

- or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;
- d. Sampling and analysis shall be performed in accordance with Section 6.10;
  - e. The Director of Public Works may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;
  - f. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW.

(3) Compliance Certification. A statement, reviewed by the user's authorized representative as defined in Section 1.4 C and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

(4) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 6.2 of this Ordinance.

(5) Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 6.13 of this ordinance and signed by an Authorized Representative as defined in Section 1.4C.

## **6.2 Compliance Schedule Progress Reports**

The following conditions shall apply to the compliance schedule required by Section 6.1(B) (4) of this Ordinance.

A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation) ;

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

C. The user shall submit a progress report to the Director of Public Works no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established scheduled; and

D. In no event shall more than nine (9) months elapse between such progress reports to the Director of Public Works.

## **6.3 Reports on Compliance with Categorical Pretreatment Standard Deadline**

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment

standards and requirements shall submit to the Director of Public Works a report containing the information described in Section 4.5(A) (6) and (7) and 6.1(B)(2) of this Ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in Section 2.3, this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 4.6 of this Ordinance. All sampling will be done in conformance with Section 6.10.

#### **6.4 Periodic Compliance Reports**

A. All Significant Industrial Users must, at a frequency determined by the Director of Public Works submit no less than twice per year (June and December), or on dates specified, reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the Director of Public Works or the Pretreatment Standard necessary to determine the compliance status of the User

B. All periodic compliance reports must be signed and certified in accordance with Section 6.13 of this ordinance.

C. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

D. If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the Director of Public Works, using the procedures prescribed in Sections 6.9 and 6.10 of this Ordinance, the results of this monitoring shall be included in the report.

E. All wastewater samples must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.

F. If a User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Director of Public Works, using the procedures prescribed in Section 6.10 of this ordinance, the results of this monitoring shall be included in the report.

#### **6.5 Reports of Changed Conditions**

Each user must notify the Director of Public Works of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least ninety (90) days before the change.

A. The Director of Public Works may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 4.5 of this Ordinance.

B. The Director of Public Works may issue a wastewater discharge permit under Section 5.7 of this Ordinance or modify an existing wastewater discharge permit under Section 5.4 of this Ordinance in response to changed conditions or anticipated changed conditions.

For purposes of this requirement, significant changes include, but are not limited to, flow increases of twenty (20%) percent or greater, loading increases of 20% or more for pollutants, and the discharge of any previously unreported pollutants.

#### **6.6 Reports of Potential Problems**

A. 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 load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the Director of Public Works of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

B. Within five (5) days following such discharge, the user shall, unless waived by the Director of Public Works, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this Ordinance.

C. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in Paragraph A, above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

D. Significant Industrial Users are required to notify the Director of Public Works immediately of any changes at its facility affecting the potential for a Slug Discharge.

#### **6.7 Reports from Unpermitted Users**

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the Director of Public Works as the Director of Public Works may require.

#### **6.8 Notice of Violation/Repeat Sampling and Reporting**

If sampling performed by a user indicates a violation, the user must notify the Director of Public Works within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Director of Public Works within thirty (30) days after becoming aware of the violation. Resampling by the Industrial User is not required if the City performs sampling at the User's facility at least once a month, or if the City performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the City receives the results of this sampling, or if the City has performed the sampling and analysis in lieu of the Industrial User.

#### **6.9 Analytical Requirements**

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, 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 Director of Public Works or other parties approved by EPA.

#### **6.10 Sample Collection**

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

A. Except as indicated in Section B and C below, the User must collect wastewater samples using 24-hour flow-proportional

composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Director of Public Works. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil 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 City, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

B. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

C. For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 6.1 and 6.3 [40 CFR 403.12(b) and (d)], 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 Director of Public Works may authorize a lower minimum. For the reports required by Section 6.4 (40 CFR 403.12(e) and 403.12(h)), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.

#### **6.11 Date of Receipt of Reports**

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

#### **6.12 Record Keeping**

Users subject to the reporting requirements of this Ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with Best Management Practices established under Section 2.4 C. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; 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 litigation concerning the user or the City, or where the user has been specifically notified of a longer retention period by the Director of Public Works.

#### **6.13 Certification Statements**

A. Certification of Permit Applications, User Reports—The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Section 4.6; Users submitting baseline monitoring reports under Section 6.1 B (5); Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under Section 6.3; Users submitting periodic compliance reports required by Section 6.4. The following certification statement must be signed by an Authorized Representative as defined in Section 1.4 C:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system,

or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

B. Annual Certification for Non-Significant Categorical Industrial Users—A facility determined to be a Non-Significant Categorical Industrial User by the Director of Public Works pursuant to 1.4 JJ(3) and 4.6 C must annually submit the following certification statement signed in accordance with the signatory requirements in 1.4 C. This certification must accompany an alternative report required by the Director of Public Works:

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

(a) The facility described as \_\_\_\_\_

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

(b) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based on the following information.

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

#### **6.14 Hazardous Waste Reporting**

Although hazardous wastes are specifically prohibited in Section 2.1 (18), if any user accidentally discharges a hazardous waste the reporting requirements at 40 CFR 403.12(p) (1) shall be adhered to.

### **Article 941.7.0 Compliance Monitoring**

#### **7.1 Right of Entry: Inspection and Sampling**

##### **7.2 Search Warrants**

#### **7.1 Right of Entry: Inspection and Sampling**

The Director of Public Works shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this Ordinance and any wastewater discharge permit or order issued hereunder. Users shall allow the Director of Public Works ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

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

B. The Director of Public Works shall have the right to set up on the user's property, or require installation of, such devices as are

necessary to conduct sampling and/or metering of the user's operations.

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

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

E. Unreasonable delays in allowing the Director of Public Works access to the user's premises shall be a violation of this Ordinance.

## **7.2 Search Warrants**

If the Director of Public Works has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Director of Public Works may seek issuance of a search warrant from the appropriate issuing authority.

### **Article 941.8.0 Confidential Information**

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the Director of Public Works inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the Director of Public Works, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

### **Article 941.9.0 Publication of Users in Significant Noncompliance**

The Director of Public Works shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the users which, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates paragraphs (C), (D) or (H) of this Section) and shall mean:

A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 2;

B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 2 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

C. Any other violation of a Pretreatment Standard or Requirement as defined by Section 2 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the Director of Public Works determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

D. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Director of Public Works exercising his emergency authority to halt or prevent such a discharge;

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

F. Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

G. Failure to accurately report noncompliance; or

H. Any other violation(s), which may include a violation of Best Management Practices, which the Director of Public Works determines will adversely affect the operation or implementation of the local pretreatment program.

#### **Article 941.10.0 Administrative Enforcement Remedies**

##### **10.1 Notification of Violation**

##### **10.2 Consent Order**

##### **10.3 Show Cause Hearing**

##### **10.4 Compliance Orders**

##### **10.5 Cease and Desist Orders**

##### **10.6 Administrative Fines**

##### **10.7 Emergency Suspensions**

##### **10.8 Termination of Discharge**

##### **10.1 Notification of Violation**

When the Director of Public Works finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director of Public Works may serve upon that user a written Notice of Violation. Within twenty (20) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Director of Public Works. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Director of Public Works to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

##### **10.2 Consent Order**

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

### **10.3 Show Cause Hearing**

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

### **10.4 Compliance Orders**

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

### **10.5 Cease and Desist Orders**

When the Director of Public Works finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Director of Public Works may issue an order to the user directing it to cease and desist all such violations and directing the user to:

A. Immediately comply with all requirements; and

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

### **10.6 Administrative Fines**

A. When the Director of Public Works finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director of Public Works may fine such user in an amount not to exceed \$25,000 regardless of jurisdictional boundaries. Such penalties shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, penalty shall be



assessed for each day during the period of violation. The penalties may be assessed whether or not the violation was willful or negligent.

B. Notice of assessment of penalty shall state the appeal process to be followed including the name, address and telephone number of the person responsible for accepting such appeal. Said notice shall also contain the date or dates of violation the permit requirement that was violated and the amount of penalty assessed. The notice shall state the time frame for appeal. It shall be served personally on the violator or shall be sent by certified mail to the address of the permit holder as noted on the permit.

The penalty shall be assessed in accordance with Chart for Assessment, below, which sets forth the City of Allentown's assessment policy considering damage to air, water, land or other natural resources, cost of restoration and abatement, savings resulting to the person for the violation, history of past violations, deterrence of future violations and other relevant factors.

Chart for Assessment

<u>Damage to Environment</u>	<u>Points</u>	<u>Cost of Restoration/Abatement</u>	<u>Points</u>
Extreme	5	Over 10,000	5
Severe	4	7,000	4
Moderate	3	5,000	3
Slight	2	2,500	2
None	1	0	

Past Violations

<u>Savings to Violator</u>	<u>Points</u>	<u>No. of Violations in Last 365 Days</u>	<u>Points</u>
10,000	5	5	5
7,500	4	4	4
5,000	3	3	3
2,500	2	2	2
0	1	1	1

Other Factors will be Considered

Other factors which may be considered include, but are not limited to; damage to POTW, willfulness or concealment, endangerment to the public and/or POTW personnel.

Points shall be assessed for a violation in accordance with the above chart which constitutes the City of Allentown assessment policy.

Points shall be totaled and the fine shall be assessed as follows:

<u>Number of Points</u>	<u>Penalty</u>
25	\$25,000
20	20,000
15	15,000
10	10,000
5	5,000

The assessment of penalties may include numbers which are not whole, such as 1.5, to allow flexibility and discretion by the Director of Public Works in arriving at a fair and appropriate penalty. The above listed fine shall be then pro-rated to reflect the less than whole number of points assessed.

