITS AUTHORITY UNDER WISCONSIN STATUTES, SECTION 66.0301, AS AMENDED, AND ITS ENABLING ORDINANCE/CONTRACT, DATED 9-28-1982, AS AMENDED, AMONG SEVERAL WISCONSIN MUNICIPALITIES WHICH JOINTLY RECREATED SAID COMMISSION).

WHEREAS, the Neenah-Menasha Sewerage Commission is required to enact, maintain and enforce industrial pretreatment rules and regulations in compliance with federal and state laws and regulations; and, accordingly, had previously enacted NMSC Ordinance No. 84-6, on October 9, 1984, amended by NMSC ordinance number 88-1, on March 2, 1988, and further amended by NMSC ordinance number 90-1, on February 26, 1991, and further amended by NMSC Ordinance No. 94-1 on April 26, 1996; and NMSC Ordinance No. 2014-1 on February 25, 2014; and NMSC Ordinance 2015-1 on March 24, 2015;

NOW, THEREFORE, the Neenah-Menasha Sewerage Commission does hereby repeal each of the foregoing ordinances and replaces the provisions of the same by enacting this ordinance to ordain the following new industrial pretreatment rules and regulations, as approved by the state of Wisconsin, Department of Natural Resources, by letter to the NMSC dated February 24, 2020 (attached hereto and incorporated herein as a fully set forth), to wit:

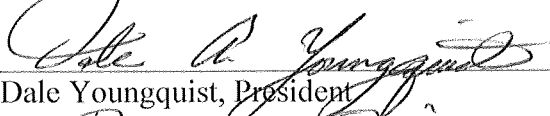
An Ordinance to repeal and replace the Neenah-Menasha Sewerage Commission's Industrial Pretreatment Rules and Regulations existing as NMSC Ordinance 2015-1 as amended, with the text of this new Ordinance set forth below:

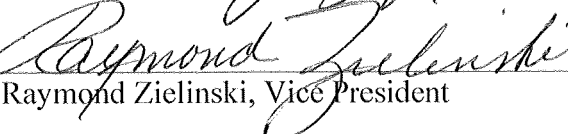
IN WITNESS WHEREOF, the NMSC has caused this ordinance to be enacted and to be signed and attested to by its duly authorized officers. This ordinance shall become effective on the date its publication.

Passed and adopted by the Neenah-Menasha Sewerage Commission, Winnebago County, State of Wisconsin, April 28, 2020. This Ordinance will be effective on June 15, 2020.

Ayes: 7  
Nays: 0

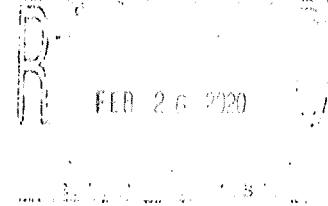
NEENAH-MENASHA SEWERAGE COMMISSION

By:   
Dale Youngquist, President

By:   
Raymond Zielinski, Vice President

State of Wisconsin  
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February 24, 2020

Mr. Dale Youngquist  
President  
Neenah Menasha Sewerage Commission  
101 Garfield Ave.  
Menasha, WI, 54952-3397

Subject: DNR Approval of Revised Industrial Pretreatment Monitoring and Reporting Requirements for the Neenah Menasha Sewerage Commission

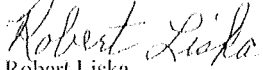
Dear Mr. Youngquist:

The Department has reviewed changes to the Neenah Menasha Sewerage Commission's (NMSC) Sewer Use Ordinance first submitted to the Department on December 11, 2019. The proposed revision would allow the Commission to revise monitoring and reporting frequencies for permitted industries and include those revised frequencies in the permits for those industries.

The Department notified the public of these revised local limits in a public notice which appeared in the Appleton Post Crescent on Jan. 16, 2020. Neither the Department nor NMSC received any comments regarding the proposed changes.

The Department hereby approves this revision of NMSC's Pretreatment Program as public noticed on Jan. 16, 2020.

Sincerely,



Robert Liska  
Pretreatment Coordinator  
Wastewater Section  
Water Quality Bureau

cc: Dale Youngquist - NMSC Wastewater Treatment Plant  
Sarah Donoughe - WDNR Green Bay  
Randall Much - NMSC Wastewater Treatment Plant  
Laurie Stenson - NMSC Wastewater Treatment Plant

cc: Pretreatment File -- WY/3

TABLE OF CONTENTS

	Page
SECTION 1—GENERAL PROVISIONS	1
1.1 Purpose and Policy	1
1.2 Administration	2
1.3 Abbreviations	2
1.4 Definitions	2
SECTION 2—GENERAL SEWER USE REQUIREMENTS	11
2.1 Prohibited Discharge Standards	11
2.2 National Categorical Pretreatment Standards	12
2.3 State Pretreatment Standards	15
2.4 Local Limits	15
2.5 NMSC’s Right of Revision	18
2.6 Dilution	18
SECTION 3—PRETREATMENT OF WASTEWATER	18
3.1 Pretreatment Facilities	18
3.2 Additional Pretreatment Measures	19
3.3 Accidental Discharge/Slug Discharge Control Plans	19
3.4 Hauled Wastewater	20
SECTION 4—INDIVIDUAL WASTEWATER DISCHARGE PERMITS and GENERAL PERMITS	21
4.1 Wastewater Analysis	21
4.2 Individual Wastewater Discharge Permit and General Permit Requirement	21
4.3 Individual Wastewater Discharge and General Permitting: Existing Connections	21
4.4 Individual Wastewater Discharge and General Permitting: New Connections	21
4.5 Individual Wastewater Discharge and General Permit Application Contents	22
4.6 Wastewater Discharge Permitting: General Permits	23
4.7 Application Signatories and Certifications	24
4.8 Individual Wastewater Discharge and General Permit Decisions	24
SECTION 5—INDIVIDUAL WASTEWATER DISCHARGE AND GENERAL PERMIT ISSUANCE	25
5.1 Individual Wastewater Discharge and General Permit Duration	25
5.2 Individual Wastewater Discharge Permit and General Permit Contents	25
5.3 Permit Issuance Process	27
5.4 Permit Modification	27
5.5 Individual Wastewater Discharge Permit and General Permit Transfer	29
5.6 Individual Wastewater Discharge Permit and General Permit Revocation	29
5.7 Individual Wastewater Discharge Permit and General Permit Reissuance	30

SECTION 6—REPORTING REQUIREMENTS	30
6.1 Baseline Monitoring Reports	30
6.2 Compliance Schedule Progress Reports	32
6.3 Reports on Compliance with Categorical Pretreatment Standard Deadline	32
6.4 Periodic Compliance Reports	33
6.5 Reports of Changed Conditions	34
6.6 Reports of Potential Problems	35
6.7 Reports from Unpermitted Users	35
6.8 Notice of Violation/Repeat Sampling and Reporting	35
6.9 Notification of the Discharge of Hazardous Waste	36
6.10 Analytical Requirements	37
6.11 Sample Collection	37
6.12 Date of Receipt of Reports	38
6.13 Recordkeeping	38
6.14 Certification Statements	38
SECTION 7—COMPLIANCE MONITORING	40
7.1 Right of Entry: Inspection and Sampling	40
7.2 Special Inspection Warrant	40
SECTION 8—CONFIDENTIAL INFORMATION	41
SECTION 9—PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE	41
SECTION 10—ADMINISTRATIVE ENFORCEMENT REMEDIES	42
10.1 Notification of Violation	42
10.2 Consent Orders	42
10.3 Show Cause Hearing	42
10.4 Compliance Orders	43
10.5 Cease and Desist Orders	43
10.6 Administrative Fines	43
10.7 Emergency Suspensions	44
10.8 Termination of Discharge	45
SECTION 11—JUDICIAL ENFORCEMENT REMEDIES	45
11.1 Injunctive Relief	45
11.2 Civil Penalties	45
11.3 Remedies Nonexclusive	46
SECTION 12—SUPPLEMENTAL ENFORCEMENT ACTION	46
12.1 Penalties for Late Reports	46
12.2 Performance Bonds	46
12.3 Liability Insurance	46
12.4 Payment of Outstanding Fees and Penalties	47
12.5 Water Supply Severance	47

SECTION 13—AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS	47
13.1 Upset	47
13.2 Prohibited Discharge Standards	48
13.3 Bypass	48
SECTION 14—WASTEWATER TREATMENT RATES - [RESERVED]	50
SECTION 15—MISCELLANEOUS PROVISIONS	50
15.1 Pretreatment Charges and Fees	50
15.2 Severability	50
SECTION 16—SUMMARY OF REQUIRED REPORTS, NOTIFICATIONS, ETC.	51
SECTION 17—EFFECTIVE DATE	51

INDUSTRIAL PRETREATMENT RULES AND REGULATIONS OF THE NEENAH-MENASHA SEWERAGE COMMISSION

NO. 2020-1

SECTION 1—GENERAL PROVISIONS

1.1 Purpose and Policy

These rules and regulations set forth uniform requirements for Users of the Publicly Owned Treatment Works for the Neenah Menasha Sewerage Commission (NMSC) and enables NMSC to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code [U.S.C.] section 1251 et seq.), the General Pretreatment Regulations (Title 40 of the *Code of Federal Regulations* [CFR] Part 403) and State of Wisconsin General Pretreatment Requirements (NR 211 Administrative Code). The objectives of these rules and regulations are:

- A. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;
- B. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;
- C. To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
- D. To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works.
- E. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and
- F. To enable NMSC to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.

