

## CHAPTER 14.23

### KENNEWICK PRETREATMENT ACT

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#### **14.23.010: General Provisions:**

(1) Purpose and Policy. This chapter sets forth uniform requirements for users of the publicly owned treatment works (POTW) for the City of Kennewick and enables the City to comply with all applicable state and federal laws, including the Clean Water Act (33 USC 1251 et seq.) and the General Pretreatment Regulations (40 CFR Part 403). The objectives of this chapter are:

- (a) To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;
- (b) To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;
- (c) To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows for its use and disposal in compliance with applicable statutes and regulations;
- (d) To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public; and
- (e) To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW.

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

(2) Administration. Except as otherwise provided herein, the Public Works Director shall administer, implement and enforce the provisions of this chapter. Any powers

granted to or duties imposed upon the Public Works Director may be delegated by the Public Works Director to other city personnel.

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

- (a) “Act” or “the Act” means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq.
- (b) “Applicable Pretreatment Standards” means, for a specific pollutant, the more stringent of a city prohibitive discharge standard, local limit or categorical pretreatment standards, and any other applicable local, state or federal standard.
- (c) “Approval Authority” means the State of Washington Department of Ecology.
- (d) “Authorized Representative of the User” means:
  - (i) If the user is a corporation:
    - (A) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
    - (B) The manager of one or more manufacturing, production or operation facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initialing and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
  - (ii) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively;
  - (iii) If the user is a federal, state or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her designee.
  - (iv) The individuals described in subsections (i) through (iii) of this definition may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company and the written authorization is submitted to the City.
- (e) “Best Management Practices (BMPs)” is a term which means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Sections 403.5(a)(1) and (b) of the Act. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

- (f) “Biochemical Oxygen Demand (BOD<sub>5</sub>)” means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 degrees Celsius expressed as a concentration (milligrams per liter (mg/L)).
- (g) “Categorical Pretreatment Standard” or “Categorical Standard” means any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307(b) and (c) of the Act (33 USC 1317) which apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405 through 471.
- (h) “Categorical user” means a user covered by one of the EPA’s categorical pretreatment standards.
- (i) “City” means the City of Kennewick or the City Council of the City of Kennewick.
- (j) “Color” means the optical density at the visual wavelength of maximum absorption, relative to distilled water. One hundred percent transmittance is equivalent to zero optical density.
- (k) “Composite Sample” means the sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.
- (l) “Control Authority.” The term refers to the City of Kennewick, Washington.
- (m) “Cooling Water/Noncontact Cooling Water” means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product or finished product. Cooling water may be generated from any use, such as air conditioning, heat exchangers, cooling or refrigeration, to which the only pollutant added is heat.
- (n) “Domestic User (residential user)” means any person who contributes, causes or allows the contribution of wastewater into the City POTW that is of a similar volume and/or chemical makeup as that of a residential dwelling unit. Discharges from a residential dwelling unit typically include up to 100 gallons per capita per day, 0.2 pounds of BOD per capita and 0.17 pounds of TSS per capita.
- (o) “Environmental Protection Agency (EPA)” means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director or other duly authorized official of said agency.
- (p) “Existing Source.” For a categorical industrial user, an “existing source” is any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.
- (q) “Existing User.” For noncategorical users an “existing user” is defined as any user who is discharging wastewater prior to the effective date of the ordinance codified in this chapter.
- (r) “Grab Sample” means a sample which is taken from a waste stream on a one-time basis without regard to the flow in the wastestream and without consideration of time.
- (s) “Indirect Discharge” or “discharge” means the introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act. The discharge into the POTW is normally by means of pipes,

conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches and all constructed devices and appliances appurtenant thereto.

- (t) “Interference” means a discharge which, alone or in conjunction with a discharge or discharges from other sources, either: (1) inhibits or disrupts the POTW, its treatment processes or operations; (2) inhibits or disrupts its sludge processes, use or disposal; or (3) is a cause of a violation of the City’s NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.
- (u) “Maximum Allowable Discharge Limit” means the maximum concentration (or loading) of a pollutant allowed to be discharged by a regulated industrial user at any time, determined from the analysis of a discrete or composited sample collected, independent of the wastewater flow rate.
- (v) “Medical Wastes” means 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.
- (w) “NAICS” means a classification pursuant to the North American Industry Classification System used by the United States Office of Management and Budget.
- (x) “New Source” means:
  - (i) Any building, structure, facility or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section; provided, that:
    - (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.
  - ii. Construction on a site at which an existing source is located results in a

- modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of subsection (i)(B) or (C) of this definition but otherwise alters, replaces or adds to existing process or production equipment.
- iii. 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 on-site construction program:
    - (I) Any placement, assembly, or installation of facilities or equipment; or
    - (II) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities 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 definition.
- (y) “New User” is a user that is not regulated under federal categorical pretreatment standards but applies to the City for a new building permit or occupies an existing building and plans to discharge wastewater to the City’s collection system after the effective date of the ordinance codified in this chapter. Any person that buys an existing facility that is discharging nondomestic wastewater will be considered an existing user if no significant changes are made in the manufacturing operation.
- (z) “Pass Through” means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the City’s NPDES permit (including an increase in the magnitude or duration of a violation).
- (aa) “Permittee” means a person or user issued a wastewater discharge permit.
- (bb) “Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, or local governmental entities.
- (cc) “pH” means a measure of the acidity or alkalinity of a substance, expressed in standard units.
- (dd) “Pollutant” means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes and the characteristics of the wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, chemical oxygen demand (COD), toxicity or odor).

- (ee) “Pretreatment” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to (or in lieu of) introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means (except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard).
- (ff) “Pretreatment requirements” means any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.
- (gg) Pretreatment Standard or Standard. “Pretreatment Standard” shall mean any regulation containing pollutant discharge limits, promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. This term includes prohibited discharge standards (KMC 14.23.020(1)), categorical pretreatment standards (40 CFR Chapter I, Subchapter N), local limits (KMC 14.23.020(5)) and BMPs established by the City.
- (hh) Prohibited Discharge Standards” or “Prohibited Discharges” means absolute prohibitions against the discharge of wastewater with specific pollutants or pollutant properties (KMC 14.23.020(1)).
- (ii) “Public Works Director” means the person designated by the City to manage the operation of the POTW and who is charged with certain duties and responsibilities by this chapter, or a duly authorized representative.
- (jj) “Publicly Owned Treatment Works (POTW)” means a “treatment works,” as defined by Section 212 of the Act (33 USC 1292) which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant. The term also means the City.
- (kk) “Septic Tank Waste” means any sewage from holding tanks such as vessels, chemical toilets, campers, trailers and septic tanks.
- (ll) “Sewage” means human excrement and gray water (household showers, dishwashing operations, etc.).
- (mm) “Sewer” means any pipe, conduit, ditch, or other device used to collect and transport sewage from the generating source.
- (nn) “Shall, May.” “Shall” is mandatory; “may” is permissive.
- (oo) “Significant Industrial User” means:
  - (i) A user subject to categorical pretreatment standards; or
  - (ii) A user that:
    - (A) Discharges an average of 25,000 gallons per day (gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blow-down wastewater); or
    - (B) Contributes a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
    - (C) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement.
  - (iii) Upon a finding that a user meeting the criteria in subsection (2) of this

