

## **Modified SFCSD Rules and Regulations incorporating Industrial Wastewater Pretreatment**

### **Section 5.4 General Prohibitions**

No Person shall discharge or cause to be discharged into a POTW or in any area served by or under the jurisdiction of the District any harmful waters or wastes, whether liquid, solid or gas, capable of causing Interference or obstruction to the flow in the sewer, damage or hazard to structures, equipment or treatment processes, hazard to personnel of the District or Interference with the District's sludge disposal operations or cause or result in a Pass Through.

Prohibited sewage shall include such quantity of clear water injected into a POTW which would Interfere with the District's volume capacity or with the biological process necessary for proper treatment.

### **Section 5.5 Dischargeable Sewage**

Wastes shall be classified into two (2) categories termed "Domestic Sewage" and "Nondomestic Sewage." The classification of dischargeable sewage shall be the responsibility of the General Manager and shall follow recommended procedures of the Colorado State Department of Health, if any, and, subject to approval of the Board, shall be final and binding.

### **Section 5.6 Grease and Sand Interceptors**

Grease, oil and sand interceptors shall be provided by and at the expense of the Customer when, in the opinion of the General Manager, they are necessary for the proper handling of liquid wastes containing excessive grease, excessive sand or other harmful ingredients. All interceptors shall be of a type and capacity approved by the District and shall be located so as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the Customer shall be responsible for the proper removal and disposal by appropriate means of captive material and shall maintain records of the date and means of disposal. Such records shall be open to review by District personnel. All such interceptors shall be cleaned and the captive material removed every three months, unless otherwise requested by the District.

### **Section 5.7 Industrial Pretreatment**

No Industrial User shall discharge or cause to be discharged or increase the discharge or change the nature of the discharge into the POTW in any area served by the District where such discharge does not meet all applicable Pretreatment Standards and Pretreatment Requirements or where such discharge would cause a violation of the CDPS or NPDES Permit issued to the District.

### **Section 5.8 Compliance**

To assure compliance with Section 5.7, all Significant Industrial Users shall, prior to connecting into the Sanitary Sewer in any area served by the District, be issued an IWDP by the District. Any Industrial User who is not classified as a Significant Industrial User but who, in

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the opinion of the General Manager, has on its premises sufficient quantities or types of Pollutants which if discharged to the POTW would cause the User to be classified as an SIU, shall also be issued an IWDP.

### **Section 5.9 General Provisions**

#### **1. Purpose and policy.**

A. This chapter sets forth uniform requirements for all users of the publicly owned treatment works for the South Fort Collins Sanitation District and enables the District to comply with all applicable state and federal laws, including the Clean Water Act (33 U.S.C. § 1251 et seq.) and the general pretreatment regulations (40 C.F.R. Part 403). The objectives of this chapter are:

1. To prevent the introduction of pollutants into the POTW that will interfere with its operation or contaminate the resulting sludge.
2. To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into receiving waters, or otherwise be incompatible with the system.
3. To prevent adverse impacts to worker health and safety, the environment, property and the District POTW.
4. To enable the District to comply with its Colorado discharge permit system conditions, biosolids use and disposal requirements, and all other state and federal laws to which the POTW is subject.
5. To improve opportunities to recycle and reclaim municipal and industrial wastewater and sludges from the POTW.
6. To control through a permit, an order or by similar means, the contribution by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements.

B. This chapter applies to all users of the POTW, regardless of whether those users are located inside or outside the District limits.

C. This section authorizes the issuance of wastewater discharge permits and other control mechanisms; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires industrial user monitoring and reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

#### **D. Administration**

1. Except as otherwise provided herein, the Director shall administer, implement, and enforce the provisions of this chapter. Any powers granted to or duties imposed upon the director may be delegated by the Director to other District employees.

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### E. Definitions

1. All definitions are listed in Article 2 of the Rules and Regulations.

### Section 5.10 General Sewer Use Requirements

#### 1. Legal authority.

A. The District operates pursuant to legal authority enforceable in federal, state or local courts that authorizes or enables the District to apply and enforce the requirements of this section and 40 C.F.R. Part 403. This authority allows the Director to:

1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants to the POTW by industrial users where:
  - a. Such contributions do not meet applicable federal, state or local pretreatment standards and requirements;
  - b. Could cause the treatment plant to violate its CDPS permit; or
  - c. Could cause problems in the POTW.
2. Control through permit, order, or similar means the wastewater contributions to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements.
3. Require compliance with applicable pretreatment standards and requirements by industrial users.
4. Identify, locate and notify all possible industrial users that might be subject to the pretreatment program.

