

Ord. 5793



AN ORDINANCE TO AMEND, CHAPTER 33, ARTICLE I, ARTICLE II, DIVISIONS 1 THROUGH 4, ARTICLE III, DIVISIONS 1 THROUGH 4, TO DELETE ARTICLE II, DIVISIONS 5 AND 6, AND TO CREATE A NEW ARTICLE IV, DIVISIONS 1 THROUGH 6, OF THE CITY OF MEMPHIS CODE OF ORDINANCES, TO UPDATE PERMIT AND DISCHARGE ASSOCIATED REQUIREMENTS FOR INDUSTRIAL AND OTHER USERS OF THE CITY'S SEWER SYSTEM IN ACCORDANCE WITH FEDERAL AND STATE REGULATIONS AND TO PROVIDE FOR PROTECTION OF THE CITY'S PUBLICLY OWNED TREATMENT WORKS INCLUDING THE SANITARY SEWER COLLECTION SYSTEM

WHEREAS, the City of Memphis recognizes that the waters of Tennessee are the property of the State and are held in public trust for the use of the people of the State of Tennessee; and

WHEREAS, the City of Memphis recognizes that the citizens of Memphis, as residents of the State of Tennessee, have a right to unpolluted waters; and

WHEREAS, the City of Memphis recognizes that it has an obligation to take all prudent action to ensure that the navigable waters located within the municipal limits of the City of Memphis remain unpolluted to the fullest extent possible; and

WHEREAS, the City of Memphis has an approved pretreatment program which provides for the implementation and enforcement of pretreatment program requirements in accordance with applicable state and Federal law; and

WHEREAS, the City of Memphis issues permits to industrial users discharging wastewaters to the City's sewer system and/or wastewater treatment plant and otherwise issues permits in accordance with local law as it deems appropriate; and

WHEREAS, the City of Memphis has a program for regulating food establishment waste dischargers and to assure that oil and grease is not inappropriately entering the City's sewer collection system; and

WHEREAS, in accordance with the Tennessee Water Quality Control Act, as well as the Federal Water Pollution Control Act, the City of Memphis deems it necessary to revise the existing pretreatment requirements for users of the wastewater collection system according to new Federal regulations currently set forth in Chapter 33 of the City of Memphis Code of Ordinances and to otherwise reorganize its ordinances; and

WHEREAS, a copy of the pretreatment requirements is also contained in Chapter 13 of the City of Memphis Code of Ordinances and is available on-line in Municode, corresponding changes are made to Chapter 13.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 33, Article I, is hereby amended to state as follows with corresponding changes to be made to Chapter 13-4 and with any cross-references herein to Chapter 33 provisions also deemed to apply to the corresponding Chapter 13 provision:

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SEWERS AND SEWAGE DISPOSAL*
MEMPHIS CODE

Art. I. In General and Definitions, ##33-1--33-16 [Chapter 13-4]

ARTICLE I. IN GENERAL AND DEFINITIONS

Secs. 33-1--33-15. **Reserved.**

***Cross references-** Memphis Light, Gas and Water division, #2-256 *et seq.*; water and/or water closets and equipment requirements for barbershops, #6-3; required toilet facilities in day care centers, #12-7; garbage, trash, and refuse, Ch.15; health and sanitation, Ch.16; toilet facilities required in coin-operated laundrettes, #16-158; sewage disposal in food establishments, #16-208; required toilet facilities at public swimming pools, #16-434; planning, Ch.26; required toilets and urinals in undertaking establishments, #28-6; sewage disposal requirements for trailer courts, #30-28; rivers and harbors, Ch.32; streets and sidewalks, Ch.34; toilets, urinals, etc., required in tattoo shops, #35-28; building code, Ch.44; plumbing, Ch.49.

State law references- Power to acquire, construct, and maintain sewage system and to charge for service, T.C.A. #7-35-401 *et seq.*; authority to require connections to sewer system, T.C.A. # 7-35-201(l); Power to impose administrative penalties, T.C.A. # 69-3-123 *et seq.*

Sec. 33-16. [Sec. 13-4-1] **Definitions.**

Terms for which definitions are not specifically herein provided shall be interpreted consistent with the intent and substance of this Ordinance and as otherwise provided by state regulation at 0400-40-14-.03 or EPA regulation at 40 C.F.R. § 403.3. Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

Act or the Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, and found in 33 U.S.C. § 1251 *et seq.*

Action Level means a goal set forth in a permit or other document. In order for a requirement in a permit or other document to be deemed an Action Level it must specifically be designated as an "Action Level" in the permit or document, as applicable. An Action Level may be established as a numerical or other limitation. While an exceedance of an Action Level is not a violation, it can trigger or otherwise lead to additional requirements being imposed upon the Discharger, including, but not limited to, User study of the cause of the Action Level exceedance and/or the imposition of enforceable Discharge limitations.

Additional Treatment Charge means the portion of the service charge, which is levied on those Users whose wastes are greater in strength than the concentration values established as representative of normal sewage or Wastewater.

Alkalinity means the mass of a 100% sulfuric acid required to reduce the pH of a given volume of Wastewater to a pH of 7.0. The value is expressed as pounds of sulfuric acid per day.

Authorized Representative of the User means:

- (1) A responsible corporate officer if the User is a Corporation. A responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for

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

(2) A general partner or proprietor if the User is a partnership or sole proprietorship, respectively.

(3) A duly authorized representative of the individual designated in paragraph (1) or (2) if: (i) The authorization is made in writing by the individual described in paragraph (1) or (2); (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial Discharge originates, such as the position of plant manager, operator of the well, well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and (iii) the written authorization is submitted to the Control Authority.

(4) If an authorization under paragraph (3) 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 paragraph (3) must be submitted to the Control Authority prior to, or together with, any reports to be signed by an Authorized Representative of the User.

Best Management Practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Sections 33-243 and 33-244 of this Ordinance [See also Tennessee Rule 0400-40-14-.05(1)(a) and (2)]. 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.

Blowdown means the Discharge of water with high concentrations of accumulated solids from boilers to prevent plugging of the boiler tubes or stream lines. In cooling tower, blowdown is discharged to reduce the concentration of dissolved salts in the recirculating cooling water.

BOD (denoting biochemical oxygen demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade, expressed in milligrams per liter (or pounds upon factoring in flow).

Building Sewer means the extension from the building to the public sewer or other place of disposal, also called "house connection."

Calendar Day means the 24-hour period from midnight-to-midnight or any other 24-hour period approved by the City for a particular facility that reasonably approximates the midnight-to-midnight time period.

Categorical Industrial User ("CIU") means an Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard (except for dental dischargers subject to 40 C.F.R. Part 441).

Categorical Standards or Categorical Pretreatment Standard means the national categorical pretreatment standards as found in 40 C.F.R. Chapter I, Subchapter N, Parts 405 *et seq.*

C.F.R. means the Code of Federal Regulations.

City means the City of Memphis, Tennessee.

COD (denoting chemical oxygen demand) means the measure of oxygen-consuming capacity of inorganic and organic matter present in Wastewater. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test. It is expressed in milligrams per liter (or pounds upon factoring in flow).

Composite Sample means a sample composed of individual subsamples taken at regular intervals over a specified period of time. Unless otherwise specified by this Ordinance or the Control Authority, subsamples may be proportioned by time interval or size according to flow (*i.e.*, flow-proportioned composite sample), or be of equal size and taken at equal time intervals (*i.e.*, time-proportioned composite sample).

Control Authority or Approving Authority means the City of Memphis, Division of Public Works. The term "Approving Authority" as used herein is differentiated from the term "Approval Authority" as defined in 40 C.F.R. § 403.3(c).

Control Mechanism means a permit, order, or similar means of establishing enforceable requirements. This includes SIU Discharge Permits and Other User Permits. Failure to comply with the requirements set forth in these documents may result in enforcement actions, which may include, but is not limited to, administrative fines and/or withdrawal of the privilege to use the City of Memphis Wastewater System.

County means Shelby County, Tennessee unless otherwise specified.

Daily Discharge means the "Discharge of a Pollutant" measured using approved methods at the appropriate sampling point during a Calendar Day, or any 24-hour period that reasonably represents the Calendar Day, established by the Control Authority in the Control Mechanism. For Pollutants with limitations expressed in units of mass, the "Daily Discharge" is calculated as the total mass of the Pollutant Discharged over the day. For Pollutants with limitations expressed in other units of measurement, the "Daily Discharge" is calculated as the average measurement of the Pollutant over the day.

Daily Maximum means the arithmetic average of all effluent samples for a Pollutant (except pH) collected during a Calendar Day.

Daily Maximum Limit means the maximum allowable Discharge limit of a Pollutant during a Calendar Day. Where Daily Maximum Limits are expressed in units of mass, the Daily Maximum Limit will be determined by the Daily Discharge, *i.e.*, the total mass Discharged over the course of a Calendar Day. Where Daily Maximum Limits are expressed in terms of a concentration, the Daily Discharge is the arithmetic average measurement of the Pollutant concentration derived from all measurements using approved methods at the appropriate sampling point taken that day. This can be based upon the averaging of several Grab Samples during a Calendar Day or Composite Samples (*e.g.*, 8-hour or 24-hour composite samples).

Day, for the purposes of counting when an event must occur (*e.g.*, report within 10 days), means, unless otherwise specified, a calendar day, which is a 24-hour period from midnight to midnight. "Days" refers to consecutive calendar days. For the purposes of an effluent limit (*e.g.*, Daily Maximum Limit), "Day" or "Calendar Day" refers to midnight-to-midnight or other 24-hour period that reasonably approximates the midnight-to-midnight time period.

Direct Discharge to State Waters or Direct Discharge means the addition of Pollutants to Waters of the State from a source.

Director means the Director of Public Works except where another position is specifically identified (e.g., EPA Regional Water Protection Division Director).

Discharge or Indirect Discharge means the introduction of Pollutants into the City's POTW including the introduction of Pollutants into the sewer system of the POTW as well as the delivery of waste waters and other Pollutants by truck or any other conveyance. "Discharge" or "Indirect Discharge" does not include a "Direct Discharge to State Water."

Discharge Permit means a SIU Discharge Permit or Other User Permit.

Discharger means a Person who Discharges.

Division means the Division of Public Works of the City of Memphis except where another entity is specifically identified (e.g., EPA Regional Water Protection Division).

Domestic Source means the waste and Wastewater from human or typical household activities including a household kitchen, water closets, lavatories and laundries, or any waste from a similar source and possessing essentially the same characteristics. Commercial facilities such as restaurants, hospitals, institutions (e.g., colleges), cafeterias, bakeries, ground-water remediation sites, and other non-household sources are not considered to be a "domestic source" (except Wastewater from their bathroom facilities, segregated from other flows, is considered a "Domestic Source").

Easement means an acquired legal right for the specific use of land owned by others.

Environmental Protection Agency or EPA means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Protection Division Director, the Regional Administrator, or other duly authorized official of said agency.

Existing Source means any source of Discharge that is not a "New Source."

Facility Site means the land or water area where any Indirect Discharge activity that is subject to regulation under this Ordinance is physically located or conducted, including adjacent land used in connection with the facility or activity (e.g., manholes on the User's owned or occupied property).

Garbage means solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

General Discharge Permit means a Discharge Permit that can be issued to more than one Discharger.

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

Holding-tank Waste means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, vaults, pits, sumps, and vacuum-pump tank trucks.

Hydrogen ion concentration: See "pH".

Industrial User means a source of Indirect Discharge.

Industrial Wastes means the Wastewater from industrial processes, trade, or business, as distinct from domestic sanitary sewage.

Instantaneous Limit means the maximum concentration of a Pollutant allowed to be Discharged at any time, determined from the analysis of any discrete sample (e.g., Grab Sample) of the Discharge. pH may *also* be regulated by an instantaneous maximum and/or minimum limit. Where a Composite Sample shows a value higher than an Instantaneous Limit, such sampling result is deemed to provide conclusive evidence of a violation of an Instantaneous Limit applicable during that time period.

Interference means a Discharge which, alone or in conjunction with a Discharge or Discharges from other sources, inhibits or disrupts the sewer system, WWTP, treatment processes, or operations or its sludge processes, use or disposal, exceeds the design capacity of the treatment works or the collection system, and/or which causes or contributes to a violation of any requirement of the City's NPDES permit or poses a threat to worker health and safety (e.g., chemical fumes). The term includes disruption with the use of biogas generated by a POTW as a fuel or prevention of sewage sludge use or disposal by the POTW in accordance with criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act ("SWDA"), the Clean Air Act, the Toxic Substances Control Act, or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

Legal Authority means the rules, regulations and ordinances of the City of Memphis regulating the Discharge and treatment of Industrial Waste.

Local Hearing Authority means the Memphis Wastewater Hearing Authority. See Tennessee Code Annotated § 69-3-124.

Local Limit means specific Discharge limits developed by the Control Authority to implement the general and specific Discharge prohibitions listed in Tennessee Rule 0400-40-14-.05(1)(a) and (2).

Medical Waste 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.

mg/l means a concentration unit of milligrams per liter of solution.

Monthly Average means the sum of all "Daily Discharges" measured during a calendar month divided by the number of "Daily Discharges" measured during that month.

Monthly Average Limit means the highest allowable average of "Daily Discharges" over a calendar month, calculated as the sum of all "Daily Discharges" measured during a calendar month divided by the number of "Daily Discharges" measured during that month.

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, Industrial Wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act (33 U.S.C. § 1288).

National Pretreatment Standards or Pretreatment Standard or Standard means any regulation containing Pollutant Discharge limits promulgated by the Environmental Protection Agency in accordance with the Act,

which applies to Users. The term includes general and specific prohibitive Discharge limits pursuant to Sections 33-243(a) and 33-243(b)(1)-(7), and local limits pursuant to Section 33-244(c), (d) and (f).

National Pollution Discharge Elimination System ("NPDES") means the program for issuing, conditioning, and denying permits for the Direct Discharge of Pollutants from point sources into navigable waters, the contiguous zone, and the oceans pursuant to Section 402 of the Clean Water Act as amended, 33 U.S.C. § 1342.

Natural Outlet means any outlet, into a watercourse, pond, ditch, lake or other body of surface, or ground water.

New Source means:

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

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

(2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the Discharge of Pollutants at an Existing Source; or

(3) 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 plan and the extent to which the new facility is engaged in the same general type of activity as the Existing Source should be considered.

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

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

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

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including cleaning, 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

(2) Entered into a binding contractual obligation for the purchase of facilities or equipment, which is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for

feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

Non-Significant Categorical Industrial User means an Industrial User, subject to Categorical Pretreatment Standards, that never Discharges more than 100 gallons per day (gpd) of total categorical Wastewater (excluding sanitary, non-contact cooling, and boiler Blowdown Wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

- (a) The Industrial User, prior to Control Authority's finding, has consistently complied with all applicable Categorical Pretreatment Standards and Pretreatment Requirements;
- (b) The Industrial User annually submits the certification statement required in Section 33-230(j)(2) of this Chapter [see Tennessee Rule 0400-40-14-.12(17)], together with any additional information necessary to support the certification statement; and
- (c) The Industrial User never Discharges any untreated concentrated Wastewater.

Other User Permit means an individual control mechanism or General Discharge Permit issued to a User that is not a Significant Industrial User. Failure to comply with the requirements set forth in Other User Permits may result in enforcement actions, which may include, but is not limited to, administrative fines and/or withdrawal of the privilege to use the City of Memphis Wastewater System. The requirements imposed in an Other User Permit and the manner in which such permits are issued and enforced, and such facilities are monitored or inspected, are subject to the City's sole discretion. Other User Permits include, but are not limited to, Food Establishment Wastewater Discharge ("FEWD") Permits imposing, among other things, requirements pertaining to fats, oils, and grease, waste hauler permits, permits issued to ground water remediation pump and treat facilities (except to the extent the Discharger is identified as an SIU), special permits for the disposal of portable toilet Wastewater, letters of approval for hauled Wastewater, and letters of approval setting forth flow limitations (e.g., limiting use of the sewer system to certain hours) on Users or new or expanded development or facilities.

Pass-through means a Discharge which exits the Wastewater Treatment Plant ("WWTP") into Waters of the State in quantities or concentrations which, alone or in conjunction with a Discharge or Discharges from other sources, is a cause of a violation of any requirement of the WWTPs' NPDES permits, including an increase in the magnitude or duration of a violation.

Person means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and Federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies, or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this or any state or country.

pH means the negative log of the hydrogen ion concentration (in moles per liter) of a given water, $\text{pH} = -\log_{10}[\text{H}^+]$. Water will dissociate into hydrogen and hydroxyl ions ($\text{H}_2\text{O} \leftrightarrow \text{H}^+ + \text{OH}^-$) and the concentration of hydroxyl ion can be expressed as pOH. The $\text{pH} + \text{pOH}$ always equals 14 in water. pH limits may be established in standard units, based on this relationship and the hydroxide load.

pH Maximum Limit means a limit imposed on the alkalinity of a Discharge. A pH Maximum Limit is distinct from a pH Minimum Limit.

pH Minimum Limit means a Discharge limit imposed on the acidity of a Discharge. A pH Minimum Limit is distinct from a pH Maximum Limit.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural, and Industrial Wastes, and certain characteristics of Wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

Pollution means the man-made or man induced alteration of the chemical, physical, biological, and radiological integrity of water.

Pretreatment means the reduction of the amount of Pollutants, the elimination of Pollutants, or the alteration of the nature of Pollutant properties in Wastewater prior to, or in lieu of, introducing such Pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes, by process changes, or by other means, except by diluting the concentration of the Pollutants, unless allowed by an applicable Pretreatment Standard.

Pretreatment Program means the rules, regulations, and/or ordinances of the City regulating the Discharge and treatment of industrial and commercial Wastewater, the Control Mechanisms issued under Article IV of Chapter 33 of the Memphis Code and such other provisions as provided for in this Ordinance, 40 C.F.R. 403.1 *et seq.*, and/or Tennessee Rule 0400-40-14-.01 *et seq.*

Pretreatment Requirement means any substantive or procedural requirement related to Pretreatment other than a National Pretreatment Standard imposed on a User.

Pretreatment Standards or Standards means prohibited Discharge standards, Categorical Pretreatment Standards, and Local Limits.

Priority Pollutants means any Pollutant identified in 40 C.F.R. Part 423, Appendix A.

Process Wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

Properly Shredded Garbage means the wastes from the preparation, cooking, and dispensing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

Publicly Owned Treatment Works ("POTW") means a treatment works as defined by Section 212 of the Federal Water Pollution Control Act, (33 U.S.C. § 1292) which is owned in this instance by the municipality (as defined by Section 502(4) of the Federal Water Pollution Control Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey Wastewater to a WWTP. The term also means the municipality as defined in Section 502(4) of the Federal Water Pollution Control Act, which has jurisdiction over the Indirect Discharges to and the Discharges from such a treatment works.

Sanitary Sewer means a sewer which carries sewage and/or Wastewater. It does not include a Storm Sewer, which is designed primarily to address storm water, surface, and ground waters.

Service Charge means the assessment levied on Users of the public sewer system.

Sewage means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with any groundwater, surface water, and storm water that may be present.

Sewage System or Wastewater System means all facilities for collecting, pumping, treating, and disposing of sewage that flows to a City's WWTP.

Significant Industrial User ("SIU") means any Industrial User of the City of Memphis Wastewater System, or Wastewater Systems of other municipalities connected to the City of Memphis Wastewater System, that is subject to Categorical Pretreatment Standards under 40 C.F.R. § 403.6 and 40 C.F.R. Chapter I, Subchapter N (except for dental dischargers subject to 40 C.F.R. Part 441) and/or has an average Discharge flow of 25,000 gallons or more per day of process Wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler Blowdown Wastewater); and/or has a Discharge of a process wastestream which is greater than or equal to five percent (5%) of the average dry weather hydraulic flow and/or organic design capacity of the receiving WWTP; and/or is found by the City of Memphis to have a reasonable potential for adversely affecting the POTW's operation, or for violating any Pretreatment Standard or Pretreatment Requirement either singly or in combination with other contributing industries on the City of Memphis' Wastewater System, including, but not limited to, the quality of sludge produced, the Wastewater System's effluent quality, groundwater in the area, or air emission generated by the Wastewater System. Upon a finding that a Non-Categorical Industrial User meeting the criteria above has no reasonable potential for adversely affecting the POTW's operation, or for violating any Pretreatment Standard or Pretreatment Requirement, the City may, at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in Tennessee Rule 0400-40-14-.08(6)(f), determine that such Industrial User is not a Significant Industrial User.

Unless otherwise designated by Memphis subject to its discretion, dental dischargers subject to 40 C.F.R. Part 441 are not "Significant Industrial Users" as defined herein and are not "Categorical Industrial Users" or "industrial users subject to categorical pretreatment standards" as those terms and variations are used herein and in 40 CFR part 403.

SIU Discharge Permit is a Control Mechanism issued to a Significant Industrial User that establish specific parameter limits and other requirements for control and monitoring of the Wastewater Discharges. Failure to comply with the requirements set forth in an SIU Discharge Permit may result in enforcement actions, which may include, but is not limited to, administrative fines and/or withdrawal of the privilege to use the City of Memphis Wastewater System. Individual SIU Discharge Permits may be issued to individual industrial/commercial users. Subject to the Control Authority's discretion, general SIU Discharge Permits may be issued to a group of facilities.

Slug Discharge or Slug means any Discharge of a non-routine, episodic nature (including, but not limited to, an accidental spill) or a batch Discharge (including customary and non-customary batch Discharges) which has a reasonable potential to cause Interference or Pass-Through, or in any other way violate Article IV of Chapter 33 of the Memphis Code and/or Local Limits or permit conditions.

Special Sewer Service Area means a sewer service area which shall be subject to unique and separate Sewer Infrastructure Surcharge Fees in addition to normal sewer fees described within this chapter, based upon the particular costs associated with providing sewer service in that area.

Standard Methods means the analytical procedures set forth in the latest edition of "Standard Methods for the Examination of Water and Wastewater" published by the American Public Health Association; and/or "EPA Methods for Chemical Analysis of Water and Wastes" as per 40 C.F.R. Part 136 and amendments thereto;

and/or City of Memphis, Public Works Division's laboratory procedures for certain tests that detail specific requirements that are not addressed elsewhere or are presented as optional.

Storm Drain or Storm Sewer means a sewer which primarily carries storm and surface waters and drainage, but is designed to exclude sewage and Industrial Wastes, other than unpolluted cooling water.

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

Suspended Solids or Total Suspended Solids means total suspended matter that either floats on the surface of, or is in suspension in, water, Wastewater, or other liquids, and that is removable by laboratory filtering as prescribed by Standard Methods.

TOC (denoting Total Organic Carbon) means the measure of the concentration of covalently bonded carbon, which is combustible to carbon dioxide. It is not to be confused with elemental carbon, dissolved carbon dioxide, inorganic carbonates, or bicarbonates.

User means any person (including a waste hauler) that Discharges Wastewater or otherwise causes or permits Wastewater to enter into the City's POTW, including, but not limited to, the sanitary sewer.

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.

Wastewater Treatment Plant ("WWTP") means the City's facilities for treating Wastewater and includes that portion of the POTW which is designed to provide treatment of municipal sewage and Industrial Waste.

Watercourse means a channel or conduit in which surface water flow of water occurs, either continuously or intermittently.

Waters of the State means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee, or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

SECTION 2. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 33, Article II, Divisions 1 through 4 are hereby amended to state as follows, with corresponding changes to be made to Chapters 13-8, 13-12 and 13-16 with any cross-references herein to Chapter 33 provisions also be deemed to apply to the corresponding Chapter 13 provision:

- Art. II. Use of Public and Private Sewage Disposal Methods, ##33-16--33-125
 - Div. 1. Generally, ##33-17--33-26
 - Div. 2. Use of Public Sewers, ##33-26--33-40 [Chapter 13-8]
 - Div. 3. Private Sewage Disposal, ##33-41--33-60 [Chapter 13-12]
 - Div. 4. Building Sewers, Connections, Sewer Extensions and Development Fees, ##33-61--33-80 [Chapter 13-16]

ARTICLE II. USE OF PUBLIC AND PRIVATE

SEWAGE DISPOSAL METHODS

DIVISION 1. GENERALLY

Secs. 33-17--33-25. **Reserved.**

DIVISION 2. USE OF PUBLIC SEWERS [Chapter 13-8]

Sec. 33-26. [Sec. 13-8-1] **Discharge to Natural Outlets Where Public Sewer Available Prohibited.**

It shall be unlawful to Directly Discharge to any natural outlet within the City, or in any area under the jurisdiction of the City, any untreated sewage or other polluted waters where suitable public collection and/or treatment has been provided in accordance with the provisions of Articles II and III of this chapter, except where a federal National Pollutant Discharge Elimination System (NPDES) permit has been duly issued and is currently valid for such discharge or the discharger is specifically exempt from obtaining an NPDES permit under duly promulgated state regulations. The City, upon becoming aware of such unlawful discharges, may refer the matter to TDEC or take such other action as the City deems appropriate. Nothing herein shall be deemed to change the obligation of a septic system to connect to the City's POTW to the extent otherwise provided under this Ordinance.