These rules and regulations shall apply to all Users of the Publicly Owned Treatment Works. These rules and regulations authorize the issuance of individual wastewater discharge permits and or general permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires User reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

## 1.2 Administration

Except as otherwise provided herein, the general manager shall administer, implement, and enforce the provisions of these rules and regulations. Any powers granted to or duties imposed upon the general manager may be delegated by the general manager to a duly authorized employee.

## 1.3 Abbreviations

The following abbreviations, when used in these rules and regulations, shall have the designated meanings:

BOD – Biochemical Oxygen Demand  
BMP – Best Management Practice  
BMR – Baseline Monitoring Report  
CFR – *Code of Federal Regulations*  
CIU – Categorical Industrial User  
EPA – U.S. Environmental Protection Agency  
gpd – gallons per day  
IU – Industrial User  
l – Liter  
mg - Milligrams  
mg/l – milligrams per liter  
NPDES – National Pollutant Discharge Elimination System  
NR – “Natural Resources” Wisconsin Administrative Code  
NSCIU – Non-Significant Categorical Industrial User  
POTW – Publicly Owned Treatment Works  
RCRA – Resource Conservation and Recovery Act  
SIC – Standard Industrial Classification  
SIU – Significant Industrial User  
SNC – Significant Noncompliance  
SWDA – Solid Waste Disposal Act, 42 U.S.C. 6901, et. seq.  
TSS – Total Suspended Solids  
U.S.C. – United States Code  
WDNR – Wisconsin Department of Natural Resources  
WPDES – Wisconsin Pollutant Discharge Elimination System

## 1.4 Definitions

Unless the text specifically indicates otherwise, the following terms and phrases, as used in these rules and regulations, shall be defined as follows:

- A. Act or “the Act.” The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. section 1251 et seq.
- B. Approval Authority. State of Wisconsin Department of Natural Resources.

C. Authorized or Duly Authorized Representative of the User.

(1) If the User is a corporation:

(a) A president, secretary, treasurer, vice-president 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 facilities, provided the manager is authorized to make decisions which govern the operation of the facility, make major capital investment recommendations, initiate and direct comprehensive measures to assure long-term compliance with environmental laws, can ensure the necessary systems are established to gather complete and accurate information for the report and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; or

(c) A representative of a person described in a. or b. if the representative has been authorized according to par. (4).

(2) If the User is a partnership, the certification in Section 6.14 shall be signed by either a general partner or a representative authorized according to par. (4).

(3) If the User is a sole proprietorship, the certification in Section 6.14 shall be signed by either the proprietor or a representative authorized according to par. (4).

(4) Authority to sign the certification in Section 6.14 may be delegated if:

(a) The person to whom authority is delegated is an individual or occupies a position with responsibility for:

(i) The overall operation of the facility from which the discharge occurs, such as plant manager; or

(ii) The overall environmental matters for the company, such as corporate environmental officer; and

(b) A written authorization is submitted to the NMSC. If circumstances change so that an authorization is no longer accurate, the industrial user shall submit a new authorization before or along with the submission of any report signed by a new representative.

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

E. Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 2.1 A and B [40 CFR 403.5 (a)(1) + (b), (sec. NR 211.10 (1) and (2) Wis. Adm. Code)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage areas.



- F. Bypass. The intentional diversion of waste streams from any portion of an Industrial User's treatment facility.
- G. Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471, chs. NR 221 to 297 Wis. Adm. Code.
- H. Categorical Industrial User. An Industrial User subject to a categorical Pretreatment Standard or categorical Standard.
- I. Chemical Oxygen Demand or COD. A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.
- J. Control Authority. The Neenah Menasha Sewerage Commission (NMSC).
- K. Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, to which the only pollutant added is heat.
- L. Daily Maximum. The arithmetic average of all effluent samples for a pollutant collected during a calendar day.
- M. Daily Maximum Limit. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.
- N. Environmental Protection Agency or EPA. The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.
- O. Existing Source. Any source of discharge that is not a "New Source."
- P. Flow Composite Sample. A series of samples deposited in a common container taken from a waste stream on the basis of flow, such that each discrete sample is taken after an equal volume of flow of the waste stream has passed a given point.
- Q. General Manager. The person designated by the NMSC to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by these rules and regulations. The term also means a Duly Authorized Representative of the General Manager.

- R. Grab Sample. A sample that is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
- S. Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any nondomestic source.
- T. Industrial Waste. Solid, liquid, or gaseous waste resulting from any industrial, manufacturing, trade, or business process or from the development, recovery or processing of natural resources.
- U. Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.
- V. Interference. A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the NMSC's WPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.
- W. Local Limit. Specific discharge limits developed and enforced by NMSC upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b) and ch NR 211.10 Wis. Adm. Code.
- X. Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.
- Y. Monthly Average. The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.
- Z. Monthly Average Limit. The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.
- AA. Neenah-Menasha Sewerage Commission (NMSC) or Commission. The authority which owns and operates the Neenah-Menasha wastewater treatment plant and facilities and certain major sewage transport interceptors, having been created under

Wisconsin Statutes, Section 66.30, by virtue of the joint execution and enactment of an Ordinance-Contract, dated September 28, 1982, by and among the following Wisconsin municipalities: City of Menasha; City of Neenah; Town of Neenah Sanitary District No. 1, Sanitary District No. 1-1, and Sanitary District No. 2; Town of Menasha Sanitary District No. 4; Town of Harrison, Waverly Sanitary District; Town of Neenah; and Town of Menasha. Also known herein as POTW.

BB. New Source.

(1) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act that will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

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

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

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

(2) Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (1) (b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

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

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

(i) any placement, assembly, or installation of facilities or equipment; or

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

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

- CC. Noncontact Cooling Water. Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- DD. Pass Through. A discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the NMSC WPDES permit, including an increase in the magnitude or duration of a violation.
- EE. Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.
- FF. pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.
- GG. Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical Wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).
- HH. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable Pretreatment Standard.
- II. Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a User, other than a Pretreatment Standard.
- JJ. Pretreatment Standards or Standards. Pretreatment Standards shall mean prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.
- KK. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 2.1 of these rules and regulations.
- LL. Publicly Owned Treatment Works or POTW. A treatment works, as defined by section 212 of the Act (33 U.S.C. section 1292), which is owned by a municipality. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

MM. Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

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

OO. Significant Industrial User (SIU).

Except as provided in paragraphs (3) and (4) of this Section, a Significant Industrial User is:

(1) An Industrial User subject to categorical Pretreatment Standards; or

(2) An Industrial User that:

(a) Discharges an average of twenty-five thousand (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 (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(c) Is designated as such by NMSC 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 NMSC may determine that an Industrial User subject to categorical Pretreatment Standards is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

(a) The Industrial User, prior to NMSC's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;

(b) The Industrial User annually submits the certification statement required in Section 6.14 B [see 40 CFR 403.12(q)], together with any additional information necessary to support the certification statement; and

(c) The Industrial User never discharges any untreated concentrated wastewater.

(4) Upon a finding that a User meeting the criteria in Subsection (2) of this part has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement, the NMSC may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8 (f) (6), determine that such User should not be considered a Significant Industrial User.

PP. Significant Noncompliance

An industrial user is in significant noncompliance if its violation meets one or more of the following criteria. A non-significant industrial user is in significant noncompliance if criteria 3, 4, or 8 apply:

1. Sixty-six percent or more of all the measurements of the industrial user's wastewater for the same pollutant taken during a 6 month period exceeded by any magnitude any numeric pretreatment standard or requirement including an instantaneous limit;
2. Thirty-three percent or more of all the measurements of the industrial user's wastewater for the same pollutant taken during a 6 month period equaled or exceeded the product of the numeric pretreatment standard or requirement including an instantaneous limit multiplied by either 1.4 for BOD, TSS and fats-oil-grease; 1.2 for all other pollutants except pH; or exceeded a pH limit by .4 standard units;
3. The control authority has reason to believe that the industrial user has caused, alone or in combination with other discharges, interference, pass-through or endangerment of the health of POTW personnel or the general public because of the violation of a pretreatment standard or requirement;
4. The industrial user has discharged a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has otherwise resulted in the POTW's exercise of its emergency authority to halt or prevent a discharge;
5. The industrial user has failed to meet, by 90 days or more, a milestone date, contained in a compliance schedule within a local control mechanism or enforcement order for starting construction, completing construction, or attaining compliance;
6. The industrial user has failed to provide, within 45 days of a deadline a required report containing all required monitoring results and other information, such as baseline monitoring report, 90 day compliance report, periodic self-monitoring report, and reports on compliance with a compliance schedule;
7. The industrial user has failed to accurately report noncompliance;
8. The control authority has determined that any other violation or group of violations, which may include a violation of required best management practices, by the industrial user has adversely affected operation or implementation of the local pretreatment program.