Example: Total Points = 12.5

Civil Penalty = \$12,500.00

All fines collected shall be placed in a restricted account and shall only be used by the City of Allentown to repair damage and provide for additional maintenance and costs as a result of violations, to pay penalties imposed by State or Federal Government for violation of pretreatment standards, for the costs of investigation and enforcement action, for monitoring of discharge in the pretreatment program and for capital improvement to the POTW.

Any party seeking to appeal the assessment of a fine shall do so by filing a notice of appeal with the Director of Public Works within thirty (30) days after receipt or service of said notice.

The Appeal Board shall hear all such appeals. A transcript shall be made of said hearing at the sole expense of the appellant.

Appellant shall pay the cost of appeal and the sum for estimate of stenographer bills at the time of filing said appeal. Failure to pay said sums at the time of filing shall make the appeal void. Such fees shall be established as required by the Charter.

After the hearing, any additional stenographer charges shall be billed to appellant and shall be paid in full within ten (10) days of receipt or appeal shall be null and void ab initio.

The Appeals Board shall either affirm the decision of the Director of Public Works or reverse or modify the same as the substantial evidence indicates in accordance with the assessment policy adopted by the City. Appeals from the decision of the Appeals Board shall be in accordance with State law. Each permit holder shall keep the City apprised in writing of any change in mailing address. The address on the permit shall be used to send all correspondence and notice of civil assessment to permit holders. The sending of a notice of civil assessment to a permit holder's address on permit shall conclusively be presumed to be valid service; thus, if the certified mail sent to such address is not accepted or picked up by permit holder, the date of service shall be the date that the certified mail was rejected or returned unclaimed.

The City shall charge all costs for re-establishing the operation of the publicly owned treatment works after a user has violated, or continues to violate any provision of this Ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement. These costs shall be paid by user within ten (10) days after notice of assessment of the same. Notice and appeal rights shall be the same as in the case of assessment of civil penalties. Any user not paying said assessment shall pay an additional penalty of five (5%) percent of the penalty per month or any part thereof.

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

### **10.7 Emergency Suspensions**

The Director of Public Works may immediately suspend a User's discharge, after informal notice to the User, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons. the Director of Public Works may also immediately suspend a User's

discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

A. Any User notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a User's failure to immediately comply voluntarily with the suspension order, the Director of Public Works may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. the Director of Public Works may allow the User to recommence its discharge when the User has demonstrated to the satisfaction of the Director of Public Works that the period of endangerment has passed, unless the termination proceedings in Section 10.8 of this ordinance are initiated against the User.

C. A User that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Director of Public Works prior to the date of any show cause or termination hearing under Sections 10.3 or 10.8 of this ordinance.

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

### **10.8 Termination of Discharge**

In addition to the provisions in Section 5.6 of this ordinance, any User who violates the following conditions is subject to discharge termination:

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

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

## **Article 941.11.0 Judicial Enforcement Remedies**

### **11.1 Injunctive Relief**

### **11.2 Civil Penalties**

### **11.3 Criminal Prosecution**

### **11.4 Remedies Nonexclusive**

### **11.1 Injunctive Relief**

When the Director of Public Works finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director of Public Works may petition the Lehigh County Court of Common Pleas through the City Solicitor for the issuance of a temporary or permanent injunction,

as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this Ordinance on activities of the user. The Director of Public Works may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

### **11.2 Civil Penalties**

A. A user who has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the City for a maximum civil penalty of \$25,000.00 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

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

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

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

### **11.3 Criminal Prosecution**

A. A user who willfully or negligently violates any provision of this Ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a summary offense, punishable by a fine of not more than \$1,000 per violation, per day, or imprisonment for not more than ninety (90) days, or both.

B. A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of at least \$1,000, or be subject to imprisonment for not more than ninety (90) days, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

C. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Ordinance, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Ordinance shall, upon conviction, be punished by a fine of not more than \$1,000 per violation, per day, or imprisonment for not more than ninety (90) days, or both.

D. In the event of a second conviction, a User shall be punished by a fine of not more than \$1,000 per violation, per day, or imprisonment for not more than one (1) years, or both.

### **11.4 Remedies Nonexclusive**

The remedies provided for in this Ordinance are not exclusive. The Director of Public Works may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the Director of Public Works may take other action against any user when the circumstances

warrant. Further, the Director of Public Works is empowered to take more than one enforcement action against any noncompliant user.

#### **Article 941.12.0 Supplemental Enforcement Action**

##### **12.1 Performance Bonds**

##### **12.2 Liability Insurance**

##### **12.3 Water Supply Severance**

##### **12.4 Contractor Listing**

##### **12.1 Performance Bonds**

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

##### **12.2 Liability Insurance**

The Director of Public Works may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this Ordinance, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

##### **12.3 Water Supply Severance**

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

##### **12.4 Contractor Listing**

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

#### **Article 941.13.0 Affirmative Defenses to Discharge Violations**

##### **13.1 Upset**

##### **13.2 Prohibited Discharge Standards**

##### **13.3 Bypass**

##### **13.1 Upset**

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

B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (C), below, are met.

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

- (1) An upset occurred and the user can identify the cause(s) of the upset;
- (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
- (3) The user has submitted the following information to the Director of Public Works within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days] ;
  - (a) A description of the indirect discharge and cause of noncompliance;
  - (b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
  - (c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

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

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

F. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

### **13.2 Prohibited Discharge Standards**

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2.1(A) of this Ordinance or the specific prohibitions in Sections 2.1(B) (3) through (17) of this Ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

A. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or

B. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge

when the City was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable biosolids use or disposal requirements.

### 13.3 Bypass

A. For the purpose of this section:

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

B. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.

#### C. Bypass Notifications

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

#### D. Bypass

- (1) Bypass is prohibited, and the Director of Public Works may take an enforcement action against a user for a bypass, unless
  - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - (c) The user submitted notices as required under paragraph (C) of this section.

(2) The Director of Public Works may approve an anticipated bypass, after considering its adverse effects, if the Director of Public Works determines that it will meet the three (3) conditions listed in paragraph (D) (1) of this section.

#### **Article 941.14.0 Hearing Board**

An Industrial Hearing Board, with the exception of the Council appointment which shall be made by the Council President, shall be appointed by the Mayor with the advice and consent of Council, for resolution of differences between the Industrial Waste Manager and owners of any improved property on matters concerning interpretation and execution of the provisions of this Article by the Industrial Waste Manager. If possible, appointments shall be City residents and the City Council designee shall be a City resident.

A. One (1) member of the Board shall be a member of the Public Works Department; one (1) member shall be a professional engineer skilled in practice of sanitary engineering; one (1) member shall be a representative of industry or manufacturing enterprise; one (1) member shall be a lawyer; and one (1) member shall be from City Council or their designee.

(1) The initial appointments to the Board shall be for the following terms:

Public Works Department Representative – five (5) years  
Professional Engineer (Sanitary Engineer) – four (4) years  
Industrial Representative – three (3) years  
Legal Representative – two (2) years  
City Council Member or Designee – one (1) year

(2) All succeeding terms shall be for a period of five (5) years. The Mayor, with the consent of Council, shall appoint representatives to fill vacancies on the Board to complete unexpired terms. Interim appointments may be permitted to serve an additional full term on the Board.

B. The Hearing Board shall have the following powers:

- (1) To hear appeals from any person aggrieved by the application of this Article;
- (2) To make rules with regard to conducting its hearings, such rules to be submitted to Council for their advice and consent;
- (3) To make such findings of fact as may be required by the application of this Article;
- (4) To decide questions presented.

Aggrieved parties seeking judicial review of the decision of the Industrial Waste Hearing Board must file an appeal pursuant to State law.

#### **Article 941.15.0 Miscellaneous Provisions**

##### **15.1 Pretreatment Charges and Fees**

##### **15.2 Severability**

##### **15.1 Pretreatment Charges and Fees**



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

- A. Fees for wastewater discharge permit applications including the cost of processing such applications;
- B. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports and certifications submitted by users;
- C. Fees for reviewing and responding to accidental discharge procedures and construction;
- D. Fees for filing appeals;
- E. Fees to recover administrative and legal costs associated with the enforcement activity taken by the Director of Public Works to address IU noncompliance; and
- F. Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this Ordinance and are separate from all other fees, fines and penalties chargeable by the City.

Such fees shall be established as required by the Charter.

## **15.2 Severability**

If any provision of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be effected and shall continue in full force and effect.

## **Article 941.16.0 Surcharge**

### **16.1 Surcharge**

#### **16.1 Surcharge**

A. In the event that any user is discharging waste having average Biochemical Oxygen Demand, Suspended Solids, or Total Kjeldahl Nitrogen exceeding 300, 360, or 85 respectively, such waste will be subject to, payment of a surcharge by such user, or by proper and continuous pretreatment before discharge into the sewerage system. However, no such waste of unusual strength or character shall allow violation of federal pretreatment requirements. The surcharge shall be reviewed annually, and shall be initially determined by the following formula:

$$\text{QUARTERLY SURCHARGE} = 8.34 \text{ Q } [(BOD - 300) \$0.085 + (SS - 360) \$0.076 + (TKN - 85) \$0.184]$$

Where: 8.34 is a constant used to convert waste strength expressed in mg/l of BOD and/or SS and/or TKN into pounds of BOD and/or SS and/or TKN per million gallons of waste.

Q is the quarterly waste flow from an improved property expressed in millions of gallons.

BOD is the biochemical oxygen demand of the waste in mg/l.

SS is the suspended solids of the waste in mg/l.