Sec. 33-27. [Sec. 13-8-2] **Maintaining Private Methods of Disposal.**

Except as hereinafter provided in this chapter, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

Sec. 33-28. [Sec. 13-8-3] **Connection to Public Sanitary Sewer, When Required.**

The owner, occupant or lessee of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the city where public sewer is available and abutting on any street, alley, right-of-way, or easement in which there is now located or may in the future be located a public sanitary sewer of the city, is hereby required at his expense to install suitable sanitary facilities therein and to connect such facilities directly with the proper public sewer, in accordance with the provisions of Articles II and III of this chapter within one year after date of official notice by the regulatory agency to do so, as long as no health hazard exists or is imminent. In cases of health hazards as determined by the city and county health department, the owner, occupant or lessee must connect within ninety (90) days of the official notice of the City and County health department that there exists a health hazard or that a health hazard is imminent.

Sec. 33-29. [Sec. 13-8-4] **Disconnection of Sanitary Sewer Service.**

Any person wishing to demolish a building or remove the sanitary sewer service from any point into their property shall obtain a "sanitary sewer line cap permit." After this line has been capped, joints shall be left exposed and inspected by the POTW. All construction procedures and specifications relative to capping shall be approved by the Approving Authority.

Sec. 33-30. [Sec. 13-8-5] **Damaging Sewerage Works.**

(a) No Person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is part of the sewage works. Any Person violating

this provision may be subject to immediate arrest and shall be guilty of a misdemeanor, punishable as provided in Section 1-8 of this Code of Ordinances and shall be responsible for correcting such damages.

- (b) If public sewer and/or the WWTP becomes obstructed or damaged, whether intentionally or otherwise, the Person or Persons responsible for such Discharge or other cause of damage may be billed and shall pay for the expenses incurred by the City in cleaning out, repairing or rebuilding the sewer and/or WWTP. This includes, but is not limited to, (i) the discharge of fats, oil and grease into the sewer system and (ii) digging or other surface or subsurface work puncturing a sewer pipe.
- (c) No unauthorized Person shall enter into or alter any manhole or similar appurtenance of any public sewer, place or cause to be placed anything therein or interfere therewith. No Person shall insert or place in any public sewer, manhole or other appurtenance thereof any debris or other materials which such sewer manhole or appurtenance thereof was not intended to receive. The City may remove or require the removal of any unauthorized materials or substances from the public sewer, repair or replace damaged infrastructure, and shall seek reimbursement of all costs, expenses and resulting damages incurred by City. Any removal or repair work undertaken by City may be performed directly by City workforces or City may engage the services of a contractor to perform such work.

Secs. 33-31--33-40. **Reserved.**

DIVISION 3. PRIVATE SEWAGE DISPOSAL [Chapter 13-12]

Sec. 33-41. [Sec. 13-12-1] **Required When Public Sanitary Sewer Not Available.**

Where a public sanitary sewer is not available under the provisions of Section 33-28 of this chapter, the sewer shall be connected to a private sewage disposal system complying with the provision of this Article.

Sec. 33-42. [Sec. 13-12-2] **Permit-Required; Application and Fees.**

Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the Division of Public Works. The application for such permit shall be made on a form furnished to the applicant, which the applicant shall supplement by any plans, specifications, and other information, which may be deemed necessary by the regulatory agency. A permit and inspection fee as designated by the regulatory agency shall be paid at the time application is filed. The permit and inspection fee of twenty-five dollars (\$25.00), to help defray the cost of plan review and construction inspection, shall be paid to the City and shall be placed in an account designated as "sewer collection and treatment fund."

Sec. 33-43. [Sec. 13-12-3] **Permit Required-effective Date; Notification of Completion of Work; Inspection.**

A private sewage disposal system shall not operate until the installation is completed to the satisfaction of the applicable governmental entity for which approval is required (e.g., TDEC, Health Department) The City shall be allowed to inspect the work at any stage of construction, and, in any event, the entity seeking to operate a private sewage disposal system shall notify the City when the work is ready for final inspection and before any underground portions are covered.

Sec. 33-44. [Sec. 13-12-4] **Design and Other Specifications; Discharge to Natural Outlet Prohibited.**

The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the state regulatory agency and the City. No septic tank or cesspool shall Directly Discharge to any natural outlet.

Sec. 33-45. [Sec. 13-12-5] Connection to Public Sewer upon Availability, Filling of Abandoned Facilities Required, Hardship Exemptions.

At such time as a public sewer becomes available to a property served by a private sewage disposal system, a direct connection shall be made to the public sewer in compliance with Articles II and III of this chapter, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable material, as required by the state regulatory agency and/or the City. In the event a person cannot make immediate connection, application may be made for a hardship exemption. Proof of hardship is incumbent upon the applicant. The Division of Public Works may grant a hardship exemption, not to exceed twelve (12) months, as long as no health hazard exists or is imminent.

Sec. 33-46. [Sec. 13-12-6] Maintenance and Manner of Operation.

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City. The removal of septage (septic contents) from private sewage disposal facilities shall be performed by individuals licensed to perform such work.

Sec. 33-47. [Sec. 13-12-7] Private Industrial Disposal as Exception to Articles II and III Provisions.

Nothing in Articles II and III of this chapter shall exclude the right of any industry or other facility to properly Directly Discharge its Wastewater, after proper treatment in accordance with an NPDES permit, as applicable, into any stream designated by the State of Tennessee.

Sec. 33-48--33-60. Reserved.

**DIVISION 4. BUILDING SEWERS, CONNECTIONS, SEWER EXTENSIONS
AND DEVELOPMENT FEES [Chapter 13-16]**

Sec. 33-61. [Sec. 13-16-1] Permit Requirements.

No unauthorized person shall uncover, make any connections with or opening into, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Division of Public Works. One copy of the permit shall at all times be available for inspection at the site of the work.

Sec. 33-62. [Sec. 13-16-2] Sewer Development Fees.

(a) There is established a sewer development fee, as set forth herein, to be paid by new sanitary sewer customers connecting to the System as of July 1, 2021. Such fee shall reflect (1) the actual cost to provide service to such new customers connecting to the System seeking an approved sewer connection for subdivisions, land developments, new buildings, and redevelopments of land or buildings served by the City sanitary sewer system or where the facility served requires modification of or enlargement of the existing sewers, whether within or outside the corporate limits of the City and whether service is by existing or by new facilities to be constructed; (2) a portion of the capital costs incurred by the City for the construction of

wastewater treatment plant facilities and related assets, including prior upgrades and expansions; and (3) a portion of the capital costs incurred by the City for the construction of the sewage collection and conveyance system including sewer mains, manholes, lift stations, associated appurtenances including prior upgrades and expansions. The sewer development fee shall be payable by the applicant, developer of the subdivision, or developer of industrial, commercial or residential site as set forth herein, upon the execution of the subdivision contract or the sewer extension contract, or at the time of application for the sewer connection or plumbing permit, as appropriately determined by the Approving Authority.

- (b) Sewer development fees shall be calculated based upon the size of the water meter used for the connection using a trended original cost method defined as the historical cost of the City’s assets in present day dollar amounts. Written confirmation of the applicable water meter size from Memphis Light, Gas & Water (MLGW) must be provided by the applicant or developer prior to payment of the sewer development fee as such payment is required in accordance with Section 33-62(a). The sewer development fee shall be assessed, as set forth in this section and the fee schedule adopted by the Approving Authority:

Meter Size (in inches)	Sewer Development Fee
5/8	\$2,255
3/4	\$3,383
1	\$5,638
1 ½	\$11,277
2	\$18,043
3	\$33,830
4	\$56,384
6	\$112,767
8	\$180,427
10	\$259,364
12	\$484,899

- (c) The sewer development fee calculation may be reviewed and adjusted by the Approving Authority every five years or as determined necessary due to significant changes to the customer makeup of the System, and in the instance of an extensive capital improvement plan.
- (d) The sewer development fee authorized herein shall become effective on July 1, 2021. Notwithstanding the foregoing, such fee assessment shall be implemented as follows:

From July 1, 2021 to June 30, 2022	50% of applicable fee
Subsequent years	100% of applicable fee

- (e) In support of the objectives of the Memphis 3.0 Comprehensive Plan which encourage increased support for community-based developers and development of affordable housing, the sewer development fee may be reduced up to 50% (fifty percent) by the Director of Public Works or his designee upon written request. In order to qualify for this discounted fee, developer must submit proof of 501c3 status and evidence that the development meets affordable housing standards for the following residential property types: 2-family (duplex), 3-family (triplex), 4-family (quadplex) structures, and single-family homes. For purposes herein, affordable housing shall be defined as at least 50% of the units serving households at 80% of the Area Median Income as defined by the applicable standards adopted by the US Department of Housing & Urban Development.

- (f) No sewer development fee shall be assessed to a person authorized to install a private sewage disposal system pursuant to this division, but a sewer development fee may be charged to the developer or property owner when sanitary sewers are available under Section 33-28 or when it is determined that sanitary sewers shall be extended to such development. The Approval Authority may thereafter require the installation of the sewer and the payment of the sewer development fee. The developer or property owner by applying for and receiving a private sewage disposal permit shall agree to such fee when the sewer is available. Notwithstanding the foregoing, a sewer development fee may be waived or reduced up to fifty percent (50%) by the Director of Public Works or his designee upon written request by a low-income residential property owner of the following property types: 2-family (duplex), 3-family (triplex), 4-family (quadplex) structures and single-family homes; provided that, proof of such low-income is made available to the City upon request. For purposes herein, low-income shall mean families who have incomes at or below 80% of the Area Median Income as defined by the applicable standards adopted by the US Department of Housing & Urban Development.
- (g) The prior payment of a sewer development fee for any land or building currently served by the System shall not restrict the City's ability to assess a sewer development fee in accordance with Section 33-62(a) for any proposed redevelopment of such land or building.
- (h) A sewer development fee shall be assessed to any development, redevelopment, new building or building addition resulting in the installation of an additional water meter or enlarged water meter. No sewer development fee shall be assessed for water meters dedicated to fire protection or irrigation.
- (i) Within the City reserve area, the owner(s) of property who petition for connection to the City's sanitary sewer system to serve their property shall at that time consent to, petition and request the annexation of such property by the City, with the annexation to take place at such time as the City may deem appropriate pursuant to state law. Until such time as annexation occurs, the owner(s) shall agree not to seek either incorporation as a separate entity nor annexation to any other incorporated area.

The consent to annexation shall be incorporated as a part of the city land development and/or sewer extension contract(s). At the time the sewer extension and/or land development contract is entered into the property owner shall submit his or her petition for annexation to the City.

The above-described consent to annexation by the City shall be made a restrictive covenant imposed by the property owner(s) upon the property which shall run with the land and shall be binding upon all heirs, successors and assigns. Such covenant shall be recorded in the office of the Shelby County register and it shall be the duty of the original property owner and all subsequent property owners to disclose the existence of the covenant to any parties to whom the property or a portion thereof is conveyed. Reference to such recorded covenant shall be evidenced on any final plat or plan development prior to the recordation of the plat or plan in the office of Shelby County register. It shall be the responsibility of the division of planning and development to ensure that the signed petition for annexation is submitted by the property owner and that the covenant appears on the plat or plan prior to signing and recordation of the final plat or plan.

Sec. 33-63. [Sec. 13-16-3] Sewer Connection Fees.

There is established a sewer connection charge, as set forth herein, to defray the construction costs of providing a sewer tap to a property which charges shall be payable by the owner, applicant, developer of the subdivision, or developer of industrial, commercial or residential site as set forth herein, and which charge shall be payable prior to the physical sewer connection being made. Sewer connection charges shall apply only where the physical connection is made by the Division of Public Works.

- (a) Standard 4 or 6-inch connections to residential and small commercial facilities will be made at the owner's expense. The owner shall be responsible for all costs and expenses incurred.
- (b) For any connections other than standard connections as determined by the Division of Public Works, or for a second connection to any property, the cost shall be based on time, materials and labor for the Approving Authority to install the connection.

Sec. 33-64. [Sec. 13-16-4] Sewer Extensions.

- (a) The City may permit the orderly extension of its sanitary sewer system to provide gravity sewer service of adequate capacity to unsewered properties and to properties not served by sewers of adequate capacity following the comprehensive plan and policies of the City for gravity sewer system expansion.
- (b) No Person shall undertake to extend City sanitary sewer service to his property without entering into a sewer extension contract with the City.
- (c) In order for a property to be eligible for City participation in the cost of a gravity sewer extension, all of the following criteria must be met:
 - (1) The capacity, location and design of the proposed gravity sewer extension shall conform to the City's comprehensive plans and policies for extension of the sanitary sewer system.
 - (2) The portion of the property or contiguous properties under one ownership being the subject of the request for a sewer extension shall neither be served by gravity sanitary sewer at the time of the request, nor have previously been part of a parcel or tract of property which was served by gravity sanitary sewers; i.e., for the purposes of determining eligibility for City funding participation, once a property or contiguous properties under one ownership is served by gravity sewers, it cannot be disassociated from that sewer service by the sale of all or part of the property.
 - (3) The property shall not be situated within the corporate limits or within the recognized annexation reserve area of another municipality unless the sewer extension will be used to serve other properties that would otherwise be eligible for City funding participation. The City shall participate in funding only those portions of the sewer extension, which will serve such other properties.
- (d) Whenever the City enters into a contract with an owner/developer relative to extending a sanitary sewer to his property, a reasonable estimated time shall be indicated in the contract for the completion of this service by the City.

Sec. 33-65. [Sec. 13-16-5] Sewer Extension Fees.

- (a) The developer/owner/applicant shall pay to the City, upon execution of the sewer extension contract, a sewer extension fee as set forth herein. The developer/owner/applicant may secure payment of the sewer extension fee by executing a performance bond, certificate of deposit assigned to the City, or an irrevocable, automatically renewable letter of credit in favor of the City. Such securities shall be in the full amount of the sewer extension fee and be in a form acceptable to the City. Payment of the sewer development fee shall be made by the developer/owner/applicant to the City upon advertisement for bids for construction of the sewer extension.

- (b) The minimum sewer extension fee to be paid by the developer/owner/applicant shall not be less than fifty percent (50%) of the cost of engineering including surveying, easement acquisition, inspection and construction of any sewer extension and other applicable fees for a development located within the municipal boundaries of Memphis and one hundred percent (100%) of such cost for developments located in unincorporated Shelby County which were authorized for a sewer extension or connection prior to August 18, 2017, and parcels to which sewer must be extended or connected pursuant to existing obligations between the City and the applicable developer or land owner. A preliminary estimate, based on the estimated cost of construction, engineering, easement acquisition, inspection, and other applicable fees shall be used for determining the fee to be charged to the developer for the purpose of negotiating a sewer extension contract. The final cost accounting shall be determined by the City upon completion of the sanitary sewer extension, and final accounting shall be made to the developer of any additional fee required or refund due to the developer.
- (c) Sewer extension fees paid to the City prior to July 1, 2021, shall run with the land described in the sewer extension contract and may be used for the purpose of defraying sewer development fees. Any sewer extension fees paid on or after July 1, 2021, shall not be used for the purpose of defraying sewer development fees as determined in Section 33-62.

Sec. 33-66. [Sec. 13-16-6] Urban Service Boundary; Definition and Amendment.

The Urban Service Boundary is defined by the Memphis 2000 Policy Plan and Map adopted by the Memphis City Council in September 1981 or its most recent adopted amendment. The Memphis and Shelby County Office of Planning and Development (O.P.D.) and the Division of Public Works shall review the Urban Service Boundary periodically, and recommendations for amendments, if any, shall be forwarded to the Memphis City Council for consideration.

Sec. 33-67. [Sec. 13-16-7] Internal Sewers and Upstream Properties.

- (a) The owner/developer or his successors in title or assigns shall, at the time of developing the property covered in the sewer extension contract, construct all internal sanitary sewers necessary to serve the property at their sole expense.
- (b) The owner/developer, upon entering into a sewer extension contract, shall grant permanent sanitary sewer easements and temporary construction easements to the City at no cost for future extension of the sanitary sewers through the property covered by the sewer extension contract to serve upstream properties. The sewer easement alignment shall be recommended by the owner/developer and be subject to the approval of the City. Acceptance of the sanitary sewer easements does not impose upon the City any obligation or responsibility to participate in the cost of or construct sanitary sewers within the easements.

Sec. 33-68. [Sec. 13-16-8] Expenditure of City Funds; Limitation.

The City may only expend City funds on construction for which the City has contracted through the standard bidding process.

Sec. 33-69. [Sec. 13-16-9] Fees Deposited in Sewer Fund.

All sewer development fees, connection fees and sewer extension fees collected herein shall be placed in the sewer collection and treatment fund established by Division 2 of Article III of this chapter and used for the purpose stated therein.

Sec. 33-70. [Sec. 13-16-10] Connection to Be at Expense of Owner; Indemnification of City; Construction.

All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City and its employees from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. All construction on the owner's property shall conform to the applicable plumbing code.

Sec. 33-71. [Sec. 13-16-11] Separate and Independent Connection Required for Each Building; Exception.

A separate and independent building sewer shall be provided for every building and for every dwelling unit in single family detached, single family attached and duplex developments, except that, where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer, but the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.

Sec. 33-72. [Sec. 13-16-12] Connection of Old Building Sewers.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Division of Public Works, to meet all requirements of Articles II and III of this chapter.

Sec. 33-73. [Sec. 13-16-13] Construction Standards - Size; Slope; Materials; Methods of Excavation.

The size, slopes, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing codes and other applicable rules and regulations of the City.

Sec. 33-74. [Sec. 13-16-14] Construction Standards - Elevation; Lifts, Where Required.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building gradient is too shallow to permit gravity flow to the public sewer, sanitary sewage carried by such building gradient shall be lifted by an approved pumping system and discharged to the building sewer. The installation and operational expenses of this system shall be borne solely by the property owner.

Sec. 33-75. [Sec. 13-16-15] Construction Standards - Connection to Sanitary Sewer of Sources of Surface Runoff, Approval Required.

No Person shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer which in turn is connected directly or indirectly to a public sanitary sewer, unless connection is approved by the Division of Public Works.

Sec. 33-76. [Sec. 13-16-16] Construction Standards - Conformity of Connection to Codes, Connection to Be Made Gastight and Watertight; Inspection During Construction.

The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing codes and other applicable rules and regulations of the City. All such connections shall be made watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Division of Public Works before installation. The Division of Public Works shall have the right to inspect the work at any stage of construction, and in any event, the covers of all building sewer manholes, inspection chambers, cleanouts, and the like shall be watertight and shall be capable of withstanding, without damage or displacement, any traffic load to which they may be subjected.

Sec. 33-77. [Sec. 13-16-17] Notification to Division of Public Works Prior to Covering of Work Underground; Final Inspection.

The applicant for the building sewer permit shall notify the Division of Public Works before covering portions of the work to be underground, and when the building sewer is ready for final inspection and connection to the public sewer. The connection and testing shall be made under supervision of the Division of Public Works.

Sec. 33-78. [Sec. 13-16-18] Guarding of Excavations Posing Hazard to Public; Restoration of Public Property; Posting of Bond.

All excavations for building any sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City. The posting of a bond of appropriate value may be required to safeguard the interest of the City with regard to damage to public property.

Sec. 33-79. [Sec. 13-16-19] Sewer Infrastructure Surcharge Fees.

(a) There is established a sewer infrastructure surcharge fee, as set forth herein, to defray the construction costs, bond costs, and/or design costs associated with providing sewer services to a special service to a Special Sewer Service Area. Such a fee may take any of the following forms:

- 1) Sewer development infrastructure surcharge fee;
- 2) Sewer construction connection infrastructure surcharge fee;
- 3) Sewer extension infrastructure surcharge fee; and/or
- 4) Sewer user infrastructure surcharge fee.

(b) Sewer infrastructure surcharge fees may not be credited against extension fees.

Sec. 33-80—33-100. Reserved.

SECTION 3. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 33, Article II, Divisions 5 and 6 are hereby repealed with the repeal of corresponding provision in Chapters 13-20 and 13-24.

SECTION 4. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 33, Article III, Divisions 1 thru 4 are hereby amended to state as follows with corresponding changes to

be made to Chapters 13-28, 13-32 and with any cross-references herein to Chapter 33 provisions also be deemed to apply to the corresponding Chapter 13 provision:

Art. III. Administration of Wastewater Treatment Facilities, ##33-126--33-185

Div. 1. Generally, ##33-126--33-130

Div. 2. Sewer Fees and Charges, ##33-131--33-140 [Chapter 13-28]

Div. 3. Powers and Authority of Inspectors, ##33-141--33-155 [Chapter 13-32]

Div. 4. Billing Procedures, ##33-156--33-170 [Chapter 13-28-7]

ARTICLE III. ADMINISTRATION OF WASTEWATER TREATMENT FACILITIES

DIVISION 1. GENERALLY

Sec. 33-101--33-130. **Reserved.**

DIVISION 2. SEWER FEES AND CHARGES [Chapter 13-28]

Sec. 33-131. [Chapter 13-28-1] **Established; Bases for Determination.**

(a) Requirements generally. In accordance with Public Law 92-500 and Title 40, Chapter 1, Subchapter B, Part 35, Subpart E, Section 35.925-11, which requires the city to implement a Wastewater treatment User's charge, each User will pay its proportionate share of the cost for operation and maintenance of the total treatment works. Direct and incidental costs to the city, including, but not limited to, administrative, technical and legal expenses, shall be considered a part of the cost of operations and maintenance of the total treatment works. There shall be two (2) types of charges: The first type of charge is volumetric charge; the second is a charge for treating Wastewater, which has an excessive strength.

(b) Sewer Service Charge. The sewer service charge shall be made up of two (2) types of charges.

(1) Volumetric charge. All customers will be charged a volumetric charge based on the equivalent strength of domestic sewage BOD5 of two hundred fifty (250) milligrams per liter, SS of three hundred (300) milligrams per liter, and COD of eight hundred (800) milligrams per liter. Since seven and forty-eight one hundredths (7.48) gallons equal one cubic foot, one thousand (1,000) gallons equals 133.689 cubic feet (cf) or one thousand (1,000) gallons equals 1.33689 hundred cubic feet (cf). The volumetric charge per one thousand (1,000) gallons shall be based on annual debt service, capital costs, treatment and operations and maintenance costs, and all other charges assigned to the sewer fund.

All customers shall be charged a volumetric charge in accordance with the following fee schedule until changed by amendment to this section. The volumetric charge shall be assessed against the name in which a meter has been installed.

Beginning January 1, 2020, the volumetric charge will be \$3.32 per one thousand (1,000) gallons of flow. A residential maximum volume fee of seventy-five dollars (\$75.00) and a minimum of eight dollars and seventy-five cents (\$8.65) per month per individual dwelling unit is herewith established.

Notwithstanding the foregoing, in the case of multifamily dwellings, a portion of the volumetric charge may be recovered through a monthly flat rate per customer charge. The charge, as determined by the Director of Public Works, shall not exceed the amounts set forth in the fee schedule below. Amounts collected through any monthly flat rate charge shall be credited in accordance with section 33-156.

Beginning January 1, 2020

\$12.95 per month

All citizens who qualify for the Solid Waste Fee Discount Program as delineated in Chapter 15, Section 12, City of Memphis, Code of Ordinances shall be charged a reduced fee for wastewater use in accordance with the following fee schedule, until changed by amendment to this section:

Beginning January 1, 2020

\$2.43 per 1,000 gallons

- (2) Additional Treatment Charge. In addition to the volumetric charge, all Users who Discharge Wastewater with a strength greater than domestic sewage which shall include, but not be limited to, BOD of 250 milligrams per liter, SS of 300 milligrams per liter, and COD of 800 milligrams per liter will be assessed an Additional Treatment Charge (ATC) based on the following formula:

$$ATC = \frac{U(B)T(B)}{B} + \frac{U(S)T(S)}{S} + \frac{U(C)T(C)}{C}$$

Where:

U(B) = BOD loading in excess of 250 milligrams per liter

T(B) = Treatment costs assigned to BOD (includes debt service, operation, maintenance, and replacement costs)

B = Total BOD loading or BOD capacity of treatment plants, whichever is less

U(S) = Suspended solids loading in excess of 300 milligrams per liter

T(S) = Treatment costs assigned to suspended solids (includes debt service, operation, maintenance, and replacement costs)

S = Total suspended solids loading or suspended solids capacity of treatment plants, whichever is less

U(C) = COD loading in excess of 800 milligrams per liter

T(C) = Treatment costs assigned to COD (includes debt service, operation, maintenance, and replacement costs)

C = Total COD loading or COD capacity of treatment plants, whichever is less

Sampling frequency for determination of the ATC will be specified in the Discharge Permit.