#### 2. Prohibited Discharge Standard

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

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### B. Specific Prohibitions

1. Pollutants that create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140° F (60° C) using the test methods specified at 40 C.F.R. 261.21.
2. Wastewater having a pH less than 5.0 or greater than 12, or otherwise causing corrosive structural damage to the POTW.
3. Solid or viscous substances in amounts that will cause obstruction to the flow in the POTW resulting in interference.
4. Pollutants, including oxygen-demanding pollutants (e.g., BOD), released in a discharge at a flow rate and/or pollutant concentration that, either singly or by interaction with other pollutants, will cause interference with the POTW.
5. Wastewater having a temperature greater than 104° F (40° C), or that will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater that causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).
6. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
7. Pollutants that result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
8. Trucked or hauled pollutants, except at *discharge* points designated by the POTW.
9. Noxious or malodorous liquids, gases, solids, or other wastewater that, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewer for maintenance or repair.
10. Wastewater that imparts color that cannot be removed by the treatment plant process, such as, by not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent.
11. Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations, or as otherwise limited by the director.
12. Sludges, screenings, or other residues from the pretreatment of industrial wastes.

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

14. Detergents, surface-active agents, or other substances that may cause excessive foaming in the POTW or otherwise cause pass through or interference.

15. Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than five percent or any single reading over ten percent of the lower explosive limit of the meter.

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

### 2. Dilution

A. Prohibited as substitute for treatment. Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a Discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The District may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.

### 3. Identify IU's, Flows and Pollutants

A. The District shall develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. At a minimum, these procedures shall enable the POTW to:

1. Identify and locate all possible Industrial Users or other sources which might be subject to the POTW Pretreatment Program. Any compilation, index or inventory of Industrial Users and sources made under this paragraph shall be made available to the Regional Administrator or Director upon request;

2. Identify the character and volume of pollutants contributed to the POTW by the Industrial Users and sources identified under (1) of this section. This information shall be made available to the EPA upon request;

### 4. Local Limits

A. The following pollutants are established to protect against pass through and interference and to protect beneficial use of biosolids. The limits were adopted by the SFCSD board on 03-22-2007. The limits apply at the point where the wastewater is discharged to the POTW. All concentrations for metallic substances are for total metal unless indicated

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otherwise. The District may impose mass limitations in addition to concentration-based limitations.

- B. No industrial user or other source shall discharge wastewater containing in excess of the following daily maximum limits (all concentrations are total):

### Industrial Pretreatment Program

Parameter	Daily Maximum (mg/l)	Monthly Average (mg/l)
Arsenic	0.25	None
Cadmium (T)	0.11	0.07
Chromium (T)	2.77	1.71
Chromium (tri)	2.1	None
Chromium (hex)	0.4	None
Copper	2.85	None
Lead	0.9	None
Mercury	0.0031	None
Molybdenum	0.5	None
Nickel	3.19	None
Selenium	2.0	None
Silver	0.12	None
Zinc	2.61	1.48

### Industrial Pretreatment Conventional Limits Criteria

BOD (total 5-day)	1500	None
COD (total)	1500	None
TSS	400	None
Grease/Oil	100	None
pH (s.u.)	6.5-12	None

## 5. Local Limits Development

The Local Limits adopted by the District, as they may be revised from time to time to protect the POTW and any portion thereof from Pass Through, Interference and sludge

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contamination.

### 6. Net Gross Adjustments

A. Application. Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section. Any Industrial User wishing to obtain credit for intake pollutants must make application to the District. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraph (b) of this section are met.

B. Criteria.

#### 1. Either:

a. The applicable categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or

b. The Industrial User demonstrates that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.

### 7. Concentration and Mass Limits

Concentration and mass limits. Pollutant discharge limits in categorical Pretreatment Standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, State or Federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical Pretreatment Standards shall apply to the effluent of the process regulated by the Standard, or as otherwise specified by the standard.

## Section 5.11 Wastewater Pretreatment

### 1. Best Management Practices

A. The Director may develop BMPs, or require an industrial user to develop BMPs, to implement the prohibitions of Section 5.10(2)(B) and the local limits established by the District. BMPs shall be considered pretreatment standards and local limits for purposes of this section and Section 307(d) of the Clean Water Act. Additionally, BMPs may be categorical pretreatment standards established by the EPA, via ordinance or permit.