TKN is the total Kjeldahl nitrogen of the waste in mg/l.

B. To determine the strength of every waste requiring a surcharge, the City shall sample and analyze four (4) times each year.

For users discharging more than one million (1,000,000) gallons per day, sampling shall consist of seven (7) twenty-four (24) hour composite samples taken every day for seven (7) consecutive days. For users discharging less than one million (1,000,000) gallons per day, the City will determine appropriate sampling and analyses periods. The City will consider any relevant factors an industry brings forth in deciding the sampling period. The average of said analysis shall be used to establish the surcharge for the quarter during which the samples are taken and quarterly billings shall be made by the City.

C. Whenever the Director of Public Works shall deem it necessary for the protection and safe, economical and efficient management of the POTW a user shall provide at their expense such facilities for preliminary treatment and processing of industrial waste as may be necessary to:

Reduce BOD to three hundred (300) mg/l and suspended solids to three hundred sixty (360) mg/l and total Kjeldahl nitrogen to eighty-five (85) mg/l;

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## **ARTICLE 942 STORM SEWER ORDINANCE**

- 942.1 General Provisions**
- 942.2 General Municipal Separate Storm Water System Use Requirements**
- 942.3 Treatment of Storm Water**
- 942.4 Reporting**
- 942.5 Compliance Monitoring**
- 942.6 Confidential Information**
- 942.7 Regulation of Storm Water Received from Other Jurisdictions**
- 942.8 Administrative Enforcement Remedies**
- 942.9 Judicial Enforcement Remedies**
- 942.10 Hearing Board**
- 942.11 Miscellaneous Provisions**
- 942.12 Effective Date**

### **1.1 Purpose and Policy**

The City Council hereby finds and determines that there is a public need to control the quality of storm water drainage flowing through the municipal storm sewer and into the waters of the Commonwealth and of the United States and, further, that this is a matter that affects the public health, safety, welfare, and recreational opportunities of the inhabitants of the City. Therefore, it is necessary for the City to provide a comprehensive system of regulation and enforcement for the control of the quality of storm water drainage through the enactment of this article.

This ordinance sets forth uniform requirements for users of the municipal separate storm sewer system of the City of Allentown and enables the City to comply with all applicable State and Federal laws, including the Water Quality Act and the Clean Water Act (33 United States Code §1251 et seq.) and Regulations (40 Code of Federal Regulations Part 122). The objectives of this ordinance are:

- A. To maintain and improve the quality of receiving waters by improving the quality of stormwater discharges.
- B. To control and prevent the introduction of pollutants into the municipal separate storm sewer system that will pass into receiving waters.
- C. To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, and any Federal or State laws to which the municipal separate storm sewer is subject.

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

## 1.2 Administration

Except as otherwise provided herein, the Manager of Water Resources shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the Manager of Water Resources may be delegated by the Manager of Water Resources to other City personnel.

## 1.3 Abbreviations

The following abbreviations, when used in this ordinance, shall have the designated meanings:

BMP - Best Management Practices

CMP - Corrugated Metal Pipe.

DEP - The Pennsylvania Department of Environmental Protection

EPA - Environmental Protection Agency.

FIFRA - Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

HSWA - Hazardous and Solid Waste Act of 1984 (P.L. 98-616).

MBAS - Methylene blue active substances.

MEP - Maximum extent practicable (treatment standards for municipal separate storm sewer point sources).

NPDES - National Pollutant Discharge Elimination System

NRC - National Response Center (800) 424-8802

OWEP - Office of Water Enforcement and Permits, EPA Headquarters, Washington, D.C.

pH - The negative log of a hydrogen ion concentration, commonly used parameter to measure acidity.

RCRA - Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

SCS - Soil Conservation Service.

SPCC - Spill Prevention Control and Countermeasure plan under section 311 of the Clean Water Act.

TOC - Total organic carbon.

TSS - Total suspended solids.

USGS - United States Geological Survey.

## 1.4 Definitions

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

Act - Clean Water Act (33 U.S.C. 1251 et seq.), including amendments resulting from the Water Quality Act of 1987.

Agency - U.S. Environmental Protection Agency and/or PA Department of Environmental Protection.

Applicable Standards and Limitations - All State, interstate, and Federal standards and limitations to which a "discharge" a "sewage sludge use or disposal practice", or a related activity is subject under the Clean Water Act (CWA), including "effluent limitations", water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices", pretreatment standards, and "standards for sewage sludge use or disposal" under sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

Authorized Representative of the User -

(1) If the user is a corporation:

(a) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(b) The manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five (25) million dollars (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(3) If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(4) The individuals described in paragraphs 1 through 3, above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

**Best Management Practice (BMP)** - Stormwater quality control measures including schedules of activities, prohibitions of practices, maintenance procedures, capital improvements and other management practices to prevent or reduce the pollution of "waters of the United States". BMPs also include treatment requirements, operating procedures, training/educational programs, and practices to control site runoff, spillage or leaks, or drainage from raw material storage.

**Biochemical Oxygen Demand (BOD)** - The oxygen utilized during a specified incubation period for the biochemical degradation of organic material, and inorganic material such as sulfides, in a sample.

**Chemical Oxygen Demand (COD)** - The oxygen equivalent of the organic matter content in a sample that is susceptible to oxidation by a strong chemical oxidant.

**City** - The City of Allentown or the City Council of Allentown.

**Code of Federal Regulations (CFR)** - A compilation of all Federal regulations implementing the various Federal acts.

**Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 et seq.)** - Also known as Superfund. Amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA).

**Effluent Limitation** - Any restriction imposed by the EPA on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States", the waters of the "contiguous zone", or the ocean.

**Effluent Limitations Guidelines** - A regulation published by the EPA under section 304(b) of CWA to adopt or revise "effluent limitations".

**Federal Register** - A daily publication of the U.S. Government that provides a uniform system for making available to the public regulations and legal notices issued by Federal Agencies.

**Illicit Discharge** - Any discharge to a municipal separate storm sewer that is not composed entirely of storm water, except discharges pursuant to a National Pollutant Discharge Elimination System (NPDES) permit.

**Limited Co-Permittee** - A permittee to a National Pollutant Discharge Elimination System (NPDES) permit that is only responsible for permit conditions relating to the discharge for which it is owner or operator.

**Major Municipal Separate Storm Sewer Outfall** - (or "major outfall") Municipal separate storm sewer outfall that discharges from a circular pipe with a diameter of more than 36 inches or its equivalent. Equivalency is based on a drainage area of 50 or more acres associated with a discharge from other than a circular pipe or the trapezoidal, rectangular, and triangular equivalent size open channels. For municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a pipe with a diameter of greater than 12 inches or its equivalent is a major outfall. Equivalency may be based on drainage area of 2 or more acres or trapezoidal, rectangular, and triangular equivalent size open channel.

**Manager of Water Resources** - The person who is charged by the City with certain duties and responsibilities by this ordinance, or a duly authorized representative.

**Municipal Separate Storm Sewer** - Conveyance or system of conveyances (including public conveyances and public roads with drainage systems) that is owned or operated by 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 a designated and approved management agency under Section 208 of the Clean Water Act (CWA) that discharges to waters of the United States and that is designed solely for collecting or conveying storm water that is not part of a publicly owned treatment works (POTW) as defined by 40 CFR 122.2.

**National Pollutant Discharge Elimination System (NPDES)** - The national program for controlling discharges from point source discharges directly into waters of the U.S. under the Clean Water Act.

**National Urban Runoff Program (NURP)** - A research and development/pilot program conducted between 1978 and 1983 by approximately 28 communities that characterized the composition of urban runoff and potential solutions and control techniques.

**Outfall** - A "point source" as defined by 40 CFR 122.2 as the point where a municipal separate storm sewer discharges to waters of the United States and does not include any open conveyances connecting two municipal separate storm sewers, or

pipes, tunnels, or other conveyances which are in the middle of a stream or other waters of the United States and are used to convey waters of the United States.

Operator - The operator of any facility or activity subject to regulation under the National Pollutant Discharge Elimination System (NPDES) program.

Person - Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

Point Source - Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural storm water runoff.

Pollutant - Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Process Wastewater - 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, byproduct, or waste product.

Runoff Coefficient - The fraction of total rainfall that will appear at a conveyance as runoff.

Significant Materials - Includes, but is not limited to: raw materials, fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101[14] of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Standard Industrial Classification (SIC) - A method used by the Office of Management and Budget to classify industries according to type and method of production. Each industry is assigned a 4-digit code. The major industrial categories are indicated by the first two digits.

Storm Water - Storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Discharge Associated with Industrial Activity - The discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated) that meet the description of the facilities listed in this paragraph (i)-(xi) include those facilities designated under the provisions of 122.26(a)(1)(v).

User - Any person who drains any storm water or other discharges into any drainage ditch or basin which ultimately, by natural flow or otherwise, enter into the storm water system; a source of discharge to the municipal separate storm sewer system.

Waters of the United States or water of the U.S. -

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands", sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would affect interstate or foreign commerce, including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (f) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

## **942.2 GENERAL MUNICIPAL SEPARATE STORM WATER SYSTEM USE REQUIREMENTS**

### **2.1 Standards for Admission of Waste into Storm Sewer**

A. Residential, commercial or industrial property may be connected to the storm sewer system or may continue the discharge of waste to the storm sewer system providing the waste to be discharged thereto conforms to the following:

(1) All discharge of waste to storm sewers shall be in compliance with the laws or regulations of the Commonwealth of Pennsylvania or the Federal government or any agency thereof having jurisdiction over streams, rivers, waterways or water resources.