COD or TOC analytical results may be used in lieu of the BOD test if the BOD test is not applicable due to a toxic effect of the wastewater or a substantial correlation can be developed between BOD and the substitute test, and if allowed by the Approving Authority. If a BOD test is not applicable due to a toxic effect, then the Approving Authority has the authority to require the discharger to determine the cause of the toxic effect and then to eliminate the constituent causing the toxic effect.

- (3) The Division of Public Works may impose and modify such additional surcharges as it deems appropriate to address, among other things, disproportional costs associated with the Discharge of Wastewater by one or more Users. For example, a fee schedule may be established to address disproportional costs the City incurs due to color, COD (due to its impacts on the City's disinfection process), sulfur (due to its impact on biogas generation), dissolved organics (due to its impact on disinfection costs) or fats oils and grease (due to its impact on the collection system). Nothing herein shall be deemed to require the City to accept such wastes for treatment.
- (c) Cooperative agreements. The sewer service charges in this section are applicable to every person inside and outside the corporate limits of the city whose sewage or Wastewater empties into the City's sewage system for eventual disposal through the sewage system and sewage or Wastewater Treatment Plants. The City may enter into appropriate agreements with the county and all other municipalities in the county or elsewhere using the city's sewage system for the disposal of their sewage or Wastewater, which agreements shall provide for the implementation of the charges herein and the billing and collection thereof. Such county and municipalities shall be required to enter into such agreement in order to continue their position of Discharging their sewage and Wastewater through the sewerage system established by the City. All funds collected shall be deposited with the City in the sewer treatment fund in accordance with applicable agreements.
- (d) Private wells. Those users having private wells will install either water meters on the wells or approved flow metering devices on Wastewater discharged to the City sewers. These water meters are subject to approval, inspections, and any maintenance, calibration, record keeping, and reporting requirements deemed necessary by the Control Authority to continually and reliably produce accurate flow volumes. Wastewater Discharge flow metering devices requirements are found in Section 33-247. Users will be classified as residential or commercial-industrial according to classifications established by the light, gas and water division or other water-serving utility.
- (e) Seasonal Adjustment of Sewer Fees. Section 33-131(b) establishes a monthly maximum charge for residential sewer service regardless of the amount of water flow measured in a billing period. During the months of June, July, August, and September, the maximum charge shall be reduced, and the following fee shall apply for residential customers until changed by amendment to this section:
- June through September 2020 and during such months for subsequent years: \$50.00
- Those residential customers living in special sewer service surcharge areas will not be relieved of the flat rate charges even if their volumetric charges are reduced by the monthly maximum charge. The appropriate flat rate charge will be added to the volumetric charge to reach the adjusted monthly value. No such relief shall be granted to those customers residing in other cities or service areas whose fees are assessed based upon current contracts and agreements.
- (f) Any User desiring to exercise his option of installing an approved metering device shall notify the Control Authority of his exercise of the option, and the Control Authority from the date of installation of the metering device shall adjust its charges back to the date of the notice of the User to install the metering

device or ninety (90) days, whichever is sooner and such adjustment shall be based upon the average charge for the ninety (90) days following the installation of the metering device. Those Users having private wells shall have ninety (90) days in which to install a water meter or a metering device for measuring Wastewater Discharged into the City sewer system. The City shall estimate charges for the period of time prior to the installation of the device and shall adjust the charges based on ninety (90) days experience after the installation of the device. If a private well owner installs a water meter and thereafter elects to install a metering device for measuring Wastewater Discharge into the City sewerage system, then he likewise shall have his charges adjusted from the time of the installation of the device back to the date of notice to the Control Authority or ninety (90) days, whichever is sooner, and such adjustment shall be based on the charges for ninety (90) days following the installation. Wherever used in this section, the word "sewer" shall mean "sanitary sewer".

(g) Groundwater Remediation and Monitoring Wells. Owners or operators of groundwater remediation and/or monitoring wells, such as for TDEC Leaking Underground Storage Tank (LUST) sites or Dry Cleaner Environmental Remediation Program (DCERP) sites, shall be subject to applicable rates based on flow and pollutants.

Sec. 33-132. [Chapter 13-28-2] Distribution of Funds, Accounting Therefore.

The Division of Public Works shall institute an accounting system reflecting an equal distribution of total funds produced under the division based upon the respective needs of each segment of the Wastewater treatment operations and maintenance functions, including but not limited to, treatment plant operations; sewer maintenance; sewer design; sewer construction; pollution control monitoring; Wastewater treatment capital improvements bond indebtedness loan repayments; direct and incidental costs to the city, including, but not limited to, administrative, technical and legal expenses; and other expenditures necessary for an effective Wastewater treatment program. Revenue generated under this division shall be used exclusively for the Wastewater treatment program.

Sec. 33-133. [Chapter 13-28-3] Sewer Fee Review.

Rates generated under Articles II and III of this chapter shall be reviewed periodically and approved or adjusted by the Division of Public Works subject to the approval of the Memphis City Counsel.

Sec. 33-134. [Chapter 13-28-4] Appeals.

Appeals related to sewer use fees, connection fees, development fees, and/or sewer extension fees in situations in which the owner, user, company, etc., feels that extenuating circumstances exist that warrant a modification of the applicable fee should be made to the Director of Public Works or his/her designee. The Director of Public Works or his/her designee shall have authority to modify or waive fees as is considered appropriate. The decision of the Director of Public Works or his/her designee shall be final.

Sec. 33-135. [Chapter 13-28-5] Grays Creek Special Sewer Service District 1.

Due to the cost of designing, constructing, construction and financing a sewer system for the Grays Creek Drainage Basin the following sewer infrastructure surcharge fees are hereby established for any Person directly or indirectly served by the Grays Creek Outfall Sewer outfall sewer:

- (a) Residential lot infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be One Thousand Dollars (\$1,000.00) per lot.
- (b) Multifamily dwelling infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be the greater of Three Thousand Five Hundred Dollars per acre or Four Hundred and Fifteen (\$415) per unit.
- (c) Commercial and industrial multi-unit building infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be the greater of Fifty Dollars (\$50.00) per front foot, or Three Thousand Five Hundred Dollars (\$3,500.00) per acre.
- (d) Residential and commercial infrastructure user surcharge fee (which shall be in addition to normal user fees) shall be Six Dollars (\$6.00) per month.
- (e) Industrial User infrastructure surcharge fee (which shall be in addition to normal user fees) shall be sixty cents (\$0.60) per one thousand (1,000) gallons.

Sec. 33-136. [Chapter 13-28-6] **Loosahatchie River Special Sewer Service Area.**

There is now established the Loosahatchie River special sewer service area. Due to the cost of designing, constructing and financing a sewer system for the Loosahatchie River Drainage Basin east of the Illinois Central railroad and north of the existing city limits for the city (as of March 31, 1999), the following sewer infrastructure surcharge fees are established for any Person directly or indirectly served by the Loosahatchie River interceptor within the bounds delineated above.

- (a) Residential lot infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be one thousand dollars (\$1,000.00) per lot.
- (b) Multifamily dwelling infrastructure surcharge development fee (which shall be in addition to normal development fee shall be the greater of three thousand five hundred dollars (\$3,500.00) per acre or four hundred fifteen dollars (\$415.00) per unit.
- (c) Commercial and industrial multiunit building infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be the greater of fifty dollars (\$50.00) per front foot or three thousand five hundred dollars (\$3,500.00) per acre.

Sec. 33-137. [Chapter 13-28-7] **Reserved.**

Sec. 33-138. [Chapter 13-28-8] **Mary's Creek Special Sewer Service Area.**

There is now established the Mary's Creek Special Sewer Service District. Due to the cost of designing, construction and financing a sewer system for the Mary's Creek drainage basin the following sewer infrastructure surcharge fees are established for any Person directly or indirectly served by the Mary's Creek. Mary's Creek is a tributary of Gray's Creek in an area north of the Wolf River, east of the City of Memphis, and in the City of Memphis annexation reserve area as of July 2004. Mary's Creek runs generally east to west. Sewer service provided to Mary's Creek will only service land in the city and/or city annexation area:

- (a) Residential lot infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be two thousand two hundred dollars (\$2,200.00) per lot.

- (b) Multifamily dwelling infrastructure surcharge development fee (which shall be in addition to normal development fees) shall be the greater of seven thousand seven hundred dollars (\$7,700.00) per acre or nine hundred fifteen dollars (\$915.00) per unit.
- (c) Commercial and industrial multiunit building infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be the greater of one hundred ten dollars (\$110.00) per front foot or seven thousand seven hundred dollars (\$7,700.00) per acre.
- (d) Residential and commercial infrastructure user surcharge fee (which shall be in addition to normal user fees) shall be twelve dollars (\$12.00) per month.
- (e) Industrial User infrastructure surcharge fee (which shall be in addition to normal user fees) shall be one dollar and twenty cents (\$1.20) per one thousand (1,000) gallons.

Sec. 33-139. [Chapter 13-28-9] Grays Creek Special Sewer Service District 2.

There is now established the Grays Creek Special Sewer Service District 2. Due to the cost of designing, construction and financing a sewer system for the Grays Creek Special Sewer Service District 2, the following sewer infrastructure surcharge fees are established for any person directly or indirectly served by this portion of the Grays Creek sewer basin. Grays Creek District 2 begins at the upstream terminus of the interceptor constructed under the original Grays Creek Special Sewer Service Area (hereafter called District 1). The general boundaries of district 2 are the Memphis annexation area in the Grays Creek drainage basin that is upstream of a point approximately one mile east of Pisgah Road. This encompasses the area outside of Grays Creek District 1 that is bounded on the north by U.S. Highway 64, on the west by (1) the eastern ridge line of an unnamed tributary to Grays Creek that is approximately two thousand (2,000) feet west of Roland Road; said tributary is north of and drains southward into Grays Creek and (2) the eastern ridge line of an unnamed tributary to Grays Creek approximately one thousand eight hundred (1,800) feet east of Pisgah Road; said tributary is south of and drains northward into Grays Creek. The southern boundary of this district is the Grays Creek Basin ridge line which generally follows Macon Road east of Pisgah. The eastern boundary is the Shelby County line which is also the eastern limit of the City of Memphis annexation reserve area. Sewer service will only be provided to those areas in Grays Creek District 2 that are within the current limits of the City of Memphis and/or the City of Memphis annexation reserve area.

- (a) Residential lot infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be two thousand five hundred dollars (\$2,500.00) per lot.
- (b) Multifamily dwelling infrastructure surcharge development fee (which shall be in addition to normal development fees) shall be the greater of eight thousand seven hundred fifty dollars (\$8,750.00) per acre or one thousand forty dollars (\$1,040.00) per unit.
- (c) Commercial and industrial multiunit building infrastructure surcharge development fee (which fee shall be addition to normal development fees) shall be the greater of one hundred twenty-five dollars (\$125.00) per front foot or eight thousand seven hundred fifty dollars (\$8,750.00) per acre.
- (d) Residential and commercial infrastructure user surcharge fee (which shall be in addition to normal user fees) shall be twelve dollars (\$12.00) per month.
- (e) Industrial User infrastructure surcharge fee (which shall be in addition to normal user fees) shall be one dollar and twenty cents (\$1.20) per one thousand (1,000) gallons.

Sec. 33-140. **Reserved.**

DIVISION 3. POWERS AND AUTHORITY OF INSPECTORS [Chapter 13-32]

Sec. 33-141. [13-32-1] **Authority to Enter, Sampling and Oversight.**

Inspectors may include representatives of the City of Memphis, Division of Public Works, Control Authority, and/or its designee (including contractors), bearing proper credentials and identification. Inspectors shall be permitted to enter appropriate property areas at all reasonable times for the purpose of inspection, observation, measurement, sampling, and testing as the inspector deems necessary in accordance with of this chapter. Sampling, inspection and other oversight may be undertaken at any location at the Facility Site including, but not limited to, effluent discharge points, internal wastestream points and manholes located on the User's owned or occupied property. This includes the authority to inspect production, waste and other areas to ascertain whether the purposes of this chapter are being met and all requirements are being complied with. Persons or occupants of premises where regulated activities occur shall allow the inspector ready access at all reasonable times, at a minimum the days and hours of operations for the purposes of inspection, sampling, testing, photographing, videotaping, copying documents and records, conducting interviews in the performance of their duties. Access to the property for the purposes set forth herein shall not be conditioned upon the City of Memphis and/or the inspectors signing an access agreement, including, but not limited to, a document pertaining to the potential waiver or release from liability or provisions pertaining to secrecy, confidentiality or disclosure of information. The inspector shall have the right to set up on the User's property such sensors or other devices as are necessary to conduct sampling, metering operations or other oversight, which includes, but is not limited to, composite samplers, discrete samplers, flow measuring devices, continuous monitoring devices and/or sensors, controllers, remote telemetry devices, modems, and cleaning devices such as air blasts or water blasts. Where a User has security measures in force, which would require proper identification and clearance before entry into the premises, the User shall make necessary arrangements with security personnel so that, upon presentation of suitable identification, inspectors shall be permitted to enter without delay for the purposes of performing their specific responsibilities.

Sec. 33-142. [13-32-2] **Injury to or by City Employees Engaged in Inspection Activities.**

While performing the necessary work on private properties referred to in Section 33-141 above, representatives of the Division of Public Works, Control Authority and/or its designee shall observe all safety rules applicable to the premises established by the company except as otherwise deemed necessary by the City (e.g., to address an emergency situation).

Sec. 33-143. [13-32-3] **Authority to Enter upon Easements for the Purposes of Inspection of Sewerage Works.**

Representatives of the Division of Public Works (including its designee), and Tennessee Department of Environment and Conservation bearing proper credentials and identification, shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewerage works lying within such easement. All entry and subsequent work, if any, on such easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

Sec. 33-144--33-155. **Reserved.**

DIVISION 4. BILLING PROCEDURES [Chapter 13-28-7]

Sec. 33-156. Billing and Collection.

- (a) The sewer service charge shall be included each month on the bills rendered by the light, gas and water division, or other serving utility, in accordance with its standard billing practices. Such charges shall be rendered on the first bill of the serving utility sent out on and after June 1, 1979, and for each month thereafter. Billings separate from those made by the light, gas and water division, as determined by the Director of Public Works, may be made to commercial and Users. Failure to pay the sewer service charge within thirty (30) days from due date of the utility statement shall be grounds for terminating water service by the serving utility.
- (b) When service commences or ceases, applicable charges may be prorated.
- (c) If service shall be supplied to a location, the occupant or tenant of which was vacated, and the city is satisfied that there has been a termination of sewer service, then the city, on timely application of the owner or agent thereof, may suspend liability for such charges, and such charges shall be reinstated for the next utility bill rendered to the occupant or tenant of such premises.
- (d) Charges based on metered measurement of volume discharged to the sewer system and/or additional treatment charges based on Wastewater strength, shall be paid monthly to the City in a manner prescribed by the Division of Public Works.
- (e) The sewer service charges are applicable to every person, inside and outside the corporate limits of the city, whose sewage and Wastewater empties into the city's collection and treatment systems.
- (f) Credit for prior billing errors is limited to errors occurring less than or equal to twelve (12) months prior to the date that the claim for credit is made by residential or commercial customers.
- (g) In accordance with the apartment credit program the Approving Authority has the right to charge each tenant twelve dollars and ninety-five cents (\$12.95) per month effective January 1, 2020, if so requested in writing by the apartment owner, until this section is otherwise amended. The total amount collected will then be credited against the amount billed from the master water meter reading each month.
- (h) Commercial and Industrial Users that are billed separately from the light, gas, and water division or other serving utility billing system will be charged a late fee of (1) percent or \$500, whichever is less, for any portion of each month in which billing information as required is not submitted to the sewer billing office by the fifteenth (15th) of each month for the previous month.

Sec. 33-157-- 199. Reserved.

SECTION 5. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 33, Article IV is hereby created to state as follows with corresponding changes to be made to Chapter 13-24 and with any cross-references herein to Chapter 33 provisions also be deemed to apply to the corresponding Chapter 13 provision:

Art. IV. Pretreatment, 33-200--33-309

Div. 1. Generally and Definitions, ## 33-200--33-219 [13-24-1--13-24-19]

- Div. 2. System Discharge Permits and Incorporation of Federal and State Requirements, ## 33-220--33-239 [13-24-20--13-24-39]
- Div. 3. Discharge to Public Sanitary Sewers, ##33-240--33-259 [13-24-40--13-24-59]
- Div. 4. Review and Enforcement, ## 33-260--33-289 [13-24-60--13-24-89]
- Div. 5. Review and Oversight of Outlying Jurisdictional Programs with Dischargers to Memphis STP(s), ## 33-290--33-299 [13-24-90--13-24-99]
- Div. 6. Miscellaneous Provisions, ## 33-300--33-309 [13-24-100--13-24-109]

ARTICLE IV. PRETREATMENT

DIVISION 1. GENERALLY AND DEFINITIONS

Sec. 33-200. [13-24-1] Definitions.

Unless the context specifically indicates otherwise, the meanings of terms used in this Article IV shall be the definitions as set forth in Section 33-16 of Article 1, which are hereby incorporated by reference into this Article IV. Terms for which definitions are not specifically provided shall be interpreted consistent with the intent and substance of this Ordinance and as otherwise provided by state regulation at 0400-40-14-.03 or EPA regulation at 40 C.F.R. § 403.3.

Sec. 33-201--33-219. [13-24-2 --19] Reserved.

DIVISION 2. SYSTEM DISCHARGE AND INCORPORATION OF FEDERAL AND STATE REQUIREMENTS

Sec. 33-220. [13-24-20] User compliance with these requirements is required whether or not such requirements are specifically incorporated into an SIU Discharge Permit or Other User Permit. This includes fees and charges as set forth in Article II and Article III, as well as other fees the Division of Public Works may impose (e.g., permit fees, sampling fees, and inspection fees) on Users.

Sec. 33-221. [13-24-21] Incorporation of Federal and State Pretreatment Requirements by Reference.

The regulatory requirements pertaining to Users as set forth in (a) 40 C.F.R. Part 403, (b) 40 C.F.R., Chapter I (Environmental Protection Agency), Subchapter N (Effluent Guidelines and Standards), Parts 405 *et. seq.*, and (c) Tennessee Pretreatment Requirements as set forth in Chapter 0400-40-14, are hereby incorporated by reference, including all future changes to such regulations. User compliance with these requirements is required, and subject to enforcement for noncompliance, whether or not such requirements are specifically incorporated into an SIU Discharge Permit or Other User Permit.

Sec. 33-222. [13-24-22] SIU Permits and Other Permits.

(a) Requirements to Obtain a Permit

Except as provided in Sec. 33-222(c), below, the Discharge of Wastewater by (i) a Significant Industrial User or (ii) such other commercial or industrial facility that the City, based upon the exercise of its discretion, identifies as requiring a Discharge Permit, is illegal unless such entity has an SIU Discharge Permit or Other User Permit, as applicable, issued by the City or an Outlying Jurisdiction which is authorized under the City's pretreatment program and this Ordinance to issue a Discharge Permit.

(b) Discretionary Permitting of Non-Significant Industrial Users

In addition to food establishments and waste haulers, non-Significant Industrial Users that the City, subject to its discretion, may require to obtain an Other User Permit are commercial or industrial facilities that: result in additional treatment costs to the City; have the potential for Discharge of acidic Wastewater; have the potential for Discharge of Wastewater with offensive characteristics (e.g., odors); have a wastestream or treatment process that the City believes is preferable to be regulated under a permit; any new or expanded development where the additional flows raise potential concerns regarding capacity associated with the collection system, pump station, and/or WWTP; Discharge Wastewater containing a Pollutant that could potentially result in additional requirements (e.g., monitoring or effluent limitation) being imposed in the City's NPDES permit; or as the City otherwise deems appropriate. Conditions included in Other User Permits and the City regulation of non-Significant Industrial Users are subject to the City's sole discretion.

(c) Time Frame for Obtaining Permit

An existing User designated by the Control Authority as requiring an SIU Discharge Permit or Other User Permit, shall submit a permit application and/or such other information as the City may require for a permit within the timeframe specified by the City. Any proposed new discharger which has not Discharged prior to the date it is notified that it must be permitted, shall not Discharge to the system until a permit is issued and it is in compliance with the terms of such permit. The City may issue individual or general discharge permits. It is illegal to Discharge Wastewater to the City's POTW (including the collection system) in violation of a Discharge Permit, Other User Permit and/or this Ordinance. The City may adjust the timeframes for applying for a permit on a case-by-case basis as it deems appropriate.

(d) Construction Summary Submission

A letter report setting forth an engineering summary of proposed changes shall be submitted to the Control Authority prior to commencement of construction, if applicable, by any existing or other industrial or commercial facility intending to discharge to the City's POTW. The Control Authority does not by its approval of the letter report, submitted by an industrial or commercial facility, warrant or aver in any manner that the implementation of such measures will result in compliance with the applicable Pretreatment Requirements. Notwithstanding any approval of such letter report by the City, the industrial or commercial facility remains solely responsible for compliance with the applicable Pretreatment Requirements and all other Federal, state, and local requirements.

(e) City Options for Non-Significant Industrial Users

Notwithstanding anything to the contrary in this Ordinance, nothing herein shall preclude the City of Memphis from issuing a letter or other authorization allowing Discharge into the POTW for Wastewater involved in groundwater clean-ups or other such Discharges as the City deems appropriate. SIUs, however, shall be regulated by an SIU Discharge Permit (see Section 33-222(f)).

(f) SIU Discharge Permits

- (1) Except as otherwise specifically provided in this Ordinance, an SIU shall apply for and obtain an SIU Discharge Permit (individual or general).
- (2) The application for an individual SIU Discharge Permit shall contain, but not be limited to, the following information: Standard industrial classification; facility name, physical address, and mailing address; if applicable, corporate name and address; facility contact name and contact information; Authorized

Representative of the User; date facility began operations or expects to start-up; number of employees; water supply and use information; raw material and chemical use rates; production rates; byproduct and waste generation rates; if applicable, service volume rates; if applicable, descriptions of onsite and office waste storage and disposal; volumes of Wastewater to be Discharged, whether process Wastewater, equipment or vehicle wash water, condensate, non-contact cooling water, boiler Blowdown, storm water, domestic sanitary Wastewater, or other Wastewater; Wastewater constituents and characteristics; time and duration of Discharge, and whether Discharges are batch or continuous; average Wastewater flow rates, including daily, monthly, and seasonal variations, or estimates of such where such information is not yet available; site plans and floor plans showing all drains and sewers, description of activities, facilities and plant processes; if applicable, descriptions of Pretreatment systems; Discharge and monitoring locations; and any additional information, data, diagrams, and drawings as required by the Control Authority to make permitting decisions. Applications for specialized individual permits, such as for groundwater remediation sites, may not require all the information listed above. This will be determined by the Control Authority.

- (3) Except for Existing Dischargers, Industrial Users seeking an SIU Discharge Permit shall obtain a permit application form from the Control Authority and file with the Control Authority a completed permit application form with all required descriptions, certifications, determinations, reports, information, data, plans, diagrams, and drawings, in the form prescribed by the Control Authority, not less than 180 days prior to the first Discharge of industrial Wastewater to the POTW, unless modified or waived by the Control Authority. Existing Dischargers shall file for a permit in accordance with Section 33-222(c), above.
- (4) At the discretion of the Control Authority, the Control Authority may use general SIU Discharge Permits to control SIU Discharges to the POTW if, in the opinion of the Control Authority, the following conditions are met. All facilities to be covered by a general permit must:
 - (A) Involve the same or substantially similar types of operations;
 - (B) Discharge the same types of wastes;
 - (C) Require the same effluent limitations;
 - (D) Require the same or similar monitoring; and
 - (E) In the opinion of the Control Authority, are more appropriately controlled under a general permit than under individual permits.
- (5) To be covered by the general SIU Discharge Permit, the SIU must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general SIU Discharge Permit, any requests in accordance with Section 33-242(h) for a monitoring waiver for a Pollutant neither present nor expected to be present in the Discharge, and any other information the Control Authority deems appropriate. A monitoring waiver for a Pollutant neither present nor expected to be present in the Discharge is not effective in the general SIU Discharge Permit until after the Control Authority has provided written notice to the SIU that such a waiver request has been granted in accordance with Section 33-242(h).

(g) Other User Permits

- (1) A User required to obtain an Other User Permit shall submit an application, or such information as the City may require, for developing permit conditions and evaluating issues associated with the Other User Permit, within the timeframe identified by the City.
- (2) Subject to its discretion, the Control Authority may use general Other User Permits to control non-SIUs or other Users to the POTW subject to such requirements as the City deems appropriate.

(h) Requirement for a Permittee with a General Permit to Obtain an Individual Permit

Notwithstanding any provision to the contrary, the City may require any permittee subject to a General SIU Discharge Permit or a General Other User Permit to be covered by an individual permit instead. In such instance, the permittee shall submit an individual permit application, or such information as the City may require, as applicable, within the timeframe specified by the City.