C. Types of a BMP may include, but are not limited to:

1. Requirements for or prohibitions on certain practices or discharges.

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2. Requirements for the operation and maintenance of treatment equipment.
3. Timeframes associated with key activities.
4. Procedures for compliance certification, reporting, and records retention.
5. Provisions for reopening and revoking BMPs.

D. Any industrial user may be required to comply with *BMPs*. *BMPs* may be incorporated in categorical pretreatment standards, control mechanisms, or orders.

### 2. Reports of Potential Problems.

A. In the case of any discharge, including, without limitation, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug discharge, that may cause *potential problems* for the POTW, the industrial user shall immediately telephone and notify the director of the incident. This notification shall include, at a minimum, the location of the discharge, type of waste, concentration and volume, and corrective actions taken by the industrial user.

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

C. Significant industrial users are required to notify the director immediately of any changes at its facility affecting the *potential* for a slug discharge.

### 3. Slug Discharges

A. The District shall evaluate whether each such SIU needs a plan to control slug discharges. The evaluation will take place within one year of a Industrial User being designated a Significant Industrial User. A slug discharge is any non-routine, episodic nature, including, but not limited to, an accidental spill, an unanticipated spill, or a non-customary batch discharge. The results of such activities shall be available to the EPA upon request. If the District decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

1. Description of discharge practices, including non-routine batch discharges.
2. Description of stored chemicals.
3. Procedures for immediately notifying the District of slug discharges, including any discharge that would violate a prohibition under Section 5.4 or Section 5.10(2)(B), with procedures for follow-up written notification within five (5) days.

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4. If determined necessary by the District, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structure or equipment, measures for containing toxic organic Pollutants (including solvents), and/or measures and equipment for emergency response.

### Section 5.12 Wastewater Discharge Permits

#### 1. Wastewater discharge permit application contents

A. All industrial users required to obtain a wastewater discharge permit must apply on a form prepared by the District. The District may require industrial users to submit as part of an application any or all of the following information:

##### 1. Identifying information, including:

- a. Name and address of the facility.
- b. Name and contact information for the owner and operator.
- c. Description of facilities, activities, and plant production processes on the premises.

##### 2. List of any environmental control permits held by or for the facility.

##### 3. Description of operations, including:

- a. Brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such industrial user. This description should include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.

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- b. Types of wastes generated and a list of all raw materials and chemicals used or stored at the facility that are, or could accidentally or intentionally be, discharged to the POTW.
  - c. Number and type of employees, hours of operation, and proposed or actual hours of operation.
  - d. Type and amount of raw materials processed (average and maximum per day).
  - e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge.
4. Time and duration of discharges.
5. Location for monitoring all wastes covered by the *permit*.
6. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula.
7. Measurement of pollutants, including:
- b. Results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the director, of regulated pollutants in the discharge from each regulated process.
  - c. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.
  - d. The sample shall be representative of daily operations and shall be analyzed. Where the standard requires compliance with a BMP or pollution prevention alternative, the industrial user shall submit documentation as required by the director or the applicable standards to determine compliance with the standard.
  - e. Sampling must be performed in accordance with Section 5.14(8)(E).
8. Any other information as may be deemed necessary by the director to evaluate the wastewater discharge permit application.
- B. Incomplete or inaccurate applications will be returned to the industrial user for revision.

**Section 5.13 Wastewater Discharge Permit Issuance Process**

1. Wastewater Discharge Permit Contents

A. A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW, such as but not limited to:

1. Statement of duration (in no case more than five years); <sup>(a)</sup>
2. A statement that the wastewater discharge permit is nontransferable without prior notification to District. The permit may be transferred, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit; ;
3. Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards in part 403 of this section, categorical Pretreatment Standards, local limits, and State and local law;
4. Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants, (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law..
5. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements.
6. Any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state or local law.

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7. Requirements to control slug discharge, if determined by the District to be necessary.

8. In the event of changes to processes, etc., affecting potential for a slug discharge, the District is to be notified immediately of the process change(s).

(a) A statement that the wastewater discharge permit is nontransferable without prior notification to the District in accordance with Section 5.13(2)(A)(9), and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit

### B. Permit Reissuance

1. An IWDP permit cannot be administratively extended past five (5) years. In no case shall the reissued permit be for a period greater than five years from the date of reissuance. A wastewater discharge permit may be reissued for a period less than five years, at the discretion of the director.