(2) No waste other than:

1. potable water
2. potable water line flushing
3. natural uncontaminated surface or ground water
4. runoff from lawn watering provided such runoff is not polluted with pesticides or herbicides or other lawn maintenance materials
5. runoff from residential car washing
6. swimming pool drainage free of residual chlorine
7. unadulterated rain, roof or surface drainage water
8. runoff from fire fighting activities
9. air conditioning condensate
10. uncontaminated non-contact cooling water shall be discharged into a storm sewer and the City may regulate the rate of discharge of such waste into a storm sewer.

B. No person shall drain any water except storm water or authorized discharges into any drainage ditch or basin which will ultimately, by natural flow or otherwise, enter into the storm sewer system, or into a stream, river or watercourse. No user shall introduce or cause to be introduced into the municipal separate storm sewer any illicit discharge, spills or materials other than stormwater or authorized discharges. No person shall drain any water, except storm water or authorized discharges, into any gutter, street or pavement. These general prohibitions apply to all users of the municipal separate storm sewer.

C. All present connections to the storm sewer system that are in violation of any provision of this Article, and that the owner has knowledge of, shall be abated within 180 days of the passage of this ordinance and application to connect to the storm sewer system under the provisions of this Article shall be submitted to the Manager of Water Resources, 112 Union Street, Allentown, PA 18102

D. Upon discovery by the City of a connection to the storm sewer that is in violation of this article, notice shall be sent to the owner of such connection and the owner shall reconnect as directed.

## 2.2 City's Right of Revision

The City reserves the right to establish, by ordinance, more stringent standards or requirements on discharges to the municipal separate storm sewer.

## 2.3 Responsibilities of Users and Developers

Any user of the municipal separate storm sewer or any person who undertakes or is responsible for an undertaking which involves earth disturbance is ultimately responsible to see that the water quality, erosion, sedimentation or changed water flow characteristics resulting therefrom are controlled to the extent necessary to avoid damage to property and pollution of receiving waters. Nothing in this ordinance shall be taken or construed as lessening or modifying the ultimate responsibility of such persons. The requirements of this ordinance shall not imply the assumption of any liability therefor on the part of the City. The standards, criteria and requirements of the ordinance are to be seen as minimum standards which are not necessarily adequate to meet the highly variable conditions which must be covered by effective control measures. Compliance with the requirements of this ordinance and the Land Development and Subdivision Ordinance, the Land Development Controls Ordinance, the Flood Control Ordinance and the Storm Water Management Ordinance may not, therefore, of itself discharge such person's responsibility to provide effective control measures.

## 2.4 Best Management Practices

During the development of any property within the City, a subdivider or person responsible or in control of said development must use best management practices for the control of the quality of storm water drainage originating from the subject property. Additionally, best management practices in combination with any necessary long-term water quality facilities are required to ensure continuing compliance with the provisions of the Land Development and Subdivision Ordinance, the Land Development Controls Ordinance, the Flood Control Ordinance and the Storm Water Management Ordinance.

## 2.5 Violation of the City's NPDES Permit

A. It shall be unlawful for any person to cause or contribute to any deleterious effect on any receiving stream, or to contribute to a violation of the City's NPDES storm water discharge permit.

B. A substantial contribution to a violation of the City's NPDES storm water discharge permit may be found when the nature of a user's discharge, either individually or cumulatively with the discharges of other users, causes the discharge at one of the City's discrete outfalls to require remediation under the terms of the NPDES permit.

C. Notwithstanding any provision of this article to the contrary, if the City is required by the EPA, DEP or other regulatory agency to prepare and submit any type of remediation plan to ensure the City's compliance with Federal and State laws, regulations or permits, any user who causes or substantially contributes to the situation requiring remediation shall provide such financial and technical assistance required by the City to develop the required plan in a proportion appropriate to the impact of that user's discharge upon the situation requiring remediation.

## 2.6 Notice of Violation

Whenever the City finds that any user has violated, or is violating this ordinance, or has caused or substantially contributed to or is causing or substantially contributing to a violation by the City of Allentown of the terms of its National Pollutant Discharge Elimination System (NPDES) permit conditions or of any other Federal or State laws to which the municipal separate storm sewer is subject, the Manager of Water Resources or his designated agent, may serve upon such person written notice stating the nature of the violation. The Manager of Water Resources or his designated agent, may require any such person to comply with the analysis, monitoring, treatment or reporting requirements of sections 3, 4 and 5 of this ordinance as he deems necessary to bring about compliance. Within thirty (30) days of the date of the notice, a plan for the satisfactory correction of all violations shall be submitted to the Manager of Water Resources by such person. Submission of this plan in no way relieves the user of liability for violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Manager of Water Resources to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

## 2.7 Imminent or Substantial Endangerment of Persons or the Environment

When, in the opinion of the Manager of Water Resources or his designated agent, it is necessary to stop discharge originating from a property to the municipal separate storm sewer which represents an actual or threatened reduction of the quality of storm water drainage which presents or may present an imminent or substantial endangerment to the health, safety or welfare of persons or the environment, he may suspend the provision of storm water drainage utility services to any such property and/or order the owner of such property to take immediate action to stop or eliminate the offending discharge or discharges.

In the event of a failure of the responsible user to take immediate, voluntary action to comply with the order, the Manager of Water Resources shall take such steps as deemed necessary, including but not limited to, the immediate

impoundment of storm water drainage to prevent or minimize damage to individuals or the environment. The Manager of Water Resources may also initiate appropriate legal action in the name of the City.

A detailed written statement shall be submitted by the offending party to the Manager of Water Resources describing the causes of the offending discharge or discharges and the measures taken to prevent any future occurrence of the same within five (5) days of the date of notice from the City.

#### **2.8 DEP Issued Individual NPDES Stormwater Permits**

When, in the opinion of the Manager of Water Resources or his designated agent, it is necessary to impose additional requirements on a user beyond those contained in any individual NPDES permit issued to that user by the DEP, the city may issue a permit containing provisions necessary for the City to meet its NPDES permit responsibilities.

### **942.3 - TREATMENT OF STORMWATER**

#### **3.1 Treatment Facilities**

When required by the Manager of Water Resources, users shall provide treatment as necessary to comply with this ordinance and shall achieve compliance with all requirements and prohibitions set out in Section 2 of this ordinance within the time limitations specified by EPA, the State, or the Manager of Water Resources, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures with a compliance schedule for the installation of facilities and implementation of any procedures (see Section 4.4), shall be submitted to the Manager of Water Resources for review, and shall be acceptable to the Manager of Water Resources before such facilities are constructed. Review and acceptance of plans are not an endorsement of the effectiveness of any facilities set forth therein and the City shall not be held liable in any way for the performance of said facilities. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the City under the provisions of this ordinance.

### **942.4 - REPORTING**

#### **4.1 Stormwater Analysis**

When required by the Manager of Water Resources, a user must submit information on the nature and characteristics of its stormwater within ninety (90) days of the request. The Manager of Water Resources is authorized to prepare a form for this purpose and may periodically require users to update this information.

#### **4.2 Analytical Requirements**

All pollutants analyses, including sampling techniques, to be submitted as part of a stormwater discharge report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures in the latest edition of "Standard Methods for the Examination of Water and Wastewater".

#### **4.3 Report Signatories and Certification**

All reports must be signed by an authorized representative of the user and contain the following certification statement:

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

#### **4.4 Compliance Schedule Progress Reports**

The following conditions shall apply to any compliance schedule required by Section 3.1 of this ordinance:

A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional treatment required for the user to meet the applicable storm water standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

B. No increment referred to above shall exceed nine (9) months nor shall the total time exceed twenty four (24) months.

C. The user shall submit a progress report to the Manager of Water Resources no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and



D. In no event shall more than nine (9) months elapse between such progress reports to the Manager of Water Resources.

#### 4.5 Periodic Compliance Reports

A. When required users shall, at a frequency determined by the Manager of Water Resources, submit a report indicating the nature and concentration of pollutants in the discharge during a representative storm event. All periodic compliance reports must be signed and certified in accordance with Section 4.3 of this ordinance.

B. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. A flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus, where required shall be grab samples.

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

C. If a user subject to the reporting requirement in this section monitors any pollutant, by generally accepted methods, more frequently than required by the Manager of Water Resources, the results of such monitoring shall be included in the report.

#### 4.6 Reports of Changed Conditions

Each user must notify the Manager of Water Resources of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its stormwater discharge at least ninety (90) days before the change.

A. The Manager of Water Resources may require the user to submit such information as may be deemed necessary to evaluate the changed condition.

B. For purposes of this requirement, significant changes include, but are not limited to, flow increases and the discharge of any previously unreported pollutants.

#### 4.7 Reports of Potential Problems

A. 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 load, that may cause potential problems for the municipal separate storm sewer, the user shall immediately telephone and notify the Manager of Water Resources of the incident. This notification shall include the location of the discharge, type of discharge, concentration and volume, if known, and corrective actions taken by the user.

B. Within five (5) days following such discharge, the user shall, unless waived by the Manager of Water Resources, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the municipal separate storm sewer, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.

C. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

#### 4.8 Record Keeping

Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance and any additional

records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the City, or where the user has been specifically notified of a longer retention period by the Manager of Water Resources.

#### **942.5 - COMPLIANCE MONITORING**

##### **5.1 Right of Entry: Inspection and Sampling**

The Manager of Water Resources shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this ordinance and any order issued hereunder. Users shall allow the Manager of Water Resources ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

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

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

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

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

E. Unreasonable delays in allowing the Manager of Water Resources access to the user's premises shall be a violation of this ordinance.