Sec. 33-223. [13-24-23] **Permit Provisions.**

(a) General Authority/Change of Discharge

The Control Authority has the right to deny issuance of a permit (and, as such, the use of the City's sewer system and treatment facilities) or to impose such conditions in a Discharge Permit as the City deems appropriate, including conditions upon the types of wastes that can be discharged (*e.g.*, precluding wastes which are solid or viscous in nature), new or increased contributions of Pollutants, or changes in the nature of Pollutants to the POTW by Industrial Users or other Users. Except as otherwise provided by the Control Authority, any Significant Industrial User changes that have the potential to substantially increase flow or Pollutants Discharged or otherwise substantially affect the POTW, the treatability of the Wastewater entering the POTW, or the ability of the POTW to meet NPDES, sludge and other applicable requirements, are subject to Control Authority approval prior to SIU implementation. The Authority may require the SIU to undertake a compatibility study to demonstrate to the satisfaction of the Control Authority that the Wastewater to be Discharged is compatible with the existing POTW, will not affect any requirements imposed upon the City (including sludge disposal requirements), and will not otherwise adversely affect the POTW. The Control Authority may preclude the discharge of certain wastes even if those wastes would otherwise meet numeric effluent limits for specific pollutants.

(b) Requirements Applicable to All Users

Users, whether permitted (*e.g.*, with an individual or a general permit), are hereby expressly subject to all provisions pertaining to Users as set forth in (1) 40 C.F.R. Part 403, (2) 40 C.F.R., Chapter I (Environmental Protection Agency), Subchapter N (Effluent Guidelines and Standards), Parts 405 *et. seq.* (categorical pretreatment requirements), (3) Tennessee pretreatment requirements as set forth in Rule 0400-40-14-.05, and (4) Article IV of this chapter, as well as all other applicable ordinances, regulations, charges, and fees administered by the Division of Public Works. User compliance with these requirements is required whether or not such requirements are specifically incorporated into an SIU Discharge Permit or Other User Permit.

(c) Permit Conditions

SIU Discharge Permits and Other User Permits, whether individual or a general permit, may contain such conditions as the City deems appropriate including, but not limited to, the following conditions:

- (1) Minimum and maximum pH limits in standard units and/or hydroxide loading;

- (2) Daily Maximum Limits, Weekly Average limits, Monthly Average Limits, and Instantaneous Maximum Limits
- (3) Daily maximum, weekly and monthly average Discharge flow limits and, when deemed appropriate by the Control Authority, flow regulation and/or equalization, including average and/or maximum flow rates;
- (4) Requirements for installation of inspection and sampling facilities, and when required, for continuous pH monitoring and flow monitoring;
- (5) When Categorical Standards are applicable, Categorical Pretreatment Standards, effluent limits, Best Management Practices, baseline monitoring reports, compliance monitoring, and certification statements, based on applicable general pretreatment standards in Part 403 of the Federal Regulations;
- (6) Other Best Management Practices (*e.g.*, to implement Local Limits and/or the requirements of Sections 33-243 and 33-244 in addition to, or in lieu of, the underlying Local Limits and/or requirements of Sections 33-243 and 33-244);
- (7) A prohibition on the use of dilution to meet permit limits (*e.g.*, to meet color limits) and/or the imposition of mass limitations to prevent dilution to meet applicable Pretreatment Standards or Pretreatment Requirements or where otherwise deemed appropriate;
- (8) Self-monitoring, sampling, reporting (*e.g.*, electronic reporting), notification and record keeping requirements, including an identification of the Pollutants to be monitored, sample location, sampling frequency, sample type, and numbers, types, and standards for tests;
- (9) Requirements for submission of self-monitoring and other reports;
- (10) Maintaining plant records relating to Wastewater Discharge, as specified by the Control Authority, and for affording the Control Authority access thereto;
- (11) Maximum Discharge rates, or other appropriate limits or prohibitions, when a potentially incompatible Pollutant is proposed or present in the User's Wastewater Discharge or otherwise deemed appropriate by the Control Authority;
- (12) Penalties and damages for violation of the permit and provisions of Article IV of this chapter, including any daily penalties, costs to the Control Authority, and damages. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any schedule to achieve compliance with applicable requirements, however, such schedules do not extend the compliance date beyond applicable Federal and state deadlines;
- (13) Statement of duration;
- (14) Statement of non-transferability or a provision allowing transfer of a permit with, at a minimum, prior notification to the Control Authority and provision of a copy of the existing Control Mechanism to the new owner or operator;
- (15) When deemed appropriate by the Control Authority, compliance schedules to meet applicable requirements (*e.g.*, local ordinance requirements and/or Federal Categorical Pretreatment Standards);

- (16) Requirements for repeat sampling after becoming aware of a violation;
- (17) Requirements to control Slug Discharges, if determined by the Control Authority to be necessary;
- (18) Requirements pertaining to the proper operation and maintenance of the User's treatment, sampling and analytical equipment, and notification to the Authority regarding the failure of such equipment;
- (19) Requirements to address Control Authority concerns about the potential effect of influent sulfur content (*e.g.*, upon the biogas at the WWTP) or the effect of other Wastewater characteristics upon activities at the WWTP;
- (20) Action Levels;
- (21) Other conditions as deemed appropriate by the Control Authority; and
- (22) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 33-242(h).

Sec. 33-224. [13-24-24] Time Period of Permits; Continuation of Expired Permits.

- (a) SIU Discharge Permits shall be issued for a specified time period, not to exceed five (5) years. Other User Permits may be issued for such time period as the City deems appropriate. To continue discharging Wastewater to the POTW, a User with an existing permit must obtain a permit application form from the Control Authority, if applicable, and file with the Control Authority a completed permit application and/or such other information required by the City with all required descriptions, certifications, determinations, reports, information, data, plans, diagrams, and drawings, in the form prescribed by the Control Authority not less than 180 days prior to the expiration date of the existing Discharge Permit (unless an alternative period is provided by the City). General permits are automatically continued after its expiration date pending a City decision to reissue the general permit, except for any Discharger that does not timely submit such information as required by the City, if applicable.
- (b) Notwithstanding any provision to the contrary, the conditions of an expired SIU Discharge Permit and Others Permits, as applicable, continue in force until the effective date of a new permit or the date of a decision by the City not to reissue the permit, as applicable, if (i) the permittee has submitted a complete and timely permit application or such other information as the Control Authority may require and (ii) the Control Authority, through no fault of the permittee, does not reissue a permit on or before the expiration date of the previous permit (for example, when issuance is impractical due to time or resource constraints).

Sec. 33-225. [13-24-25] Modification, Suspension, or Revocation of Permits and Appeals.

- (a) During the life of the permit, the Control Authority may conduct review of the permit to assess if the individual or general permit should be modified, suspended, or revoked.
- (b) The terms and conditions of a permit, or any part thereof, are subject to modification for good cause, including, but not limited to, the following reasons:
 - (1) To incorporate any new or revised Federal, state, or local requirements;

- (2) To address significant alterations or additions to the User's operation, processes, or Wastewater volume or character;
 - (3) A change in the POTW'S NPDES permit or in the POTW (*e.g.*, changes in the design or capability of WWTP or sludge disposal options);
 - (4) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized activity;
 - (5) Information indicating that the authorized discharge poses a threat to the City's WWTP (*e.g.*, would adversely impact the wastewater treatment process) or the collection system (*e.g.*, could cause corrosion to the pipes or pumping station), City personnel, the receiving waters, or that contradicts prior information;
 - (6) Violation of any term or condition of the permit and/or any requirement set forth in applicable law, regulation, and/or this Ordinance;
 - (7) Misrepresentations or failure to fully disclose all relevant facts in the permit application or in any required reporting or the tampering of monitoring equipment;
 - (8) Failure to allow timely access to the User's facility or records;
 - (9) Failure to timely pay fines or applicable sewer charges;
 - (10) Revision of or a grant of variance from Categorical Pretreatment Standards pursuant to Tennessee Rule 0400-40-14-.13;
 - (11) To correct typographical errors, omissions, or other errors in the permit;
 - (12) Changes to the local sewer Discharge requirements;
 - (13) To change monitoring, sampling, or reporting requirements; and/or
 - (14) For such other reason as the City deems appropriate.
- (c) When a permit is modified, only the conditions subject to modification are reopened. The User may request that the Control Authority modify the permit. All other terms and conditions of the existing SIU Discharge Permit and/or Other User Permit remain unchanged. In lieu of modifying or changing an existing permit, the Control Authority may require the User to apply for a new permit when there are significant changes to a User's facility, significant changes to the Discharges, or other good cause exists. A User newly designated as a Significant Industrial User shall obtain an SIU permit, in which case its Other User Permit for the same Discharge, if applicable, shall terminate upon issuance of an SIU Discharge Permit.
- (d) A request for modification or other change to a permit does not stay any term or condition set forth in the existing or modified permit pending a determination upon the request. The Control Authority may, upon its own initiative or in response to a request by the permittee, stay contested permit conditions or actions.
- (e) Any User is subject to having its permit modified, suspended, or revoked and sewer service discontinued for cause, including:

- (1) Violation of the SIU Discharge Permit, Other User Permit, or any provision of this Ordinance;
 - (2) Failure of a User to fully disclose all relevant facts, or the permittee's misrepresentation of any relevant facts, including the reporting of the Wastewater constituents and characteristics of its Discharge;
 - (3) Failure of the User to report significant changes in operations, which affect Wastewater constituents and characteristics;
 - (4) Refusal of reasonable access at the User's premises for the purpose of inspection or monitoring the applicable sewage or Wastewater System;
 - (5) Refusal or failure to pay all appropriate fees, charges, or civil penalties;
 - (6) Causing the City to violate any condition of its NPDES permit(s); or
 - (7) A determination by EPA, TDEC, or the Control Authority that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.
- (f) Duty to Provide Information: The User shall furnish the Control Authority, within a reasonable time, any information which the Control Authority may request to determine whether cause exists for issuing, modifying, reissuing, suspending, or revoking an SIU Discharge Permit or Other User Permit or to determine compliance. The User shall also furnish to the Control Authority, upon request, copies of records required to be kept. Where the User becomes aware that it failed to submit any relevant facts in an application for a permit, or submitted incorrect information in an application for a Permit, report to the Control Authority, or in any other correspondence pertaining to its regulated activities, it shall promptly submit such facts or information.
- (g) A User shall not refuse to provide the City of Memphis or its representatives (*e.g.*, inspector) information or refuse to allow the City to undertake actions authorized by this Ordinance, based upon the User's belief that the information would be confidential business information. The User may request that the information be treated as confidential in accordance with Section 33-229.
- (h) A Permittee shall have the right to appeal the issuance, reissuance, modification, suspension, or revocation of a permit to the Local Hearing Authority under Division 4 of this Ordinance. Any appeal must be received within thirty (30) days of the City's action.
- (i) Action of the Control Authority for which review has been available (*e.g.*, enactment of an ordinance, or issuance, reissuance, modification, suspension, or revocation of a permit) shall not be subject to administrative or judicial review in any civil or criminal proceeding for enforcement. Among other things, this means that an underlying permit condition or ordinance requirement cannot be challenged in an enforcement proceeding.

Sec. 33-226. [13-24-26] Limitation to Specific Operation of Specific User; Nontransferable.

- (a) SIU Discharge Permits and Other User Permits are issued to a specific User for a specific operation and the SIU Discharge Permit and Other User Permit shall not be reassigned, transferred, or sold to a new owner, other Industrial User, or different premises. The City, subject to its discretion, may modify the existing SIU

Discharge Permit and/or Other User Permit to include the new owner and may make such changes to the SIU Discharge Permit or Other Permit as the City deems appropriate.

- (b) The User shall provide the City 90 days written notice prior to requested transfer of a permit and shall include a permit application (unless waived by the City).

Sec. 33-227. [13-24-27] Monitoring Facilities, Provisions to Be Outlined in Discharge Permit.

Monitoring facilities, in accordance with Section 33-247 of this chapter, may be required in the SIU Permit or Other User Permit.

Sec. 33-228. [13-24-28] Right of Inspection, Sampling and Oversight; Access to Premises by Control Authority.

Inspectors may include representatives of the Division of Public Works, Control Authority, and/or its designee (including contractors), bearing proper credentials and identification. Inspectors shall be permitted to enter appropriate property areas at all reasonable times for the purpose of inspection, observation, measurement, sampling, and testing as the inspector deems necessary, to assure User compliance with Article IV of this chapter. Sampling, inspection, and other oversight may be undertaken at any location at the Facility Site including, but not limited to, effluent discharge points, internal wastestream points, and manholes located on the User's owned or occupied property. This includes the authority to inspect the production, sewage, and Wastewater facilities of any User to ascertain whether the purposes of this chapter are being met and all requirements are being complied with. Persons or occupants of premises where Wastewater is Discharged shall allow the inspector ready access at all reasonable times, at a minimum, the days and hours of operations indicated in the permit application submitted by the User, for the purposes of inspection, sampling, testing, photographing, videotaping, copying documents and records, and conducting interviews in the performance of their duties. Access to the property for the purposes set forth herein shall not be conditioned upon the City of Memphis and/or the inspectors signing an access agreement, including, but not limited to, a document pertaining to the potential waiver or release from liability or provisions pertaining to secrecy, confidentiality, or disclosure of information. The inspector shall have the right to set up on the User's property such sensors or other devices as are necessary to conduct sampling, metering operations, or other oversight, which includes, but is not limited to, composite samplers, discrete samplers, flow measuring devices, continuous monitoring devices and/or sensors, controllers, remote telemetry devices, modems, and cleaning devices such as air blasts or water blasts. Where a User has security measures in force, which would require proper identification and clearance before entry into the premises, the User shall make necessary arrangements with security personnel so that, upon presentation of suitable identification, the inspectors shall be permitted to enter without delay for the purposes of performing their specific responsibilities.

Sec. 33-229. [13-24-29] Availability of Information on User to Public; Use of Claimed Confidential Information.

(a) Confidential Business Information

All information and data on a User obtained from reports, questionnaires, applications, permits, inspection, monitoring programs, or submitted to the Control Authority pursuant to this Ordinance shall be available to the public, subject to the restrictions of the Tennessee Open Records Act codified at 10-7-501 *et seq.*, and applicable statutory exemptions. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submission, by stamping the words

“confidential business information” on each page containing such information. If no claim is made at the time of submission, the Control Authority may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the standards in 40 C.F.R. Part 2 (Public Information).

(b) Effluent Data

Notwithstanding any provision to the contrary, User information and data which are effluent data shall be available to the public without restriction.

(c) State or Control Authority

All other information which is submitted to the State or Control Authority shall be available to the public at least to the extent provided by T.C.A. §§ 10-7-501 *et seq.*

(d) Information Requested by Another Governmental Agency

Where User information is lawfully requested by another governmental agency (*e.g.*, TDEC or EPA), the City may provide such information to the governmental agency and the City will not be required to make a confidentiality determination regarding such information. The User seeking confidentiality protection of the information shall bear the burden of demonstrating to the other governmental agency that such information is entitled to confidential protection. Prior to providing such information to the other governmental agency, the City shall provide notice to the User.

Sec. 33-230. [13-24-30] Reporting and Recordkeeping.

(a) General

The Control Authority has the right to require the submission of such notices and self-monitoring reports from Users as are necessary to assess and assure compliance by, among others, Users with Pretreatment Standards and Pretreatment Requirements, including, but not limited to, the reports required in 40 C.F.R. § 403.12. Industrial Users shall submit the following reports, as applicable, and Industrial Users and other Users shall submit such reports as may be required by the Control Authority and shall contain the certification statement set forth in paragraph 33-230(j)(1), below.

(b) Baseline Monitoring Report (BMR)

- (1) Within either one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard or the final administrative decision on a category determination under Tennessee Rule 0400-40-14-.06(1)(d), whichever is later, existing Categorical Industrial Users currently Discharging to or scheduled to Discharge to the WWTP shall submit to the Control Authority a report which contains the information listed in paragraphs 2(A) through (E), (3) and (4), below. At least ninety (90) days prior to commencement of their Discharge, New Sources and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable Categorical Standard, shall submit to the Control Authority a report which contains the information listed in paragraph (2) below. A New Source shall report the method of Pretreatment it intends to use to meet applicable Categorical Standards and shall provide estimates of the information required under paragraphs (b)(2)(D) and (E), below, regarding its anticipated flow and quantity of Pollutants to be discharged.

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

- (A) Identifying Information. The Username and address of the facility including: the names of operators and owners.
- (B) Permit Information. A listing of any environmental control permits held by or for the facility.
- (C) Description of Operations. 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 User. This description should include a schematic process diagram, which indicates points of Discharge to the WWTP from the regulated processes.
- (D) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula pursuant to Section 33-242(b) (See Tennessee Rule 0400-40-14-.06(5)). The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations. In addition, Discharge flow data showing whether flow-proportional, time-proportional composite, and/or grab sampling are required for collecting representative samples for Discharge monitoring purposes based on the consistency of the Discharge flows.
- (E) Measurement of Pollutants.
 - (i) Identification of the Categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.
 - (ii) The results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the Pretreatment Standard or by the Control Authority), of regulated Pollutants in the Discharge from each regulated process.
 - (iii) Instantaneous, daily maximum, and long-term average concentrations (or masses, where required), shall be reported.
 - (iv) The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in 40 C.F.R. § 136 and amendments, unless otherwise specified in an applicable Categorical Standard. Where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the Industrial User shall submit documentation as required by the Control Authority, or the applicable Standards, to determine compliance with the Pretreatment Standard.
 - (v) The Industrial User shall take a minimum of one representative sample to compile the data necessary to comply with the requirements of this paragraph.
 - (vi) 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 wastestream formula pursuant to Section 33-242(b) and Tennessee Rule 0400-40-14-.06(5) to evaluate compliance with the Pretreatment Standards.

(vii) The Control Authority may allow the submission of a baseline report, which utilizes only historical data, so long as the data provide information sufficient to determine the need for industrial Pretreatment measures.

(viii) 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 WWTP.

(3) Compliance certification. Existing Industrial Users shall submit a statement, reviewed by the Authorized Representative of the Industrial User and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards.

(4) Compliance schedule. If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards, existing Industrial Users shall submit the shortest schedule by which the User will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule for meeting a Categorical Pretreatment Standard shall not be later than the compliance date established for the applicable Categorical Pretreatment Standard. A compliance schedule pursuant to this section must meet the requirements set out in paragraph (c) of this section, below.

(c) Compliance Schedule Progress Report

The following conditions shall apply to the compliance schedule required under the BMR section above:

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards (such events include, but are not limited to, hiring a Tennessee State licensed professional engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation).

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

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

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

(5) At the discretion of the Control Authority, progress reports may be submitted by the 15th of each calendar month until full compliance is achieved, as determined by the Control Authority.

(d) Report on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards, or in the case of a New Source, following commencement of the introduction of Wastewater into

the POTW, any Industrial User subject to Pretreatment Standards and requirements shall submit to the Control Authority a report containing the information described in Sections 33-230(b)(2)(D) &(E) and 33-230(b)(3). For Industrial Users subject to equivalent mass or concentration limits, established by the Control Authority in accordance with the procedures in Section 33-242(e) or (f), this report shall contain a reasonable measure of the Industrial 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.

(e) Self-Monitoring Reports (SMRs)

- (1) All Significant Industrial Users (including CIUs, except for non-significant CIUs) must submit, at a frequency determined by the Control Authority, but no less than twice per year, reports indicating the nature, concentration of Pollutants in the Discharge, which are limited or otherwise required to be sampled by the Discharge Permit and such other Pretreatment Standards as are applicable, and the measured or estimated average and maximum daily flows, as applicable, for the reporting period. In cases where the Pretreatment Standard requires compliance with a BMP (or pollution prevention alternative), the Industrial User must submit documentation necessary to determine the compliance status of the Industrial User, including documentation required by the Control Authority and/or the Pretreatment Standard. If a semi-annual reporting schedule is established, then such reports are to be submitted on April 15 and October 15 for the preceding six full-month calendar period, unless a different schedule is established by the Control Authority. Monthly self-monitoring reports (and reports at other frequencies established by the Control Authority) are required to be submitted on the 15th of the month following the compliance report (*i.e.*, monthly compliance reports are due by the 15th of each successive calendar month) unless an alternative approach is established in writing by the Control Authority.
- (2) All self-monitoring reports must be signed and certified in accordance with this Ordinance (*see* subsection (j), below).

(f) Potential Reduced Reporting for Small CIUs

If allowed by State law or regulation, the Control Authority may reduce the requirement for self-monitoring reports by a Categorical Industrial User in Section 33-230(e) herein, to a requirement to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by the State, where the Industrial User's total categorical Wastewater flow does not exceed any of the following, and the Industrial User otherwise meets the requirements as set forth in 40 C.F.R § 403.12(e)(3)(ii) – (v).

- (1) One one-hundredth (0.01) of a percent of the design dry weather hydraulic capacity of the POTW or five thousand (5,000) gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device, unless the Industrial User discharges in batches;
- (2) One one-hundredth (0.01) of a percent of the design dry weather organic treatment capacity of the receiving treatment plant as determined by the Control Authority; and
- (3) One one-hundredth (0.01) of a percent of the maximum allowable headworks loading (MAHL) of the receiving treatment plant for any Pollutant regulated by applicable Categorical Pretreatment Standard for which Local Limits were developed as determined by the Control Authority.

(g) Reporting of Alternate Concentration or Mass Limits

Where an alternate concentration or mass limit has been calculated in accordance with Section 33-242(f), this adjusted limit, along with supporting data, shall be submitted to the Control Authority.

(h) Reports of Changed Conditions

Each Industrial User must notify the Control Authority at least thirty (30) days before any significant changes to the Industrial User's operations or system or any substantial increase to the nature, quality, or volume of its Wastewater Discharged, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under subsection (k), below, or any changes that could reasonably be expected to cause Interference or Pass-Through.

- (1) The Control Authority may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a new or updated permit application.
- (2) The Control Authority may issue an individual or general permit under section 33-222, modify, suspend, or revoke an existing Discharge Permit in response to, among other things, changed conditions or anticipated changed conditions.

Control Authority approval is required before a Significant Industrial User can make such changes.

(i) Report of Potential Problems

- (1) In the case of any Discharge, including, but not limited to, accidental Discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a Slug Discharge that might cause potential problems to the POTW (including problems to the collection system that may be caused by fats, oils or grease clogging the sewer system or lift stations), the Industrial User shall immediately notify the Control Authority of the incident. This notification shall include the location of the Discharge, type of waste, concentration, and volume, if known, and corrective actions taken by the Industrial User.
- (2) Within five (5) days following such Discharge, the Industrial User shall, unless waived by the Control Authority, submit a detailed written report describing the cause(s) of the Discharge and the measures to be taken by the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the WWTP, 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 which may be imposed pursuant to this Ordinance.
- (3) A notice shall be permanently posted on the Industrial User's bulletin board or other prominent place advising employees who to call in the event of a Discharge described in paragraph (1), above. Employers shall ensure that all employees, who could cause such a Discharge to occur, are advised of the emergency notification procedure.
- (4) Significant Industrial Users are required to notify the Control Authority immediately of any changes at its facility that significantly increases the potential for a Slug Discharge.

(j) Certification Statements

- (1) The following reports shall be signed by the Authorized Representative of the User and shall have the certification statement set forth below in the indented language: permit applications, periodic self-

monitoring reports, compliance schedule compliance reports, baseline monitoring, reports of accidental or Slug Discharges, and such other reports as the City identifies in writing to a User:

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.

- (2) Annual Certification for Non-Significant Categorical Industrial Users. The City may determine that an Industrial User, subject to Categorical Pretreatment Standards, is a non-significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User meets the definition of "Non-Significant Categorical Industrial User" in Section 33-16 due to its discharge of less than one hundred (100) gallons of total categorical Wastewater on any given day. A facility identified by the City as a non-significant Categorical Industrial User based upon such criteria must annually submit the following certification statement signed by the Authorized Representative of the Industrial User filling in the appropriate information:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Categorical Pretreatment Standards under 40 C.F.R. _____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

(a) The facility described as _____ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in Section 33-16 Definitions;

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

(c) the facility never Discharged more than one hundred (100) gallons of total categorical Wastewater on any given day during this reporting period.

This compliance certification is based on the following information.

_____.

- (3) Certification of Pollutants Not Present. Industrial Users that have an approved monitoring waiver based on Section 33-242(h) must certify on each report with the following statement 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 C.F.R. _____ [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 self-monitoring report under Sec. 33-230(e).