### 2. Wastewater discharge permit modification.

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

1. To incorporate any new or revised federal, state or local pretreatment standards or requirements;
2. To address alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
3. A change to the POTW's CDPS permit;
4. Information indicating that the permitted discharge poses a threat to the POTW, District personnel, or the receiving waters;
5. Violation of any terms or conditions of the individual wastewater discharge permit;
6. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
7. Revision of or the grant of variance from categorical pretreatment standards pursuant to 40 C.F.R. 403.13;
8. To correct typographical or other errors in the wastewater discharge permit; or

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9. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested as a discharge permit transfer. The permittee must give the District 30-days advanced notice and the District must approve the wastewater discharge permit transfer. The notice must include a written certification by the new owner/operator which:

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

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

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

### 3. Termination of Permit

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

1. Failure to notify the director of changes to the wastewater prior to the changed discharge;
2. Failure to provide prior notification to the director of changed conditions pursuant to Section 5.15(1)(A) or Section 5.13(2)(A)(9).
3. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application.
4. Falsifying self-monitoring reports and certification statements;
5. Tampering with sampling or monitoring equipment;
6. Refusing to allow the director timely access to the facility premises and records;
7. Failure to meet effluent limitations;
8. Failure to pay fines;

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9. Failure to pay wastewater charges and fees;
10. Failure to meet compliance schedules;
11. Failure to complete a wastewater survey or the wastewater discharge permit application.
12. Failure to provide advance notice of the transfer of the wastewater permit to a new owner or operator; or
13. Violation of any pretreatment standard or requirement, any terms of the wastewater discharge permit, or this section.

B. Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership to a new owner or operator without the director's approval in violation of **Section 5.13(2)(A)**. All wastewater discharge permits issued to an industrial user are void upon the issuance of a new wastewater discharge permit to that industrial user.

### Section 5.14 Reporting Requirements

#### 1. Reports of changed conditions

A. All industrial users shall promptly notify the Director 30-days in advance of any significant changes to the industrial user's operations or system that might alter the nature, quality, or volume of its wastewater. For the purposes of this section, a "significant change" shall mean a change that will be in effect for a period of ten days or more and shall include, but is not limited to, the following:

1. A change in number of shifts or shift hours, an additional processing operation, or the new use or discharge of any substances regulated under **Section 5.12(1)(A)(3)**.
2. A 20% increase or decrease in the wastewater flow or production volume, or any other change which may alter the average normal wastewater characteristics.
3. Any other change that triggers the applicability of a categorical pretreatment standard that previously had not applied to the industrial user.

B. The director may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under **Section 5.12(1)(A)**.

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C. The director may reissue an individual wastewater discharge permit under Section 5.13(1)(B) or modify an existing wastewater discharge permit under Section 5.13(2)(A) in response to changed conditions or anticipated changed conditions.

### **2. Compliance Schedule Requirement**

A. The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. At a minimum, this legal authority shall, but not limited to, enable the POTW to:

1. Require (A) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements, and
2. (B) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12.

### **3. Baseline Monitoring Reporting**

A. Within 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 C.F.R. 403.6(a)(4), whichever is later, existing categorical industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the director a report that contains the information listed in Subsection B, below. At least 90 days prior to commencement of discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report that contains the information listed in Subsection B, below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

B. Industrial users described above shall submit the following information:

1. All information as may be required by Section 5.12(1)(A)(1-6) and Section 5.12(1)(A)(8).
2. Measurement of pollutants.

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- a. The industrial user shall provide the information required in Section 5.12(1)(A)(7).
- b. The industrial user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection.
- c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the industrial user should measure the flows and concentrations necessary to allow use of the combined waste stream formula in 40 C.F.R. 403.6(e) to evaluate compliance with the pretreatment standards.
- d. Sampling and analysis shall be performed in accordance with Section 5.14(6).
- e. The director may allow the submission of a baseline report that utilizes only historical data so long as data provides information sufficient to determine the need for industrial pretreatment measures.
- f. The baseline report shall indicate the time, date, and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

### C. Compliance schedule and Progress reports.

1 .If additional pretreatment and/or O and M will be required to meet the Pretreatment Standards; the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O and M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.

a Where the Industrial User's categorical Pretreatment Standard has been modified by a removal allowance (§ 403.7), the combined wastestream formula (§ 403.6(e)), and/or a Fundamentally Different Factors variance (§ 403.13) at the time the User submits the report required by Section 5.14(3)(A), the information required by Section 5.14(2). of this section shall pertain to the modified limits.

b. If the categorical Pretreatment Standard is modified by a removal allowance (§ 403.7), the combined wastestream formula (§ 403.6(e)), and/or a Fundamentally Different Factors variance (§ 403.13) after the User submits the report required by **Section 5.14(3)(B)** of this section, any

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necessary amendments to the information requested by **Section 5.14(2)** of this section shall be submitted by the User to the District within 60 days after the modified limit is approved.