definition has no reasonable potential for adversely affecting the POTW's operation or for violating any applicable pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a 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) "Slug Load" means any discharge at a flow rate or concentration which could cause a violation of the discharge standards in KMC 14.23.020(1) through (4) or any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or a noncustomary batch discharge.
- (qq) "Stormwater" means any flow that occurs during or follows any form of natural precipitation and results from such precipitation, including snowmelt.
- (rr) "Total Suspended Solids" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid and which is removable by laboratory filtering.
- (ss) "Treatment Plant Effluent" means the discharge from the POTW into waters of the United States.
- (tt) "User" or "industrial user" means a source of indirect discharge. The source shall not include "domestic user" as defined herein.
- (uu) "Wastewater" means liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.
- (vv) "Wastewater Discharge Permit (industrial wastewater discharge permit, discharge permit)" means an authorization or equivalent control document issued by the City to users discharging wastewater to the POTW. The permit may contain appropriate pretreatment standards and requirements as set forth in this chapter.
- (ww) "Wastewater Treatment Plant" or "Treatment Plant" means that portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.

(4) Abbreviations. The following abbreviations shall have the designated meanings:

- (a) ASPP – accidental spill prevention plan.
- (b) BOD – biochemical oxygen demand.
- (c) CFR – Code of Federal Regulations.
- (d) COD – chemical oxygen demand.
- (e) EPA – U.S. Environmental Protection Agency.
- (f) FOG – fats, oil and grease.
- (g) gpd – gallons per day.
- (h) L – liter.
- (i) LEL – lower explosive limit.
- (j) mg – milligrams.
- (k) mg/L – milligrams per liter.
- (l) NAICS – North American Industry Classification System.
- (m) NPDES – National Pollutant Discharge Elimination System.

- (n) O&M – operation and maintenance.
- (o) POTW – publicly owned treatment works.
- (p) RCRA – Resource Conservation and Recovery Act.
- (q) SIC – Standard Industrial Classifications.
- (r) SWDA – Solid Waste Disposal Act (42 USC 6901, et seq.).
- (s) TSS – total suspended solids.
- (t) USC – United States Code. (Ord. 5420 Sec. 1 (part), 2012)

**14.23.020: General Requirements:**

- (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. These general prohibitions apply to all users of the POTW whether or not they are subject to a categorical pretreatment standard or any other national, state, or local pretreatment standard or requirement.
  - (b) Specific Prohibitions. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
    - (i) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods specified in 40 CFR 261.21;
    - (ii) Wastewater having a pH less than 5.0 or more than 10.0, or otherwise causing corrosive structural damage to the POTW or equipment, unless specifically authorized by the City. In no case shall the discharge have a pH less than 5.0 at any time;
    - (iii) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference;
    - (iv) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
    - (v) Wastewater having a temperature which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius) unless the approval authority, upon the request of the POTW, approves alternate temperature limits;
    - (vi) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
    - (vii) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
    - (viii) Trucked or hauled pollutants, except at discharge points designated by the City;
    - (ix) 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;

- (x) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby causing or contributing to a violation of the City's NPDES permit;
- (xi) Wastewater containing any radioactive wastes or isotopes except as specifically approved by the Public Works Director in compliance with applicable state or federal regulations;
- (xii) Stormwater, surface water, ground water, artesian well water, roof runoff, subsurface drainage, condensate, deionized water, noncontact cooling water and unpolluted wastewater, unless specifically authorized by the Public Works Director;
- (xiii) Any sludges, screenings, or other residues from the pretreatment of industrial wastes or from industrial processes;
- (xiv) Wastewater that causes or contributes to a failure of a toxicity test conducted on the POTW effluent;
- (xv) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW or otherwise cause pass through or interference;
- (xvi) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time shall two successive readings on an explosion meter, at the point of discharge into the system (or at any point in the system), be more than five percent nor any single reading over 10 percent of the lower explosive limit (LEL) of the meter;
- (xvii) Animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, feathers, ashes, cinders, sand, spent lime, stone or marble dusts, metal, glass, straw, shavings, grass clippings, rags, waste paper, wood, plastics, gas, tar asphalt residues, residues from the refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes;
- (xviii) Any substance which will cause the POTW to violate its NPDES and/or other disposal system permits;
- (xix) Any wastewater which, in the opinion of the Public Works Director, can cause harm either to the sewers, sewage treatment process, or equipment; have an adverse effect on the receiving stream; or can otherwise endanger life, limb, public property, or constitute a nuisance, unless allowed under special agreement by the Public Works Director (except that no special waiver shall be given from categorical pretreatment standards or a violation of an approved maximum allowable industrial load or that causes or contributes to pass through or interference);
- (xx) The contents of any tank or other vessel owned or used by any person in the business of collecting or pumping sewage, effluent, septage, or other wastewater unless said person has first obtained testing and approval as may be generally required by the City of Kennewick and

- paid all fees assessed for the privilege of said discharge;
- (xxi) Persistent pesticides and/or pesticides regulated by the Federal Insecticide Fungicide Rodenticide Act (FIFRA) that will cause or contribute to pass through or interference;
- (xxii) Sewage sludge, except in accordance with the City's NPDES permit, providing that it specifically allows the discharge to surface water of sewage sludge pollutants.
- (xxiii) The discharge of dry cleaning process wastes, including new and used tetrachloroethylene (synonyms: perchloroethylene, tetrachloroethene), still bottom oil and separator water, is prohibited entirely. Where necessary, the City may require that these wastes be physically prevented from discharging into the sanitary sewer system.
- (xxiv) At no time shall an emulsifying agent, enzyme, bio-additive, or similar chemical be introduced into the waste stream, grease trap, grease interceptor or any chamber of a grease interceptor, except by City employees or designees for the purpose of maintenance and operations of the POTW.

(2) Wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW except as authorized by an industrial user permit and/or this chapter. If the industrial user has a pretreatment facility, all floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility or to sumps or tanks that do not have the potential for a discharge to the POTW before connecting with the POTW. The City may require other industrial users to contain or collect wastewater from floor drains to protect the POTW and meet the objectives of this chapter.

(3) Federal Categorical Pretreatment Standards. The national categorical pretreatment standards as amended and promulgated by the EPA pursuant to the Act and as found in 40 CFR Chapter I, Subchapter N, Parts 405 through 471 are hereby incorporated and shall be enforceable under this chapter.

(4) State Requirements. State requirements and limitations on discharges to the POTW shall be met by all users which are subject to such standards in any instance in which they are more stringent than federal requirements and limitations, or those in this chapter or other applicable ordinances.