- (k) Notification of the Discharge of Hazardous Wastes

- (1) Industrial/Commercial Users shall notify the Control Authority, the EPA Regional Waste Management Division, and the Tennessee Department of Environment and Conservation (TDEC) in writing of any Discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261 or Rule 0400-2-01. Such notification must include the name of the hazardous waste as set forth in 40 C.F.R. Part 261 or Rule 0400-12-01, the EPA hazardous waste number, and the type of Discharge (continuous, batch, or other). If the Industrial User Discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and 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 waste stream Discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be Discharged during the following twelve months. All notifications for Dischargers existing at the time should have taken place within one hundred eighty (180) days of the City's first adoption of this rule (*i.e.*, within 180 days of March 26, 1982). Industrial Users who commence Discharging after March 26, 1982, were and are required to provide the notification no later than 180 days after the Discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste Discharged. However, notifications of changed Discharges must be submitted under Section 33-230(h). The notification requirement in this section does not apply to Pollutants already reported under the self-monitoring requirements of this Ordinance.
- (2) Dischargers are exempt from the requirements of paragraph (k)(1) in this section during a calendar month in which they Discharge no more than fifteen (15) kilograms (kg) of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R. §§ 261.30(d) and 261.33(e). A Discharge of more than fifteen (15) kg of non-acute hazardous wastes in a calendar month or of any quantity of acute hazardous wastes as specified in 40 C.F.R. §§ 261.30(d) and 261.33(e) requires a one-time notification.
- (3) In the case of any new regulations under Section 3001 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921, identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the POTW, the EPA Regional Waste Management Division Control Authority, and the TDEC of the Discharge of such substance within 90 days of the effective date of such regulations.
- (4) In the case of any notification made under paragraph (k) of 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.

(l) Recordkeeping

Users subject to the reporting requirements of this Ordinance shall retain and make available for inspection and copying all reports, and records of information obtained pursuant to any monitoring activities required by this Ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices. 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. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any enforcement action or litigation concerning the User's compliance with its Discharge Permit or this Sewer Ordinance, or an enforcement action or litigation concerning the City, or where the User has been specifically notified of a longer retention period by the Control Authority.

(m) Submission of All Monitoring Data

A User may monitor its Discharge more frequently than the minimum set forth in its Discharge Permit, this Sewer Use Ordinance, or as otherwise required. If a User subject to reporting requirements monitors any regulated Pollutant at the appropriate sampling location more frequently than required by the Control Authority, using the procedures prescribed in Section 33-248, the results of this monitoring shall be included in the reports required under Section 33-230 and/or the Discharge Permit, as applicable.

(n) Electronic Reporting

Reports of permittees shall contain all results of sampling and analysis of the discharge, including the flow, nature, concentration, production and/or mass, where required. Upon the City of Memphis receiving approval from TDEC of a Cross Media Electronic Reporting Regulation (CROMERR) system, compliant with the Code of Federal Regulations Title 40, Part 3 (CROMERR), the City of Memphis may require all or some of its Users to submit such reports as the City deems appropriate in an electronic-only format through a CROMERR compliant system. CROMERR is an Environmental Protection Agency approved system allowing states, tribes, and local governments that receive or plan to begin receiving *electronic* documents in lieu of paper documents to satisfy regulations under an authorized program. Each User shall submit such CROMERR reports as the City identifies in a Control Mechanism (*e.g.*, permit or letter) to the User within the time frame set forth, which shall provide the User at least ninety (90) days to become CROMERR compliant. The User may request additional time for good cause, but such request does not automatically extend the deadline for becoming CROMERR compliant. New Significant Industrial User dischargers, including those located in Outlying Jurisdictions, shall submit reports through a CROMERR compliant system unless waived by the City of Memphis, Division of Public Works, in writing.

Sec. 33-231--33-239. [13-24-31 -- 39] **Reserved.**

DIVISION 3. DISCHARGE TO PUBLIC SANITARY SEWERS

Sec. 33-240. [13-24-40] **Reserved**

Sec. 33-241. [Sec. 13-24-41] **Discharges of Storm Water, Groundwater, etc., into Sanitary Sewer Prohibited; Exceptions; Discharges into Sanitary Sewer System Other Than through Specifically Permitted Building Sewer, Permit Required.**

- (a) No Person shall Discharge or cause to be Discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, or uncontaminated cooling water to any sanitary sewer except by permission of the City of Memphis and under permit from the Control Authority.
- (b) No Person shall Discharge, whether directly or by truck or other transportation, any substance into a manhole or other opening in a public sewer, other than through an approved building sewer, unless he/she has been issued a Discharge Permit by the Control Authority that specifically authorizes a Discharge at such location. No Person shall Discharge any holding tank waste into the City POTW, including the collection system, unless he/she has been issued a permit by the Control Authority specifically authorizing such Discharge. Unless otherwise allowed by the Control Authority under the terms and conditions of the permit, a separate permit must be secured for each separate Discharge. This permit may state the specific location of Discharge, the time of day the Discharge is to occur, the volume of the Discharge, the maximum Discharge rate, Wastewater constituents and characteristics, and such other conditions as the Control Authority deems appropriate. If a permit is granted for Discharge of such waste into a community sewer,

the User shall pay the applicable charges and fees and shall meet such other conditions as are required by the Control Authority.

- (c) No Person who generates Wastewater at one property shall Discharge it at another property without approval from the Control Authority.
- (d) No Person shall flush commercial or other non-domestic Wastewater down the toilet or Discharge it through other bathroom connections (e.g., shower drain).

Sec. 33-242. [Sec. 13-24-42] **Implementation of Categorical Pretreatment Standards.**

(a) Compliance with Categorical Pretreatment Standards Required

Users must comply with the Categorical Pretreatment Standards found at 40 C.F.R. Chapter I, Subchapter N, Parts 405–471, as applicable. Compliance by Existing Sources with Categorical Pretreatment Standards shall be within three (3) years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of Subchapter N or the *Federal Register* promulgation of the Standard. Existing Sources, which become Industrial Users subsequent to promulgation of an applicable Categorical Pretreatment Standard, shall be considered existing Industrial Users except where such sources meet the definition of a New Source. New Sources shall install, have in operating condition and, “start-up” all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed ninety (90) days), New Sources must meet all applicable Pretreatment Standards.

(b) Use of the Combined Wastestream Formula

When Wastewater subject to a Categorical Pretreatment Standard is mixed with Wastewater not regulated by the same Standard, the Control Authority may impose an alternate limit in accordance with the combined wastestream formula as set forth in Tennessee Rule 0400-40-14-.06(5) or take such other action as necessary to assure compliance with Categorical Pretreatment Standards.

(c) Fundamentally Different Factors Variance

A Discharger may request a variance from Categorical Pretreatment Standards in accordance with applicable procedures. *See, e.g.*, Tennessee Rule 0400-40-14-.13.

(d) Net Gross Adjustment

A Categorical Industrial User (CIU) may obtain a net/gross adjustment to a Categorical Pretreatment Standard in accordance with the following paragraphs:

- (1) 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 City. Upon request of the Industrial User, the applicable Pretreatment Standard will be calculated on a “net” basis (*i.e.*, adjusted to reflect credit for Pollutants in the intake water) if the requirements of paragraphs (2) through (5) of this section are met.
- (2) Criteria

- (A) The applicable Categorical Pretreatment Standards contained in 40 C.F.R. 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 Pretreatment Standards in the absence of Pollutants in the intake waters.
- (3) Credit for generic Pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the Industrial User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water Pollutants either at the outfall or elsewhere.
 - (4) Credit shall be granted only to the extent necessary to meet the applicable Categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Pretreatment Standard(s) adjusted under this section.
 - (5) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW Discharges. The City may waive this requirement if it finds that no environmental degradation will result.
- (e) Implementation of Production-based Limits
- (1) When the limits in a Categorical Pretreatment Standard are expressed only in terms of mass of Pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of Pollutant Discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.
 - (2) Any Industrial User operating under a Control Mechanism incorporating equivalent mass or concentration limits calculated from a production-based standard shall notify the Control Authority within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any Industrial User not notifying the Control Authority of such anticipated change will be required to meet the mass or concentration limits in its Control Mechanism that were based on the original estimate of the long-term average production rate.
- (f) Imposition of Equivalent Mass or Concentration Based Limits
- (1) When a Categorical Pretreatment Standard is expressed only in terms of Pollutant concentrations, the Control Authority may also establish equivalent mass limits so that local, state, or Federal authorities may enforce either concentration or mass limits. In the alternative, an Industrial User may request that the Control Authority convert the concentration limits to equivalent mass limits and include only the equivalent mass limits in the permit. The determination to convert concentration limits to mass limits is within the discretion of the Control Authority. The Control Authority may establish equivalent mass limits in lieu of a concentration limit only if the Industrial User meets all the conditions set forth in paragraphs (f)(1)(A) through (E) below.
 - (A) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its Discharge Permit;

- (B) Currently use control and treatment technologies adequate to achieve compliance with the applicable Categorical Pretreatment Standard and has not previously used or plan to use dilution as a substitute for treatment;
 - (C) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
 - (D) Not have daily flow rates, production levels, or Pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and
 - (E) Have consistently complied with all applicable Categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.
- (2) An Industrial User subject to equivalent mass limits must:
- (A) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
 - (B) Continue to record the facility's flow rates with a continuous effluent flow monitoring device;
 - (C) Continue to record the facility's production rates and notify the Control Authority whenever production rates are expected to vary by more than twenty (20) percent from its baseline production rates. Upon notification of a revised production rate, the Control Authority may reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
 - (D) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraph (f)(1)(A) of this section, so long as it Discharges under an equivalent mass limit.
- (3) When developing equivalent mass limits, the Control Authority may:
- (A) Calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average standard for the applicable Categorical Pretreatment Standard and the appropriate unit conversion factor;
 - (B) Upon notification of a revised production rate, reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility;
 - (C) Retain the same equivalent mass limit in subsequent Discharge Permit terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment; and

- (D) Deny or condition equivalent mass limits upon the Industrial User also being in compliance with Section 33-246(c)(4) regarding the prohibition of bypass.
- (4) The Control Authority may convert the mass limits of the Categorical Pretreatment Standards of 40 C.F.R. Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Industrial Users. The conversion is at the discretion of the Control Authority.
- (5) If only equivalent mass limitations are included in the Control Mechanism, once included in the Control Mechanism, the Industrial User must comply with the equivalent limitations in lieu of the promulgated Categorical Standards from which the equivalent limitations were derived.

(g) Calculation of Categorical Limits

Many Categorical Pretreatment Standards specify one limit for calculating maximum Daily Discharge limitations and a second limit for calculating maximum monthly average, or 4-day average limitations. Where such standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation under applicable Categorical Pretreatment Standards.

(h) Sampling Waiver

The Control Authority may authorize an Industrial User subject to a Categorical Pretreatment Standard to forego sampling of a Pollutant regulated by a Categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the Pollutant is neither present nor expected to be present in the Discharge, is present only at background levels from intake water, and there will be no increase in the Pollutant due to activities of the Industrial User. See Tennessee Rule 0400-40-14-.12(5)(b). This authorization is subject to the following conditions:

- (1) The waiver may be authorized where a Pollutant is determined to be present solely due to sanitary Wastewater Discharged from the facility, provided that the sanitary Wastewater is not regulated by an applicable Categorical Standard and otherwise includes no process Wastewater.
- (2) The monitoring waiver is valid only for the duration of the effective period of the individual Control Mechanism, but in no case longer than five (5) years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent Control Mechanism.
- (3) In making a demonstration that a Pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process Wastewater prior to any treatment present at the facility that is representative of all Wastewater from all processes.
- (4) The request for a monitoring waiver must be signed by an Authorized Representative of the User and include the certification statement in 33-230(j)(3). See 40 C.F.R. § 403.6(a)(2)(ii) and Tennessee Rule 0400-40-14-.06(1)(b)2.
- (5) EPA and TDEC have determined that, where the lowest minimum detection level for a Pollutant as set forth in 40 C.F.R. Part 136 has been used in the analysis, it is appropriate to equate a non-detectable sample result as demonstrating that a Pollutant is not present.
- (6) In order for a monitoring waiver approval by the Control Authority to be effective, it must be included as a condition in the User's Discharge Permit.

- (7) Upon approval of the monitoring waiver and revision of the User's Control Mechanism by the Control Authority, the Industrial User must certify on each report with the statement in Section 33-230(j)(3) that there has been no increase in the Pollutant in its wastestream due to activities of the Industrial User.
- (8) In the event that a waived Pollutant is found to be present or is expected to be present because of changes that occur in the Industrial User's operations, the Industrial User must immediately comply with the monitoring requirements as set forth in Section 33-230(e) or other more frequent monitoring requirements imposed by the Control Authority and notify the Control Authority.
- (9) This provision does not supersede certification processes and requirements established in Categorical Pretreatment Standards, except as otherwise specified in the Categorical Pretreatment Standard.

Sec. 33-243. [Sec. 13-24-43] **General and Specific Prohibitions.**

(a) General Prohibition Against Interference and Pass-Through

No Person shall introduce into the POTW any Pollutant(s) which cause Pass-Through or Interference. This prohibition and the specific prohibitions in paragraphs (b)(1) through (11), below, apply to each Person introducing Pollutants into the POTW, whether or not the Person is subject to other National Pretreatment Standards or any national, state, or local Pretreatment Requirements.

(b) Specific Prohibitions

No Person shall Discharge, or cause to be Discharged, any of the following to the City's POTW (including the City's sewers):

- (1) Petroleum oil (*e.g.*, gasoline, benzene, naphtha, fuel oil, diesel fuel, jet fuel, or kerosene), nonbiodegradable cutting oil, products of mineral oil origin, or any other Pollutant (i) which causes Interference or Pass-Through, (ii) creates a fire or explosion hazard in the POTW, including, but not limited to, Wastewater with a closed cup flashpoint of less than 140° Fahrenheit or 60° Celsius using the test methods specified in 40 C.F.R. § 261.21, as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79 or D-93-80 or a Setaflash Closed-Cup Tester, using the test method specified in ASTM Standard D-3278-78, and/or (iii) Pollutants which cause an exceedance of 10% of the lower explosive limit (LEL) at any point within the POTW.
- (2) Pollutants, including toxic or poisonous solids, liquids, vapors, or gases in sufficient quantity, either singly or by interaction with other wastes, to result in the presence of toxic gases, vapors, or fumes within the WWTP in a quantity that may injure personnel, cause workers to have acute health or safety problems, cause fires, explosions, interfere with any sewage or Wastewater treatment process or any sanitary sewer system, constitute a hazard to humans or animals, threaten the public health or safety, create a public nuisance, or create any hazard in the receiving waters of the sewage or Wastewater Treatment Plant.
- (3) Pollutants in violation of a pH Minimum Limit, *i.e.*, having a pH lower than 5.5 standard units.

- (4) Pollutants with corrosive properties capable of causing damage or hazard to the structures, equipment, conveyances, and personnel of the sewerage works or interfering with the operation of the treatment facility.
- (5) Wastewaters in violation of a pH Maximum Limit, *i.e.*, having a pH higher than 10.0 standard units unless prior approval of a higher limit is approved by the City of Memphis, Division of Public Works, and set forth in a Discharge Permit. In order to Discharge a pH above 10.0 standard units, the City may require the User to submit a study identifying, among other things, the flow and pH concentrations requested, an estimate of the duration the Discharge will exceed 10.0 standard units, the potential impacts of the high pH on the sewer system, lift stations, WWTP or any other part of the POTW, and such other information as the City may request. In no event shall a User discharge a pH equal to or over 11.5 s.u.
- (6) Wastewaters exceeding the hydroxide loadings set forth in a Discharge Permit, as applicable.
- (7) Solid, viscous, or foaming substances in quantities of such size or amount as to reasonably raise a concern to the City of the potential to cause obstruction to the flow in sewers, overflows, Interference with the proper operation of the Wastewater facilities, or cause a violation of the POTW's NPDES permit. This prohibition includes, but is not limited to, the Discharge of surfactants, foaming agents, paper pulp, clays, ashes, bones, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, oil, grease, underground garbage, whole blood, paunch manure, hair and fleshing, wipes, bed pads, cotton tips, tissues, entrails, paper dishes, cups, Styrofoam, milk containers, etc., either whole or ground by garbage grinders. Should blood, tissue, or other prohibited body parts be unavoidably Discharged into the sanitary sewer, then such Discharge must be accompanied by or immediately followed with a liquid disinfectant; such disinfectant may include bleach.
- (8) Any trucked or hauled Pollutants, except at Discharge points designated by the Control Authority.
- (9) Any Pollutant, including oxygen-demanding Pollutants (*e.g.*, BOD, etc.), released at a flow rate and/or Pollutant concentration which will cause Interference.
- (10) Any Wastewater having a temperature which will inhibit biological activity in the WWTP resulting in Interference, but in no case Wastewater with a temperature resulting in the temperature at the introduction into the WWTP which exceeds 40°C (104° F) unless approved by the Control Authority.
- (11) Any Wastewater or waste into street inlets or sewer manholes.

(c) pH Limits

The pH Discharge limit is an instantaneous reading of any Discharge into the sanitary sewer and not an average of any kind. In addition to standard units, the City may establish limits on pH based upon the hydroxide loading.

(d) Limits on Other Corrosive Pollutants

The City may establish limits in a Discharge Permit on other pollutants (*e.g.*, chloride and sulfates), as the City deems necessary to prevent corrosion to the collection system or other parts of the POTW.

(e) Dilution Prohibition

No Industrial User shall ever increase the use of process water, or in any way attempt to dilute a Discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a Discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Pretreatment Requirement or, in the case of other Discharge limitations (e.g., Local Limits), unless expressly authorized by the Control Authority.

(f) Safe Harbor Affirmative Defense

A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in subparagraph (a) of this paragraph and the specific prohibitions in subparagraphs (b)(1), (2), (6) and (7) where the User can demonstrate that:

- (1) It did not know, or have reason to know, that its Discharge, alone, or in conjunction with a Discharge or Discharges from other sources, would cause Pass-Through or Interference, and a Local Limit designed to prevent Pass-Through and/or Interference, as the case may be, fits one of the following descriptions:
 - (A) The Local Limit for that Pollutant is established in Section 33-244(c) for each Pollutant in the User's Discharge that caused Pass-Through or Interference, and the User was in compliance with each such Local Limit directly prior to and during the Pass-Through or Interference; or
 - (B) The Local Limit has not been established in Section 33-244(c) for the Pollutant(s) that caused the Pass-Through or Interference, the User's Discharge directly prior to and during the Pass-Through or Interference did not change substantially in nature or constituents from the User's prior Discharge activity when the WWTP was regularly in compliance with the WWTP's NPDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.

Sec. 33-244. [Sec. 13-24-44] Certain Discharge Restricted, Local Limits, Etc.

(a) Restricted Discharges

Except as otherwise specifically authorized by the Control Authority in writing, no Person shall Discharge or cause to be Discharged the following described Pollutants, substances, materials, Wastewaters, and/or wastes. The limitations or restrictions of materials or characteristics of waste or Wastewaters Discharged to the sanitary sewer, shall not be violated without a variance being granted. The following are restricted Discharges to the POTW:

- (1) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit (sixty-five (65) degrees Celsius).
- (2) Any Wastewater or waste containing fats, wax, grease, or oils in excess of one hundred (100) milligrams per liter (mg/l) or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees Celsius). This 100 mg/l standard applies to hydrocarbons, whether measured as (i) petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, (ii) animal or vegetable origin, or (iii) total hydrocarbons.
- (3) Any waste that has not been properly shredded. The installation and operation of any waste grinder equipped with a motor of three-fourths (0.75) horsepower or greater shall be subjected to the review and approval of the Control Authority.

- (4) Any Wastewaters or wastes containing strong acid, iron pickling wastes, or any waters or wastes containing concentrated plating solutions whether neutralized or not, except by written permission of the Control Authority.
- (5) Any Wastewater or wastes (*e.g.*, contaminated waters, rinse waters, etc.) containing iron, chromium, copper, lead, mercury, zinc, other heavy metals or toxic substances to such degree that any such Discharge exceeds the Local Limits established by the Control Authority unless a variance is obtained.
- (6) Any Wastewater or wastes containing phenols and/or chlorophenols, to such degree that any such Discharge in the composite sewage at the WWTP exceeds the limits established by the Control Authority.
- (7) Any radioactive wastes or isotopes of long half-life (over one hundred (100) days) without special permit. The radioactive isotopes (I 131 and P 32) used at hospitals are not prohibited if properly diluted at the source.
- (8) Materials, which exert or cause:
 - (A) Concentrations of inert suspended solids (such as, but not limited to, clays, fibers, fuller's earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate), which is reasonably anticipated to cause obstruction to the flow in sewers, damage to the sewer system, or Interference.
 - (B) BOD, chemical oxygen demand, or disinfection requirements in such quantities as to constitute Interference.
- (9) Wastewater containing objectionable substances, which are not readily amenable to treatment or reduction by the sewage treatment processes employed.
- (10) Any Wastewater that may cause the Wastewater treatment facility effluent or any product of the treatment process, residues, biogas, sludges, or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process.
- (11) Any Wastewater that could have a detrimental environmental impact or create an objectionable color, foam, or nuisance in the Waters of the State.
- (12) Any Wastewater that could cause excessive collection or treatment costs or may use a disproportionate share of the POTW.
- (13) Any Wastewater, which causes hazard to human life or creates a public nuisance.
- (14) Any Wastewater containing hydraulic fluid, brake fluid, transmission fluid, steering fluid, motor oils, or lubricants removed from vehicles or other machinery except to the extent that there is a *de minimis* amount after having gone through an oil/water separator or other treatment device.
- (15) Any Wastewater where there is a significant likelihood of producing toxic effects to the biota in the receiving water of the POTW's effluent.

(16) Any hazardous waste as classified or characterized under the Resource, Conservation, and Recovery Act (RCRA), 40 C.F.R. Part 261. This prohibition does not apply if the domestic sewage exemption as set forth in 40 C.F.R. § 261.4(a)(1) would be applicable.

(17) Any Wastewater or waste from an EPA Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site, unless approved by the U.S. Environmental Protection Agency in writing and the City (subject to the City's sole discretion).

(b) Discharge That Potentially Interferes with Plant Operations

When it is determined by the Control Authority that a User is Discharging Wastewater so as to potentially interfere with the operation or efficacy of the POTW then the Control Authority may develop effluent limitation(s) (including a prohibition) for such User to correct the concern and/or take such other action as the City deems appropriate.

(c) Local Limits

(1) The Control Authority is authorized to establish Local Limits for Pollutants Discharged to the POTW pursuant to Tennessee Rule 0400-40-14-.05(3). Local Limits may be reviewed and revised as deemed appropriate by the Control Authority. The Local Limits may be implemented as concentration and/or mass limits, as permitted or required under applicable state or Federal rules and regulations. When mass limits are used, continuous flow monitoring of the Discharge flows may be required. Daily Discharge flow volumes and monthly average Discharge flows measured shall be reported and used to calculate Pollutant mass Discharge for each day of Discharge, the calendar Monthly Average Discharge, and the Daily Maximum Discharge for the calendar month.

(2) The following Local Limits apply to all Users Discharging into the City's POTW (including the sewer system) unless subject to a variance under subsection (d), below, or superseded by Local Limits subsequently adopted by the Division of Public Works and approved by TDEC, with the notice of such Local Limits set forth on the Division of Public Works (e.g., website at www.memphistn.gov). Such subsequent Local Limits may also include limits on additional Pollutants beyond those identified below. Compliance with all Local Limits (including those identified on the above identified website) is required regardless of whether a Person is issued a permit.

TABLE I

LOCAL LIMITS FOR DISCHARGE INTO THE MUNICIPAL SEWERAGE SYSTEM.

Constituent	Daily * Maximum Limit Concentration mg/l	Instantaneous Maximum Limit** Concentration mg/l
Biochemical Oxygen Demand	(1)	(1)
Settleable Solids (ml/l)	(1)	(1)
Total Suspended Solids	(1)	(1)
Nitrogen (total Kjeldahl)	(1)	(1)
Arsenic	1.0	2.0
Cadmium (total)	(2)	(2)

Chromium (hexavalent)	1.0	2.0
Chromium (total)	5.0	10.0
Copper (total)	5.0	10.0
Cyanide (oxidizable) ***	2.0	4.0
Cyanide (total) ***	4.0	8.0
Lead (total)	(2)	(2)
Mercury	(2)	(2)
Nickel (total)	5.0	10.0
Zinc (total)	5.0	10.0
Ammonia NH3-N	125 ppm	250 ppm

* See definition of "Daily Maximum Limit."

** See definition of "Instantaneous Limit" providing for noncompliance to be determined by use of a grab sample or a composite sample, as applicable.

*** Cyanide samples are required to be collected as grab samples.

(1) Effluent Limits and/or Action Levels may be established for these Pollutants.

(2) Cadmium, mercury, and lead Discharges are severely restricted due to limitations placed on the disposal of sewage sludge containing cadmium, mercury, and/or lead. Actual allowable Discharge concentrations for these constituents will be determined on a case-by-case basis.

(d) Potential Variances

The City, subject to its discretion, may grant a variance for a User's Local Limits, as it deems appropriate. Notwithstanding such authority, nothing herein shall be deemed to entitle a User to a variance.