QQ. Slug Load or Slug Discharge. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 2.1 of these rules and regulations. A Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.

RR. State. State of Wisconsin

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

- TT. Total Suspended Solids or Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.
- UU. Toxic Pollutant. Any pollutant or combination of pollutants identified as toxic pursuant to Section 307(a) of the Federal Water Pollution Control Act or other Federal Statutes or in regulations promulgated by the State under state law.
- VV. Upset. An exceptional incident in which a Discharger unintentionally and temporarily is in a state of non-compliance with the standards set forth in these rules and regulations due to factors beyond the reasonable control of the Discharger, excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation thereof.
- WW. User or Industrial User. A source of indirect discharge.
- XX. Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
- YY. Wastewater Discharge Permit. A permit (or control mechanism) issued by the Commission to a Significant Industrial User that is subject to Categorical Pretreatment Standards, or that has a reasonable potential for adversely affecting the POTW's operation, or any other industrial user at the discretion of the Commission.
- ZZ. Wastewater Treatment Plant or Treatment Plant. That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.
- Aa. Wastewater Treatment System. Is synonymous with the definition of POTW herein.
- Bb. Waters of the State.
- (1) Both surface and underground waters within the boundaries of the State of Wisconsin which are subject to its jurisdiction, including but not limited to all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and
- (2) The flood plain of free-flowing waters determined by the Wisconsin Department of Natural Resources on the basis of 10-year flood frequency.
- Cc. WPDES. Wisconsin Pollutant Discharge Elimination System. Any permit or requirement issued by the Wisconsin Department of Natural Resources pursuant to the Act for the purpose of controlling sewage, Industrial Wastes, or other wastes under the authority of Section 402 of the Act, and Ch. 147, Wis. Stats.

## SECTION 2—GENERAL SEWER USE REQUIREMENTS

### 2.1 Prohibited Discharge Standards

- A. General Prohibitions. No User shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes Pass Through or Interference with the operation or performance of the POTW. These general prohibitions apply to all Users of the POTW whether or not they are subject to categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or Requirements.
- B. Specific Prohibitions. No User shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
- (1) Pollutants which create or contribute to a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21 (NR 661.21 Wis. Adm. Code);
  - (2) Pollutants which will cause or contribute to corrosive structural damage to the POTW but in no case discharges having a pH less than 5.0 or more than 11, unless the industrial user has a pH variance approved by the NMSC;
  - (3) Solid or viscous pollutants in amounts which will cause or contribute to obstruction of the flow in sewers or other interference with the operation of the POTW.
  - (4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge of such volume or strength as to cause or contribute to interference in the POTW;
  - (5) Heat in amounts which will inhibit or contribute to the inhibition of biological activity in the POTW treatment plant resulting in interference or causing damage to the POTW, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees F (40 degrees C), unless alternate temperature has been approved;
  - (6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
  - (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the NMSC Wastewater Treatment System in a quantity that may cause acute worker health and safety problems;
  - (8) Trucked or hauled pollutants, except at discharge points designated by NMSC in accordance with Section 3.4 of the Neenah Menasha Sewerage Commission's Pretreatment Rules and Regulations;
  - (9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair (including pollutants which result in the presence of toxic gases, vapors, or fumes);



- (10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent;
- (11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations;
- (12) Storm Water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, de-ionized water, Noncontact Cooling Water, and unpolluted wastewater, unless specifically authorized by the general manager;
- (13) Sludges, screenings, or other residues from the pretreatment of industrial wastes;
- (14) Medical Wastes, except as specifically authorized by the general manager in an individual wastewater discharge permit or a general permit;
- (15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity test; Wastewater containing toxic or poisonous components in sufficient quantity to injure or interfere with any wastewater treatment process, to constitute hazards to humans or animals, or to create any hazard in waters which receive treated effluent from the sewer system treatment plant. Toxic wastes shall include, but are not limited to, waste containing cyanide, chromium, cadmium, mercury, copper, and nickel ions;
- (16) Detergents, surface-active agents, or other substances which that might cause excessive foaming in the POTW;
- (17) Fats, oils, or greases of animal or vegetable origin in concentrations that can upset or cause problems at the treatment plant;
- (18) Wastewater causing a reading on an explosion hazard meter at any point in the NMSC system for any single reading over 10 percent of the Lower Explosive Limit of the meter;
- (19) Wastewater containing any component which would cause the treatment plant to be in noncompliance with sludge use, recycle or disposal criteria pursuant to guidelines or regulations developed under section 405 of the Federal Clean Water Act, the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or other regulations or criteria for sludge management and disposal as required by the State of Wisconsin or EPA.

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

## 2.2 National Categorical Pretreatment Standards

Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471, chs. NR 221-297 Wis. Adm. Code.

- A. Where a categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, general manager may impose equivalent concentration or mass limits in accordance with Section 2.2 D and 2.2 E.

- B. When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the general manager may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.
- C. When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, the general manager shall impose an alternate limit in accordance with 40 CFR 403.6(e), sec. NR 211.12 Wis. Adm. Code.
- D. When the limits in a categorical Pretreatment Standard is expressed only in terms of pollutant concentrations, an Industrial User may request that the NMSC convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the general manager. The NMSC may establish equivalent mass limits only if the Industrial User meets all the conditions set forth in Sections 2.2 D (1) (a) through 2.2 D (1) (e) below.
  - (1) To be eligible for equivalent mass limits, the Industrial User must:
    - a. Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its wastewater discharge permit;
    - b. Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and has not used dilution as a substitute for treatment;
    - c. Provide sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
    - d. Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and
    - e. Have consistently complied with all applicable categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.
  - (2) Upon approval by the NMSC an Industrial User subject to equivalent mass limits shall:
    - a. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
    - b. Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;
    - c. Continue to record the facility's production rates and notify the NMSC whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in paragraph 2.2 D (1) (c) of this Section. Upon notification of a revised production rate, the NMSC will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

- d. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraphs 2.2 D (1) (a) of this Section so long as it discharges under an equivalent mass limit.
  - (3) A Control Authority which chooses to establish equivalent mass limits:
    - a. Shall calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based Daily Maximum and Monthly Average Standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor;
    - b. Upon notification of a revised production rate, shall reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and
    - c. May retain the same equivalent mass limit in subsequent wastewater discharge permit terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment as prohibited by Section 2.6 of these rules (sec. NR 211.10 (4) Wis. Adm. Code). The Industrial User must also be in compliance with Section 13.3 of these rules (sec. NR 211.19 Wis. Adm. Code) regarding the prohibition of bypass.
  - (4) A Control Authority may not express limits in terms of mass for pollutants such as, pH, temperature, radiation or other pollutants which cannot appropriately be expressed as mass.
- E. The NMSC may convert the mass limits of the categorical Pretreatment Standards of 40 CFR Parts 414, 419, and 455 (chs. NR 233, 235, and 279 Wis. Adm. Code) to equivalent concentration limits. When converting such limits to concentration limits, the NMSC shall use the concentrations listed in the applicable subparts of chs. NR 233, 235, and 279 and document that dilution is not being substituted for treatment as prohibited by NR 211.10(4). The conversion is at the discretion of the Manager.
- F. Once included in its permit, the Industrial User must comply with the equivalent limitations developed in this Section (2.2) in lieu of the promulgated categorical Standards from which the equivalent limitations were derived.
- G. When pretreatment standards specify both maximum daily and maximum average limits, the same production or flow figures shall be used in calculating maximum daily and maximum average limits.
- H. Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the NMSC within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the NMSC of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long term average production rate.

- I. (1) Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water if the applicable categorical pretreatment standards specifically provide that they may be applied on a net basis or if the industrial user demonstrates to the control authority that:
  - a. The control system used or proposed to meet the categorical pretreatment standards would meet the categorical pretreatment standards in the absence of pollutants in the intake water if the control system is properly installed and operated;
  - b. The constituents of a generic measure, such as BOD, TSS or oil and grease, in the industrial user's effluent are substantially similar to the constituents of the generic measure in the intake water. The control authority may waive this requirement if appropriate additional limits are placed on process water pollutants either at the point of discharge or elsewhere; and
  - c. The intake water is drawn from the same water body as the water body to which the POTW discharges. The control authority may waive this requirement if it finds that no environmental degradation will result.
- (2) The NMSC shall grant credits only to the extent necessary to meet the applicable categorical pretreatment standards, up to a maximum value equal to the influent value. The NMSC may require additional monitoring to determine eligibility for credits and compliance with the adjusted standards.

### 2.3 State Pretreatment Standards

Users must comply with State Pretreatment Standards codified at Ch. NR 200-297.