(5) Local Limits. The following pollutant limits are established to protect against pass through and interference. No permitted industrial user shall discharge wastewater that exceeds the following limits:

<b>Pollutant</b>	<b>Symbol</b>	<b>Maximum Allowable Discharge Limit<sup>1</sup> in mg/L</b>
Arsenic	As	0.14
Cadmium	Cd	0.155
Chromium	Cr	3.4
Copper	Cu	1.71
Lead	Pb	0.658
Mercury	Hg	0.0216
Molybdenum	Mo	0.34

<b>Pollutant</b>	<b>Symbol</b>	<b>Maximum Allowable Discharge Limit<sup>1</sup> in mg/L</b>
Nickel	Ni	1.31
Selenium	Se	0.24
Silver	Ag	0.213
Oil and grease (FOG)	–	100 and/or 25% capacity of any chamber of the interceptor
Zinc	Zn	6.93
Tetrachloroethylene (synonyms: tetrachloroethene, perchloroethylene)	–	1.152
Benzene <sup>2</sup>	–	0.05
BTEX <sup>2,3</sup>	–	0.75

<sup>1</sup>All pollutants shown are total.

<sup>2</sup>These pollutants and limits generally apply to wastewaters from the cleanup of petroleum or gasoline underground storage tanks. In addition, the pollutants may be required of other users or included in permits where sampling and analysis indicate that the wastewater contains concentrations of these pollutants in excess of the stated limits.

<sup>3</sup>This is the sum of measured concentrations for benzene, toluene, ethylbenzene, and xylene.

The above limits apply at the point where the wastewater is discharged to the POTW (end of the pipe). The Public Works Director may impose mass limitations in addition to (or in place of) the concentration-based limitations above. Where a user is subject to both categorical pretreatment standards and local limits for a given pollutant, the more stringent limit shall apply.

(6) City's Right of Revision. The City reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

(7) Special Agreement. The City reserves the right to enter into special agreements with users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a categorical pretreatment standard or federal pretreatment requirement. However, the user may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. They may also request a variance from the categorical pretreatment standard from the approval authority in accordance with 40 CFR 403.13.

(8) 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 an applicable pretreatment standard or requirement unless expressly authorized by an applicable pretreatment standard or requirement. The Public Works Director may impose mass limitations on users which he believes may be using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

(9) Pretreatment Facilities. Users shall provide necessary wastewater treatment as required to comply with this chapter and shall achieve compliance with all applicable pretreatment standards and requirements set out in this chapter within the time limitations specified by the EPA, the state, or the Public Works Director, whichever are more stringent. Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review and shall be acceptable to the City before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the City under the provisions of this chapter.

(10) Deadline for Compliance with Applicable Pretreatment Requirements. Compliance by existing users (categorical users) covered by categorical pretreatment standards shall be within three years of the date the standard is effective unless a shorter compliance time is specified in the appropriate standard. The City shall establish a final compliance deadline date for any existing user not covered by categorical pretreatment standards or for any categorical user when the local limits for said user are more restrictive than the EPA's categorical pretreatment standards.

New sources and new users shall install and have in operating condition and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge.

Any wastewater discharge permit issued to a categorical user shall not contain a compliance date beyond any deadline date established in the EPA's categorical pretreatment standards. Any other existing user or a categorical user that must comply with a more stringent local limit, which is in noncompliance with any local limits, shall be provided with a compliance schedule placed in an industrial wastewater permit or registered letter for non Categorical users to ensure compliance within the shortest time feasible.

(11) Additional Pretreatment Measures.

- (a) Whenever deemed necessary, the Public Works Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this chapter.
- (b) Each user discharging to the POTW greater than 25,000 gallons per day or greater than five percent of the average daily flow into the POTW, whichever is less, may be required to install and maintain, on its property and at its expense, a suitable storage and flow-control facility to ensure equalization of flow over a 24-hour period. A wastewater discharge permit may be issued solely for flow equalization.
- (c) Grease, oil and sand interceptors shall be provided when, in the opinion of the Public Works Director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the Public Works Director in specifications with current Uniform Plumbing Code and/or any City Standard Specifications and shall be so located to be easily accessible for cleaning and inspection.

Where installed, all grease, oil and sand traps (or interceptors) shall be maintained by the owner, at his expense, in continuously efficient operation at all times and subject to inspection. In the event the owner fails to properly maintain the grease trap (or interceptor), which in the opinion of the Director causes or has the potential to cause clogging of the sewer lines and/or pump stations, the cost of the City, time and material, in cleaning the sewer lines and/or pump stations may be charged to the owner of the grease trap. For the purpose of this paragraph, the owner shall be the person, firm or corporation named on the sewer account. For the purpose of this subsection, a grease interceptor is not in continuous efficient operation and is in violation of this section if the total volume of grease, solids, or food waste at any time displaces more than twenty-five percent of the effective volume of any chamber of the grease interceptor.

The user shall have a written record of trap and/or interceptor maintenance on site for inspection and all such records shall be available for inspection by the City of Kennewick, and shall be kept in accordance with the recordkeeping requirements of KMC 14.23.040. Grease trap maintenance will be recorded/ reported on a monthly basis; Interceptors will be recorded/reported on their designated cleaning frequency. At the discretion of the Public Works Director, reports may be required to be submitted to the City's Pretreatment Inspector via e-mail, fax, postal mail or electronic form submission when it becomes available.

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

(12) Accidental Spill Prevention Plans/Slug Control Plans. The Public Works Director may require any user to develop and implement an accidental spill prevention plan (ASPP)/slug control plan. Where deemed necessary by the City, facilities to prevent accidental discharge or slug discharges of pollutants shall be provided and maintained at the user's cost and expense. An accidental spill prevention plan or slug control plan showing facilities and operating procedures to provide this protection shall be submitted to the City for review and approval before implementation. The City shall determine which user is required to develop a plan and require said plan to be submitted within 120 days after notification by the City. Each user shall implement its ASPP as submitted or as modified after such plan has been reviewed and approved by the City. Review and approval of such plans and operating procedures by the City shall not relieve the user from the responsibility to modify its facility as necessary to meet the requirements of this section.

- (a) Any user required to develop and implement an accidental discharge/slug control plan shall submit a plan which addresses, at a minimum, the following:
  - (i) Description of discharge practices, including nonroutine batch discharges;
  - (ii) Description of stored chemicals;
  - (iii) Procedures for immediately notifying the POTW of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any of the standards in subsections (1) through (4) of this section; and
  - (iv) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials,

loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents) and/or measures and equipment for emergency response.

- (b) Users shall notify the City wastewater treatment plant immediately after the occurrence of a slug or accidental discharge of substances regulated by this chapter. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume and corrective actions. Any affected user shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the City on account thereof under state or federal law.
- (c) Within five days following an accidental discharge, the user shall submit to the Public Works Director a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property. Nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this chapter or other applicable law.
- (d) Signs shall be permanently posted in conspicuous places on the user's premises advising employees whom to call in the event of a slug or accidental discharge. Employers shall instruct all employees who may cause or discover such a discharge with respect to emergency notification procedures.
- (13) Septic Tank Wastes/RV dump sites.
  - (a) Entities that supply an RV dumping connection to the POTW must secure a permit/permission from the City of Kennewick as authorized in KMC 14.23.030
  - (b) Septic tank waste haulers are not allowed to discharge loads into the POTW and must dispose of their loads as outlined in their permit with the Department of Ecology and at a Department of Health approved facility.
  - (c) Fees for RV dump connections will be established as part of the user fee system as authorized in KMC 14.23.140. (Ord. 5420 Sec. 1 (part), 2012)

**14.23.030: Wastewater Discharge Permit Requirements:** No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Public Works Director; the permit must be enforceable and contain all the elements as required by 40 CFR 403.8(t)(1)(iii)(B). Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this chapter and subjects the wastewater discharge permittee to the sanctions set out in this chapter. Obtaining a wastewater discharge 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.