- (1) Consideration of variances to the Local Limits may be based on consideration of any of the following criteria:
 - (A) Age, location, land availability, and type of manufacturing processes employed;
 - (B) Total mass of Pollutant Discharged by the industry;
 - (C) Volume of industrial waste in proportion to the total Wastewater flow in the system;
 - (D) Energy requirements of the application of control and treatment technology, but only if the Discharger demonstrates that less energy consumptive alternative control technology is not available;
 - (E) Removal efficiency of the receiving WWTP to effectively treat the Pollutant, and potential to cause Interference or Pass-Through of the WWTP treatment process;
 - (F) Available Pollutant treatment capacity at the receiving WWTP;
 - (G) Potential threat to the health and safety of sewer workers;
 - (H) Protection of biosolids produced at the receiving WWTP;

- (I) Interim measures that can be undertaken to reduce the discharge of the pollutant(s) of concern;
- (J) Costs and schedule associated with installing additional pretreatment to meet the limits; and/or
- (K) Such other factors as the Control Authority deems appropriate.

(2) In no case shall a variance be granted for those parameters defined by Federal Pretreatment regulations as general and specific prohibitions at 40 C.F.R. §§ 403.5(a) and (b) (see Sections 33-243(a) and (b)), or that would violate applicable Categorical Standards.

(e) Discharge of Specific Pollutants Restricted

No User or other Person shall Discharge Wastewater containing any of the Pollutants listed herein into the municipal sewer system or shall otherwise allow any Wastewater to enter the municipal sewer system containing any of the listed Pollutants without obtaining written approval from the Control Authority.

Individual Pollutants	Groups of Pollutants
0,M,P-Xylenes	a) Total Polychlorinated Biphenyls (PCBs), Arochlor compounds
1,1-Dichloroethylene	
1,2 trans,dichloroethylene	(b) Herbicides and Pesticides, including, <u>but not</u> <u>limited</u> to:
3,3-Dichlorobenzidene	Aldrin
Beryllium	Chlordane
Bromodichloromethane	Demeton
Dimethylnitrosamine	Dieldrin
Ethyl benzene	Endosulfan I
O-Dichlorobenzene	Endosulfan II
Tin	Endosulfan sulfate
1,1,1,2-Tetrachloroethane	Endrin
1,1,2-Trichloroethane	Endrin aldehyde
1,1-Dichloroethane	Guthion
1,1-Dichloropropane	Heptachlor
1,2,3-Trichloropropane	Heptachlor epoxide
1,2-Cis,dichloroethylene	Hexachlorocyclo-hexane
1,2-Dibromo-3-Chloropropane	Hexachlorocyclopentadiene
1,2-Dichloroethane	Lindane
1,2-Dichloropropane	Mirex
1,3-Dichloropropane	Methoxychlor
1,3-Dichloropropene	Parathion
1,4-Dichlorobenzene(p)	4,4-DDD
2,2-Dichloropropane	4,4-DDE
2,4-Dinitroluene	4,4 DDT
2,4-Dinitrophenol	Alpha BHC, Beta BHC, Delta BHC, or Gamma BHC
2-butanone (MEK)	Tetrachlorodiphenylethane (TDE)
2-Chlorophenol	Toxaphene
4-methyl-2-pentanone (MIBK)	
Acetone	(c) Total Dioxin

Acrylonitrile
Aluminum
Barium
Benzo (a) pyrene
Benzotrichloride
Bromobenzene
Bromoform
Chlorobenzene
Chlorodibromomethane
Chloroethane
Chloroform
Cumene
Dichloroethyl ether(Bis(2-chloroethyl))
Diisobutylenes
Hexachlorobenzene
Hexachlorobutadiene
Hexane
Isopropylbenzene
M-Dichlorobenzene
Molybdenum
O-Chlorotoluene
Para-Dichlorobenzene
P-Chlorotoluene
Phenanthrene
Pyrene
Titanium
Toluene
Vinyl chloride

The Control Authority reserves the right to modify this list of Pollutants restricted from entering the POTW as may become necessary to protect the POTW from Interference and Pass-Through or as the City otherwise deems appropriate. This may be undertaken by the City providing an updated list of restricted Pollutants on the City website or in any other manner that provides a Discharger notice.

(f) 15% of Maximum Allowable Loading Limitation

Unless otherwise agreed to in writing by the Control Authority, no User shall Discharge a mass loading of any compound or Pollutant, which has a Local Limit, of more than fifteen (15) percent of the Maximum Allowable Industrial Loading (MAIL) of that compound or Pollutant as calculated from current Local Limits. The City may impose a fifteen percent limit on pollutants based upon the rated capacity of the WWTP.

(g) Best Management Practices

The City may develop Best Management Practices (BMPs), by ordinance or in individual and/or general wastewater discharge permit, to implement Local Limits and such other requirements, as it deems appropriate. The City may decide not to apply a local limit to User(s) that are subject to a best management practice designed to address that pollutant.

Sec. 33-245. [Sec. 13-24-45] **Discretionary Actions of Control Authority with Respect to Restricted Discharges.**

(a) Potential Options for Acceptance of Wastewater

If any waters or wastes are Discharged or are proposed to be Discharged to the public sanitary sewers, which waters contain substances or possess characteristics which, in the judgment of the Control Authority, are incompatible with the capacities of the Publicly Owned Treatment Works (including the collection system) and/or may have a deleterious effect upon the sewerage works, processes, sludge use, equipment, or receiving waters, or which otherwise may create a hazard to life or constitute a public nuisance, the Control Authority may undertake such action(s) as it deems appropriate, including but not limited to of the following: (1) Reject the wastes; (2) Require Pretreatment or an acceptable condition for Discharge to the public sanitary sewers; (3) Require control over the quantities and rate of Discharge; and/or (4) Require payment to cover the added cost of handling and treating the wastes as provided in division 2 of Article III of this chapter.

(b) Flow and Other Associated Requirements

The City, in response to potential capacity concerns associated with the collection system, Wastewater Treatment Plant, and/or pumping/lift station, or for other good cause, may impose flow limits including limitation on the hours that flows may enter the sewer system (e.g., limiting the discharge of wastewater and/or domestic wastewater to off-peak hours), may require any User to install on-site storage as a condition to connect or increase flow, and/or may impose such other conditions as the Control Authority deems appropriate. Such conditions may be set by the Control Authority in a control mechanism (e.g., permit, letter of approval, or conditional letter of approval). No Person shall violate the conditions established by the Control Authority set forth in a control mechanism issued by the Control Authority.

(c) Control Authority Review of Pretreatment System

If the Control Authority permits the Pretreatment or equalization of waste flows, the design and installation of any new process Pretreatment or flow equalization system installed in connection therewith shall, upon request from the City, be subject to the review and/or approval of the Control Authority. The City of Memphis does not by its approval of any of the designs, installation, or the construction of the plans and equipment or any of the information or plans submitted by the Permittee, warrant or aver in any manner that the Permittee's implementation of such measures will result in compliance with the applicable Pretreatment requirements. Notwithstanding such review and/or approval, compliance with Federal, state, and local law (including this Ordinance and/or a Discharge Permit) is the sole responsibility of the User. In no event shall the City of Memphis be deemed liable for any User actions based upon the City's review and/or approval of User documents.

(d) Use of Interceptors, Traps and/or Separators

Interceptors, traps, and/or separators shall be provided by industrial and commercial Dischargers (in addition to those cases otherwise specified in this Ordinance) when, in the opinion of the Control Authority, they are necessary for the proper handling of water or waste containing such materials as fats, oils, greases, sand, or flammable reactive or corrosive liquids, substances which may solidify or become viscous in the system, or other harmful ingredients. In maintaining interceptors, traps, and separators, the owner shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the waste manifests, laboratory reports, chain-of-custodies, any field reports, log sheets, field test data (e.g., pH, temperature, ammonia, or chlorine), dates, and means of disposal, which are subject to review by the Control Authority. Any removal and hauling of the collected materials not performed by the owner's personnel must be performed by waste transport and disposal firms and must be documented by the facility.

Any transport to a Memphis WWTP or to a designated Discharge point must be undertaken by a City approved waste transport firm.

(e) Removed Substances

Except as provided by paragraph (d) above, or otherwise approved in a Discharge Permit or in writing by the City of Memphis, Division of Public Works, removed substances, such as solids removed from liquid wastestreams, sludges, filter backwash, or other residuals removed in the course of treatment or control of Wastewater, shall be disposed of in a manner such as to prevent such material from entering the sewer system and Waters of the State.

Sec. 33-246. [Sec. 13-24-46] Proper Operation and Maintenance/Maintenance and Inspection of Pretreatment or Flow Equalization Facilities, Bypass and Upset

(a) Proper Operation and Maintenance

The User shall, at all times, properly operate and maintain all Pretreatment facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Industrial User to achieve and monitor compliance with Pretreatment Standards and Pretreatment Requirements. This includes adequate laboratory controls and appropriate quality assurance procedures, the operation of back-up or auxiliary facilities, or similar systems which are installed by the Industrial User only when the operation is necessary to achieve compliance. Except as provided by 33-246(c), the intentional diversion of waste streams from any portion of the Industrial User's treatment facility is prohibited. In no event shall the diversion of waste streams from any portion of the User's treatment facility cause Interference or Pass-Through.

(b) Pretreatment and/or Flow Equalization

Where pretreatment or flow equalization facilities are required for any water or Wastewater, they shall be maintained continuously and satisfactorily and in effective operation by the owner at his expense and shall be subject to periodic inspection by the Control Authority. The owner or operator shall maintain and make available, as requested, operating records as prescribed by the Control Authority.

(c) Bypass

(1) For the purposes of this section,

- (A) Bypass means the intentional diversion of wastestreams from any portion of a User's treatment facility or around required metering or sampling equipment.
- (B) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

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

(3) Bypass Notifications

- (A) If a User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, at least ten (10) days before the date of the bypass, if possible.
- (B) A User shall submit oral notice to the Control Authority of an unanticipated bypass that exceeds applicable Pretreatment Standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(4) Bypass

- (A) Bypass is prohibited, and the Control Authority may take an enforcement action against a User for a bypass, unless bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; 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; and the User submitted notices as required under paragraph (3) of this section. 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.
- (B) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in 33-107(c)(4)(A) of this section.
- (C) In no event shall the diversion of flows cause the City to violate its NPDES permit(s). Notwithstanding any provision to the contrary, bypass shall not be a defense to causing Interference or Pass-Through.

(d) Upset

- (1) For the purposes of this section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (2) An upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of paragraph (3), below, are met. An upset is not an affirmative defense for violation of any other requirement (e.g., general and specific prohibitions, Local Limits).
- (3) A User who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs or other relevant evidence that:

- (A) An upset occurred and the User can identify the cause(s) of the upset;
- (B) The facility was, at the time being operated, in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
- (C) The User has submitted the following information to the Control Authority within twenty-four (24) hours of becoming aware of the upset (and, if this information is provided orally, a written submission must be provided within five (5) days) that includes: a description of the indirect Discharge and cause of noncompliance; the period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and steps being taken and/or planned to reduce, and prevent recurrence of the noncompliance.

(4) In any enforcement proceeding, the User seeking to establish the occurrence of an upset shall have the burden of proof.

(5) Review of whether an event meets the upset criteria is available to a User only in the context of an enforcement action brought for noncompliance with Categorical Pretreatment Standards.

(e) Reduction in Production Required as Necessary to Achieve Compliance

Users shall control production to the extent necessary to maintain compliance with Discharge limitations 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.

Sec. 33-247. [Sec. 13-24-47] Monitoring, Control Facilities for Sampling and Observation of Industrial and Commercial Wastes/ Flow Monitoring and Repeat Monitoring.

(a) Installation of Control Facility

When required by the Control Authority, the owner or operator of any industrial, commercial property, any new or expanded development (including developments discharging only domestic flow), or facility serviced by a sewer, shall install a suitable control facility for sampling together with such necessary equipment, which could include: meters, instruments, refrigerated samplers, connections such as contact closures or flowmeter output to drive flow-proportional composite sampler, digital read-outs, data-loggers, recorders, and other appurtenances, in the sewer to facilitate observation, sampling, measurement, and recording of the wastes and Discharge and/or domestic flows.

(b) Monitoring Manhole and Related Provisions

Unless otherwise required by the City and/or federal or State regulations, all regulated and permitted non-domestic waste from the property or facility shall be Discharged through the control facility or facilities, as applicable, after any pretreatment of the waste. Unless otherwise required by the City, those industries with a permitted average daily maximum BOD₅ or TSS of ten thousand (10,000) pounds per day or greater and/or with a permitted average daily maximum Discharge flow of 700,000 gallons per day or greater and/or as deemed necessary by the Control Authority to monitor other permitted Pollutants shall install a monitoring manhole. The facility, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the Control Authority. The facility shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times. Plans for such facilities for

the installation of control and related equipment must be reviewed and/or approved by the Control Authority before construction is begun.

(c) Calibration

The User shall ensure that all monitoring, analytical, and sampling equipment used to monitor flow or analyze Pollutants Discharged under a permit are periodically calibrated and maintained at intervals which ensure the accuracy and reliability of measurements, and when required by the Control Authority, the User shall provide written documentation and certification of the calibrations.

(d) Flow Monitoring Maintenance and Calibration Logs

When the measurement or reporting of Discharge flow is required, appropriate effluent flow measurement devices and methods consistent with accepted scientific and engineering practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored Discharges. The City of Memphis may require that the entire flow measuring system be designed, stamped, signed, constructed, and installed under the direct supervision of a Tennessee State Licensed Professional Engineer. The devices shall be installed, calibrated, and maintained to ensure that the accuracy and reliability of the measurements are consistent with the accepted capabilities of the device and in accordance with the device manufacturer. The flow measuring devices shall be capable of measuring flows with a maximum deviation of less than plus or minus five (5) percent from the true Discharge rates throughout the range of expected Discharge flows (*i.e.*, from the highest peak flow to the minimum flow) using no less than three (3) calibration points, unless otherwise approved by the Control Authority. The flow measuring device shall be calibrated and maintained at the expense of the Permittee as often as recommended by the device manufacturer or at least annually, whichever is more frequent. The City, subject to its discretion, may require a User to have a qualified third-party undertaking calibration. If the flow measuring device can be tested and certified to prove accuracy of $\pm 5\%$, then recalibration is not required. Calibration reports and/or verification reports shall be submitted as required by the City. The Permittee shall maintain written maintenance and calibration logs for the flow measuring device, which will include at least the following information:

- (1) Name of Permittee's facility;
- (2) Name, signature, and affiliation of person(s) performing maintenance and/or calibration;
- (3) Device type, manufacturer, model, and serial number;
- (4) Date and time of maintenance and/or calibration;
- (5) Description of maintenance and/or calibration;
- (6) Whether the maintenance and/or calibration was routine or due to problem with device, with brief explanation;
- (7) Whether or not it was likely that the device was producing accurate flow readings before maintenance and/or calibration, with brief explanation; and
- (8) Whether and/or not it is likely that the device is producing accurate flow readings after maintenance or calibration, with brief explanation.

(e) Flow Monitor Calibration Report

The Permittee shall submit a flow measuring device calibration certification letter to the Control Authority within thirty (30) days, or such alternative time established by the Control Authority, of initial permitted sewer Discharge and all subsequent letters before June 30th every year thereafter. Any User first subject to this requirement shall submit the certification June 30th of every year it Discharges. If required by the City of

Memphis, each of these letters must be certified by either (i) the manufacturer that calibrated the meter or (ii) both a Tennessee State Licensed Professional Engineer and a responsible corporate officer. The flow measuring device calibration reports shall include at least the following information:

- (1) Name of Permittee's facility;
- (2) Location and ID of the device;
- (3) Device type, manufacture, model, serial number, and size;
- (4) Total range capacity of the device;
- (5) Maximum range used at the facility;
- (6) Minimum of three (3) calibration points evenly spaced within the maximum range used at the facility to determine accuracy of the device (e.g., 0%, 25%, 50%, 75% and 100%; 4 mA, 8 mA, 12 mA, 16 mA and 20 mA; or 0 GPM, 200 GPM, 400 GPM, 600 GPM and 800 GPM when the maximum range is 800 GPM);
- (7) Final accuracy of device at each of the calibration points used;
- (8) Date of calibration;
- (9) Name of person performing the calibration; and,
- (10) Name and signature of certifying Tennessee State Licensed Professional Engineer (if required) or other appropriate third-party approved by the Control Authority.

(f) Monitoring Instrumentation Calibration and Maintenance

Instrumentation used for self-monitoring (e.g., pH monitoring) shall be calibrated and maintained at least as often as recommended by the manufacturer and shall be calibrated and maintained more frequently when necessary to maintain instrument reading accuracy and reliability within acceptable error limits based upon the manufacturer's specifications. The Permittee shall maintain a maintenance and calibration log for each instrument, which would include at least the following information:

- (1) Name of Permittee facility;
- (2) Name, signature, and affiliation of person(s) performing maintenance and/or calibration;
- (3) Instrument type, manufacturer, model, and serial number;
- (4) Date and time of maintenance and/or calibration;
- (5) Description of maintenance and/or calibration;
- (6) Whether the maintenance and/or calibration was routine or due to problem with the instrument, with brief explanation;
- (7) Whether or not it was likely that the instrument was producing accurate readings before maintenance and/or calibration, with brief explanation; and
- (8) Whether or not it is likely that the instrument is producing accurate readings after maintenance and/or calibration, with brief explanation.

(g) Repeat Monitoring

If sampling performed by an Industrial User indicates a violation, the Industrial User shall notify the Control Authority within twenty-four (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 City within thirty (30) days after becoming aware of the violation (or sooner if so directed by the Control Authority or its designee). Repeat sampling within thirty (30) days of a violation under this section need not be undertaken if the Control Authority undertakes sampling and indicates in writing to the Industrial User that such repeat sampling is not required.

(h) Toxicity Testing/Toxicity Reduction Evaluation

The User shall undertake effluent toxicity testing as required by the Authority, using the test procedures and methodology specified by the Authority. In the event toxicity is indicated, the User shall undertake a toxic reduction evaluation and take steps to reduce toxicity, as required by the City of Memphis and/or the Control Authority.

Sec. 33-248. [Sec. 13-24-48] **Measurement and Testing Methods.**

(a) Analytical Requirements

All Pollutant analyses, including sampling techniques, to be submitted as part of a Discharge Permit application or report(s) shall be performed in accordance with the techniques prescribed in 40 C.F.R. Part 136 and 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 the Part 136 sampling and analytical techniques are inappropriate for the Pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Control Authority or other qualified parties approved by EPA.

(b) Representative Sample Collection

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report and be based on data that is representative of conditions occurring during the reporting period. The Control Authority, subject to its sole discretion, may undertake all or part of the sampling and/or analysis otherwise required by the SIU in lieu of requiring the SIU to undertake the minimum sampling.

- (1) Except as indicated in subsections (b)(2) and (3) below, the Industrial User must collect Wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the Discharge. Using protocols (including appropriate preservation) specified in 40 C.F.R. Part 136, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate. Notwithstanding anything to the contrary, grab samples may be required to show compliance with instantaneous limits.
- (2) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

- (3) For sampling required in support of baseline monitoring report and 90-day compliance reports, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the self-monitoring reports required by 33-230(e), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Pretreatment Requirements.
- (4) Chain-of-custody forms must be filled out and maintained in the User's files for a period of at least three (3) years. Upon request of the Control Authority, the chain-of custody forms shall be submitted to the City.

(c) Approval Required to Change Sampling Locations

The Control Authority may specify User monitoring points. In such a case, compliance monitoring points shall not be changed without the approval of the Control Authority.

(d) Monitoring and Flow Measurement Facilities

Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that non-compliant sample results are not representative of its Discharge.

Sec. 33-249. [Sec. 13-24-49] Accidental and Slug Discharges.

(a) Authority to Require Development of a Plan

The Control Authority may require a User to develop a plan to provide protection from accidental and/or Slug Discharge of prohibited materials or other substances regulated by these regulations. Any facilities to prevent accidental and/or Slug Discharge of prohibited material shall be provided and maintained at the User's own cost and expense.

(b) Minimum Requirements for SIU Slug Control Plans

If a Significant Industrial User is required to develop a slug control plan by the Control Authority, the plan shall contain, at a minimum, the following elements:

- (1) Detailed descriptions of Discharge practices, including routine and non-routine batch Discharges;
- (2) Detailed descriptions of stored chemicals, and/or stored waste;
- (3) Procedures for immediately notifying the POTW of Slug Discharge, including any Discharges that would violate a prohibition under Section 33-243, with procedures for follow-up written notification within five (5) days;
- (4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operation,

control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic Pollutants (include solvents), and/or measure and equipment for emergency response.

(c) Additional Potential Requirements for SIU Slug Control Plans

Upon notice from the Control Authority, an SIU shall submit the following additional information in a Slug control plan as indicated in the Control Authority's notice:

- (1) Material safety data sheets, when applicable;
- (2) Best Management Practices to prevent, control, and cleanup releases of chemicals, materials, and/or wastes;
- (3) If necessary, engineering practices (*e.g.*, temporary storage) to assure that Interference or Pass-Through does not occur;
- (4) Employee education;
- (5) Adequate storage or other practices (*e.g.*, trucking the waste off-site for disposal) to assure that potential batch Discharges (whether Wastewater or off-specification product) will not interfere with the operation of the POTW (including the collection system); and
- (6) Such other requirements as the Control Authority deems appropriate.

(d) Potential Requirements for Non-SIU Slug Control Plans

The Control Authority may require a non-SIU to develop a Slug control plan containing such requirements as set forth in Sec. 33-249(b) and (c) as the Control Authority deems appropriate.

(e) Control Authority Approval of Slug Control Plan

Subject to the Control Authority's discretion, a User may be required to submit a plan to the Control Authority for approval. Failure to submit a Slug control plan to the Control Authority, meeting the requirements of Sec. 33-249, may subject the User to an enforcement action.

(f) Notice to Potentially Avoid Downstream Problem at POTW

In order to ensure the integrity of the Wastewater Treatment Plant at a high level and protect the treatment process from unacceptable flows, any User facility at which an accidental spill occurs or any person causing an accidental spill that may enter the sewer system, shall notify the POTW as soon as reasonably possible by telephone and e-mail as to the spill's nature, relating its location, quantity, duration of event, the time of such spill, and corrective action, so that further action may be taken at the Wastewater Treatment Plant to deal with any problems which the incoming flow may create. The applicable e-mail and telephone numbers for notification are as follows:

- Stiles Wastewater Treatment Plant: 901-636-4300
- Maxson Wastewater Treatment Plant: 901-789-0510
- E-Mail: pretreatment@memphistn.gov

(g) Written Notice

See Section 33-230(i) regarding reporting of, among other things, accidental Discharges or Slug Discharges.

(h) Notice to Employees

A notice shall be permanently posted on the Industrial User's bulletin board(s) or other prominent places advising employees who to call in the event of a dangerous Discharge. Employers shall ensure that all employees who become aware of a Slug Discharge occurring are advised of the emergency notification procedure.

(i) Closure Plan

In the event a Significant Industrial User will be terminating its Discharge on a temporary or permanent basis, the Discharger shall notify the Control Authority at least sixty (60) days prior to such termination. The Control Authority, subject to its discretion, may require any User to submit a closure plan to the Control Authority for approval at least thirty (30) days before cessation of Discharge. If required, the closure plan, at a minimum, shall address the cleaning and other activities that will be occurring, the anticipated effect on the quality and quantity of the Discharge, and how the Discharger will assure that such activities will not adversely impact the POTW or otherwise cause Interference or Pass-Through.

Sec. 33-250 [Sec. 13-24-50] **[Reserved]**

Sec. 33-251-. [Sec. 13-24-51] **Discharge of Hauled Wastes.**

(a) Requirements Applicable to Trucked or Hauled Wastes

The requirements of this Ordinance apply to Pollutants from domestic and non-domestic sources, which are transported (e.g., by truck or rail) to the POTW. These requirements apply to such trucked or hauled Pollutants to the same extent as Pollutants Discharged directly into the sewer system. Except for wastewater from residential household septic tank, food establishment grease, drive through car wash traps, and portable toilets, no User shall have wastewater hauled to the Memphis WWTP without receiving preapproval from the City of Memphis.

(b) Requirements for Generators and/or Haulers of Wastewater

The Control Authority may require any generator and/or hauler of Wastewater, including but not limited to, those pertaining to holding tank wastes, industrial waste, sludge, septage, fats, oils and grease, or other sanitary sewage to:

- (1) Monitor, sample, and analyze the Wastewater;
- (2) Provide a representative waste analysis of the waste prior to Discharge;
- (3) Submit reports, including a waste tracking form, and such other information as requested by the Control Authority for every load or at such other frequency as the Control Authority deems appropriate; and/or

- (4) Undertake such additional requirements as deemed appropriate by the Control Authority to implement Pretreatment Requirements and to protect the POTW, human health, and the environment.