#### **942.6 - CONFIDENTIAL INFORMATION**

Information and data on a user obtained from reports, surveys, and monitoring programs, and from the Manager of Water Resources inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the Manager of Water Resources, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the user furnishing the report. Stormwater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.303 will not be recognized as confidential information and will be available to the public without restriction.

#### **942.7 - REGULATION OF STORM WATER RECEIVED FROM OTHER JURISDICTIONS**

##### **7.1 Intermunicipal Agreement**

A. If another municipality, or user located within another municipality, contributes stormwater to the municipal separate storm sewer, the City shall enter into an intermunicipal agreement with the contributing municipality.

B. Prior to entering into an agreement required by paragraph A, above, the Manager of Water Resources shall request the following information from the contributing municipality:

(1) A description of the origin, quality and volume of stormwater discharged to the municipal separate storm sewer by the contributing municipality;

(2) Such other information as the Manager of Water Resources may deem necessary.

C. An intermunicipal agreement, as required by paragraph A, above, shall contain the following conditions:

(1) A requirement for the contributing municipality to adopt a municipal separate storm sewer use ordinance which is a functional equivalent of this ordinance and which meets all applicable state and federal statutes and regulations. The requirement shall specify that such ordinance must be revised as necessary to reflect changes made to the City's ordinance.

(2) A requirement for the contributing municipality to provide the Manager of Water Resources with access to all information that the contributing municipality obtains as part of its stormwater activities;

(3) Limits on the nature, quality, and volume of the contributing municipality's stormwater at the point where it discharges to the City's municipal separate storm sewer system;

(4) Requirements for monitoring the contributing municipality's discharge;

(5) A provision ensuring the Manager of Water Resources access to the facilities of users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the Manager of Water Resources; and

(6) A provision specifying remedies available for breach of the terms of the intermunicipal agreement.

(7) A provision for reimbursement of expenditures by the City in administering this program for stormwater flows generated in contributing municipalities.

#### **942.8 - ADMINISTRATIVE ENFORCEMENT REMEDIES**

##### **8.1 Consent Agreements**

The Manager of Water Resources may enter into Consent Agreements, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document.

##### **8.2 Show Cause Hearing**

The Manager of Water Resources may order a user who has violated, or continues to violate, any provision of this ordinance or order issued hereunder, to appear before the Manager of Water Resources and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

##### **8.3 Compliance Orders**

When the Manager of Water Resources finds that a user has violated, or continues to violate, any provision of this ordinance, or order issued hereunder, the Manager of Water Resources may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

##### **8.4 Cease and Desist Orders**

When the Manager of Water Resources finds that a user has violated, or continues to violate, any provision of this ordinance, or order issued hereunder, that the user's past violations are likely to recur, the Manager of Water Resources may issue an order to the user directing it to cease and desist all such violations and directing the user to:

A. Immediately comply with all requirements; and

B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

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

#### **942.9 - JUDICIAL ENFORCEMENT REMEDIES**

##### **9.1 Injunctive Relief**

When the Manager of Water Resources finds that a user has violated, or continues to violate, any provision of this ordinance, or order issued hereunder, the Manager of Water Resources may petition the Lehigh County Court of Common Pleas for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the order, or other requirement imposed by this ordinance on activities of the user. The Manager of Water Resources may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a violator.

## 9.2 Criminal Prosecution

A. A person who willfully or negligently violates any provision of this ordinance, or order issued hereunder, upon conviction, be guilty of a summary offense, punishable by a fine of not more than \$1,000.00 per violation, for each day the violation exists, or imprisonment for not more than ninety (90) days, or both.

B. A person who willfully or negligently introduces any substance into the municipal separate storm sewer which causes personal injury or property damage shall, upon conviction, be guilty of a summary offense and be subject to a penalty of not more than \$1,000.00, or be subject to imprisonment for not more than ninety (90) days, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

C. A person who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine of not more than \$1,000.00 per violation, for each day the violation exists, or imprisonment for not more than ninety (90) days, or both.

## 9.3 Remedies Nonexclusive

The remedies provided for in this ordinance are not exclusive. The Manager of Water Resources may take any, all, or any combination of these actions against a noncompliant user. Further, the Manager of Water Resources is empowered to take more than one enforcement action against any noncompliant user.

### 942.10 - HEARING BOARD

A. A Storm Sewer Hearing Board shall be appointed by the Mayor with the advice and consent of Council, for resolution of differences between the Manager of Water Resources and owners of any improved property on matters concerning interpretation and execution of the provisions of this Article by the Manager of Water Resources. The intent of this Board is to create a single Hearing Board for all appeals related to the Storm Water Program, including those appeals from neighboring or contributing municipalities.

B. One (1) member of the Board shall be a member of the Public Works Department; one (1) member shall be a professional civil engineer; one (1) member shall be a representative of industry or manufacturing enterprise; one (1) member shall be a lawyer; and one (1) member shall be selected at large for his interest in accomplishing the objectives of this Article.

C. The initial appointments to the Board shall be for the following terms:

Public Works Department Representative -	(5) five years
Professional Engineer -	(4) four years
Industrial Representative -	(3) three years
Legal Representative -	(2) two years
Representative at Large -	(1) one year

All succeeding terms shall be for a period of five (5) years. The Mayor, with the consent of Council, shall appoint representatives to fill vacancies on the Board to complete unexpired terms. Interim appointments may be permitted to serve an additional full term on the Board.

D. The Hearing Board shall have the following powers:

- (1) To hear appeals from any person aggrieved by the application of this Article.
- (2) To make rules with regard to conducting its hearings, such rules to be submitted to Council for their advice and consent.
- (3) To make such findings of fact as may be required by the application of this Article.

(4) To decide questions presented.  
Aggrieved parties seeking judicial review of the decision of the Storm Sewer Hearing Board must file an appeal pursuant to state law.

## **942.11 - MISCELLANEOUS PROVISIONS**

### **11.1 Charges and Fees**

The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's Stormwater Management Program which may include:

A. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users;

B. Fees for reviewing and responding to accidental discharge procedures and construction;

C. Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this ordinance and are separate from all other fees, fines, and penalties chargeable by the City.

D. Such fees will be listed in the Administrative Information Manual (AIM).

### **11.2 Severability**

If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be effected and shall continue in full force and effect.

## **942.12 - EFFECTIVE DATE**

This ordinance shall be in full force and effect following its passage and approval, as provided by law. (13812 §1 2/3/2000)

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## **ARTICLE 945 SEWER RATES**

- 945.01 Imposition of charge
- 945.02 Use of funds
- 945.03 Charge for sewer service
- 945.04 Penalty charge
- 945.05 Special charges
- 945.06 Administration
- 945.07 Rebates
- 945.08 Sewer Service Charge Reviewed by Council

## **CROSS REFERENCES**

Power to Impose and Collect Rentals - See 3rd Class §3211 et seq. (53 P.S. §38211 et seq.)

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### **945.01 IMPOSITION OF CHARGE**

On and after April 1, 1970, a sewer service rental is hereby imposed upon the owners of all properties within the City which are drained directly by the sanitary sewage system or from which sewage is transported to and treated at the sewage treatment works of the City. (11800 §1 3/24/70)

### **945.02 USE OF FUNDS**

The funds received from the collection of sewer service rentals shall be collected and deposited by the City Treasurer in the General Sewer Fund of the City, and shall be used for the purpose of defraying the expenses of the City in the operation, maintenance, repairing, alteration, design and inspection, depreciation, amortization of indebtedness and interest thereon, arising out of or connected with the sanitary sewerage and sanitary sewage disposal system of the City, in accordance with the provisions of the Act of 1935, P.L. 1286, its amendments and supplements. (11800 §2 3/24/70)

### **945.03 CHARGES FOR SEWER SERVICE**

A. All flow discharged into the sanitary sewer system shall be subject to the following two charges:

1. Minimum charge

#### **Daily Charges**

Meter Size	Quarterly Bills	Monthly Bills
5/8"	0.096118	0.199453
3/4"	0.117767	0.221055
1"	0.160990	0.264329
1-1/2"	0.269122	0.372490
2"	0.398871	0.502189
3"	0.744905	0.850669
4"	1.136619	1.239922
6"	2.220347	2.323694
8"	3.520369	4.262838

2. Quantity charges shall be assessed at the rate of \$2.237638 per 1,000 gallons discharged.

Thus, the total charge will be the sum of the minimum charge plus the sum of the quantity charge.

B. These charges assume that the actual discharge is Eighty-five (85%) of the metered water consumption. If the Director of Finance shall find that a particular user's discharge is more than Ninety (90%) percent or less than Eighty (80%) percent of the metered water consumption, he/she may establish a special rate for that user, which rate shall be proportional to \$2.237638 per thousand gallons of metered water with Eighty-five (85%) percent discharged to the sanitary sewer system, and the applicable minimum charge, or may require such user to install a discharge meter.

C. Where the user discharges water obtained from sources other than the City's metered water supply, the Director of Finance may require such user to install a discharge meter.

D. Additional charges may be levied based upon the composition of discharge pursuant to Article 941 or other City Ordinance(s).