The Public Works Director may require other users, including liquid waste haulers, to obtain wastewater discharge permits (as necessary) to carry out the purposes of this chapter.

(1) Wastewater Discharge Permitting – Existing Significant Industrial User (SIU). Any SIU that was discharging wastewater into the POTW prior to the effective date of the ordinance codified in this chapter and that wishes to continue such discharges in the future shall, within 60 days after notification by the Public Works Director, submit a permit

application to the City in accordance with subsection (4) of this section and shall not cause or allow discharges to the POTW to continue after 90 days of the effective date of the ordinance codified in this chapter except in accordance with a wastewater discharge permit issued by the Public Works Director.

(2) Wastewater Discharge Permitting – New Source and New User. At least 180 days prior to the anticipated start-up, unless specifically authorized by the Public Works Director, any new source, sources that become a user subsequent to the promulgation of an applicable categorical pretreatment standard and “new users” considered by the City to fit the definition of SIU, shall apply for a wastewater discharge permit and will be required to submit to the City at least the information listed in subsections (5)(a) through (e) of this section. A new source or “new user” cannot discharge without first receiving a wastewater discharge permit from the City. New sources and “new users” shall also be required to include in their application information the method of pretreatment the user intends to use to meet applicable pretreatment standards. New sources and “new users” shall give estimates of the information requested in subsections (5)(d) and (e) of this section.

(3) Pretreatment Equipment Modification. Before the construction, addition or modification of pretreatment equipment, the user must submit an engineering report to the City and/or WDOE for approval.

(4) Wastewater Discharge Permitting – Extra Jurisdictional Users. Any existing user located beyond the City limits who is required to obtain a wastewater discharge permit shall submit a wastewater discharge permit application as outlined in subsection (1) of this section. New source and “new users” located beyond the City limits required to obtain a wastewater discharge permit shall comply with subsection (2) of this section.

(5) Wastewater Discharge Permit Application Contents. All users required to obtain a wastewater discharge permit must submit, at a minimum, the following baseline information. The Public Works Director shall approve a form to be used as a permit application. Categorical users submitting the following information shall have complied with 40 CFR 403.12(b).

- (a) Identifying Information. The user shall submit the name and address of the facility including the name of the operator and owners;
- (b) Permits. The user shall submit a list of any environmental control permits held by or for the facility;
- (c) Description of Operations. The user shall submit a brief description of the nature, average rate of production and standard industrial classification of the operation(s) carried out by such industrial user, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW; number of employees; hours of operation; each product produced by type, amount, process or processes and rate of production; type and amount of raw materials processed (average and maximum per day) and the time and duration of discharges. This description should also include a schematic process diagram which indicates points of discharge to the POTW from the regulated or manufacturing processes. Disclosure of site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation.
- (d) Flow Measurement.

- (i) Categorical User. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:
    - (A) Regulated or manufacturing process streams; and
    - (B) Other streams as necessary to allow use of the combined waste stream formula of 40 CFR 403.6(e).
  - (ii) Noncategorical User. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:
    - Total process flow, wastewater treatment plant flow, total plant flow or individual manufacturing process flow as required by the Public Works Director.
    - The City may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.
- (e) Measurements of Pollutants.
- (i) Categorical User.
    - (A) The user shall identify the applicable pretreatment standards for each regulated or manufacturing process.
    - (B) In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass where required by the categorical pretreatment standard or as required by the City) of regulated pollutants (including standards contained in KMC 14.23.020(1) through (5), as appropriate) in the discharge from each regulated or manufacturing process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in KMC 14.23.050.
    - (C) The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection.
    - (D) Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) for a categorical user covered by a categorical pretreatment standard this adjusted limit, along with supporting data, shall be submitted as part of the application.
  - (ii) Noncategorical User.
    - (A) The user shall identify the applicable pretreatment standards for its wastewater discharge.
    - (B) In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass where required by the City) of regulated pollutants contained in KMC 14.23.020(1) through (5), as appropriate in the discharge. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in KMC 14.23.050.

- (C) The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection.
  - (D) Where the Public Works Director developed alternate concentration or mass limits because of dilution, this adjusted limit along with supporting data shall be submitted as part of the application.
- (f) Certification. The user shall submit a statement, reviewed by an authorized representative of the user and certified by a qualified professional as outlined in subsection (6) of this section, indicating whether the applicable 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 for the user to meet the applicable pretreatment standards and requirements.
- (g) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the applicable pretreatment standards, the user will provide the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The user's schedule shall conform to the requirements of KMC 14.23.040(4). The completion date in this schedule shall not be later than the compliance date established pursuant to KMC 14.23.020(10).
  - (i) Where the user's categorical pretreatment standard has been modified by a removal allowance (40 CFR 403.7), the combined waste stream formula (40 CFR 403.6(e)), and/or a fundamentally different factors variance (40 CFR 403.13) at the time the user submits the report required by this subsection, the information required by subsections (5)(f) and (g) of this section shall pertain to the modified limits.
  - (ii) If the categorical pretreatment standard is modified by a removal allowance (40 CFR 403.7), the combined waste stream formula (40 CFR 403.6(e)), and/or a fundamentally different factors variance (40 CFR 403.13) after the user submits the report required by subsections (5)(f) and (g) of this section, a new report shall be submitted by the user within 60 days after the modified limit is approved.
- (h) The user shall submit any other information as may be deemed necessary by the Public Works Director to evaluate the wastewater discharge permit application. Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.
- (6) Signatory and Certification Requirement. All wastewater discharge permit applications and user reports must be signed by an authorized representative. For the purpose of this section, a responsible officer or manager means:
  - (a) A president, vice-president, secretary, or treasurer of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
  - (b) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary information for control mechanism requirements; and

where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. This authorization must be made in writing by the principal executive officer or ranking elected official and submitted to the approval authority prior to, or together with, the report being submitted of the user and contain the following certification statement:

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

A duly authorized representative is an individual designated by the responsible officer, manager, sole proprietor or general partner in writing. The written authorization must be submitted to the City and also specifies either an individual or a position having the responsibility of the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company. If an authorization in this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to the City prior to or together with any reports to be signed by an authorized representative.

(7) Wastewater Discharge Permit Issuance Decisions. The Public Works Director will evaluate the data furnished by the user and may require additional information. Within 90 days of receipt of a complete wastewater discharge permit application, the Public Works Director will determine whether or not to issue a wastewater discharge permit. Upon a determination to issue, the permit shall be issued within 90 days of full evaluation and acceptance of the data furnished. The Public Works Director may deny any application for a wastewater discharge permit.