(c) Designated Discharge Points and Approvals

No Person may Discharge hauled Wastewater of any type into the sewer system or WWTP except at a Discharge point designated by the City of Memphis and with proper permit, approvals, and manifest. Alternate site locations must be approved or designated by the City of Memphis. Sewer systems treated by the POTW include all sewer systems located in Memphis, Germantown, certain systems located in Bartlett, Collierville, Lakeland, Millington, unincorporated Shelby County, and certain parts of Desoto County, Mississippi, including Southaven, Mississippi, and Horn Lake, Mississippi. Except for the Memphis designated point(s), wastewater may not be hauled into any sewer systems treated by the Memphis POTW.

(d) Hauling License Required and Other Requirements

Any Person engaged in the hauling of Wastewater to the Memphis WWTP must obtain any necessary approvals from the Shelby County Health Department. Licensed haulers shall be responsible for complying with all the terms and conditions contained in the license, in addition to Section R.5 of the Septic Cleaner Regulations of the Memphis and Shelby County Plumbing Code. Additionally, if the waste hauler intends to use the POTW disposal site, the hauler must obtain a disposal permit from the Control Authority and shall be responsible for complying with all the terms and conditions contained in the permit and the City of Memphis Sewer Use Ordinance. All trucks must be marked with the company name, phone number, waste hauler permit number, city, and state. The tank must also be marked with the company name and capacity of the tank in gallons.

(e) Hauled Waste Tracking Form Required for Every Load

Waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and a certification that none of the hauled wastes are RCRA hazardous wastes as defined in 40 C.F.R. Part 261 or State Rule 0400-12-01.

(f) Absolute Prohibition on Hauling of Hazardous Waste to Memphis POTW

In no event shall any Person arrange for or deliver to the POTW (including the collection system), by truck or rail, any Pollutant or waste which would be a hazardous waste as defined in 40 C.F.R. Part 261 or State Rule 0400-12-01.

(g) Letter of Approval and Manifest

Except as provided in Section 33-251(h), below, or the City of Memphis otherwise provides in writing, no Wastewater may be picked up and disposed at the POTW (including the collection system) unless the entity producing the waste has a Letter of Approval from the City of Memphis authorizing receipt of the particular wastestream, and each truck load or other load is accompanied with a properly completed manifest. Misrepresentation as to the waste delivered by a hauler may lead to civil and/or criminal enforcement. The generator of the waste must submit a written request to the City of Memphis containing all required information requesting approval to dispose of the waste and must receive the Letter of Approval prior to the pickup of the waste. The following are the requirements for the written request:

- (1) Must be on company letterhead and must be signed by an Authorized Representative of the User;
- (2) Must include the physical address or location of the facility;
- (3) Must include the address or physical location of the waste sump, pit, or catch basin;
- (4) Must include estimated volume or volumes of Wastewater and/or sludge from each basin, sump, pit, basement, etc.;
- (5) Must include source of waste for each basin, sump, pit, basement, etc. (e.g., sanitary or septic waste, lift station sludge, sediment from industrial Pretreatment system, laundry waste, maintenance shop sludge, mop water, storm water, etc.);
- (6) Must include a Certification Statement of Non-Hazardous Waste, "I certify that the waste to be disposed of would not be classified as hazardous waste as defined under the Resource Conservation and Recovery Act at 40 C.F.R. Part 261 and State Rule 0400-12-01;"
- (7) Must include a Certification Regarding Inapplicability or Compliance with Categorical Pretreatment Standards in accordance with one of the following two options:
 - (A) "I certify that the waste is not subject to Categorical Pretreatment Standards as set forth in 40 C.F.R. Chapter I, Subchapter N, Part 405 *et seq.*" or
 - (B) "I certify that the waste is from the following category [**insert category**], is subject to Categorical Pretreatment Standards as set forth in 40 C.F.R. Chapter I, Subchapter N, Part 405 *et seq.*, and that based upon the attached sampling information, the waste is in compliance with the applicable categorical pretreatment standard.

If option B applies, the letter must include the sampling information.

- (8) Must include the number of expected disposals or frequency of disposals from each basin, sump, or pit (e.g., a one-time event, one-disposal every three months for 12 months, one disposal per month for 12 months, etc., but not for any longer than 12 months); and
- (9) When required by the Control Authority, must include the laboratory report(s) of test results for a representative grab sample collected from each basin, sump, pit, basement, etc., with completed chain-of-custody document(s) attached, and must include any required field test results (e.g., pH) or such additional information as the Control Authority may require.

(h) Wastestreams Not Requiring Separate Written Approval

Notwithstanding Section 33-251(g), above, the following wastestreams are not required to have a separate Written Approval for each particular wastestream unless otherwise required by the Control Authority on a case-by-case basis:

- (1) Wastewater from residential household septic tanks;
- (2) Food establishment grease removal equipment;

(3) Drive-through car wash traps; and

(4) Portable toilets.

(i) Documents Required During Disposal and Fee

A copy of the Approval Letter and properly completed manifest must accompany the permitted waste hauler during the disposal at the City of Memphis' designated Discharge point. The disposal fee will be a charge based on a rate established by the Division of Public Works in accordance with the gallon capacity of the truck.

(j) Pollutant Limits and Other Conditions

Maximum hauled waste Pollutant limits and such other conditions as the Control Authority deems appropriate may be set by the Control Authority in a permit and/or Letter of Approval for determining whether a request to transport and dispose of waste to the designated Discharge point is acceptable or not. No Person shall violate the Pollutant limits established by the Control Authority for hauled Wastewater or otherwise be in violation of a waste hauler permits, disposal permit, Letter of Approval, or Other User Permit issued by the Control Authority.

(k) pH Limits for Hauled Wastewater and Volume

(1) All hauled Wastewater must not violate a pH Minimum Limit of 5.5 standard units, *i.e.*, having a pH lower than 5.5 standard units.

(2) Notwithstanding Section 33-243(b)(5), all hauled Wastewater must not violate a pH Maximum Limit of 10.0 standard units.

(3) Decanting or back flushing of the grease trap or its wastes for the purpose of reducing the volume to be hauled is prohibited.

(l) Forfeiture of Hauler Waste Privileges

Failure to renew and/or obtain a waste hauler permit or disposal permit or recurrence of late payment of disposal fees may result in the waste hauler not being allowed to use the City of Memphis' designated Discharge point for disposal.

(m) City Reservation of Rights

The City of Memphis, subject to its discretion, may prohibit the disposal and/or Discharge of Pollutants or wastes hauled or trucked to the POTW or any subcategories thereof.

Sec. 33-252. [Sec. 13-24-52] Specific Charge for Hauled Waste Transported for Disposal at the Discharge Point Designated by the City of Memphis.

The disposal fee charge for hauled Wastewater originating from residential household septic tanks, food establishment grease removal equipment, drive through car washes, portable toilets, and industrial Wastewater and sludge shall be a flat rate based upon the volume of the truck (tank capacity). All customers will be charged on a hauled waste disposal charge based on rate in cents per gallon of Wastewater multiplied by the capacity in gallons of the truck hauling the Wastewater. The rate may be reviewed and adjusted by the Division of Public Works.

Sec. 33-253. [Sec. 13-24-53] **Food Establishment Wastewater.**

Sec. 33-253-01. [Sec. 13-24-53-01] **Waste Disposal – Construction Plans Approval and Permit Required.**

(a) Compliance with Ordinance

All food service establishments (“FSE”), including but not limited to cafes, restaurants, hotels, retirement centers, nursing homes, hospitals, grocery stores, markets, prisons, mobile food units, or other food preparation establishments, Discharging Wastewater to the City’s POTW, including the sewer system, shall comply with this Ordinance except to the extent that any requirement is specifically superseded by the City of Memphis, Division of Public Works, Fats, Oil and Grease (“FOG”) Plan, if applicable. The FOG Management Plan, if applicable, would be available at www.memphistn.gov.

(b) Grease Trap Required/Design Criteria

- (1) An FSE shall not Discharge to the POTW, including the collection system, unless it has installed and is operating and maintaining a sufficiently sized oil and grease, water and solids separator (hereinafter called grease removal equipment) necessary to prevent the accumulation of oil and grease in the sewer collection system. Approval of the City of Memphis, Division of Public Works, shall be required during the construction plans approval process.
- (2) All grease traps used in conjunction with food service establishments shall have the capacity of 15 gallons per seat of dining capacity, except that no single grease trap shall be smaller than 750 gallons or larger than 3,000 gallons. In certain cases, multiple grease traps may be utilized. Alternative treatment technologies shall be considered on a case-by-case basis for food establishments that are to be located in an existing building where large grease removal equipment is not feasible. The use of enzymes and other chemical agents to dissolve, emulsify, or break-up fats, oil, and greases (FOG) in lieu of physically cleaning and removing FOG with grease removal equipment is prohibited.

(c) Food Establishment Wastewater Discharge (“FEWD”) Permits

All FSE’s shall obtain a FEWD permit to Discharge to the POTW, including the collection system, from the Control Authority. This permit shall be posted on the premises and renewed as needed. Except where the Control Authority requires the FSE to obtain an individual permit, an FSE may be covered by a general Other User Permit.

(d) Multi-Dwelling Units, Apartments and Other FSE’s – Control of Fats, Oils & Grease (FOG) Discharges

Any multi-dwelling unit, or apartment building, complex or FSE’s may be subject to enforcement action for discharging FOG that contributes to a sanitary sewer overflow event, or obstruction to the sewer system.

(e) Person Who Causes Obstruction of Sewers

No Person shall Discharge or cause a Discharge that results in an obstruction of the sewer system. For example, a plumber shall take such actions as necessary to avoid the release of FOG material that is lodged in a pipe to be released into the sewer system.

Sec. 33-253-02. [Sec. 13-24-53-02] **Subject to Industrial Wastewater Limitations.**

Wastewater Discharged into public sewers from FSE's are subject to the limitations set forth in Sections 33-243 and 33-244 of this Ordinance and such other provisions of this Ordinance and City Code provisions that apply to Discharges to the POTW (including the sewer system), general and specific prohibitions, reporting, user charges, permit fees, sampling fees, inspection fees, and any other fees established from time to time by the City, and such conditions as the Control Authority includes in a permit.

Sec. 33-253-03. [Sec. 13-24-53-03] Permit for Food Establishment Wastewater Discharge.

In addition to requirements otherwise set forth in this Ordinance, a permit for Food Establishment Wastewater Discharge may require pretreatment of Wastewater before Discharge, restriction of peak flow Discharges, Discharge of certain Wastewater only to specified sewers of the City, relocation of point of Discharge, prohibition of Discharge of certain Wastewater components, restriction of Discharge to certain hours of the day, payment of additional charges to defray increased costs of the City created by the Wastewater Discharge, and such other conditions as may be required. Except as otherwise provided in this Section 33-253 and subparts thereof, FEWD permits are subject to the same provisions in this Ordinance applicable to Other User Permits.

Sec. 33-253-04. [Sec. 13-24-53-04] Permit Application Required for New Construction and Others.

Any newly constructed building or redevelopment resulting in a new FEWD establishment shall complete and file with the Division of Public Works, an application in the form prescribed by the Division of Public Works. The applicant may be required to submit, in units and terms appropriate for evaluation, the following information:

- (a) Name and address of applicant;
- (b) Volume of Wastewater to be Discharged;
- (c) Time of daily food preparation operations;
- (d) Description of food preparation, dining room capacity by seats, number of employees, and size of kitchen;
- (e) Type of FOG treatment; and
- (f) Any other information as may be deemed by the Approving Authority to be necessary to evaluate the permit application.

The Division of Public Works, subject to its discretion, may require other FEWDs (*e.g.*, existing FEWDs) to submit permit applications. The Division of Public Works, after evaluating the data furnished by the applicant, may require additional information. After evaluation and acceptance of the data furnished, an on-site inspection of the waste Discharge system, treatment systems, or other systems relating to the waste Discharge may be required. The Approving Authority may then issue a FEWD Permit subject to the terms and conditions provided herein.

Sec. 33-253-05. [Sec. 13-24-53-05] Duration of FEWD Permits.

FEWD Permits shall be issued for a specified time period, not to exceed five (5) years. If the Permittee is not notified by the City thirty (30) days prior to the expiration of the permit, the permit shall be extended under Sec. 33-224(b) until such time as the City (1) reissues a new FEWD permit or (2) decides that a new FEWD permit should not be reissued. The terms and conditions of the permit may be subject to modification and change by the City during the life of the permit as limitations or requirements as identified in Sections 33–243 and 33-244 are modified and changed or as otherwise deemed appropriate by the Control Authority. See Section 33-225 pertaining to modification of permits, including FEWD permits.

Sec. 33-253-06. [Sec. 13-24-53-06] Revocation of Food Establishment Wastewater Permit.

In addition to causes set forth in Section 33-225, the Division of Public Works may revoke the FEWD permit of any permittee who is found to be in violation of this Ordinance or who:

- (a) Fails to install grease pretreatment devices as required by permit;
- (b) Fails to fulfill reporting requirements or pretreatment maintenance as required by permit;
- (c) Refuses reasonable access to the permittee’s premise for the purpose of inspection or monitoring; or
- (d) Violates any condition of the FEWD permit.

Sec. 33-253-07. [Sec. 13-24-53-07] Grease Pretreatment Required.

(a) Grease Reduction Equipment/Oil and Grease Limit

FEWDs shall make Wastewater acceptable under the limitations established herein (*see, e.g.*, Section 33-244(a)(2) setting forth a FOG limit of 100 mg/l) before Discharging to any public sewer. All permittees are required to install an approved type of grease removal equipment (“GRE”) in the waste line leading from the food preparation area, or from sinks, drains, appliances, dish washers, mop sinks, floor drains, and other fixtures or equipment used in food preparation or cleanup where grease may be introduced into the sewerage system. Such grease Pretreatment devices shall be installed to remove grease from Wastewater and shall be maintained in efficient operating conditions by periodic removal of the accumulated grease. No such collected grease shall be introduced into any drainage piping or public sewer. Such grease may, however, be hauled by a licensed waste hauler to the City’s WWTP subject to the provisions of this Ordinance.

(b) Segregation of Oils, Greases and Greasy Solids

Each FEWD shall also be required to provide a collection drum or container for the purpose of physically segregating oils, greases, and greasy solids. FEWDs shall establish procedures for personnel to practice maximum segregation of oils, greases, and greasy solids to the collection drum or container prior to washing and other water cleaning, which goes into sewers. The FEWD is responsible for the proper removal and disposal by appropriate means of the material captured from either grease pretreatment devices on Wastewater lines or the collection drum for segregating oils, grease, and greasy solids.

(c) Training Program to Assure Proper Handling of Grease Waste

Upon notification from the Division of Public Works, the FEWD shall undertake a training program to assure that its employees are familiar with and implement a program to assure that grease waste is properly handled.

Recordkeeping and reporting of such training program, and other food and grease related activities may be required.

Sec. 33-253-08. [Sec. 13-24-53-08] Maintenance Reports.

The FEWD shall maintain records of grease Pretreatment device cleaning, maintenance, and grease removal on site. The Division of Public Works may require the FEWD to provide results of periodic measurements of its Discharge, which may include chemical analysis of oil and grease content and measurements of FOG content in GRE. FEWDs shall allow the City or its representative ready access at all reasonable times to all parts of the premises for purposes of sampling and inspections.

Sec. 33-253-09. [Sec. 13-24-53-09] Penalty for Violation and Civil Liability.

Any person(s) Discharging Wastewater in violation of a FEWD Permit and/or this Ordinance is subject to fines, penalties, cost recovery, injunction, termination of sewer service, permit revocation, and/or such other remedies as are available to the Control Authority.

Sec. 33-253-10. [Sec. 13-24-53-10] Surcharges for Oil and Grease.

The Division of Public Works may impose and modify such additional surcharges, as it deems appropriate, to address disproportional costs or other concerns associated with the Discharge of FOG (e.g., the impact on the collection system).

Secs. 33-253-11—33-253-20. [Sec. 13-24-53-11 -- 20] Reserved.

Sec. 33-254 – 33-259. [Sec. 13-24-54 -- 59] Reserved.

DIVISION 4. REVIEW AND ENFORCEMENT

Secs. 33-260 -- 33-269. [Sec. 13-24-60 -- 69] Reserved.

Section 33-270 [Sec. 13-24-70] Violations and Enforcement Actions.

(a) Enforcement

A violation of any of the foregoing may result in enforcement actions including, among other things, administrative fines, civil penalties, withdrawal of the privilege to use the City of Memphis Wastewater System, and suspension or termination of the existing permit (e.g., waste hauler permit) and/or prohibition from obtaining a new permit.

(b) Criminal Penalties

Any person in violation of this Ordinance shall be guilty of a misdemeanor and subject to punishment as provided in section 1-24-1. Any person who willfully and negligently violates permit conditions may be subject to other criminal penalties, including criminal penalties imposed by the State of Tennessee and/or the United States.

(c) Damaging Sewerage Works

The prohibitions and requirements of Section 33-30 (Damaging Sewerage Works) are hereby incorporated by reference. A violation of Section 33-30 is also a violation of Article IV of this Ordinance.

Sec. 33-271. [Sec. 13-24-71] **Local Hearing Authority.**

There is hereby created and established a local hearing authority to be known as the Memphis Wastewater Hearing Authority and referred to hereinafter as the "Hearing Authority."

Sec. 33-272. [Sec. 13-24-72] **Purpose.**

The Hearing Authority shall serve as the local hearing authority as prescribed in Tenn. Code Ann. § 69-3-124 and shall be responsible for the review of orders issued or actions undertaken by the Director of Public Works or his designee pursuant to the Sewer Use Ordinance, pretreatment statutes codified at Tennessee Code Annotated §§ 69-3-123 through 69-3-129, and such requirements as set forth in the National Pollutant Discharge Elimination System ("NPDES") permits issued to the City of Memphis.

Sec. 33-273. [Sec. 13-24-73] **Composition, Length of Term, Officers.**

- (a) The Hearing Authority shall be composed of the following seven (7) members and two (2) alternates who shall be appointed by the Mayor subject to approval by the Memphis City Council, and shall constitute the voting members of the Hearing Authority:

Representative Group (# of members)	Length of Term (years)
Industry (2)	1
Private Citizenry (3)	2
Engineering/Science (2)	2
Public Interest Group/University (2)	1

- (b) Each member and alternate shall serve without compensation and may be reappointed, but do not succeed themselves automatically.
- (c) One (1) alternate shall be appointed from the "Industry" group and one (1) from the "Public Interest/University" group.
- (d) A chairperson of the Hearing Authority shall be elected at the first meeting of each newly appointed Hearing Authority from among its own membership to serve for a term of one (1) year. Another member shall serve as vice chair for a period of one (1) year upon a majority vote of all members.
- (e) The Hearing Authority shall keep complete and accurate records of the proceedings of all meetings and the Director of Public Works or his designee shall serve as the Hearing Authority's technical secretary.
- (f) The Hearing Authority may issue subpoenas requiring attendance of witnesses and production of such evidence as requested, administer oaths, and take testimony as the Hearing Authority deems necessary to fulfill its purpose.

- (g) No member or alternate shall participate in the appeal of any matter in which the member or alternate has a direct personnel or financial interest.

Sec. 33-274. [Sec. 13-24-74] **Removal.**

Members may be removed from the Hearing Authority for continued absence from meetings or other just cause in accordance with the procedure for removal of board or commission members set forth within House Rule Ordinance No. 1852 of the City Charter.

Sec. 33-275. [Sec. 13-24-75] **Power and Duties.**

In addition to any other duty or responsibility otherwise conferred upon the Hearing Authority by this Chapter, the Hearing Authority shall have the duty and power as follows:

- (a) To recommend to the Director of Public Works as the local administrative officer that this Article or any provision included within this Chapter be amended or modified;
- (b) To establish, modify, or amend procedural rules governing hearings, orders, issuance of permits, and all other matters not specifically requiring a hearing, provided that such rules do not conflict with applicable State or Federal law or the City Code of Ordinances;
- (c) To establish a schedule of the amount of civil penalty that can be assessed for certain specific violations or categories of violations in accordance with T.C.A. § 69-3-125(a)(3);
- (d) To hold meetings and such special meetings as the Hearing Authority may find necessary;
- (e) To hold hearings upon appeals from orders or actions of the Director of Public Works as the local administrative officer in accordance with Tennessee Code Annotated § 69-3-124;
- (f) To hold hearings related to the issuance, reissuance, suspension, revocation, or modification of an SIU Discharge Permit or Other User Permit and issue appropriate orders related thereto;
- (g) To hold such other hearings related to any aspect or matter in the administration of this Chapter and to make such determinations and issue such orders as may be necessary to effectuate the purpose of this Chapter;
- (h) To obtain assistance upon request from the Director of Public Works or his designee as the Hearing Authority might need;
- (i) In addition to any other power granted by this title, the Hearing Authority is granted the authority to review the assessment of a civil penalty against any person in the amount not to exceed the sum of ten thousand dollars (\$10,000) per day for each day of violation during which the act or omission continues or occurs in accordance with Tennessee Code Annotated § 69-3-125;
- (j) The decision of the Hearing Authority shall become final and binding on all parties unless appealed to the courts as provided in Section 33-176, which governs appeals.

Sec. 33-276. [Sec. 13-24-76] **Appeal.**

Pursuant to Tennessee Code Annotated § 69-3-124(b), an appeal may be taken from any final order or other final determination of the Hearing Authority by any party who is or may be adversely affected thereby, to the chancery court pursuant to the common writ of certiorari set out in Tennessee Code Annotated § 27-8-101, within sixty (60) days from the date such order or determination is made.

Sec. 33-277. [Sec. 13-24-77] **Quorum.**

A quorum of the Hearing Authority must be present at any regular or special meeting in order to conduct a hearing. Four (4) members of the authority shall constitute a quorum.

Sec. 33-278. [Sec. 13-24-78] **Members to Be Residents of the City.**

Each member and alternate of the Hearing Authority must have been a resident of Memphis for not less than one (1) year and shall continue to maintain such residency throughout such member's term.

Sec. 33-279. [Sec. 13-24-79] **Members Oath.**

Each member of the Hearing Authority shall take an oath to faithfully perform the duties imposed upon him without fear or favor, and in full accordance with the constitution and laws of the State and the ordinances of the City.

Sec. 33-280. [Sec. 13-24-80] **Hearings.**

Any hearing or rehearing brought before the Hearing Authority shall be conducted in accordance with Tenn. Code Annotated Section 69-3-124.

Sec. 33-281. [Sec. 13-24-81] **Administrative Order/Emergency Order Procedures.**

(a) Complaint issued by Director or His Designee

- (1) Whenever the Director or his/her designee has reason to believe that a violation of any provision of the pretreatment program (including but not limited to a violation of the Sewer Use Ordinance, SIU Discharge Permit or Other User Permit) or orders of the Hearing Authority issued pursuant thereto has occurred, is occurring, or is about to occur, the Director or his/her designee may cause a written complaint to be served upon the alleged violator or violators.
- (2) The complaint should specify the provision or provisions of the pretreatment program (including but not limited to a violation of the Sewer Use Ordinance, SIU Discharge Permit or Other User Permit) or order alleged to be violated or about to be violated, the facts alleged to constitute a violation thereof, may order that necessary corrective action be taken within a reasonable time to be prescribed in such order, and shall inform the violators of the opportunity for a hearing before the Hearing Authority.
- (3) Any such order shall become final and not subject to review unless the Person or Persons named therein request by written petition a hearing before the Hearing Authority, no later than thirty (30) days after the date such order is served; provided, however, that the Hearing Authority may review such final order on the same grounds upon which a court of the state may review default judgments.

(b) Emergency Circumstances

- (1) Whenever the Director or his/her designee finds that an emergency exists imperatively requiring immediate action to protect the public health, safety or welfare, the health of animals, fish or aquatic life, a public water supply, or the facilities of the POTW, the Director or his/her designee may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the Director or his designee deems necessary to meet the emergency (e.g., immediate termination of sewer service).
 - (2) If the violator fails to respond, or is unable to respond, to the Director or his/her designee's order, the Director or his/her designee may take such emergency action, as he deems necessary, or contract with a qualified person or persons to carry out the emergency measures. The Director or his designee may assess the Person or Persons responsible for the emergency condition for actual costs incurred by the POTW and local agencies in meeting the emergency.
 - (3) Any Person to whom an emergency order is issued shall comply with the emergency order immediately, but on petition to the Hearing Authority shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than three (3) days from the receipt of such petition by the Hearing Authority.
- (c) Except as otherwise expressly provided, any notice, complaint, order, or other instrument issued by or under authority of this Division 4 may be served on any person affected thereby personally, by the Director or any person designated by him/her, or such service may be made in accordance with Tennessee statutes authorizing service of process in civil action. Proof of service shall be filed in the office of the Director.
- (d) User compliance with the requirements of an Administrative Order or Emergency Order does not relieve the User of liability for any violations occurring before or after receipt of the Order. Failure of a User to comply with any condition or requirement set forth in an Administrative Order or Emergency Order is a violation and is independently enforceable for each day of violation. An Administrative Order and Emergency Order have the full force of law and are enforceable in a court of law. Nothing in this section shall limit the authority of the Control Authority to take any action, including emergency actions or any other enforcement action, whether or not an Administrative Order or Emergency Order has been issued.