### 4. Compliance schedule for meeting categorical Pretreatment Standards.

A. The following conditions shall apply to the schedule required by **Section 5.14(2)** of this section:

1. 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 Industrial User to meet the applicable categorical Pretreatment Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
2. No increment referred to in Section 5.14(3) of this section shall exceed 9 months.
3. Not later than 14 days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the District 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 Industrial User to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the District.

### 5. Periodic compliance reports.

A. All significant industrial users shall, at a frequency determined by the director, submit during the months of June and December unless required more frequently in the Pretreatment Standard or by the District or the Approval Authority reports indicating the nature and concentration of pollutants in the discharge that are limited by pretreatment standards and the measured, estimated average and/or maximum daily flow and or BMP's the for the reporting period.

B. All wastewater samples must be representative of the industrial user's discharge. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.

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C. Upon approval of the monitoring waiver and revision of the User's control mechanism by the District, the Industrial User must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

“Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR \_\_\_\_\_ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of \_\_\_\_\_ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under 40 CFR 403.12(e)(1).”

### 6. Analytical requirements.

All pollutant analyses, including sampling techniques, required by the director shall be performed in accordance with the techniques prescribed at 40 C.F.R. Part 136, and any amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the director or approved by the EPA.

### 7. Notification of Violation.

If sampling performed by an industrial user indicates a *violation*, the industrial user must notify the director within 24 hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the director within 30 days after becoming aware of the violation. If the District performed the sampling and analysis in lieu of the industrial user, the District shall have the authority to require the industrial user to perform the repeat sampling and analysis.

### 8. Requirement for Representative Sampling:

The reports required in 5.14(3), 5.14(4), 5.14(2), and 5.14(5) of this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The District shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. 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 District. Where time-proportional composite sampling or grab sampling is authorized by the District, the samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for

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that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the District, as appropriate.

### 9. Notification of Changed Discharge

All Industrial Users shall promptly notify the District in advance of any substantial change in the volume or character of pollutants in their Discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under 5.15(1) of this section.

### 10. Notification of the discharge of hazardous waste

A. Any industrial user who commences the discharge of hazardous waste shall notify the POTW, the EPA regional waste management division director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance that, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261. Such notification must include the name of the hazardous waste under 40 C.F.R. Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known or readily available to the industrial user: an identification of the hazardous constituents contained in the wastes; an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month; and an estimation of the mass of constituents in the wastestream expended to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 5.14(1)(A). The notification requirement in this section does not apply to pollutants already reported by industrial users subject to categorical pretreatment standards under the self-monitoring requirements of Sections 5.14(3), 5.14(4), and 5.14(5).

B. Dischargers are exempt from the requirements of Subsection A above during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified at 40 C.F.R. 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified at 40 C.F.R. 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

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C. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the director, the EPA regional waste management division director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

D. In the case of any notification made under this section, the industrial user shall certify that it 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.

E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this section, a control mechanism issued thereunder, or any applicable federal or state law.

### **11. Certification – Signature of Authorized Representative**

- A. All documents submitted to the director pursuant to this section shall be signed by an authorized representative of the industrial user as defined in Article 2.
- B. Any person signing the application statement or reports submitted pursuant to this section shall make the following certification:

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

### **12. Recordkeeping Requirements:**

A. Industrial users subject to the reporting requirements of this section shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this section, any additional records of information obtained pursuant to monitoring activities undertaken by the industrial user independent of such requirements, and documentation associated with BMPs.

B. Records shall include, at a minimum, the date, exact place, method, and time of sampling, and the name of the person(s) taking the sample(s); the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses.

C. These records shall remain available for a period of at least three (3) years (including documentation associated with Best Management Practices). This period shall be

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automatically extended for the duration of any litigation concerning the industrial user, the District or where the industrial user has been specifically notified of a longer retention period by the director.

### 13. Submission of Data

If an Industrial User subject to the reporting requirement (for periodic compliance reports or Industrial Users not subject to Categorical Pretreatment Standards) of Section 5.14 monitors any regulated pollutant at the appropriate sampling location more frequently than required by the District using the procedures prescribed in 5.14(3)(B) of this section, the results of this monitoring shall be included in the report.

### 14. Upset provision.

A. Definition. For the purposes of this section, Upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial 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. Effect of an upset. An Upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (c) are met.