Justifications for decisions made during the permitting process are summarized in an industrial user "fact sheet." A fact sheet briefly sets forth the principal facts and the significant legal, procedural and policy decisions considered in preparing an industrial wastewater permit. The fact sheet contains, at a minimum, the following components:

- (a) Description of industrial user;
- (b) Discharge information;
- (c) Basis for permit limits;
- (d) Special conditions in permit; and
- (e) Calculation used to derive each limit.

(8) Wastewater Discharge Permit Contents. Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Public Works Director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal and protect against damage to the POTW.

- (a) Wastewater discharge permits must contain the following conditions:
  - (i) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five years;
  - (ii) A statement that the wastewater discharge permit is nontransferable without prior notification to and approval from the City and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
  - (iii) Applicable pretreatment standards and requirements, including any special state requirements;
  - (iv) Self-monitoring, sampling, reporting, notification, submittal of technical reports, compliance schedules and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency and sample type based on federal, state and local law;
  - (v) Requirement for immediate notification to the City where self-monitoring results indicate noncompliance;
  - (vi) Requirement to report a bypass or upset of a pretreatment facility;
  - (vii) Requirement to report immediately to the City all discharges, including slug loadings, that could cause problems to the POTW;
  - (viii) Requirement for the SIU who reports noncompliance to repeat the sampling and analysis and submit results to the City within 30 days after becoming aware of the violation;
  - (ix) A statement of applicable civil, criminal and administrative penalties for violation of pretreatment standards and requirements and any applicable compliance schedule;
  - (x) Requirements to control slug discharges, if determined by the POTW to be necessary.
- (b) Wastewater discharge permits may contain, but need not be limited to, the following conditions:
  - (i) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
  - (ii) 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;
  - (iii) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;
  - (iv) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
  - (v) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;

- (vi) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- (vii) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit;
- (viii) Any special agreements the Public Works Director chooses to continue or develop between the City and user; and
- (ix) Other conditions as deemed appropriate by the Public Works Director to ensure compliance with this chapter, and state and federal laws, rules and regulations.

(9) **Wastewater Discharge Permit Appeals.** Any person, including the user, may petition the City to reconsider the terms of a wastewater discharge permit within 30 days of its issuance.

- (a) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- (b) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection and the alternative condition, if any, it seeks to place in the wastewater discharge permit.
- (c) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.
- (d) If the City fails to act within 30 days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit, shall be considered final administrative actions for purposes of judicial review.
- (e) Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a complaint with the Benton County Superior Court for jurisdiction within two years of the denial of the permit.

(10) **Wastewater Discharge Permit Duration.** Wastewater discharge permits shall be issued for a specified time period, not to exceed five years. A wastewater discharge permit may be issued for a period less than five years, at the discretion of the Public Works Director. Each wastewater discharge permit will indicate a specific date upon which it will expire.

(11) **Wastewater Discharge Permit Modification.** The Public Works Director may modify the wastewater discharge permit for good cause including, but not limited to, the following:

- (a) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
- (b) To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
- (c) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- (d) Information indicating that the permitted discharge poses a threat to the City's POTW, city personnel, or the receiving waters;
- (e) Violation of any terms or conditions of the wastewater discharge permit;

- (f) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required report;
- (g) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;
- (h) To correct typographical or other errors in the wastewater discharge permit; or
- (i) To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

(12) **Wastewater Discharge Permit Transfer.** Wastewater discharge permits may be reassigned or transferred to a new owner and/or operator only if the permittee gives at least 30 days' advance notice to the Public Works Director and the Public Works Director approves the wastewater discharge permit transfer. The notice to the Public Works Director must include a written certification by the new owner and/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) Assumes full responsibility for complying with the existing wastewater discharge permit beginning on the date of transfer.

Failure to provide advance notice of a transfer renders the wastewater discharge permit voidable as of the date of facility transfer.

Provided that the above occurs and that there were no significant changes to the manufacturing operation or wastewater discharge, the new owner will be considered an existing user and be covered by the existing limits and requirements in the previous owner's permit.

(13) **Wastewater Discharge Permit Revocation.** Wastewater discharge permits may be revoked for, but not limited to, the following reasons:

- (a) Failure to notify the City of significant changes to the wastewater prior to the changed discharge;
- (b) Failure to provide prior notification to the City of changed conditions;
- (c) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- (d) Falsifying self-monitoring reports;
- (e) Tampering with monitoring equipment;
- (f) Refusing to allow the City timely access to the facility premises and records;
- (g) Failure to meet discharge 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 a permitted facility;
- (m) If the City has to invoke its emergency provision as cited in KMC 14.23.090(7); or
- (n) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this chapter.

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

(14) Wastewater Discharge Permit Reissuance. A user who is required to have a wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete wastewater discharge permit application, in accordance with subsection (5) of this section, a minimum of 180 days prior to the expiration of the user's existing wastewater discharge permit. A user whose existing wastewater discharge permit has expired and who has submitted its re-application in the time period specified herein shall be deemed to have an effective wastewater discharge permit until the City issues or denies the new wastewater discharge permit. A user whose existing wastewater discharge permit has expired and who failed to submit its re-application in the time period specified herein will be deemed to be discharging without a wastewater discharge permit.

(15) Pretreatment Equipment Modification. Before the construction, addition or modification of pretreatment equipment, the user must submit an engineering report to the City for approval.

(16) Public Notice. The City's pretreatment program encourages public involvement of permit development activities by publishing an announcement on the City's official web page two weeks prior to the issuance of an industrial wastewater permit. The publication describes the industrial user applying for a permit, the tentative determination of the permit process, and where interested persons can submit written comments and/or review proposed permits and related documents.

If the comments received indicate significant public interest in the proposed permit, or if useful information could be produced thereby, the Public Works Director may hold a public hearing on the application. Public notice regarding any hearing will be circulated at least 30 days in advance of the public hearing on the city's web page and notifications will be sent to all individuals providing comments that provide contact information.

If a small number of comments are received, the City's pretreatment program will review them and respond in writing, either on an individual basis to each comment or comments in a single "Response to Comment" document issued at the same time as the final permit. (Ord. 5420 Sec. 1 (part), 2012)

#### **14.23.040: Reporting Requirements:**

(1) Baseline Monitoring Reports. Categorical users who submit permit applications as described in KMC 14.23.030(5) shall be considered to have complied with requirement in 40 CFR Section 403.12(b) to submit baseline monitoring reports.

(2) Final Compliance Report (Initial Compliance Report).

(a) Within 90 days following the date for final compliance by the significant industrial user with applicable pretreatment standards and requirements set forth in this chapter, in a wastewater discharge permit, or within 30 days following commencement of the introduction of wastewater into the POTW by a new source or new users considered by the City to fit the definition of SIU, the affected user shall submit to the City a report containing the information outlined in KMC 14.23.030(5)(d) through (f).