### 2.4 Local Limits

- A. The general manager is authorized to establish Local Limits pursuant to 40 CFR 403.5(c), (sec. NR 211.10 (3) Wis. Adm. Code).
- B. The following pollutant limits are established to protect against Pass Through and Interference. No person shall discharge wastewater containing in excess of the following:

00.584	mg/l Arsenic
5.33	mg/l Copper
0.0044	mg/l Mercury
16.7	mg/l Zinc
5.0-11.0	pH

The above limits apply at the point where the wastewater is discharged to the POTW. All concentrations for metallic substances are for total metal unless indicated otherwise. The general manager may impose mass limitations in addition to the concentration based limitations above.

C. The general manager may develop Best Management Practices (BMPs), by rules and regulations or in individual wastewater discharge permits or general permits, to implement Local Limits and the requirements of Section 2.1.

D. Local pH Limitation

a. Limitation: All dischargers shall meet a pH range not less than 5.0 minimum and not more than 11.0 maximum.

b. pH Variance Authorization:

1) Supplemental Definitions

(a) Normality: A normal solution contains one gram molecular weight of the dissolved substance divided by the hydrogen equivalent of the substance (that is, one gram equivalent) per liter of solution.

(b) Milliequivalents (MEQ): A milliequivalent is equal to the normality times the milliliters.

(c) Contracting Municipality: Shall mean any of the Wisconsin municipalities enumerated in Section 1.4, herein.

(d) pH Test Procedures: Shall mean those pH neutralization test procedures which are set forth in detail in this section.

2) Obtaining pH Variance Authorization

The NMSC may approve and authorize a variance to the upper pH limit set forth under Section 2.4 B, herein, regarding the effluent proposed to be discharged to the Wastewater Treatment System by an Industrial Discharger, provided the following conditions are met:

(a) A written request for such variance, indicating the extent of pH variance requested and the specific reason for such a request, is made to the NMSC.

(b) The Contracting Municipality within which nonconforming effluent is proposed to be discharged approves such nonconforming discharge in writing.

(c) The Industrial Discharger adequately demonstrates and establishes to the satisfaction of the NMSC by the pH neutralization test procedures described below that the MILLIEQUVALENTS of acid required to lower the maximum pH of the discharge at maximum effluent flow conditions to pH 11.0 is less than the MILLIEQUVALENTS of caustic required to raise the pH of the wastewater in receiving sewer at minimum flow conditions to pH 11.0.

(d) That any pH variance authorized by the NMSC shall be conditioned upon amendment and modification of the Industrial Discharger's wastewater permit to incorporate the variance and any limitations or conditions to which the variance has been made subject by the NMSC. If the Industrial Discharger does not hold a permit, the Industrial Discharger shall be required to obtain a discharge permit from the NMSC before any pH variance may be exercised.

- (e) Any pH variance granted by the NMSC shall be limited to the life of the permit of such Industrial Discharger. At the time of permit renewal, the NMSC, at its sole discretion, may incorporate the pH variance into the renewed permit or may require the Industrial Discharger to submit a new variance request.

3) Termination of pH Variance Authorization:

The NMSC may terminate pH variance authorization to any Industrial Discharger, at the sole discretion of the Commission, should the Commission determine that the discharge under such variance is detrimental to the Wastewater Treatment System in any way. Termination of pH variance authority shall become effective upon 90-day written notice by the NMSC to the Industrial Discharger, made by registered U.S. mail, or equivalent, return receipt requested. Following such notice the Industrial Discharger shall: (i) report the actions the Industrial Discharger intends to take to insure that its future effluent discharge is not at variance with the upper pH limit established in Section 2.4 B, herein; (ii) furnish the NMSC with a compliance schedule implementing such proposed action. Provided such action and compliance schedule are approved by the NMSC, the Industrial Discharger may continue pH variance discharge pursuant to the approved schedule. Failing approval by NMSC of either the proposed compliance action or schedule, all variable discharge by the Industrial Discharger shall cease upon the expiration of 90 days from its receipt of the termination notice.

4) Neutralization Test Procedures:

As part of the pH variance authority application to NMSC by an Industrial Discharger seeking pH variance authority, the following pH test procedures shall be performed by a commercial testing laboratory certified by the State of Wisconsin, the results of which shall be submitted to the NMSC as an attachment to the application for pH variance authority:

- (a) Determination of Applying Industrial Discharger's Maximum Discharge pH. The Industrial Discharger-applicant shall have a commercial laboratory continuously monitor the Industrial Discharger's flow and pH for a consecutive two-week period at the place or places of discharge concerning which pH variance is requested. The daily maximum and average pH value and flows (GPM) shall be reported the NMSC.
- (b) Grab Sample. The Industrial Discharger-applicant shall cause a commercial laboratory to collect a grab sample of its wastewater when the maximum pH value is achieved. The following test shall be conducted of such sample.
  - 1) A 100 milliliter aliquot of sample shall be titrated with 0.25 N Hydrochloric acid to pH 11.0.
  - 2) The milliequivalents (MEQ) of acid to lower the maximum discharge flow to pH 11.0 shall be calculated as follows: (MEQ of acid = mls of acid for 100 ml aliquot X acid normality X 37.5 X maximum flow [gallons per minute])

- (c) Upstream Monitoring. The Industrial Discharger-applicant shall cause such commercial laboratory to monitor the receiving sewer flow immediately upstream of the applicant's discharge point(s) for a two-week period. Flow data (GPM) to be report to NMSC shall include daily minimum, daily maximum and average flows.
- (d) Upstream Grab Sample. Such commercial laboratory shall collect a grab sample of wastewater from receiving sewer immediately upstream of applicant's discharge point(s). The following test shall be conducted of the sample:
  - 1) A 100 milliliter aliquot of sample shall be titrated with 0.25 N Sodium Hydroxide to pH 11.0.
  - 2) The milliequivalents (MEQ) of caustic to raise the minimum sewerage flow to pH 11.0 shall be calculated as follows: (MEQ of acid = mls of NaOH for 100 ml aliquot X NaOH normality X 37.5 X minimum flow [gallons per minute]).

## 2.5 NMSC's Right of Revision

The NMSC reserves the right to establish, by rules and regulations or in individual wastewater discharge permits or in general permits, more stringent Standards or Requirements on discharges to the POTW consistent with the purpose of these rules and regulations.

## 2.6 Dilution

No User shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Requirement. The NMSC may impose mass limitations on Users who are using dilution to meet applicable Pretreatment Standards or Requirements or in other cases when the imposition of mass limitations is appropriate.

## SECTION 3—PRETREATMENT OF WASTEWATER

### 3.1 Pretreatment Facilities

Users shall provide wastewater treatment as necessary to comply with these rules and regulations and shall achieve compliance with all categorical Pretreatment Standards, Local Limits, and the prohibitions set out in Section 2.1 of these rules and regulations within the time limitations specified by EPA, the State, or general manager, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the User's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the general manager for review, and shall be acceptable to the general manager before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the User from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the NMSC under the provisions of these rules and regulations.

### 3.2 Additional Pretreatment Measures

- A. Whenever deemed necessary, the general manager may require Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the User's compliance with the requirements of these rules and regulations.
- B. The general manager may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual wastewater discharge permit or a general permit may be issued solely for flow equalization.
- C. Grease, oil, and sand interceptors shall be provided when, in the opinion of the general manager, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the general manager, shall comply with these rules and regulations, and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired on a frequency as determined by the general manager. In addition, no chemicals or additives may be used on grease oil and sand interceptors whose purpose is to solubilize the grease or oil and allow it to pass through the interceptor. The general manager may impose these requirements as well as additional best management practices (BMPs) as deemed necessary to control the discharge of oil and grease to the POTW. In addition to complying with these requirements, the user must also comply with any ordinances from their municipal jurisdiction or the State of Wisconsin.
- D. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

### 3.3 Accidental Discharge/Slug Discharge Control Plans

Each Discharger shall carefully survey its facilities, no less than annually, and shall provide, where necessary, adequate protection against accidental or slug discharge or discharge of prohibited or regulated materials or substances established by these rules and regulations. The NMSC may require any User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control Slug Discharges. Alternatively, the NMSC may develop such a plan for any User. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

- A. Description of discharge practices, including non-routine batch discharges;



- B. Description of stored chemicals;
- C. Procedures for immediately notifying the NMSC of any accidental or Slug Discharge, as required by Section 6.6 of these rules and regulations; and
- D. Procedures to prevent adverse impact from any accidental or Slug Discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

### 3.4 Hauled Wastewater

- A. Septic tank waste may be introduced into the POTW only at locations designated by the general manager, and at such times as are established by the general manager. Such waste shall not violate Section 2 of these rules and regulations or any other requirements established by the NMSC. The NMSC may require septic tank waste haulers to obtain individual wastewater discharge permits or general permits.
- B. The NMSC may require haulers of industrial waste to obtain individual wastewater discharge permits or general permits. The NMSC may require generators of hauled industrial waste to obtain individual wastewater discharge permits or general permits. The NMSC also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of these rules and regulations.
- C. Industrial waste haulers may discharge loads only at locations designated by the NMSC. No load may be discharged without prior consent of the NMSC. The NMSC may collect samples of each hauled load to ensure compliance with applicable Standards. The NMSC may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- D. Industrial waste haulers must provide a “waste tracking” form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

## SECTION 4—INDIVIDUAL WASTEWATER DISCHARGE PERMITS and GENERAL PERMITS

### 4.1 Wastewater Analysis

When requested by the NMSC, a User must submit information on the nature and characteristics of its wastewater within ninety (90) days of the request. The NMSC is authorized to prepare a form for this purpose and may periodically require Users to update this information.