E. The penalty assessed on delinquent accounts will be changed to 1-1/2% per month from the current penalty structure.

(13366 §1 12/28/95; 13430 §1 12/12/96; 13725 §1 2/15/98; 13958 §1 12/15/01; 14037 §1 12/10/02; 14137 §1 12/12/03; 14249 §1 12/15/04; 14444 §1 12/8/06; 14548 §1 12/7/07; 14851 12/3/2010; 14939 §1 12/3/2011)

### **945.04 PENALTY CHARGE**

A. The penalty assessed on the delinquent accounts will be 1-1/2% per month. (13096 §1 12/3/91; 13169 §1 12/17/92; 13255 §1 4/21/94)

B. In addition thereto, any costs or fees incurred in conjunction with the collection of any such delinquencies shall be the responsibility of, and paid by the owner(s) of the subject property. (12129 §4 4/7/75; 12869 §2 9/21/88; 13255 §1 4/21/94)

### **945.05 SPECIAL CHARGES**

In the event that the volume of water furnished to a property does not substantially reflect the volume of sewerage drained by that property into the sanitary sewer system, the Business Administrator is empowered to determine the actual sewerage flow of the property and to fix and collect a sewerage service rental from the owner(s) of the property which shall substantially reflect that amount of sewerage actually being drained by the property into the sanitary sewer system. (12129 §6 4/7/75)

### **945.06 ADMINISTRATION**

The Director of Administration and Finance is hereby charged with the administration and enforcement of the provisions of this Article. He is empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this Article, subject to the provisions of Section 121.05 of the Administrative Code, including provisions for the re-examination, correction and adjustment of bills and of payments alleged or

found to be incorrect, or as to which an overpayment is claimed or found to have occurred, reasonable extensions of time upon proper cause shown, and to prescribe forms necessary for the administration of this Article. (12129 §5 4/7/75)

#### 945.07 REBATES

A. All bona fide residents of the City who are sixty-five (65) years of age or over or permanently disabled persons shall be entitled to rebates from the minimum sewer rental charge paid for their homesteads, in accordance with the schedule hereinafter set forth. Only one rebate shall be paid for each homestead; and in the case of co-ownership, a single rebate shall be paid to the co-owners jointly so long as any one of them is sixty-five (65) years of age or over or permanently disabled persons, provided that all co-owners are otherwise eligible for the rebate. (12317 §2 9/20/78)

B. Definitions for the purpose of determining rebates are as follows:

1. **Income** means all income from whatever source derived, including but not limited to salaries, wages, bonuses, commissions, income from self-employment, alimony, support money, cash, public assistance and relief, the gross amount of any pensions or annuities including railroad retirement benefits, all benefits received under the Federal Social Security Act (except Medicare benefits but including supplemental Social Security payments), all benefits received under State unemployment insurance laws and veteran's disability payments, all interest received from the Federal or any State government, or any instrumentality or political subdivision thereof, realized capital gains, rentals, workmen's compensation and the gross amount of loss of time insurance benefits, life insurance benefits and proceeds (except the first Five Thousand (\$5,000) Dollars of the total death benefit payments), and gifts of cash or property (other than transfers by gift between members of a household) in excess of a total value of Three Hundred (\$300.00) Dollars but shall not include surplus food or other relief in kind supplied by a governmental agency or those rebates offered by state and local government for services supplied.

2. **Household income** means the aggregate of all income received by the homestead owner (or owners, in case of co-ownership) and his or her spouse if a resident of the same household during a calendar year in which minimum sewer rental charges are due and payable.

3. **Homestead** means a dwelling, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, which is owned and occupied by a claimant. A "homestead" also includes premises occupied by reason of ownership or lease in a cooperative housing corporation, mobile homes which are assessed as realty for local property tax purposes and the land, if owned or rented by the claimant, upon which the mobile home is situated. An "owner" includes a person in possession under a contract of sale, deed of trust, life estate, joint tenancy or tenancy in common.

4. **Minimum sewer rental charge** means the minimum charge, per month, as defined in Section 945.04.

5. **Permanently disabled persons** means persons who are unable to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment which can be expected to continue indefinitely. (12317 §2 9/20/78)

C. The amount of rebates for the minimum sewer rental charge paid during calendar year 1980 and thereafter shall be determined in accordance with the following schedule:

<u>Percentage of Minimum Sewer</u>	
<u>Household Income</u>	<u>Rental Charge to be Rebated</u>
\$ 0 to 5,999	100%
6,000 to 6,499	40%
6,500 to 6,999	30%
7,000 to 7,499	20%
7,500 to 7,999	10%
8,000 or over	No Rebate
(12433 §2 10/1/80)	

D. A claim for rebate shall be filed with the Bureau of Finance of the City between May 1 and June 30 of each year. The rebate shall apply to the minimum charges for the fiscal year, January 1 to December 31 immediately preceding the claim filing period. Such claims shall be submitted on forms provided by the City. The Bureau of Finance may require such additional evidence as it deems necessary or appropriate in processing the claim and reserves the right to deny any claim that does not meet the requirements for rebate. The rebate shall be limited to the minimum service charges paid for the applicable calendar year. The Bureau of Finance shall review each claim and shall verify and confirm the amount of the rebate to the extent that the claim is valid and proper. (12317 §2 9/20/78)

E. Any information gained by the Director of Administration and Finance or any other official, agent or employee of the City, as a result of any claims, investigations or hearings required or authorized by this Article, shall be confidential and shall not be disclosed to any person except for official use in connection with the administration or enforcement of this Article or as otherwise provided by law. (12317 §2 9/20/78)

F. Any person who willfully makes any false or untrue statement on any claim for rebate under this Article shall upon conviction before any District Justice of the County of Lehigh, be fined not more than Three Hundred (\$300.00) Dollars for each offense and, in default of payment of fine or costs, shall be imprisoned for not more than ninety (90) days for each offense. (12317 §2 9/20/78)

#### **945.08 SEWER SERVICE CHARGE REVIEWED BY COUNCIL**

The sewer service charge provided by this Article and the surcharge provided by Article 941 shall be reviewed by the City at least every two (2) years and revised periodically as necessary by City Council to meet actual operational and maintenance expenses. Furthermore, records shall be maintained by the Business Administrator, such as are necessary to document compliance of this system of charges with Federal regulations. (12346 §2 3/21/79)

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### **947 SEWER TAPPING FEES (14522 §1 8/16/07)**

- 947.01 Definitions**
- 947.02 Tapping Fee Required**
- 947.03 Fees**
- 947.04 Improved Properties and Exceptions**
- 947.05 Fees Due**
- 947.06 Fees to be Paid Prior to Service**
- 947.07 Review of Fees**

Sewer Tapping fees were established by Ordinance 14522, passed and signed by the Mayor on August 16, 2007.

#### **947.01 Definitions**

- A. Cost of Existing Facilities - The historical cost of existing sewer system facilities trended forward to current costs using published cost indices, as set forth in the Engineering News Record, where such historical cost is available. In those cases where historical costs is not available, said cost shall be determined by a present construction cost estimate as prepared by the City's Engineer. In calculating the cost of existing facilities as set forth herein, outstanding debt principal relating to the facilities shall be subtracted from the trended cost, provided, however, that no debt shall be subtracted which is attributable to facilities exclusively serving new customers. Any grant monies contributed to the City for construction of existing facilities by any government or agency shall also be subtracted from the cost.
- B. Design Capacity - The total capacity of the Sewer System of the City, measured in gallons per day, which is established at 40,000,000 gallons per day.
- C. Developer - Any person who is an Owner or who is authorized by the Owner of real property who intends to improve said real property by the construction or addition of a structure or facility which will require the Public Sewer System of the City, disposal of sanitary sewage and other wastewater (other than storm water).
- D. Dwelling Unit - Any room, group of rooms, house, apartment unit, trailer or other single enclosure or part thereof, occupied or intended for human occupancy as separate living quarters by a family or other group of individuals living together or by individuals living alone.
- E. Engineering News Record (ENR) - Construction Cost Index - The published index used to measure the change in costs over a specified period of time as found in the Engineering News Record magazine.
- F. Equivalent Dwelling Unit (EDU) - The daily average amount of sewer estimated by the City to be drawn from the Sewer System of the City by a Dwelling Unit on a daily basis. For purposes of this Ordinance, an EDU shall be equivalent of one hundred seventy-five point five (175.5) gallons of sewer use per day.
- G. Improved Property - Any real property upon which there is erected, or upon which there will be erected, a structure intended for continuous or periodic habitation, storage, occupancy or use by human beings or animals and for which structure potable sewer shall be or may be drawn from the sewer system of the City.



H. Non-Residential Establishment - Any property used for commercial, industrial or institutional purposes including but not limited to the conduct of trade, commerce sale, distribution of goods and/or services, manufacturing, processing, cleaning, laundering or assembling any product or commodity, schools, churches, hospitals and libraries.

I. Owner - Any person vested with ownership, legal or equitable, sole or partial, of any real property.

J. That estimate, as approved by the City as hereinafter provided, of the number of gallons of sewage to be discharged to the Sewer System of the City on a daily basis of each improved property proposed to be connected to said Sewer System of the City.

K. Sewer System - All facilities, used for collecting, conveying, and treating sanitary sewage and other wastewater (other than storm water) owned and operated by the City of Allentown.

L. A Tapping Fee - A fee charged by the City for capacity related facilities only of the Sewer System, including but not limited to: treatment, conveyance, collection and/or other general system facilities. Said fee shall not include charges for collection related facilities, which include sewers less than sixteen (16") inches in size.

#### **Tapping Fee Required**

No Developer or Owner of real property, nor any person or entity, shall connect real property with or use in any manner any part of the Sewer System of the City, without first making application in writing for and securing a

Tapping Fee Permit from this City. Such application shall be made on a Tapping Fee Permit form to be provided by the City, and shall be accompanied by the Tapping Fees as set forth in this Ordinance.

#### **947.03 Fees**

A. The Tapping Fee to be charge to the Developer or Owner of Dwelling Units shall be determined by taking the number of Dwelling Units, as determined by the provisions of this Ordinance and multiplying that number by one hundred seventy-five point five (175.5) gallons to arrive at the projected daily discharge of sewage to the Sewer System of the City. This projected daily sewage discharge shall then be multiplied by an amount not to exceed three dollars and eighty-seven cents (\$3.87) per gallon to arrive at the total tapping fee, which for one dwelling unit will be \$680. See Appendix AA@ attached for calculation of the cost per gallon.