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

- (3) Periodic Compliance Report.
- (a) Any user that is required to have an industrial waste discharge permit and performs self-monitoring shall submit to the City during the months of June and December, unless required on other dates or more frequently by the City, a report indicating the nature of the effluent over the previous reporting period. The frequency of monitoring shall be as prescribed within the industrial waste discharge permit. At a minimum, users shall sample their discharge at least twice per year.
  - (b) The report shall include a record of the concentrations (and mass if specified in the wastewater discharge permit) of the pollutants listed in the wastewater discharge permit that were measured and a record of all flow measurements (average and maximum) taken at the designated sampling locations and shall also include any additional information required by this chapter or the wastewater discharge permit. Production data shall be reported if required by the wastewater discharge permit.
  - (c) Both daily maximum and average concentration (or mass, where required) shall be reported. If a user sampled and analyzed more frequently than what was required by the City or by this chapter, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge during the reporting period.
  - (d) Any user subject to equivalent mass or concentration limits established by the City or by unit production limits specified in the applicable categorical standards shall report production data as outlined in subsection (2)(b) of this section.
  - (e) If the City calculated limits to factor out dilution flows or nonregulated flows, the user will be responsible for providing flows from the regulated process flows, dilution flows and nonregulated flows.
  - (f) Flows shall be reported on the basis of actual measurement; provided, however, that the City may accept reports of average and maximum flows estimated by verifiable techniques if the City determines that an actual measurement is not feasible.
  - (g) Discharges sampled shall be representative of the user's daily operations and samples shall be taken in accordance with the requirements specified in KMC 14.23.050.
  - (h) The City may require reporting by users that are not required to have an industrial wastewater discharge permit if information or data is needed to establish a sewer charge, determine the treatability of the effluent or determine any other factor which is related to the operation and maintenance of the sewer system.
  - (i) The City may require self-monitoring by the user or, if requested by the user, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this section. If the City agrees to perform such periodic compliance monitoring, it may charge the user for such monitoring, based upon the costs incurred by the City for the sampling and analyses. Any such charges shall be added to the normal sewer charge and shall be payable as part of the sewer bills. The City is under no obligation to perform periodic compliance monitoring for a user.
- (4) Compliance Schedule for Meeting Applicable Pretreatment Standards.

- (a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
- (b) No increment referred to in subsection (4)(a) of this section shall exceed nine months.
- (c) Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the City including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports.
- (5) Notification of Significant Production Change. Any user operating under a wastewater discharge permit incorporating equivalent mass or concentration limits shall notify the City within two business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not providing a notice of such anticipated change will be required to comply with the existing limits contained in its wastewater discharge permit.
  - (6) Hazardous Waste Notification.
    - (a) Any industrial user shall notify the City, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261. Such notification to the City shall be made within the appropriate time frames specified in subsection (7) or (9) of this section, whichever is shorter. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements as specified in subsection (1), (2) or (3) of this section. Such notification must include:
      - (i) The name of the hazardous waste as set forth at 40 CFR Part 261;
      - (ii) The EPA hazardous waste number;
      - (iii) The type of discharge (continuous, batch, or other);
      - (iv) An identification of the hazardous constituents contained in the wastes;
      - (v) An estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month;
      - (vi) An estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months;
      - (vii) Certification that the industrial user has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical; and
      - (viii) Signatory certification as required by KMC 14.23.030(6).
    - (b) Any industrial user shall notify the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of the discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261 and meets the reporting criteria specified at 40 CFR 403.12(p). Notification to the Washington State Department of Ecology and EPA is the responsibility of the industrial user and shall be made as

required under 40 CFR 403.12(p). The industrial user shall copy the City on all notifications made to the state and EPA.

- (c) In the case of any new regulation under Section 3001 of the Resource Conservation and Recovery Act (RCRA) identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the industrial user must notify the City, the EPA Regional Waste Management Waste Division Director, and Washington State Department of Ecology hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

- (d) This provision does not create a right to discharge any substance not otherwise allowed to be discharged by this chapter, a permit issued hereunder, or any applicable federal or state law.

(7) Notice of Potential Problems, Including Accidental Spills, Slug Loadings. Any user shall notify the City immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined in KMC 14.23.010(3). The notification shall include the concentration and volume and corrective action. Steps being taken to reduce any adverse impact should also be noted during the notification. Any user who discharges a slug (or slugs) of pollutants shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the City under state or federal law.

(8) Noncompliance Reporting. If sampling performed by a user indicates a violation, the user shall notify the City within 24 hours of becoming aware of the violation. The user shall also repeat the sampling within five days and submit the results of the repeat analysis to the City within 30 days after becoming aware of the violation. (Where the City has the sampling and analysis in lieu of the industrial user, the City must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis.) Resampling is not required if:

- (a) The City performs sampling at the user at a frequency of at least once per month; or
- (b) The City performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(9) Notification of Changed Discharge. All users shall promptly notify the City in advance of any substantial change in the volume or character of pollutants in their discharge, including significant regulated or manufacturing process changes, pretreatment modifications and the listed or characteristic hazardous wastes for which the user has submitted initial notification under 40 CFR 403.12(p).

(10) Reports from Unpermitted Users. All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the City as the Public Works Director may require.

(11) Record Keeping. Users subject to the reporting requirements of this chapter shall retain and make available for inspection and copying all records of information obtained pursuant to any monitoring activities required by this chapter and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method and time of sampling and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses including documentation associated with BMPs. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration

of any litigation concerning the user or POTW, or where the user has been specifically notified of a longer retention period by the Public Works Director. (Ord. 5420 Sec. 1 (part), 2012)

**14.23.050 Sampling and analytical requirements.**

- (1) Sampling Requirements for Users.
  - (a) A minimum of four grab samples must be used for pH (unless performing continuous pH monitoring), cyanide, total phenols, oil and grease, sulfide and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the control authority. The sample must be representative of the discharge and the decision to allow alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during the 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. Composite samples for other parameters unaffected by compositing procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.
  - (b) For sampling required in support of baseline monitoring and 90-day compliance reports, a minimum of four grab samples must be used for pH (unless performing continuous pH monitoring), cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the control authority may authorize a lower minimum. For the reports required by 40 CFR 403.12(e) and (h), the control authority shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.
  - (c) Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated or manufacturing process if no pretreatment exists or as determined by the City and contained in the user's wastewater discharge permit. For categorical users, if other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user shall measure the flows and concentrations necessary to allow use of the combined waste stream formula of 40 CFR 403.6(e) in order to evaluate compliance with the applicable categorical pretreatment standards. For other SIUs, for which the City has adjusted its local limits to factor out dilution flows, the user shall measure the flows and concentrations necessary to evaluate compliance with the adjusted pretreatment standard(s).
  - (d) All sample results shall indicate the time, date and place of sampling and methods of analysis and shall certify that the waste stream sampled is representative of normal work cycles and expected pollutant discharges from the user. If a user sampled and analyzed more frequently than what was required in its wastewater discharge permit, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge as part of its self-monitoring report.