### 4.2 Individual Wastewater Discharge Permit and General Permit Requirement

- A. No Significant Industrial User shall discharge wastewater into the POTW without first obtaining an individual wastewater discharge permit or a general permit from the NMSC, except that a Significant Industrial User that has filed a timely application pursuant to Section 4.3 of these rules and regulations may continue to discharge for the time period specified therein.
- B. The NMSC may require other Users to obtain individual wastewater discharge permits or general permits as necessary to carry out the purposes of these rules and regulations.
- C. Any violation of the terms and conditions of an individual wastewater discharge permit or a general permit shall be deemed a violation of these rules and regulations and subjects the wastewater discharge permittee to the sanctions set out in Sections 10 through 12 of these rules and regulations. Obtaining an individual wastewater discharge permit or a general permit does not relieve a permittee of its obligation to comply with all Federal and State Pretreatment Standards or Requirements or with any other requirements of Federal, State, and local law.

### 4.3 Individual Wastewater Discharge and General Permitting: Existing Connections

Any User required to obtain an individual wastewater discharge permit or a general permit who was discharging wastewater into the POTW prior to the effective date of these rules and regulations and who wishes to continue such discharges in the future, shall, upon notification by the general manager, apply for a discharge permit within 90 days after the effective date of these rules and regulations, in accordance with Section 4.5 of these rules and regulations.

### 4.4 Individual Wastewater Discharge and General Permitting: New Connections

Any User required to obtain an individual wastewater discharge permit or a general permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this individual wastewater discharge permit or general permit, in accordance with Section 4.5 of these rules and regulations, must be filed at least 30 days prior to the date upon which any discharge will begin or recommence.

#### 4.5 Individual Wastewater Discharge and General Permit Application Contents

A. All Industrial Dischargers required to obtain an Individual Wastewater Discharge Permit or general permit, shall complete and file with the NMSC a permit application in the form prescribed by the Commission and accompanied by the appropriate fee established in Section 15 of these rules and regulations. Current permit holders shall apply for renewal of their Wastewater Discharge Permit at least ninety (90) days prior to expiration. No discharge permit or renewal shall be issued unless and until such Industrial Discharger has satisfactorily completed a permit application which shall include, but not be limited to, the following conditions:

(1) Identifying Information.

- a. The name and address of the facility, including the name of the owner or operator.
- b. Contact information, description of activities, facilities, and plant production processes on the premises;
- c. Name of Authorized Representative of Industrial User;

(2) Environmental Permits. A list of any environmental control permits held by or for the industrial user.

(3) Description of Operations.

- a. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications (SIC) of the operation(s) carried out by such User. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.
- b. Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
- c. Number and type of employees, hours of operation, and proposed or actual hours of operation;
- d. Type and amount of raw materials processed (average and maximum per day);
- e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, sewer connections, inspection manholes, sampling chambers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;

(4) Time and duration of discharges;

(5) The location for monitoring all wastes covered by the permit;

(6) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process

streams and other streams, as necessary, to allow use of the combined waste stream formula set out in Section 2.2 C [40 CFR 403.6(e), (sec. NR 211.12 Wis. Adm. Code)]. All flows shall be measured, unless other verifiable techniques are approved by the NMSC because of cost or non-feasibility.

(7) Measurement of Pollutants.

- a. The categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.
- b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Standard or by NMSC, of regulated pollutants in the discharge from each regulated process.
- c. Instantaneous, Daily Maximum, and long-term average concentrations, or mass, where required, shall be reported.
- d. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 6.10 of these rules and regulations. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the NMSC or the applicable Standards to determine compliance with the Standard.
- e. Sampling must be performed in accordance with procedures set out in Section 6.11 of these rules and regulations.

(8) Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on Section 6.4 B [40 CFR 403.12(e)(2), (sec. NR 211.15 (4) (b) Wis. Adm. Code)].

(9) Any request to be covered by a general permit based on Section 4.6.

(10) Where additional Pretreatment and/or operation and maintenance activities will be required to comply with these rules and regulations, the applicant shall provide a declaration of the shortest time schedule within which it will provide either such additional Pretreatment and/or implement additional operational and maintenance activities. Any proposed schedule shall comply with Section 6.2 of these rules and regulations.

(11) Any other information as may be deemed necessary by NMSC to evaluate the permit application.

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

#### 4.6 Wastewater Discharge Permitting: General Permits

- A. At the discretion of the general manager, the general manager may use general permits to control SIU discharges to the POTW if the following conditions are met. All facilities to be covered by a general permit must:
  - (1) Involve the same or substantially similar types of operations;
  - (2) Discharge the same types of wastes;
  - (3) Require the same effluent limitations;
  - (4) Require the same or similar monitoring; and
  - (5) In the opinion of the general manager, are more appropriately controlled under a general permit than under individual wastewater discharge permits.
- B. To be covered by the general permit, the SIU must complete any application or provide any requested information as deemed necessary by NMSC for the issuance of a general permit.
- C. The general manager will retain a copy of the general permit, documentation to support the POTW's determination that a specific SIU meets the criteria in Section 4.6 A (1) to (5) and applicable State regulations, and a copy of the User's written request for coverage for three (3) years after the expiration of the general permit.
- D. The NMSC may not control an SIU through a general permit where the facility is subject to production-based categorical Pretreatment Standards or categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for IUs whose limits are based on the Combined Waste Stream Formula (Section 2.2 C).

#### 4.7 Application Signatories and Certifications

- A. All wastewater discharge permit applications, User reports and certification statements must be signed by an Authorized Representative of the User and contain the certification statement in Section 6.14 A.
- B. If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to NMSC prior to or together with any reports to be signed by an Authorized Representative.
- C. A facility determined to be a Non-Significant Categorical Industrial User by NMSC pursuant to 1.4 OO (3) must annually submit the signed certification statement in Section 6.14 B.

#### 4.8 Individual Wastewater Discharge and General Permit Decisions

The general manager will evaluate the data furnished by the User and may require additional information. Within 90 days of receipt of a complete permit application, the general manager will

determine whether to issue an individual wastewater discharge permit or a general permit. The general manager may deny any application for an individual wastewater discharge permit or a general permit.

## SECTION 5—INDIVIDUAL WASTEWATER DISCHARGE AND GENERAL PERMIT ISSUANCE

### 5.1 Individual Wastewater Discharge and General Permit Duration

An individual wastewater discharge permit or a general permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. An individual wastewater discharge permit or a general permit may be issued for a period less than five (5) years, at the discretion of the general manager. Each individual wastewater discharge permit or a general permit will indicate a specific date upon which it will expire.

### 5.2 Individual Wastewater Discharge Permit and General Permit Contents

An individual wastewater discharge permit or a general permit shall include such conditions as are deemed reasonably necessary by NMSC to prevent Pass Through or Interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

#### A. Individual wastewater discharge permits and general permits must contain:

- (1) A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date;
- (2) A statement that the wastewater discharge permit is nontransferable without prior notification to NMSC in accordance with Section 5.5 of these rules and regulations, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
- (3) Effluent limits, including Best Management Practices, based on prohibited discharge standards, Categorical Pretreatment Standards, local limits and State and local laws;
- (4) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law.
- (5) Notification requirements for irregular discharges regulated by ch. NR 211.15(7) Wis. Adm. Code.

- (6) Any applicable compliance schedule.
  - (7) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 6.4 B. Any grant of the monitoring waiver by the NMSC (Section 6.4 B) must be included as a condition in the User's permit [or other control mechanism].
  - (8) A statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.
  - (9) Requirements to control Slug Discharge, if determined by the NMSC to be necessary.
- B. Individual wastewater discharge permits or general permits may contain, but need not be limited to, the following conditions:
- (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
  - (2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
  - (3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges;
  - (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
  - (5) The unit charge or schedule of User charges and fees for the management of the wastewater discharged to the POTW;
  - (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;
  - (7) Requirements for the notification by the permittee to the NMSC of the introduction of any new wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system.
  - (8) Requirements for the permittee maintaining and retaining plant records relating to wastewater discharge, and affording the NMSC access thereto.

- (9) Requirements for notification by permittee to the NMSC of slug discharges.
- (10) A statement that compliance with the individual wastewater discharge permit or the general permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the individual wastewater discharge permit or the general permit; and
- (11) Other conditions as deemed appropriate by the NMSC to ensure compliance with these rules and regulations, and State and Federal laws, rules, and regulations.

### 5.3 Permit Issuance Process

A. Permit Appeals. Any person, including the User, may petition the NMSC to reconsider the terms of an individual wastewater discharge permit or a general permit within 30 days of its issuance.