C. Conditions necessary for a demonstration of upset. An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An Upset occurred and the Industrial User can identify the cause(s) of the Upset;
2. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;
3. The Industrial User has submitted the following information to the POTW and District 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;

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

4. Burden of proof. In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.

5. Reviewability of agency consideration of claims of upset. In the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that non-compliance was caused by an Upset. No determinations made in the course of the review constitute final Agency action subject to judicial review. Industrial Users will have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.

6. User responsibility in case of upset. The Industrial User shall control production or all Discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

### 15. Sample Collection

A. The reports required in 5.14(3) of this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The District shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. 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 District. Where time-proportional composite sampling or grab sampling is authorized by the District, the samples must be representative of the Discharge and the decision to allow the 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 a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the District, as appropriate.

B. For sampling required in support of baseline monitoring and 90-day compliance reports required in **5.14(3)** of this section, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic

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compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the District may authorize a lower minimum. For the reports required by 5.14(4) and 5.14(5) of this section, the District shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements.

### 16. Chain of Custody

A chain of custody form is required for any sampling and shall be included with self-monitoring reports.

### 17. Recordkeeping – right to inspect and copy records

Any Industrial User or POTW subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to retain for a minimum of 3 years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the Director and the Regional Administrator (and POTW in the case of an Industrial User). This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or POTW or when requested by the Director or the Regional Administrator. This right includes the taking of photographs on-site.

### 18. Reports and Information

All industrial users connected to, or proposing to connect to, the POTW shall provide appropriate reports or information to the Director as the Director may require to meet the requirements of this section. It is unlawful for any person to knowingly make a false statement, representation, or certification in any record, report, or other document submitted or required to be maintained under this section.

### 19. Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards

That in the event the Permittee is not subject to Categorical Standards (i.e., a Significant Noncategorical Industrial User) such Permittee shall monitor and report in accordance with the requirements stated in the IWDP and shall submit a completed Discharge Report to the District at least once every six (6) months on such dates as shall be specified by the District, which reports shall contain a description of the nature, concentration and flow of the Pollutants required to be reported by the District. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the District to determine the compliance status of the User. Such reports shall be based on sampling and analysis performed in the period covered by the report and in accordance with the techniques described in 40 CFR 136 and amendments thereto.

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### 20. Non-Significant Industrial User Certification

A. The District may determine that an Industrial User subject to categorical Pretreatment Standards under § 403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

1. The Industrial User, prior to the District's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
2. The Industrial User annually submits the certification statement required in § 403.12(q) together with any additional information necessary to support the certification statement; and
3. The Industrial User never discharges any untreated concentrated wastewater.

### 21. Date of Reports

Written reports will be deemed to have been submitted on the date postmarked. For reports that are not postmarked the date of receipt of the report at the District office shall be the accepted date.

### 22. Compliance Report

Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the District a report containing the information described in paragraphs (b) (4)-(6) of this section. For Industrial Users subject to equivalent mass or concentration limits established by the District in accordance with the procedures in § 403.6(c), this report shall contain a reasonable measure of the User's long term production rate. For all other Industrial 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.

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### Section 5.15 Compliance Monitoring

#### 1. Legal authority.

A. The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

1. Require (A) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and

(2) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12.

#### 2. Tampering

It shall be unlawful to interfere with or remove, alter, or tamper with sampling, monitoring, or other pretreatment equipment.

#### 3. Right of Entry, Inspection and sampling

A. The director shall have the right to enter the premises of any industrial user to determine whether the industrial user is complying with all requirements of this chapter and any control mechanism or order issued hereunder. Industrial users shall allow the director ready access to all parts of the premises for the purposes of inspection, identifying the character or volume of pollutants, sampling, records examination and copying, photographs, noncompliance investigation, and the performance of any additional duties.

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

C. The director may require the industrial user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the industrial user at its own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

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D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the director and shall not be replaced. The costs of clearing such access shall be borne by the industrial user.

E. Unreasonable delays in allowing the director access to the industrial user's premises shall be a violation of this chapter.

### **4. Immediate Halt of Service**

That the District shall have the authority to disconnect the Permittee's system from the District's system, or to require the Permittee to immediately and effectively halt any discharge of Pollutants into the POTW or any portion thereof, if such discharge reasonably appears to present an imminent endangerment to the health and welfare of Persons or to the environment or Interferes with the operation of the POTW or any portion thereof.