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

(3) City Monitoring of User's Wastewater. The City will follow the same procedures as outlined in subsections (A) and (B) of this section. (Ord. 5420 Sec. 1 (part), 2012)

**14.23.060: Compliance Monitoring:**

(1) Inspection and Sampling. The City shall have the right to enter the facilities of any user to ascertain whether the purpose of this chapter, and any wastewater discharge permit or order issued hereunder, is being met and whether the user is complying with all requirements thereof. Users shall allow the Public Works Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying and the performance of any additional duties.

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

(b) The Public Works Director shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

(c) 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 Public Works Director and shall not be replaced. The costs of clearing such access shall be borne by the user.

(d) Unreasonable delays in allowing the Public Works Director access to the user's premises shall be a violation of this chapter.

(2) Compliance monitoring of grease interceptors will be done by the following method:

(a) Liquid column samples will be taken from random sections of all interceptor chambers.

(b) The amounts of fats/oils/grease and the sludge at the bottom of the chamber will be measured.

(c) The percent of the capacity of the interceptor will be calculated using the average numbers from a minimum of (3) samples taken.

(d) The average must be below 25% of the capacity within any chamber of the interceptor.

(3) Compliance monitoring of grease traps will be done by the following method:

(a) Review of maintenance records

(b) Visual inspections of the grease trap and its contents

(4) Monitoring Facilities. Each user shall provide and operate at its own expense a monitoring facility to allow inspection, sampling and flow measurements of each sewer discharge to the City. Each monitoring facility shall be situated on the user's premises except, where such a location would be impractical or cause undue hardship on the user, the City may

concur with the facility being constructed in the public street or sidewalk area, providing that the facility is located so that it will not be obstructed by landscaping or parked vehicles. The Public Works Director, whenever applicable, may require the construction and maintenance of sampling facilities at other locations (for example, at the end of a manufacturing line, wastewater treatment system).

There shall be ample room in or near such sampling facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

The Public Works Director may require the user to install monitoring equipment as necessary. All monitoring facilities shall be constructed and maintained in accordance with all applicable local construction standards and specifications. All devices used to measure wastewater flow and quality shall be calibrated to ensure their accuracy.

(5) Search Warrants. If the Public Works Director has been refused access to a building, structure or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect as part of a routine inspection program of the City designed to verify compliance with this chapter or any wastewater discharge permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Public Works Director shall seek issuance of a search and/or seizure warrant from the Superior Court of Benton County. Such warrant shall be served at reasonable hours by the Public Works Director in the company of a uniformed police officer of the City.

(6) Vandalism. No person shall willfully or negligently break, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, appurtenance or equipment, or other part of the POTW. Any person found in violation of this requirement shall be subject to the sanctions set out in this chapter. (Ord. 5420 Sec. 1 (part), 2012)

**14.23.070: Confidential Information:** Information and data regarding a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits and monitoring programs, and from city inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the City, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable state law. 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 by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction. (Ord. 5420 Sec. 1 (part), 2012)

**14.23.080: Publication of Users in Significant Noncompliance:** The City reserves the right to publish annually, in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of the users which, during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of wastewater measurements taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(1);

(2) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(1), multiplied by the TRC (TRC equals 1.4 for BOD, TSS, fats, oils and grease and 1.2 for all other pollutants except pH);

(3) Any other discharge violation of a pretreatment standard or requirement as defined by 40 CFR 403.3(1) (daily maximum, longer-term average, instantaneous limit, or narrative standard) that the City believes has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of city personnel or the general public);

(4) Any discharge of pollutants that has caused imminent endangerment to the public or to the environment or has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge;

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

(6) Failure to provide, within 30 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation(s) which the City determines will adversely affect the operation or implementation of the local pretreatment program. (Ord. 5420 Sec. 1 (part), 2012)

#### **14.23.090: Administrative Enforcement Remedies:**

(1) Notification of Violation. When the Public Works Director finds that a user has violated (or continues to violate) any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Public Works Director may serve upon that user a written notice of violation (via certified letter). Within 30 days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Public Works Director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(2) Consent Orders. The Public Works Director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to subsections (4) and (5) of this section and shall be judicially enforceable.

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

(3) Show Cause Hearing. The Public Works Director may order (via a certified letter) a user who has violated or continues to violate any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Public Works Director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least 10 days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

(4) Compliance Orders. When the Public Works Director finds that a user has violated or continues to violate any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Public Works Director may issue an order to the user responsible for the discharge directing that the user come into compliance within a time specified in the order. If the user does not come into compliance within the time specified in the order, sewer service may be discontinued until adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also 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. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(5) Cease and Desist Orders. When the Public Works Director finds that a user has violated (or continues to violate) any provision of this chapter, a 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 Public Works Director may issue an order to the user directing it to cease and desist all such violations and directing the user to:

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

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

(6) Administrative Fine.

- (a) When the Public Works Director finds that a user has violated or continues to violate any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Public Works Director may fine such user in an amount not less than \$500.00 and not to exceed \$10,000. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.
- (b) Unpaid charges, fines and penalties shall, after 30 calendar days, be assessed an additional penalty of five percent of the unpaid balance, and interest shall accrue thereafter at a rate of one percent per month. A lien against the user's property will be sought for unpaid charges, fines and penalties.

- (c) Users desiring to dispute such fines must file a written request for the Public Works Director to reconsider the fine along with full payment of the fine amount within 30 days of being notified of the fine. Where a request has merit, the Public Works Director shall convene a hearing on the matter within 15 days of receiving the request from the user. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user.

The City 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.
- (7) Emergency Suspensions. The Public Works Director may immediately suspend a user's discharge (after informal notice to the user) whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Public Works Director may also immediately suspend a user's discharge (after notice and opportunity to respond) that threatens to interfere with the operation of the POTW, or which presents or may present an endangerment to the environment.

- (a) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Public Works Director shall 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 water and waste utilities department shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City that the period of endangerment has passed, unless the termination proceedings in subsection (8) of this section 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 Public Works Director prior to the date of any show cause or termination hearing under subsections (3) and (8) of this section.

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

(8) Termination of Discharge (Nonemergency). In addition to the provisions in KMC 14.23.030(13), any user that violates the following conditions is subject to discharge termination:

- (a) Violation of wastewater discharge 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 KMC 14.23.020.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under subsection (3) of this section why the proposed action

should not be taken. Exercise of this option by the City shall not be a bar to, or a prerequisite for, taking any other action against the user. (Ord. 5420 Sec. 1 (part), 2012)

**14.23.100: Judicial Enforcement Remedies.**

(1) Injunctive Relief. When the Public Works Director finds that a user has violated (or continues to violate) any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Public Works Director may petition the Benton County Superior Court through the City's attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this program on activities of the user. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(2) Civil Penalties.

- (a) A user who has violated or continues to violate any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, shall be liable to the City 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 Public Works Director may recover reasonable attorneys' fees, court costs and other expenses associated with enforcement activities, including sampling and monitoring expenses and the cost of any actual damages incurred by the City.
- (c) In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user and any other factor as justice requires.
- (d) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(3) Criminal and Civil Prosecution.

- (a) A user who has willfully or negligently violated any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, shall have committed a civil infraction subject to a civil penalty as set forth in KMC 1.12.030.