- (1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- (2) In its petition, the appealing party must indicate the individual wastewater discharge permit or a general permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the individual wastewater discharge permit or a general permit.
- (3) The effectiveness of the individual wastewater discharge permit or a general permit shall not be stayed pending the appeal.
- (4) If the general manager fails to act within 30 days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider an individual wastewater discharge permit or a general permit, not to issue an individual wastewater discharge permit or a general permit, or not to modify an individual wastewater discharge permit or a general permit shall be considered final administrative actions for purposes of judicial review.
- (5) Aggrieved parties seeking judicial review of the final administrative individual wastewater discharge permit or general permit decision must do so by filing a complaint with the Circuit Court for Winnebago County within thirty (30) days of the NMSC's written decision.

### 5.4 Permit Modification

A. At the NMSC's discretion the NMSC may modify or amend an individual wastewater discharge permit for good cause, including, but not limited to, the following reasons:



- (1) To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements;
- (2) To address significant alterations or additions to the User's operation, processes, or wastewater volume or character since the time of the individual wastewater discharge permit issuance;
- (3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- (4) Information indicating that the permitted discharge poses a threat to the POTW, NMSC personnel, or the receiving waters;
- (5) Violation of any terms or conditions of the individual wastewater discharge permit;
- (6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
- (7) Revision of or a grant of variance from categorical Pretreatment Standards pursuant to 40 CFR 403.13, (sec. NR 211.14 Wis. Adm. Code);
- (8) To correct typographical or other errors in the individual wastewater discharge permit; or
- (9) To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 5.5.
- (10) Upon request of a permittee, provided such request, if granted, will not create a violation of any applicable requirements, standards, laws, or rules and regulations.
- (11) Such other reason(s) the Commission, from time to time, may determine to be appropriate and/or necessary for the effective, efficient and proper operation of its wastewater treatment facilities, protection of the public health or welfare or protection of the environment.
- (12) Permit extension or modification. Provided permittee has submitted a complete permit application to NMSC (90) days or more prior to the expiration date of its permit, and provided any failure to reissue the permit is not due to any act or failure to act on the part of the permittee, such permit may be extended, at NMSC discretion, for a specified additional term by letter notice provided to permittee by NMSC, provided that the original and extended permit terms together do not exceed five (5) years.

B. The NMSC may modify a general permit for good cause, including, but not limited to, the following reasons:

- (1) To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements;
- (2) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- (3) To correct typographical or other errors in the individual wastewater discharge permit; or
- (4) To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 5.5.

#### 5.5 Individual Wastewater Discharge Permit and General Permit Transfer

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

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

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

#### 5.6 Individual Wastewater Discharge Permit and General Permit Revocation

The Commission may revoke, terminate or refuse to reissue or extend the wastewater discharge permit of any Discharger for good cause, including, but not limited to, the following reasons:

- A. Failure to notify the NMSC of significant changes to the wastewater prior to the changed discharge;
- B. Failure to provide prior notification to the NMSC of changed conditions pursuant to Section 6.5 of these rules and regulations;
- C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

- D. Falsifying self-monitoring reports and certification statements;
- E. Tampering with monitoring equipment;
- F. Refusing to allow the NMSC timely access to the facility premises and records;
- G. Failure to meet effluent limitations;
- H. Failure to pay fines;
- I. Failure to pay sewer charges;
- J. Failure to meet compliance schedules;
- K. Failure to complete a wastewater survey or the wastewater discharge permit application;
- L. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
- M. Violation of any Pretreatment Standard or Requirement, or any terms of the wastewater discharge permit or the general permit or these rules and regulations.

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

#### 5.7 Individual Wastewater Discharge Permit and General Permit Reissuance

A User with an expiring individual wastewater discharge permit or general permit shall apply for individual wastewater discharge permit or general permit reissuance by submitting a complete permit application, in accordance with Section 4.5 of these rules and regulations, a minimum of 90 days prior to the expiration of the User's existing individual wastewater discharge permit or general permit.

### SECTION 6—REPORTING REQUIREMENTS

#### 6.1 Baseline Monitoring Reports

- A. Within either one hundred eighty (180) days after the effective date of a categorical Pretreatment Standard as published in the federal register, or 180 days after the final decision in a request for category determination under 40 CFR 403.6(1)(4), (sec. NR 211.33 Wis. Adm. Code), whichever is later, Industrial Users subject to that standard which are not new sources and which are currently discharging to or scheduled to discharge to the POTW shall submit to the NMSC a report which contains the

information listed in paragraph B, below. At least ninety (90) days prior to commencement of their discharge, New Sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall submit to the NMSC a report which contains the information listed in paragraph B, below. A New Source shall report the method of pretreatment it intends to use to meet applicable categorical Standards. A New Source shall estimate its anticipated flow and concentration of pollutants to be discharged.

B. Users described above shall submit the information set forth below.

- (1) All information required in Section 4.5 A (1) (a), Section 4.5 A (2), Section 4.5 A (3) (a), and Section 4.5 A (6).
- (2) Measurement of pollutants.
  - a. The User shall provide the information required in Section 4.5 A (7) (a) through (d).
  - b. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
  - c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined waste stream formula in 40 CFR 403.6(e), (sec. NR 211.12 Wis. Adm. Code) to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e), (sec. NR 211.12 Wis. Adm. Code) this adjusted limit along with supporting data shall be submitted to the Control Authority;
  - d. Sampling and analysis shall be performed in accordance with Section 6.10;
  - e. The NMSC may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;
  - f. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW.
- (3) Compliance Certification. A statement, reviewed by the User's Authorized Representative as defined in Section 1.4 C and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.
- (4) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards, the shortest schedule by which the User

will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule pursuant to this Section must meet the requirements set out in Section 6.2 of these rules and regulations.

- (5) Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 6.14 A of these rules and regulations and signed by an Authorized Representative as defined in Section 1.4 C.

## 6.2 Compliance Schedule Progress Reports

The following conditions shall apply to the compliance schedule required by Section 6.1(B)(4) of these rules and regulations:

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

## 6.3 Reports on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) days following the date for final compliance with applicable categorical Pretreatment Standards, or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any User subject to such Pretreatment Standards and Requirements shall submit to NMSC a report containing the information described in Section 4.5 A (6) and (7) and 6.1(B) (2) of these rules and regulations. For Users subject to equivalent mass or concentration limits established in accordance with the procedures in Section 2.2, this report shall contain a reasonable measure of the User's long-term production rate. For all other Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period. All compliance reports must be signed and

certified in accordance with Section 6.14 A of these rules and regulations. All sampling will be done in conformance with Section 6.11.

#### 6.4 Periodic Compliance Reports

- A. All Significant Industrial Users must, at a frequency determined by and at the discretion of NMSC submit reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards or local limits and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard or local limits require compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by NMSC or the Pretreatment Standard necessary to determine the compliance status of the User. Any required reports and their frequency will be indicated by the User's pretreatment discharge permit.
- B. The NMSC may authorize an Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. (see [40 CFR 403.12(e)(2), (sec. NR 211.15 Wis. Adm. Code)] This authorization is subject to the following conditions:
  - (1) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.
  - (2) The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit. See Section 4.5 A (8).
  - (3) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.
  - (4) The request for a monitoring waiver must be signed in accordance with Section 1.4 C, and include the certification statement in 6.14 A [40 CFR 403.6(a)(2)(ii), (sec. NR 211.15 (10) (b) Wis. Adm. Code)].
  - (5) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136

with the lowest minimum detection level for that pollutant was used in the analysis.

- (6) Any grant of the monitoring waiver by the NMSC must be included as a condition in the User's permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the NMSC for 3 years after expiration of the waiver.
  - (7) Upon approval of the monitoring waiver and revision of the User's permit by the NMSC, the Industrial User must certify on each report with the statement in Section 6.14 C below, that there has been no increase in the pollutant in its waste stream due to activities of the Industrial User.
  - (8) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the User's operations, the User must immediately: Comply with the monitoring requirements of Section 6.4 A, or other more frequent monitoring requirements imposed by the NMSC, and notify the NMSC.
  - (9) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.
- C. All periodic compliance reports must be signed and certified in accordance with Sections 1.4 C and 6.14 A of these rules and regulations.
- D. All wastewater samples must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.
- E. If a User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the NMSC, using the procedures prescribed in Section 6.11 of these rules and regulations, the results of this monitoring shall be included in the report.
- G. POTWs that elect to receive electronic documents to satisfy the requirements of this Section must submit reports in accordance with and satisfy the requirements of 40 CFR Part 3 (Electronic Reporting). **NMSC industrial users must obtain written permission from the NMSC prior to submitting any documents electronically.**

## 6.5 Reports of Changed Conditions

Each User must notify the NMSC of any significant changes to the User's operations or system which might alter the nature, quality, or volume of its wastewater at least 30 days before the change.

- A. The NMSC may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 4.5 of these rules and regulations.
- B. The NMSC may issue an individual wastewater discharge permit or a general permit under Section 5.7 of these rules and regulations or modify an existing wastewater discharge permit or a general permit under Section 5.4 of these rules and regulations in response to changed conditions or anticipated changed conditions.