Sec. 33-282. [Sec. 13-24-82] **Violations and Penalties.**

(a) Violations

- (1) Any Person including, but not limited to, residential, carwash, restaurant, waste haulers, commercial facilities, or Industrial Users, who does any of the following acts or omissions shall be subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the act or omission continues or occurs:
 - (A) Violates an effluent standard or limitation imposed by the pretreatment program (including a violation of the Sewer Use Ordinance);
 - (B) Violates the terms or conditions of an SIU Discharge Permit or Other User Permit;
 - (C) Fails to complete a filing requirement of the pretreatment program (including a violation of a filing requirement of the Sewer Use Ordinance);

- (D) Fails to allow or perform an entry, inspection, and monitoring or reporting requirement of the pretreatment program (including the Sewer Use Ordinance);
 - (E) Fails to pay user or cost recovery charges imposed by the pretreatment program (including the Sewer Use Ordinance); or
 - (F) Violates a final determination or order of the Hearing Authority or the Director or his designee.
- (2) Any civil penalty may be assessed in the following manner:
- (A) The Director or his/her designee may issue an assessment against any Person or Industrial User responsible for the violation;
 - (B) Any Person or Industrial User against whom a civil penalty assessment has been issued may secure a review of such assessment by filing with the Director or his/her designee a written petition setting forth the grounds and reasons for his/her objections and asking for a hearing in the matter involved before the Hearing Authority and, if a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final;
 - (C) Whenever any assessment has become final because of a Person's failure to appeal the Director or his/her designee's assessment, the Director or his/her designee may apply to the appropriate court for a judgment and seek execution of such judgment and the court, in such proceedings, shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment.
 - (D) In assessing the civil penalty, the Director or his/her designee may consider the following factors:
 - (i) Whether the civil penalty imposed will be a substantial economic deterrent to illegal activity;
 - (ii) Damages to the POTW, including compensation for the damage or destruction of the facilities of the POTW, and also including any penalties, costs, and attorneys' fees incurred by the Control Authority as the result of the illegal activity, as well as the expenses involved in enforcing this section and the costs involved in rectifying any damages;
 - (iii) Cause of the Discharge or violation;
 - (iv) The severity of the Discharge and its effect upon the facilities of the POTW and upon the quality and quantity of the receiving waters;
 - (v) Effectiveness of action taken by the violator to cease the violation;
 - (vi) The technical and economic reasonableness of reducing or eliminating the Discharge; and
 - (vii) The economic benefit gained by the violator.
 - (E) The Director or his/her designee may institute proceedings for assessment in the chancery court of the county in which all or part of the pollution or violation occurred, in the name of the Control Authority.

- (3) The Division of Public Works may establish a schedule of the amount of civil penalty which can be assessed by the Director or his/her designee for certain specific violations or categories of violations.

(b) Imprisonment

In accordance with TCA 6-54-306, any violation of this Ordinance shall be subject to a maximum imprisonment under State law of thirty (30) days. A violator may be subject to a greater length of imprisonment under Federal and/or State law.

(c) State or Federal Enforcement

Notwithstanding anything to the contrary, violation of a pretreatment program requirements by a User may subject a User to an enforcement action by TDEC, EPA, or a citizen suit including but not limited to the following:

- (1) In the case of civil enforcement under the federal Clean Water Act by EPA or a citizen suit, a User may be subject to, among other things, civil penalties of \$55,800 per day, per violation, and such additional amounts as provided for by the Civil Monetary Penalty Inflation Adjustments in 40 C.F.R. § 19.4.
- (2) Any person who negligently or knowingly violates any requirement imposed in a pretreatment program including, but not limited to, SIU Discharge Permit or Other User Permit (*e.g.*, hauled Wastewater Permit or Food Establishment Wastewater Permit conditions) may be subject to criminal penalties under the Clean Water Act.

(d) Interest/Lien

Interest may accrue on unpaid balances. A lien against the User's property may be sought for unpaid charges, fines, and penalties.

Sec. 33-283. [Sec. 13-24-83] Damages Assessment.

- (a) The Director or his/her designee may assess the liability of any polluter or violator for damages to the pretreatment agency resulting from any Person's or Industrial User's pollution or violation, failure, or neglect in complying with any permits or orders issued pursuant to the provisions of the pretreatment program or Sections 33-275, 33-281, and 33-282, herein.
- (b) Any polluter or violator against whom a damage assessment has been issued may secure a review of such assessment by filing with the Hearing Authority an appeal asking for a hearing in the matter. If an appeal from such assessment is not made to the Hearing Authority by the polluter or violator within thirty (30) days of notification of such assessment, he/she shall be deemed to have consented to such assessment and it shall become final.
- (c) Damages may include any expenses incurred in investigating and enforcing the pretreatment program or Tennessee Code Annotated, Section 69-3-123 through 69-3-129 in removing, correcting, and terminating any pollution, and also compensation for any actual damages caused by the pollution or violation.
- (d) Whenever any assessment has become final because of a person's failure to appeal within the time provided, the Director may apply to the appropriate court for a judgment and seek execution on such

judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment.

Sec. 33-284. [Sec. 13-24-84] **Additional Enforcement Provisions.**

(a) Other Enforcement Actions

In addition to the enforcement remedies and responses otherwise identified in Sections 33-270 through 33-283 of this Ordinance, noncompliance by a User may subject a User to enforcement response(s) including, but not limited to, a phone call, e-mail, Notice of Violation, increased monitoring, Consent Order or Agreement, Show Cause Request, case referral to Federal or state government, or such other remedy as the Control Authority deems appropriate. These enforcement responses include:

- (1) Notice of Violation: The Control Authority may issue a Notice of Violation to a User when the Control Authority determines that a User violated, or continues to violate, any provision of this Ordinance, an SIU Discharge Permit, Other User Permit, enforcement Order issued hereunder, or any Pretreatment Standard or Pretreatment Requirement. The Notice of Violation may request that the User promptly respond to the Control Authority and to identify, among other things, an explanation of the cause(s) of the violation and a plan for the satisfactory correction and prevention of future violations. Submission of the response by a User does not relieve the User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Control Authority to take any action, including emergency actions or any other enforcement action, whether or not a Notice of Violation has been issued.
- (2) Increased Monitoring: The Control Authority, in response to User violation(s), may require the User to increase the sampling and monitoring of its Discharge or the Control Authority may undertake increased sampling and monitoring of the User's Discharge. If increased monitoring is undertaken by the Authority, the costs associated with such increased sampling and monitoring may be charged to the User.

The increase in a User's sampling and monitoring activities in response to violation(s) may be imposed upon the Industrial User by the Control Authority issuing a modification to the User's SIU Discharge Permit or Other User Permit, issuing an Administrative Order, or by issuing any other appropriate mechanism. An option the Control Authority, subject to its discretion, may include in an SIU Discharge Permit or Other User Permit is a permit condition which automatically provides for increased sampling upon User noncompliance.

- (3) Consent Order or Consent Agreement: The Control Authority may enter into a Consent Order or Consent Agreement when the Control Authority determines that a User violated, or continues to violate, any provision of this Ordinance, a SIU Discharge Permit, Other User Permit or enforcement Order issued hereunder, or any Pretreatment Standard or Pretreatment Requirement. A Consent Order or Consent Agreement may provide for monetary penalties for past violation(s), stipulated monetary penalties for future violation(s), an enforceable compliance schedule setting forth specific action(s) to be taken by the User to correct noncompliance within a specified time period, and/or such other conditions as the Control Authority deems appropriate.

Failure of a User to comply with any condition or requirement set forth in a Consent Order or Consent Agreement is a violation of this Ordinance and each day of a violation is independently enforceable. A Consent Order and Consent Agreement have the full force of law and are enforceable in a court of law.

A Consent Order is subject to judicial approval as a precondition to its effectiveness whereas a Consent Agreement is not subject to such judicial approval prior to its adoption.

- (4) Show Cause Request: The Control Authority may issue a Show Cause Request to a User when the Control Authority determines that a User violated, or continues to violate, any provision of this Ordinance, a SIU Discharge Permit, Other User Permit, enforcement Order issued hereunder, or any Pretreatment Standard or Pretreatment Requirement. A Show Cause Request may provide for the User to appear before the Control Authority (at a Show Cause Meeting) and show cause as to why a proposed or subsequent enforcement action should not be taken. Nothing in this section shall limit the authority of the Control Authority to take any action, including emergency actions or any other enforcement action, whether or not a Show Cause Request has been issued or a Show Cause Meeting has been held.
- (5) Referral to State or Federal Government: The Control Authority may refer a matter to a Federal and/or state government for enforcement by such governmental entity when the Control Authority determines that a User violated, or continues to violate, any provision of this Ordinance, an SIU Discharge Permit, or enforcement Order issued hereunder, or any Pretreatment Standard or Pretreatment Requirement. The Control Authority may assist the Federal and/or state government in a Federal or state-initiated enforcement action against a User.

(b) City Enforcement Options Not Limited

Nothing in this Ordinance, the Control Authority's Enforcement Response Plan, or any other provision of Memphis' approved pretreatment program shall be intended to limit the enforcement discretion of the Control Authority as otherwise provided for by law.

(c) User Liability for Causing City Violations

A User shall be liable for any penalty imposed upon the City (whether the penalty is a result of a judicial or administrative trial or hearing or the settlement of a judicial or administrative penalty action) where the City's violation was caused by the User, either alone or in conjunction with the Discharge(s) from other source(s). Where the User has violated a Local Limit under Section 33-244(c) and a violation of the NPDES Permit applicable to the City's POTW subsequently occurred for the same Pollutant or associated Pollutant(s), a rebuttable presumption is deemed to exist that the permittee caused the violation of the NPDES Permit. The User shall have the burden of proof to demonstrate that its Discharge did not cause, in whole or part, the City to violate its NPDES permit limitation.

(d) Exhaustion of Administrative Remedies and Appeals

Any issue that was decided by the Hearing Authority in a prior hearing or could have been decided by the Hearing Authority had the Permittee or Defendant, as applicable, appealed the matter, shall be binding upon such Permittee or Defendant in subsequent hearing(s) unless there is a change in law (e.g., a court overturned the Hearing Authority's decision or the underlying Ordinance standard has been amended) or a significant change in the underlying facts.

(e) Need to Halt or Reduce Activity not a Defense

It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. See Section 33-246(e), requiring the reduction in production as necessary to achieve compliance.

(f) Duty to Mitigate.

The User shall take all reasonable steps to minimize or prevent any Discharge which has a reasonable likelihood of adversely affecting human health or the environment or any action which has the reasonable likelihood of obstructing flow in the sewer collection system.

Sec. 33-285. [Sec. 13-24-85] **Special Fund.**

All damages and/or penalties assessed and collected under Section 33-282 and/or 33-283 shall be placed in a special fund by the pretreatment agency and allocated and appropriated to the City of Memphis for the administration of its pretreatment program.

Sec. 33-286. [Sec. 13-24-86] **Public Notification and Significant Noncompliance.**

(a) Publication of SNC

As provided for by 40 C.F.R. § 403.8, the Control Authority may publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the City, of Industrial Users, which at any time during the year were in significant noncompliance with applicable Pretreatment Requirements. For purposes of this provision, a significant Industrial User (or any Industrial User which violates subparts (3), (4), or (8) of this part) 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 sixty-six (66) percent or more of all the measurements for each Pollutant taken during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Pretreatment Requirement, including instantaneous limits, for the same Pollutant parameter;
- (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements for each Pollutant parameter taken during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Pretreatment Requirement, including instantaneous limits, multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other Pollutants except pH);
- (3) Any other violation of a Pretreatment Standard or Pretreatment Requirement (Daily Maximum, long term average, instantaneous limit or narrative standard) that the Control Authority determines has caused, alone, or in combination with other Discharges, Interference or Pass-Through (including endangering the health of POTW personnel or general public);
- (4) Any Discharge of a Pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or reduce such a Discharge;
- (5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

- (6) Failure to provide, within forty-five (45) days after the due date, Federal or State required reports such as baseline monitoring reports, ninety (90)-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules (however an Industrial User is not in Significant Noncompliance if the late report only pertains to the reporting of a Pollutant value for surcharge purposes, not for compliance purposes);
- (7) Failure to accurately report noncompliance;
- (8) Any other violation or group of violations, which may include a violation of Best Management Practices, the Control Authority determines will adversely affect the operation or implementation of the Control Authority's pretreatment program.

(b) Publication of non-SNC Violations

Notwithstanding any provision to the contrary, the Control Authority may publish in a newspaper of general circulation any other noncompliance that does not meet the criteria or is not addressed in paragraph 33-286(a) above (e.g., exceedance of the TRC by a non-Significant Industrial User).

Secs. 33-287--33-289. [Sec. 13-24-87 -- 89] **Reserved.**

DIVISION 5. REVIEW AND OVERSIGHT OF OUTLYING JURISDICTIONAL PROGRAMS WITH PERMITTED INDUSTRIAL USER AND/OR OTHER DISCHARGES TO MEMPHIS STP(S)

Sec. 33-290. [Sec. 13-24-90] Purpose of This Division

- (a) Inasmuch as Memphis is the NPDES permittee that owns and operates WWTPs that receive wastewater, not only from discharges within the City but discharges from facilities located outside of the City's corporate limits, this Division of Article IV is drafted to provide a mechanism to assure that (i) Industrial User permits for discharge to Memphis issued by Outlying Jurisdictions impose requirements at least as stringent as that required by federal law, Tennessee law, and as set forth in this Article and (ii) Outlying Jurisdictions do not approve any discharges that would enter Memphis' sewers or WWTPs (e.g., Discharges originating from outside the corporate limits of the Outlying Jurisdiction) without Memphis' approval.
- (b) The provisions of this Division are modeled after the Clean Water Act ("CWA") §§ 401 and 402(b) provisions and implementing regulations (see, e.g., 40 C.F.R. §§ 122.4(a), 123.44 and 124.53) wherein EPA or an approved NPDES state review, comment upon, and potentially object to a draft permit proposed to be issued by the other governmental entity.

Sec. 33-291. [Sec. 13-24-91] Prohibitions Applicable to Outlying Jurisdiction Issuance of Industrial User Permits for Discharge to Memphis

- (a) No permit may be issued by an Outlying Jurisdiction to an Industrial User to Discharge to a Memphis WWTP when:
 - (1) The conditions of the Industrial User permit do not provide for compliance with the applicable requirements of CWA and regulations, Tennessee pretreatment Rules, and Article IV of this Ordinance of Memphis;

- (2) The Outlying Jurisdiction has failed to provide Memphis an opportunity to review and object to an Industrial User permit under section 33-292;
 - (3) The Outlying Jurisdiction has failed to provide Memphis the requested information under section 33-292(b); and/or
 - (4) Memphis has objected to issuance of the permit under § 33-292 and (i) the permit has not been changed to resolve the objection(s) or (ii) Memphis and the Outlying Jurisdiction have not otherwise resolved the issue(s).
- (b) No User shall introduce Sewage or Wastewater to the Memphis POTW, including to the sewers, pipes, and other conveyances that convey wastewater to the Memphis WWTP if:
- (1) A permit cannot be issued to that User under section 33-291(a), above;
 - (2) The Industrial User is an existing source and has been identified as a significant Industrial User by the Outlying Jurisdiction and/or Memphis and a permit has not been issued to such Industrial User within 180 days of being identified as a Significant Industrial User;
 - (3) A permit has not yet been issued to a new source unless the new source facility is designated as a Non-Significant Categorical Industrial User; or
 - (4) The User is located in an Outlying Jurisdiction which does not have a written agreement with Memphis allowing the discharge of its Users to the Memphis POTW.
- (c) Unless Memphis agrees in writing, in no event shall an Outlying Jurisdiction allow any person (including any Industrial User) located outside of its jurisdictional boundaries to introduce sewage or wastewater to that Outlying Jurisdiction's sewer system such that it would discharge to the Memphis POTW, including to the sewers, pipes, and other conveyances that convey wastewater to the Memphis WWTP.
- (d) Issuance of a permit by an Outlying Jurisdiction or other authorization of the Outlying Jurisdiction for a User to discharge in contravention of the requirements set forth in this Division, once approved as part of Memphis' pretreatment program, shall be deemed a violation by the Outlying Jurisdiction of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq.*, Tennessee Water Quality Control Act ("TWQCA"), T.C.A. §§ 68-3-101 *et seq.*, and Article IV of this Ordinance.
- (e) The introduction of sewage or wastewater to the Memphis POTW, including sewers, pipes, and other conveyances that convey wastewater to the Memphis WWTP, in contravention of the requirements set forth in this Division, once approved as part of Memphis' pretreatment program, shall be deemed a violation by an Industrial User in an Outlying Jurisdiction of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq.*, Tennessee Water Quality Control Act ("TWQCA"), T.C.A. §§ 68-3-101 *et seq.*, and Article IV of this Ordinance.

Sec. 33-292. [Sec. 13-24-92] Memphis Review of and Objections to Outlying Jurisdiction Permits.

- (a) Before issuing, reissuing, or modifying an Industrial User permit for a Discharge to the Memphis WWTP, an Outlying Jurisdiction shall provide a draft of the permit to Memphis and provide Memphis a minimum of thirty (30) days to review and comment upon the draft permit. Memphis may extend the time to comment on the draft permit for an additional thirty (30) day period for an existing permitted facility, and sixty (60) day period for a newly permitted facility, upon providing the Outlying Jurisdiction written notice of such extension.

- (b) If Memphis needs more information (*e.g.*, Industrial User permit application, Outlying Jurisdiction rationale for the permit conditions) regarding its evaluation of the proposed Industrial User permit, Memphis may request that the Outlying Jurisdiction provide Memphis the requested information. The time periods under section 33-292(a), above, are automatically extended during the pendency of the request until Memphis receives all the requested information.
- (c) Memphis may object to the issuance, reissuance, or modification of an Industrial User permit by an Outlying Jurisdiction. Such objection may identify permit conditions in the draft permit that must be changed (*e.g.*, modified or deleted) or additional conditions that must be added to the permit.
 - (1) In objecting to the Industrial User permit, Memphis shall provide a statement of the reason(s) for the objection(s) and the actions that must be taken by the Outlying Jurisdiction to eliminate the objection. These changes may be based upon the specific wording of a federal, Tennessee, or Memphis requirement or Memphis' general approach for implementing requirements for Industrial Users.
 - (2) An objection may be based upon the objective that Industrial Users in Outlying Jurisdictions should not be subject to more lenient requirements than Industrial Users located in Memphis.
 - (3) Objections may address any provisions of the proposed permit as well as the absence of permit conditions, including those relating to effluent limitations, the maintenance of records, reporting, monitoring, sampling, enforcement, or assuring that Memphis receives notice and information from the Industrial User (*e.g.*, slug reports, permit applications, etc.).
 - (4) Unless Memphis agrees to withdraw its objections, if the Outlying Jurisdiction does not resubmit a permit revised to resolve an objection to Memphis' satisfaction, the permit shall not be issued by the Outlying Jurisdiction to the Industrial User.
- (d) Where a Memphis objection is not resolved:
 - (1) If an unresolved Memphis objection involves a proposed modification to the Industrial User permit, then the permittee can continue to discharge to Memphis under the preexisting unmodified Industrial User permit for the remaining term of the permit unless precluded by subsequent legal requirements.
 - (2) If an unresolved Memphis objection involves a new Industrial User permit, the Industrial User may not discharge to Memphis unless it obtains a valid Industrial User permit. The Industrial User may request that Memphis issue the permit under section 33.293.
 - (3) If an unresolved Memphis objection involves the reissuance of an Industrial User permit, the Industrial User may continue to discharge to Memphis under the preexisting permit, subject to the limitation in section 33-294(b).
- (e) In addition, Memphis may provide recommendations with respect to the proposed permit issuance, reissuance, or amendment. Failure of the Outlying Jurisdiction to follow a recommendation does not trigger the requirements of section 33-291(a).
- (f) Notwithstanding anything to the contrary, nothing herein shall be deemed to require Memphis to review Industrial User permits issued by Outlying Jurisdictions.

Sec. 33-293. [Sec. 13-24-93] Memphis Issuance of Industrial User Permits for Dischargers in Outlying Jurisdiction

- (a) Where an unresolved Memphis objection exists, the Industrial User may request that Memphis issue an Industrial User permit authorizing the discharge to the Memphis sewers and WWTP. Memphis may

condition its willingness to issue the permit to an Industrial User located in an Outlying Jurisdiction, on the Industrial User entering into a separate written agreement with Memphis wherein the Industrial User agrees to be subject to such conditions as Memphis deems appropriate, including, but not limited to, being subject to:

- (1) Memphis' pretreatment Ordinance,
 - (2) Announced and unannounced inspections and sampling by Memphis, and/or
 - (3) Any and all enforcement actions as deemed appropriate by Memphis, including agreeing to be subject to administrative actions before Memphis and judicial actions in Tennessee State Courts, subject to the civil penalty amounts and damages as provided in Tennessee law and/or Memphis' Ordinance. Notwithstanding this provision, the Industrial User does not waive any arguments as to whether it actually committed the alleged violation.
- (b) A permit issued by Memphis to an Industrial User in an Outlying Jurisdiction may be appealed to the Memphis Hearing Authority.
- (c) Wherein Memphis issues a permit to an Industrial User in an Outlying Jurisdiction, nothing herein shall be deemed to waive federal, State, and local legal obligations of the Industrial User that apply in the Outlying Jurisdiction.

Sec. 33-294. [Sec. 13-24-94] Miscellaneous Provisions Regarding Outlying Jurisdictions Issuance of Permits

- (a) For the purposes of this Division, an "Outlying Jurisdiction" means a city, town, county, district, association, or other public body created by or pursuant to state law in which an Industrial User is located outside the Memphis City limits that discharges sewage and/or wastewater to a sewer system located in that jurisdiction, wherein the sewage and/or wastewater empties into the Memphis sewage system for eventual treatment at the Memphis WWTP(s). An "Outlying Jurisdiction" also includes a state that is approved pursuant to 40 C.F.R. § 403.10(e), that issues permits to Industrial User(s) for discharging sewage and/or wastewater to a sewer system located in that state, wherein the sewage and/or wastewater empties into the Memphis sewage system for eventual treatment at the Memphis WWTP(s). The City of Memphis is not an "Outlying Jurisdiction."
- (b) Where an Industrial User in an Outlying Jurisdiction has submitted a timely and complete permit renewal application or request for permit reissuance, in no event shall the existing permit, if not reissued by the expiration date, be continued for a period longer than six (6) months.

Secs. 33-295--33-299. [Sec. 13-24-95 -- 99] **Reserved.**

DIVISION 6. MISCELLANEOUS PROVISIONS

Sec. 33-300. [Sec. 13-24-100] **Reservation of Rights.**

Nothing contained in Articles I, II, III, IV, V or otherwise contained in a City Ordinance shall be construed to interfere with any additional requirements that may be imposed by the Control Authority subject to its sole discretion. Notwithstanding any other pretreatment program provision to the contrary, nothing in this Ordinance, any other City Ordinance, or in the City's pretreatment program shall be deemed a legally binding commitment under the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the Tennessee Water Quality Control Act of

1977, T.C.A. §§ 69-3-101 *et seq.*, and applicable regulations (*e.g.*, 40 C.F.R. Part 403, Rule 1400-40-14) for the City to undertake pretreatment implementation or enforcement activities beyond the minimum otherwise required by these Federal/state laws and regulations. Nevertheless, the City maintains its discretionary authority to undertake pretreatment activities beyond the minimum required.

Sec. 33-301. [Sec. 13-24-101] **Special Agreements or Arrangements.**

Nothing contained in this Ordinance shall be construed as prohibiting any special agreement or arrangement between the Control Authority and any Person, or for the Control Authority to otherwise waive requirements herein, when conditions and circumstances making such special agreement(s), arrangement(s), or waiver(s) advisable and/or necessary, in the opinion of the Control Authority, are present. In no event shall special agreement(s), arrangement(s), or waiver(s) permit any Industrial User to violate applicable minimum Federal or State pretreatment requirements (*e.g.*, National Categorical Pretreatment Standards) as set forth in 40 C.F.R. Part 403 and Rule 1400-40-14.

Secs. 33-302--33-309. [Sec. 13-24-102 -- 109] **Reserved.**

SECTION 6. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 7. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

Frank Colvett, Jr., Chairman
Memphis City Council

ATTEST:

Comptroller

THE FOREGOING ORDINANCE
5793 PASSED
1st Reading 7/20/2021
2nd Reading 8/3/2021
3rd Reading 8/17/2021
Approved: [Signature]
Chairman of Council.
Date Signed: 9/7/21
APPROVED: [Signature]
Mayor, City of Memphis
Date Signed: 9/20/21
I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.
Valerie C. Snipes
Comptroller