Provided, if the same violator has been found to have committed an infraction violation for the same or similar conduct two separate times, with the violations occurring at the same location and involving the same or similar sections of the Kennewick Municipal Code or other similar codes, the third or subsequent violation shall constitute a misdemeanor, punishable as provided in KMC 1.12.010 for criminal offenses.

- (b) A user who has willfully or negligently introduced any substance into the POTW which causes personal injury or property damage shall have committed a civil infraction subject to a civil penalty as set forth in KMC 1.12.030. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.

Provided, if the same violator has been found to have committed an infraction violation for the same or similar conduct two separate times, with the violations occurring at the same location and involving the same or similar sections of the Kennewick Municipal Code or other similar codes, the third or subsequent violation shall constitute a misdemeanor, punishable as provided in KMC 1.12.010 for criminal offenses.

- (c) A user who knowingly made any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this chapter, wastewater discharge permit, or order issued hereunder, or who falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this chapter, shall have committed a civil infraction subject to a civil penalty as set forth in KMC 1.12.030. In addition, the user shall be subject to:
  - (i) The provisions of 18 USC Section 1001 relating to fraud and false statements;
  - (ii) The provisions of Section 309(c)(4) of the Clean Water Act, as amended governing false statements, representation or certification; and
  - (iii) The provision of Section 309(c)(6) of the Clean Water Act, regarding responsible corporate officers.

(4) Remedies Nonexclusive. The provisions in KMC 14.23.080 through 14.23.110 of this program are not exclusive remedies. The City reserves the right to take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the City reserves the right to take other action against any user when the circumstances warrant. Further, the City is empowered to take more than one enforcement action against any noncompliant user. These actions may be taken concurrently. (Ord. 5420 Sec. 1 (part), 2012)

#### **14.23.110: Supplemental Enforcement Action:**

(1) Performance Bonds. The Public Works Director may decline to issue or reissue a wastewater discharge permit to any user which has failed to comply with any provision of this chapter, a previous wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement unless such user first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Public Works Director to be necessary to achieve consistent compliance.

(2) Liability Insurance. The Public Works Director may decline to issue or reissue a wastewater discharge permit to any user which has failed to comply with any provision of this chapter, a previous wastewater discharge 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.

(3) Water Supply Severance. Whenever a user has violated or continues to violate any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

(4) Public Nuisances. A violation of any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or

requirement, is hereby declared a public nuisance and shall be corrected or abated as directed by the Public Works Director. Any person(s) creating a public nuisance shall be subject to the provisions of Section 1.12.080 KMC governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance. (Ord. 5420 Sec.1 (part), 2012)

**14.23.120: Affirmative Defenses to Discharge Violations:**

- (1) Upset.
  - (a) For the purposes of this section, “upset” means an exceptional incident in which there is unintentional and temporary noncompliance with applicable pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
  - (b) An upset shall constitute an affirmative defense to an action brought for noncompliance with applicable pretreatment standards if the requirements of subsection (1)(c) of this section are met.
  - (c) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
    - (i) An upset occurred and the user can identify the cause(s) of the upset;
    - (ii) 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
    - (iii) The user has submitted the following information to the POTW and treatment plant operator within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):
      - (A) A description of the indirect discharge and cause of noncompliance;
      - (B) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
      - (C) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.
  - (d) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
  - (e) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with applicable pretreatment standards.
  - (f) Users shall control production of all discharges to the extent necessary to maintain compliance with applicable pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(2) Prohibited Discharge Standards. A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the prohibitions in KMC 14.23.020(1)(b)(i) through (vii) and (2) if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either: (1) a local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or (2) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

(3) Bypass.

(a) For the purposes of this section:

(i) "Bypass" means the intentional diversion of waste streams from any portion of a user's treatment facility.

(ii) "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 applicable pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (3)(c) and (d) of this section.

(c) Notice of Bypass.

(i) If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW, at least 10 days before the date of the bypass, if possible.

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

(d) Bypass Conditions.

(i) Bypass is prohibited, and the POTW may take an enforcement action against a user for a bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up

equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

- (C) The user submitted notices as required under subsection (3)(c) of this section.
- (ii) The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three conditions listed in subsection (3)(d)(i) of this section. (Ord. 5420 Sec. 1 (part), 2012)

**14.23.130: Wastewater Treatment Rates:** For commercial rates, please refer to Chapter 14.26.040 KMC. (Ord. 5420 Sec. 1 (part), 2012)

**14.23.140: Miscellaneous Provisions:**

- (1) Pretreatment Charges and Fees. The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City'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 submitted by users;
  - (c) Fees for reviewing and responding to accidental discharge procedures and construction;
  - (d) Fees for filing appeals; and
  - (e) Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this chapter and are separate from all other fees, fines and penalties chargeable by the City.
  - (f) Annual Permit Fees. Permitted significant industrial users shall be charged 70 percent of the annual permit fee charged by the State of Washington for permitting industrial facilities per Chapter 173-224 WAC.
  - (g) Sampling Fees.
    - (i) The expenses for annual sample analysis required by the user's permit will be charged to the user. For analyses conducted by a third party commercial laboratory the permittee will be charged the actual fees charged by the laboratory. For analyses conducted by the City laboratory the permittee will be charged the actual cost of the analyses, not to exceed fees established by locally available commercial laboratories.
    - (ii) Any user establishing a pattern of noncompliance, or having a history of noncompliance, or suspected of being in noncompliance, may require additional monitoring visits as deemed appropriate by the Public Works Director. Any additional analysis performed which detects noncompliance will be billed directly to the user.
  - (h) A discharge authorization shall be \$250.00 for a one-time batch discharge.
  - (i) Permit transfer fee: \$250.00.
  - (j) Permit modification fee: \$500.00. Permit modification fees will only be

charged in a case where changes in the user's operation require the modification, or when the user requests a modification.

(k) High Strength Waste Fees.

(i) Users having effluent concentrations of BOD in excess of 240 mg/l and/or TSS in excess of 250 mg/l, and/or FOG concentrations in excess of 100 mg/l may be billed a high strength waste surcharge or a charge for excessive maintenance and/or inspections to ensure compliance. Surcharge rates will be established by the Public Works Director, and based on cost of conveyance and treatment in the POTW.

(ii) All fees or charges will be collected by direct billing. Unless the Public Works Director has been made aware of extenuating circumstances that would prevent prompt payment, all fees are payable within 30 days of the billing. Fees past due will be considered a violation of this chapter. Users not paying fees within 60 days of the billing period will be subject to termination of service. The Public Works Director may change existing or adopt new fees to comply with the actual cost of service.

(l) RV Dumping Discharge fee. Users with City approved RV dumping discharge authorization shall be \$600.00 per year and reviewed on an annual basis to assure the cost of maintenance and treatment is being recovered.

(m) Inspection Fees. Users will be required to pay a \$600.00 per year inspection fee to pay for inspections made by the pretreatment inspector to ensure compliance is being maintained.

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

(3) Conflicts. All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this chapter are hereby repealed to the extent of the inconsistency or conflict. (Ord. 5420 Sec. 1 (part), 2012)