## 6.6 Reports of Potential Problems

- A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the NMSC of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.
- B. Within five (5) days following such discharge, the User shall, unless waived by the NMSC, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to these rules and regulations.
- C. A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.
- D. Significant Industrial Users are required to notify the NMSC immediately of any discharges that could cause problems at the NMSC or changes at its facility affecting the potential for a Slug Discharge and the need for a slug control plan.

## 6.7 Reports from Unpermitted Users

All Users not required to obtain an individual wastewater discharge permit or general permit shall provide appropriate reports to the NMSC as the NMSC may require.



## 6.8 Notice of Violation/Repeat Sampling and Reporting

If sampling and analysis performed by a User indicates a violation, the User must notify the NMSC within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the NMSC within thirty (30) days after becoming aware of the violation.

## 6.9 Notification of the Discharge of Hazardous Waste

An industrial user shall notify, in writing, the NMSC, the EPA Region V waste management division director and the Wisconsin DNR bureau of waste management of the discharge to the NMSC of:

- A. More than 15 kilograms per calendar month of any substance that would be hazardous waste according to ch. NR 661 Wis. Adm. Code if otherwise disposed; or
- B. Any amount of a substance that would be an acute hazardous waste according to sec. NR 661.30 (4) or 661.33 (5) Wis. Adm. Code if otherwise disposed.
- C. The notification required shall include: The name of the hazardous waste; The hazardous waste number; Whether the discharge is continuous, batch or other, and; A certification that the industrial user has a program in place to reduce to the extent economically practicable the volume and toxicity of the generated hazardous wastes.
- D. If an industrial user discharges to the NMSC more than 100 kilograms of hazardous waste per month, the report required by sub. (A)(B) shall include the following additional information to the extent it is known and available: The identity of the hazardous constituents in the listed wastes; The mass and concentration of the hazardous constituents in the waste stream; and the mass of the hazardous constituents expected to be discharged during the next 12 months.
- E. The notification required by sub. (A)(B) shall be made by the date required by the NMSC.
- F. Industrial users who commence discharging hazardous waste after the date established under sub. (E) shall provide the notification required by sub. (A)(B) within 180 days of commencement of discharge.
- G. Any notification under this section need to be submitted only once for each hazardous waste discharge except for notifications of changed discharges under sec. NR 211.15 (6) Wis. Adm. Code.
- H. This section does not apply to waste streams already reported under self-monitoring requirements of sec. NR 211.15 Wis. Adm. Code.

- I. If ch. NR 661 Wis. Adm. Code is amended to identify additional characteristics of hazardous wastes or to list any additional substances as hazardous waste, any industrial user discharging the newly designated hazardous waste shall notify, in writing, the NMSC, the EPA Region V waste management division director and the Wisconsin DNR bureau of waste management of the discharge of the substance within 90 days of the effective date of the new regulations.
- J. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by these rules and regulations, a permit issued thereunder, or any applicable Federal or State law.

#### 6.10 Analytical Requirements

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in ch. NR 219 Wis. Adm. Code and amendments thereto, unless otherwise specified in an applicable categorical Pretreatment Standard and performed by a laboratory certified or registered under C. NR 149 Wis. Adm. Code. If ch. NR 219 Wis. Adm. Code does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the NMSC or other parties approved by EPA. Analysis must be completed by a laboratory certified or registered under ch. NR 149 Wis. Adm. Code.

#### 6.11 Sample Collection

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

- A. Except as indicated in Section B and C below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the NMSC. Where time-proportional composite sampling or grab sampling is authorized by the NMSC, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in ch. NR 219 Wis. Adm. Code and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the NMSC, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

- B. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- C. For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 6.1 and 6.3 [40 CFR 403.12 (b) and (d), (sec. 211.15 (1) Wis. Adm. Code)], a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the NMSC may authorize a lower minimum. For the reports required by paragraphs Section 6.4 [40 CFR 403.12 (e) and (h) (sec. NR 211.15 (4) and (5) Wis. Adm. Code)], the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.

#### 6.12 Date of Receipt of Reports

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

#### 6.13 Recordkeeping

Users subject to the reporting requirements of these rules and regulations shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by these rules and regulations, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices established under Section 2.4 C. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; the results of such analyses; and shall certify that sampling and analysis are representative of normal work cycles and expected pollutant discharges to the NMSC. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the User or the NMSC, or where the User has been specifically notified of a longer retention period by the NMSC.

#### 6.14 Certification Statements

- A. Certification of Permit Applications, User Reports and Initial Monitoring Waiver—The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Section 4.7; Users submitting baseline monitoring reports under Section 6.1 B (5); Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under Section 6.3; Users submitting periodic compliance reports required by Section 6.4 A–D, and Users submitting an initial request to forego sampling of a pollutant on the basis of Section

6.4 B (4). The following certification statement must be signed by an Authorized Representative as defined in Section 1.4 C:

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

B. Annual Certification for Non-Significant Categorical Industrial Users—A facility determined to be a Non-Significant Categorical Industrial User by the NMSC pursuant to 1.4 OO (3) and 4.7 C must annually submit the following certification statement signed in accordance with the signatory requirements in 1.4 C. This certification must accompany an alternative report required by the NMSC:

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

(a) The facility described as \_\_\_\_\_ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in 1.4 OO (3);

(b) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and

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

This compliance certification is based on the following information:

\_\_\_\_\_  
\_\_\_\_\_

C. Certification of Pollutants Not Present

Users that have an approved monitoring waiver based on Section 6.4 B must certify on each report with the following statement that there has been no increase in the pollutant in its waste stream due to activities of the User.

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR \_\_\_\_\_ [specify

applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of \_\_\_\_\_ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under Section 6.4. A.

## SECTION 7—COMPLIANCE MONITORING

### 7.1 Right of Entry: Inspection and Sampling

The NMSC shall have the right to enter the premises of any User to determine whether the User is complying with all requirements of these rules and regulations and any individual wastewater discharge permit or general permit or order issued hereunder. Users shall allow the NMSC ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- A. Where a User has security measures in force which require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the NMSC shall be permitted to enter without delay for the purposes of performing specific responsibilities.
- B. The NMSC shall have the right to set up on the User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the User's operations.
- C. The NMSC may require the User to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated on a frequency as determined by NMSC to ensure their accuracy.
- D. 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 NMSC and shall not be replaced. The costs of clearing such access shall be borne by the User.
- E. Unreasonable delays in allowing the NMSC access to the User's premises shall be a violation of these rules and regulations.

### 7.2 Special Inspection Warrants

If the NMSC 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 these rules and regulations, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the NMSC designed to verify compliance with these rules and regulations or

any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the NMSC may seek issuance of a special inspection warrant.

#### SECTION 8—CONFIDENTIAL INFORMATION

Effluent data submitted to the control authority under ch. NR 211 Wis. Adm. Code shall be public record within the meaning of s. 19.21, Stats. All other information submitted to the control authority under ch. NR 211 Wis. Adm. Code shall be public record unless the information is entitled to confidential treatment under s. 283.55 (2), Stats., and sec. NR 2.19 Wis. Adm. Code as a trade secret. When requested and demonstrated by the User furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined at 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

#### SECTION 9—PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE

The NMSC shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the NMSC, a list of the Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. An industrial user is in significant noncompliance if any of the following criteria apply. A non-significant industrial user is in significant noncompliance if criteria (C), (D) or (H) apply:

- A. Sixty-six percent or more of all the measurements of the industrial user's wastewater for the same pollutant taken during a 6 month period exceeded by any magnitude any numeric pretreatment standard or requirement including an instantaneous limit;
- B. Thirty-three percent or more of all measurements of the industrial user's wastewater for the same pollutant taken during a 6 month period equaled or exceeded the product of the numeric pretreatment standard or requirement including an instantaneous limit multiplied by either 1.4 for BOD, TSS, fats, oils and grease; 1.2 for all other pollutants except pH; or exceeded a pH limit by 0.4 standard units.
- C. The NMSC has reason to believe that the industrial user has caused, alone or in combination with other discharges, interference, pass through, or endangerment of the health of POTW personnel or the general public because of the violation of a pretreatment standard or requirement;
- D. The industrial user has discharged a pollutant that has caused imminent endangerment to human health or the environment or has otherwise resulted in the NMSC's exercise of its emergency authority to halt or prevent such a discharge;

- E. The industrial user has failed to meet, by 90 days or more, a milestone date, contained in a compliance schedule within a local control mechanism or enforcement order for starting construction, completing construction, or attaining compliance;
- F. The industrial user has failed to provide within 45 days of a deadline a required report containing all required monitoring results and other information, such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with a compliance schedule;
- G. The industrial user has failed to accurately report noncompliance;
- H. The control authority (NMSC) has determined that any other violation or group of violations, which may include a violation of required best management practices, by the industrial user has adversely affected operations or implementation of the local pretreatment program.