B. The Tapping Fee to be charged to an Owner or Developer of a Non-Residential Establishment shall be determined by taking the number of Equivalent Dwelling Units as determined by the provisions of Sections 5C through 5P of this Ordinance and multiplying that number by one hundred seventy-five point five (175.5) gallons to arrive at the projected daily discharge of sewage to the Sewer System. This projected daily sewage discharge shall then be multiplied by an amount not to exceed three dollars and eighty-seven cents (\$3.87) per gallon to arrive at the total tapping fee.

C. The Tapping Fee to be charged to the Owner or Developer of a property which is connected to the Sewer System whenever the use of the property is to be changed or intensified to the extent that increased discharge to the Sewer System will result shall be determined by the projected increase in daily sewage discharge determined by the provisions of Section 5 of this Ordinance multiplied by an amount not to exceed three dollars and eighty-seven cents (\$3.87) per gallon.

#### **947.04 Improved Properties and Exceptions**

The number of Equivalent Dwelling Units for any given Improved Property served or to be served by the City shall be determined as follows:

A. Residential. Improved properties upon which residential uses (other than apartments, hotels and motels) are maintained shall be charged with one (1) Equivalent Dwelling Unit for each Dwelling Unit. Additional Equivalent Dwelling Units shall be charged for any retail, service or business use which is attached to or part of a Dwelling Unit, in accordance with the other subsections of this Section 5.

However, no additional Equivalent Dwelling Units shall be charged for laundry facilities provided on an Improved Property solely for the use of residents.

Apartment buildings shall be charged with eight-tenth, (0.8) of an Equivalent Dwelling Unit for each apartment unit.

B. Hotel & Motels. Improved Properties upon which hotels or motels are maintained shall be charged with 0.2857 Equivalent Dwelling Units for each room. If self-service laundry facilities or dining or food service areas are also provided on the Improved Property, additional Equivalent Dwelling Units shall be charged as provided in subsections (C.) and (F.). No additional

Equivalent Dwelling Units shall be charged for institutional laundry facilities associated with hotels or motels and which provide services solely for hotel or motel guests.

C. Restaurants/Food Service. Improved Properties upon which restaurants and other food services uses are maintained shall be charged as follows:

- (1) Full-Service Restaurant. If the use is a full-service restaurant (one in which the utensils will be washed and reused, and patrons will eat on the premises), 0.0048 Equivalent Dwelling Units shall be charged for each square foot of gross floor area in the dining areas of the restaurant (not counting any cocktail lounge or bar areas). If cocktail lounge or bar areas are also present, additional Equivalent Dwelling Units shall be charged as provided in paragraph (4) below.
- (2) Single-Service Utensil Restaurants. If the use is a single-service utility restaurant (one in which the utensils will not be washed and re-used, but in which the majority of patrons will eat on the premises), 0.0067 Equivalent Dwelling Units shall be charge for each square foot of gross floor area in the dining areas of the restaurant.
- (3) Take-Out Restaurants and Food Catering Facilities. If the use is a take-out restaurant or other food service establishment in which the majority of patrons will not eat on the premises, or a food catering facility in which food is prepared for consumption at another location, 0.0086 Equivalent Dwelling Units shall be charged for each square foot of gross floor area occupied by the use (other than gross floor area in any incidental dining area).
- (4) Cocktail Lounges and Bar Areas. If the use includes a cocktail lounge and/or bar, 0.0071 Equivalent Dwelling Units shall be charged for each square foot of floor area in the cocktail lounge and bar areas, including the floor area behind the bar.

D. Beauty Shops/Barbershops. Improved Properties upon which beauty shops or barbershops are maintained (except as described in subsection (A)) shall be charged with 0.2285 Equivalent Dwelling Units for each operator's chair. Any change in the number of operator chairs on an Improved Property shall constitute a change in use or a modification of the use of the Improved Property.

E. Movie or Live-Performance Theatres. Improved Properties upon which movie or live-performance theatres are maintained shall be charged with 0.0005 Equivalent Dwelling Units for each square foot of gross floor area in the performance-viewing areas of the Improved Properties. If food service areas are also provided on the Improved Property, additional Equivalent Dwelling Units shall be charged as provided in subsection (C.).

F. Self-Service Laundries. Improved Properties upon which self-service laundries are maintained shall be charged with 0.0286 Equivalent Dwelling Units for each square foot of gross floor area in the areas open to the public.

G. Offices. Improved Properties upon which offices are maintained shall be charged with 0.0002 Equivalent Dwelling Units for each square foot of gross floor area devoted to office and accessory uses (including e.g., storage, filing, and supply areas, waiting areas, conference areas, meeting rooms, halls, elevators, washrooms, etc.).

H. Retail Stores. Improved Properties upon which retail sales uses are maintained shall be charged with 0.0002 Equivalent Dwelling Units for each square foot of gross floor area devoted to retail sales and accessory uses (including e.g., storage and supply areas, aisles, store shelves, elevators, washrooms, etc.)

I. Industrial. Improved Properties upon which industrial uses are maintained shall be charged as follows:

- (1) In General. 0.0003 Equivalent Dwelling Units for each square foot of gross floor area devoted to industrial uses (including e.g., manufacturing, processing, fabrication, assembly, repair, maintenance, garage, printing, binding, and freight terminal uses) and uses accessory thereto, other than uses described in paragraph (2); plus
- (2) Warehouse & Storage. 0.0002 Equivalent Dwelling Units for each square foot of gross floor area devoted to warehouse or storage uses (including aisles, etc.); plus
- (3) Industrial Waste. The City Engineer shall establish the number of Equivalent Dwelling Units for such use as follows: the Engineer shall estimate the number of gallons of sewer which will be consumed by such use on an average day period of a year for which the total flow is greatest, and divide such estimate by one hundred seventy-five point five (175.5) gallons, to yield the number of Equivalent Dwelling Units.

J. Schools.

- (1) Day Schools. Improved Properties upon which schools are maintained (other than boarding schools) shall be charged with 0.0229 Equivalent Dwelling Units per person if the school includes showers, and 0.0109 Equivalent Dwelling Units per person if the school does not include showers.
- (2) Boarding Schools. Improved Properties upon which boarding schools are maintained shall be charged with 0.0023 Equivalent Dwelling Units for each square foot of gross floor area in any residence hall (including bedrooms, washrooms, lounge areas, halls, etc.), plus 0.0229 Equivalent Dwelling Units per person for all other areas.
- (3) A Person. For purposes of this subsection (j), the number of persons in a school shall be equal to the maximum number of students who may attend the school at any one time as established by the Pennsylvania Department of Education, plus the number of administrators, faculty, staff, and other employees reasonably expected to be assigned to work at the school building in the event the number of students at the school is equal to the maximum permitted number of students.

K. Churches. Improved Properties upon which churches are maintained shall be charged with 0.0002 Equivalent Dwelling Units for each square foot of gross floor area in any worship-assembly area (including, but not limited to, nave and sanctuary areas, but not including any vestibule areas). In addition, if schools, classrooms, offices, or food service uses are located on church property, such additional uses shall be charged with Equivalent Dwelling Units as prescribed in the other subsection of this Section E.

L. Hospitals. Improved Properties upon which hospitals are maintained shall be charged with:

- (1) In-Patients. 0.8571 Equivalent Dwelling Units for each in-patient bed the hospital is authorized to maintain. (Any change in the number of authorized in-patient beds shall be deemed a change in use or modification of use of the Improved Property; plus
- (2) Out-Patients. 0.0002 Equivalent Dwelling Units for each square foot of gross floor area in the hospital, except for in-patient rooms (rooms with beds primarily occupied by in-patients) and rooms primarily devoted to the performance of medical procedures on persons who are in-patients at the hospital. In addition, if food service uses are located at the hospital, such uses shall be charged with Equivalent Dwelling Units as prescribed in subsection (c), and the area occupied by such uses shall not be included in the calculations made under the first sentence of this paragraph (2).

M. Institutions Other Than Hospitals. Improved Properties upon which institutions (other than hospitals) are maintained (e.g. nursing homes) shall be charged with 0.3596 Equivalent Dwelling Units for each bed the institution is authorized to maintain. (Any change in the number of authorized beds shall be deemed a change in use or modification of use of the Improved Property for purposes of calculating EDU=s.)

N. Swimming Pools & Bathhouses.

- (1) Except as provided in paragraph (2), Improved Properties upon which swimming pools or bathhouses are maintained shall be charged with 0.0007 Equivalent Dwelling Units for each square foot of gross area in the building areas and/or outdoor enclosed areas devoted to the pool or bathhouse uses. In addition, any food service uses shall be charged with additional Equivalent Dwelling Units as provided in subsection (C.).
- (2) Paragraph (1) shall not apply to pools or bathhouses which are associated with residential properties and which may only be used by residents or guests of residents who are not charged an admission fee.

O. Other Uses. Whenever any use is proposed or exists on Improved Property which is not fairly described in the preceding subsections of this Section 6, the number of Equivalent Dwelling Units with respect to such use shall be determined, whenever practicable, by reference to that use (or those uses) described in the preceding subsections of this Section 6 which is most similar to the use which is proposed or exists on the Improved Property, or shall be based on patterns of sewage discharge for similar existing customers. Whenever it is not practicable to calculate Equivalent Dwelling Units by reference to one or more of the preceding provisions of this Section 6, the City Engineer shall establish the number of Equivalent Dwelling Units for such use as follows: the Engineer shall estimate the number of gallons of sewage which will be discharged by such use on an average day and divide such estimate by one hundred seventy-five point five (175.5) gallons, to yield the number of Equivalent Dwelling Units.