### **Section 5.16 Confidential Information**

#### **1. Confidential Information**

That the Permittee comply with such other provisions as may be required by the District, by the Act or by EPA regulations, including a procedure to protect the confidentiality of reports and information furnished by the Permittee in accordance with 40 CFR 403.14. Effluent data shall be considered nonconfidential.

### **Section 5.17 Publication of Industrial Users in Significant Noncompliance**

#### **1. Publication of industrial users in significant noncompliance**

The director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of the industrial users that, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term "significant noncompliance" shall be applicable to all significant industrial users, and any other industrial user that violates the definition of "significant noncompliance" set forth in Article 2

### **Section 5.18 Administrative Enforcement Remedies**

#### **1. Consent orders.**

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The Director may enter into consent orders, assurances of compliance, or other similar documents establishing an agreement with any industrial user responsible for noncompliance. Such documents shall include specific actions to be taken by the industrial 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 Section 5.18(2) and Section 5.18(3) and shall be judicially enforceable.

### 2. Show cause hearing.

A. The District may order an industrial user that has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, to appear before the director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the industrial user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the industrial user show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally, by registered or certified mail (return receipt requested), or by commercial carrier at least ten calendar days prior to the hearing. Such notice may be served on any authorized representative of the industrial user as defined in Section 5.19(1)(A) and required by Section 5.14(19). A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the industrial user.

B. The director may conduct the hearing and take the evidence, or may designate a representative to:

1. Issue, in the name of the director, a notice of hearing requesting the attendance and testimony of witnesses and the production of relevant evidence;
2. Take the evidence; and
3. Transmit an audio recording or written transcript of any testimony, and any other evidence, to the director, together with a written recommendation for action thereon.

C. Upon review of the evidence, the director shall make written findings of fact and conclusion upholding, modifying, or striking the proposed enforcement action.

### 3. Cease and Desist Orders.

A. When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, the director may fine such industrial user an amount not to exceed \$1,000.00 per day, per violation. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

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B. Industrial users desiring to dispute such fines must file a written request for the director to reconsider the fine along with full payment of the fine amount within 15 days of being notified of the fine. Such request shall set forth the nature of the order or determination being appealed, the date of such order or determination, the reason for the appeal, and a request for a hearing.

### Section 5.19 Judicial Enforcement Remedies

#### 1. Injunctive relief

A. When the director finds that an industrial user has violated, or continues to violate, any provision of this section, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, the director may petition the appropriate court for the issuance of a temporary or permanent *injunction*, as appropriate, that restrains or compels the specific performance of the control mechanism, order, or other requirement imposed by this chapter on activities of the industrial user. The director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the industrial 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 an industrial user.

#### 2. Criminal Penalties

Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements.

#### 3. Civil penalties

A. An industrial user who has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the District for a maximum civil *penalty* of \$1,000.00 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 violation.

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

C. In determining the amount of civil liability, the District shall take into account all relevant circumstances, including, without limitation, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained

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through the industrial user's violation, corrective actions by the industrial user, the compliance history of the industrial 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 an industrial user.

### 4. Penalties

Any Person who violates any provision of Article 5, Sections 5.4 through 5.9 inclusive, or of an IWDP (collectively "Article 5 Violation"), shall be notified and may be assessed a penalty, in accordance with the District Enforcement Response Plan. The amount of the penalty shall be determined by the District as follows:

- A. In the event of a first violation, the penalty shall be an amount not less than one (1) and not greater than three (3) times the actual expenses incurred by the District, directly or indirectly, as a result of the violation plus an administrative fine or penalty of not greater than One Thousand Dollars (\$1,000.00) per day for each violation. The amount of the expenses shall include, but not be limited to, the following:
  - a. The cost of repair or replacement, or both, of the Facilities of the District; and
  - b. The amount of any penalty imposed on the District by any other governmental entity; and
  - c. The amount expended by the District for equipment, employee compensation and payments to independent Contractors (including attorneys' fees, laboratory expenses and expenses of independent chemists and engineers) to determine the existence and locate the source of or to correct or terminate the violation; and
  - d. Any other incidental expenses related to the violation, including a Surcharge to reimburse the District any cost incurred in reconnecting service.

B. In the event of a continuing violation or a second violation within six (6) months of the first, the District shall assess the penalty set forth in 5.19(2) or 5.19(3) of this section and in addition thereto may assess an additional penalty, the purpose of which is to deprive the violator of any economic benefit realized by the failure, refusal or delay in complying with the requirements set forth in Article 5 or in the violator's Permit, where applicable.