## SECTION 10—ADMINISTRATIVE ENFORCEMENT REMEDIES

### 10.1 Notification of Violation

When the NMSC finds that a User has violated, or continues to violate, any provision of these rules and regulations, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, NMSC may serve upon that User a written Notice of Violation. Within the time period as determined and directed by NMSC, 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 NMSC. Submission of such a plan in no way relieves the User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this Section shall limit the authority of the NMSC to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

### 10.2 Consent Orders

The NMSC may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such documents shall include specific action to be taken by the User to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 10.4 and 10.5 of these rules and regulations and shall be judicially enforceable.

### 10.3 Show Cause Hearing

The NMSC may order a User which has violated, or continues to violate, any provision of these rules and regulations, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, to appear before the NMSC

and show cause why the proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the User show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least 10 days prior to the hearing. Such notice may be served on any Authorized Representative of the User as defined in Section 1.4 C and required by Section 4.7 A. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the User.

#### 10.4 Compliance Orders

When the NMSC finds that a User has violated, or continues to violate, any provision of these rules and regulations, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the NMSC may issue an order to the User responsible for the discharge directing that the User come into compliance within a specified time. If the User does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.

#### 10.5 Cease and Desist Orders

When the NMSC finds that a User has violated, or continues to violate, any provision of these rules and regulations, an individual wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, or that the User's past violations are likely to recur, the NMSC may issue an order to the User directing it to cease and desist all such violations and directing the User to:

- A. Immediately comply with all requirements; and
- B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the User.

#### 10.6 Administrative Fines

- A. When the NMSC finds that a User has violated, or continues to violate, any provision of these rules and regulations, an individual wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the NMSC may



fine such User in an amount not to exceed 10,000 dollars per violation per day. Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

- B. Unpaid charges, fines, and penalties shall, after thirty 30 calendar days, be assessed an additional penalty of twenty-five percent (25%) of the unpaid balance, and interest shall accrue thereafter at a rate of two percent (2%) per month. A lien against the User's property shall be sought for unpaid charges, fines, and penalties.
- C. Users desiring to dispute such fines must file a written request for the NMSC to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit, the NMSC may convene a hearing on the matter. In the event the User's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the User. The NMSC may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.
- D. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the User.

#### 10.7 Emergency Suspensions

The NMSC may immediately suspend a User's discharge, after informal notice to the User, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons. The NMSC may also immediately suspend a User's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

- A. Any User notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a User's failure to immediately comply voluntarily with the suspension order, the NMSC may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The NMSC may allow the User to recommence its discharge when the User has demonstrated to the satisfaction of the NMSC that the period of endangerment has passed, unless the termination proceedings in Section 10.8 of these rules and regulations are initiated against the User.
- B. A User that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the NMSC prior to the date of any show cause or termination hearing under Sections 10.3 or 10.8 of these rules and regulations.

Nothing in this Section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this Section.

#### 10.8 Termination of Discharge

In addition to the provisions in Section 5.6 of these rules and regulations, any User who violates the following conditions is subject to discharge termination:

- A. Violation of individual wastewater discharge permit or general permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- D. Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring, or sampling; or
- E. Violation of the Pretreatment Standards in Section 2 of these rules and regulations.

Such User will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 10.3 of these rules and regulations why the proposed action should not be taken. Exercise of this option by the NMSC shall not be a bar to, or a prerequisite for, taking any other action against the User.

### SECTION 11—JUDICIAL ENFORCEMENT REMEDIES

#### 11.1 Injunctive Relief

When the NMSC finds that a User has violated, or continues to violate, any provision of these rules and regulations, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the NMSC may petition the Winnebago County Circuit Court through NMSC's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the individual wastewater discharge permit, the general permit, order, or other requirement imposed by these rules and regulations on activities of the User. The NMSC may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a User.

#### 11.2 Civil Penalties

- A. A User who has violated, or continues to violate, any provision of these rules and regulations, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement shall be liable to the NMSC for a maximum civil penalty of \$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 NMSC 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 NMSC.
- C. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the User's violation, corrective actions by the User, the compliance history of the User, and any other factor as justice requires.
- D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a User.

### 11.3 Remedies Nonexclusive

The remedies provided for in these rules and regulations are not exclusive. The NMSC may take any, all, or any combination of these actions against a noncompliant User. Enforcement of pretreatment violations will generally be in accordance with the NMSC's enforcement response plan. However, the NMSC may take other action against any User when the circumstances warrant. Further, The NMSC is empowered to take more than one enforcement action against any noncompliant User.

## SECTION 12—SUPPLEMENTAL ENFORCEMENT ACTION

### 12.1 Penalties for Late Reports

A penalty of \$500 shall be assessed to any User for each day that a report required by these rules and regulations, a permit or order issued hereunder is late; beginning forty-five days after the date the report is due. Actions taken by the NMSC to collect late reporting penalties shall not limit the NMSC's authority to initiate other enforcement actions that may include penalties for late reporting violations.

### 12.2 Performance Bonds

The NMSC may decline to issue or reissue an individual wastewater discharge permit or a general permit to any User who has failed to comply with any provision of these rules and regulations, a previous individual wastewater discharge permit, or a previous general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, unless such User first files a satisfactory bond, payable to the NMSC, in a sum not to exceed a value determined by the NMSC to be necessary to achieve consistent compliance.

### 12.3 Liability Insurance

The NMSC may decline to issue or reissue an individual wastewater discharge or a general permit to any User who has failed to comply with any provision of these rules and regulations, a previous individual wastewater discharge permit, or a previous general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, unless the User first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

### 12.4 Payment of Outstanding Fees and Penalties

The NMSC may decline to issue or reissue an individual wastewater discharge permit or a general permit to any User who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of these rules and regulations, a previous individual wastewater discharge permit, or a previous general permit or order issued hereunder.

### 12.5 Water Supply Severance

Whenever a User has violated or continues to violate any provision of these rules and regulations, an individual wastewater discharge permit, a general permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, water service to the User may be severed. Service will recommence, at the User's expense, only after the User has satisfactorily demonstrated its ability to comply.

## SECTION 13—AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

### 13.1 Upset

- A. For the purposes of this Section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (C), below, are met.
- C. A User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (1) An upset occurred and the User can identify the cause(s) of the upset;

- (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - (3) The User has submitted the following information to the NMSC 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 shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.
- F. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

### 13.2 Prohibited Discharge Standards

A User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2.1(A) of these rules or regulations or the specific prohibitions in Sections 2.1(B) (3) through (19) of these rules and regulations 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 NMSC was regularly in compliance with its WPDES permit, and in the case of Interference, was in compliance with applicable sludge use or disposal requirements.

### 13.3 Bypass

#### A. For the purposes of this Section,

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

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

#### C. Bypass Notifications

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

#### D. Bypass

- (1) Bypass is prohibited, and the NMSC may take an enforcement action against a User for a bypass, unless
  - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of

reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

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

(2) The NMSC may approve an anticipated bypass, after considering its adverse effects, if the NMSC determines that it will meet the three conditions listed in paragraph (D)(1) of this Section.

## SECTION 14—WASTEWATER TREATMENT RATES - [RESERVED]

## SECTION 15—MISCELLANEOUS PROVISIONS

### 15.1 Pretreatment Charges and Fees

The NMSC may adopt reasonable fees for reimbursement of costs of setting up and operating NMSC's Pretreatment Program, which may include:

- A. Fees for wastewater discharge permit applications including the cost of processing such applications;
- B. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a User's discharge, and reviewing monitoring reports and certification statements submitted by Users;
- C. Fees for reviewing and responding to accidental discharge procedures and construction;
- D. Fees for filing appeals;
- E. Fees to recover administrative and legal costs (not included in Section 15.1 B) associated with the enforcement activity taken by the NMSC to address IU noncompliance; and
- F. Other fees as the NMSC may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by these rules and regulations and are separate from all other fees, fines, and penalties chargeable by the NMSC.

### 15.2 Severability

If any provision, paragraph, word, section or chapter of these rules and regulations is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words sections, and chapters shall not be affected and shall continue in full force and effect.

If any provision of these rules and regulations is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

SECTION 16—SUMMARY OF REQUIRED REPORTS, NOTIFICATION AND SCHEDULES BY USERS

The following sections of these pretreatment rules and regulations require submission to the NMSC by Users of reports, notifications and schedules and are listed here for the convenience of Users:

<u>Report</u>	<u>Section</u>
Accidental Discharge/Slug Discharge Control Plans	3.3
Baseline Monitoring Report	6.1
Compliance Schedule Progress Reports	6.2
Categorical Pretreatment Standard Deadline Compliance Reports	6.3
Periodic Compliance Reports	6.4
Reports of Changed Conditions	6.5
Reports of Potential Problems	6.6
Reports from Unpermitted Users	6.7
Notice of Violation/Repeat Sampling and Reporting	6.8
Notification of the Discharge of Hazardous Waste	6.9
Bypass Notification	13.3 C

SECTION 17—EFFECTIVE DATE

These rules and regulations shall be in full force and effect immediately following its passage, approval, and publication, and any stated effective date, as provided by law.