### 5. Enforcement

The District will apply the enforcement response plan, as described in Section 5.20(1), for the purpose of apply enforcement actions against any Person.

### 6. Notice of Violations

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Person or Customer is not in compliance with any provision of these Rules and Regulations, such Person or Customer shall be served a written notice stating the nature of the violation, the amount of any penalty assessed, a reasonable time limit to correct the violation, that service may be suspended, and the right to appeal as provided in these Rules and Regulations. Written notice shall be served by any method set forth in the Colorado Rules of Civil Procedure, Section 4(e), or by mailing to the service address by first-class mail. Mail shall be deemed to be received within three

(3) business days of mailing. The violator shall, within the period of time stated in such notice, permanently cease all violations and pay all penalties assessed.

### **Section 5.20 Supplemental Enforcement Action**

#### 1. Enforcement Response Plan

The Director is authorized to develop and maintain an enforcement response plan containing procedures indicating how the director will investigate and respond to industrial user noncompliance in conformance with this section and all applicable state and federal laws and regulations.

### **Section 5.21 Affirmative Defenses To Discharge Violations**

#### 1. Upset provision.

A. Definition. For the purposes of this section, Upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial 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. Effect of an upset. An Upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (c) are met.

C. Conditions necessary for a demonstration of upset. An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An Upset occurred and the Industrial User can identify the cause(s) of the Upset;

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

3. The Industrial User has submitted the following information to the POTW and District 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;

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

d. Burden of proof. In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.

e. Reviewability of agency consideration of claims of upset. In the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that non-compliance was caused by an Upset. No determinations made in the course of the review constitute final Agency action subject to judicial review. Industrial Users will have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.

f. User responsibility in case of upset. The Industrial User shall control production or all Discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

## 2. Bypass

### A. Definitions.

1. Bypass means the intentional diversion of waste streams from any portion of an Industrial User's treatment facility.

2. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be

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expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

B. Bypass not violating applicable Pretreatment Standards or Requirements. An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (c) and (d) of this section.

C. Notice.

1. If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the District, if possible at least ten days before the date of the bypass.

2. An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the District within 24 hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the Industrial 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 District may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

D. Prohibition of bypass.

1. Bypass is prohibited, and the District may take enforcement action against an Industrial 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 preventative maintenance; and

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

E .The District may approve an anticipated bypass, after considering its adverse effects, if the District determines that it will meet the three conditions listed in paragraph (d)(1) of this section.

### Section 5.22 Wastewater Charges and Fees

#### 1. Charges

A. The District may adopt reasonable charges and fees for reimbursement of the costs of operating the Districts pretreatment program in an amount as established by the SFSCD Board of Directors. These charges and fees, which may be included on the industrial user's sewer bill, may include the following:

1. Administrative fees for wastewater discharge permit applications, including the cost of processing such applications;
2. Charges for monitoring, inspection, and surveillance procedures, including the cost of collection and analyzing an industrial user's discharge, and reviewing monitoring reports submitted by industrial users;
3. Charges for reviewing accidental spill/slug control procedures and construction;
4. Charges for the cost of publication in the newspaper for annual significant noncompliance notifications;
5. Costs for continued implementation of the User's Pretreatment Program on an annual basis.

B. Fees for filing appeals; and

C. Other charges and fees as the District may deem necessary to carry out the requirements contained herein.

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### 2. Cost recovery

A. Any industrial user that violates any of the provisions of this chapter or that discharges or causes a discharge producing a deposit or obstruction or causes damage to or impairs the POTW shall be liable to the District for any expense, loss, or damage caused by such violation or discharge, including, without limitation, all costs and expenses related to suspending or terminating service and costs of labor, materials, and specified *fees*.

B. The District shall charge the industrial user for the cost incurred by the District for any monitoring surveillance, cleaning, repair, or replacement work caused by the violation or discharge and for costs incurred by the District in investigating the violation or discharge and in enforcement this chapter, including reasonable attorneys' *fees*, court costs, and other expenses of litigation.

C. In the event that an industrial user discharges pollutants that cause the District to violate any condition of its CDPS permit and the District is fined by the EPA or the state for such violation, then such industrial user shall be fully liable for the total amount of the fine.

### Section 5.23 Miscellaneous Provisions

#### 1. Leased Property

Where the industrial user is leasing the property subject to the control mechanism, the Director shall notify the record owner of the property where the industrial user is in significant noncompliance with applicable pretreatment standards and requirements. The property owner shall be responsible for ensuring that the industrial user is in compliance with this chapter and shall be subject to enforcement under this chapter for noncompliance.