P. Multiple Uses. Whenever any Improved Property shall have more than one use established thereon, the number of Equivalent Dwelling Units for such Improved Property shall be equal to the sum of the number of Equivalent Dwelling Units for each individual use (as provided in the preceding subsections of this Section E).

Q. SPECIAL EXCEPTIONS TO USE OF PRESUMED EDU=S

- (1) In General. The City recognizes that the presumptions set forth in Section 5 may not properly reflect discharge rates from a given Improved Property for sewer. Therefore, the procedures set forth in this Section shall apply to any request to establish a different number of EDU=s for any given Improved Property, applicable to sewage discharge by special exception.
- (2) Request for Special Exception. Either the City or a person with an interest in the Improved Property may request a special exception to the presumptions of Section E. The City shall make such a request by mailing (certified mail, return receipt requested to last known address) or hand-delivering a notice of the request to the Owner of the Improved Property or his authorized agent. Any other interested person shall make such a request by filing a written notice with the City, on forms prescribed by the City.
- (3) Agreement of Owner and City. If the owner of the Improved Property and the City shall agree that the number of EDU=s which should be assigned to any Improved Property for purposes of sewer, should be higher or lower than the number of Presumed EDU=s under Section 5, and shall agree on the appropriate number of EDU=s the number so agreed shall be the number of EDU=s assigned to the Improved Property at that time. Any agreement under this subsection (c) with respect to any particular situation giving rise to an obligation to make a payment to the City shall be made at or prior to the time that the payment is due to the City.

**947.05 Fees Due**

A. Except as hereinafter set forth, the Tapping Fee charged pursuant to this Ordinance for each Improved Property which is to be newly connected to the Sewer System shall be due and payable at the time application is made to connect to the sewer system.

B. In the case of a Tapping Fee charged due to a change or intensification in the use of a property connected to the Sewer System, the tapping Fee shall be due and payable:

- (1) at or before the time the Owner or his agent obtains a building permit, if a building permit is required in connection with the circumstances under which the Tapping Fee is imposed;
- (2) at or before the time the Owner or his agent obtains a zoning permit, if a building permit is not required but a zoning permit is required in connection with the circumstances under which the Tapping Fee is imposed;
- (3) at or before the time the Owner or his agent obtains a business privilege license, if neither a building permit nor zoning permit is required, but a new business privilege license is required in connection with the circumstances under which the Tapping Fee is imposed;
- (4) at or before the time the Owner or his agent completes his improvements, alterations, extensions, or modifications, or establishes his new use, or intensifies his existing use, if neither a building permit, a zoning permit, nor a business privilege license is required in connection with the circumstances under which the Tapping Fee is imposed.

**Fee to Paid Prior to Service**

It is expressly understood that all fees charged pursuant to this Resolution shall be based upon the duly adopted fee schedule at the time of payment. It is expressly understood that no capacity shall be guaranteed for an Owner until such time as the Tapping Fees enumerated herein have been paid or secured by financial security as may be approved by the City.

All Fees as authorized to be charged pursuant to this Ordinance shall be in addition to any charges assessed against the property in the construction of a sewer main or appurtenances by the City as well as any other user charges, industrial waste fees and charges and connection fees imposed by the City.

**947.07 Review of Fees**

That the City reserves its right to review the fees set forth in this Ordinance as well as the methods of calculation thereof from time to time as it deems necessary.

**ARTICLE 949**  
**INDUSTRIAL COST RECOVERY SYSTEM**

- 949.01 Purpose and Scope
- 949.02 Effective Date
- 949.03 Definitions
- 949.04 Application
- 949.05 Industrial User Classification and Monitoring
- 949.06 Computation of Industrial Cost Recovery Payments
- 949.07 Industrial Cost Recovery Charge Formula
- 949.08 Administration
- 949.09 Industrial Cost Recovery Billing
- 949.10 Appeals
- 949.11 Reserved Capacity Agreements
- 949.12 Disposition of Industrial Cost Recovery Revenue
- 949.13 Partial Invalidity

**949.01 PURPOSE AND SCOPE**

This ICRS implements the requirements of Section 204 (b) (1) (B) of Public Law 92-500, 33 U.S.C. Section 1284 (b) (1) (B), the Amendments of 1977 as well as the regulations and guidelines issued pursuant thereto, in order to maintain eligibility for Federal grants which provide necessary funds for the construction of wastewater treatment works.

It is the intent of this ICRS to provide for payment by each industrial user, in addition to the already established system of rates and charges currently in effect, of such user's appropriate share of Federal construction grant funds which are allocable to the treatment of industrial wastes by the City. (12347 §1 3/21/79)

**949.02 EFFECTIVE DATE**

The provisions of this ICRS shall become effective on the first day that any City treatment works assisted with a Federal grant awarded after March 1, 1973 shall become operational. For the purposes of ICRS, treatment works become operational on the day that the City officially accepts the works from the contractor responsible for their construction. (12347 §1 3/21/79)

**949.03 DEFINITIONS**

In addition to the terms defined in Section 941.02 of the Codified Ordinances of the City of Allentown, the following definitions apply herein:

1. **Expansion** An increase in collection and/or treatment capacity.
2. **Infiltration** The water entering a sewer system from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, inflow.
3. **Inflow** The water discharged into a sewer system, including service connections from such sources as, but not limited to, roof leaders, cellar, yard, and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catchbasins, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from infiltration.
4. **Industrial Cost Recovery (ICR)** Recovery by the City from the industrial users of the treatment works of the grant amount allocable to the treatment of wastes from such users pursuant to Section 204 (b) of Public Law 92-500 as amended and subsequent regulations.
5. **Industrial Cost Recovery Period** That period during which the Federal grant amount allocable to the treatment of wastes from industrial users shall be recovered from industrial users of the City sewer system, a period of thirty (30) years from the first day that each such grant-assisted treatment works shall become operational (or, the useful life of the treatment works in the event that such useful life is less than thirty (30) years).
6. **Industrial User** (This definition is contingent on EPA's eventual finalization of ICR regulations pursuant to the 1977 Amendments to PL 92-500. As of September 27, 1978, the definition is as follows:
  - a. Any nongovernmental nonresidential user of treatment works owned by the City which discharges more than the equivalent of 25,000 gallons per day (gpd) of sanitary wastes and which is identified in the Standard Industrial Classification

Manual, 1972, United States Office of Management and Budget, as amended and supplemented, under one of the following divisions:

- i. Division A: Agricultural Forestry and Fishing;
- ii. Division B: Mining;
- iii. Division D: Manufacturing;
- iv. Division E: Transportation, Communications, Electric, Gas, and Sanitary Services; and

v. Division I: Services. (For the purposes of Industrial Cost Recovery this definition of industrial user applied regardless of how a user is classified for other purposes; e.g., commercial or public.)

b. Any nongovernmental user of treatment works owned by the City, which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids, or gases in sufficient quantity either singly or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or to interfere with any sewage treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance, or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

**7. Sanitary Wastes** Wastes of substantially such origin and strength as those typically produced in households, including wastes from sanitary conveniences. Also called Domestic Wastes and sometimes Primarily Segregated Domestic Wastes.

**8. Process Wastewater** Liquid wastes from industrial processes, such as cooling water or water which has come in contact with an end-product or with materials incorporated in an end-product; distinct from domestic or sanitary wastes.

**9. Substantial Change** For the purposes of ICR, any change in strength, volume or delivery flow rate, which the Business Administrator considers to be substantial. Changes in characteristics which cause a ten (10%) percent change in the annual ICR charge may be presumed to be substantial.

**10. Upgrading** An increase in the degree of treatment. (12347 §1 3/21/79)

#### **949.04 APPLICATION**

A. ICR applies to all process wastewater introduced by industrial users to the City sewerage system.

B. To the extent that an industrial user introduces sanitary or domestic wastes to the City sewerage system, such user shall be excluded from the operation of this ICRS.

C. Throughout the implementation and operation of this ICRS, the City must determine which users are classified as industrial users for the purposes of ICR. This determination shall be based on actual knowledge of the type of industry, the wastewater volumes and characteristics and reasonable presumption of no discharges identified in Section 949.03 (f) (2).

D. For the purposes of determining which of the users discharge more than 25,000 gpd of equivalent sanitary wastes, the City shall exclude domestic wastes or discharges from sanitary conveniences. The exclusion shall be computed in the same manner as the exclusion incorporated in the ICR charge formula set forth in Section 949.07 of this Article.

After applying the sanitary waste exclusion, discharges in the above divisions listed in Section 949.03 (f) that have a volume exceeding 25,000 gpd or the weight of biochemical oxygen demand (BOD) or suspended solids (SS) equivalent to that weight found in 25,000 gpd of sanitary waste are considered industrial users. Sanitary wastes, for purposes of this calculation of equivalency, are the wastes discharged by "normal" users as defined in Section 949.05 (c).

E. For the purposes of this ICRS, the following users are defined as discharging primarily segregated domestic wastes and are excluded from the operation of this ICRS:

- 1. Veterinary services (SIC: 0741, 0742)
- 2. Coin-operated laundromats (SIC: 7215)
- 3. Beauty and/or barber shops (SIC: 723, 724)

4. Hospitals and other health care centers or clinics, and offices associated with health services (SIC: 80, excluding 8071, 8072.)

5. Museums, botanical and zoological gardens (SIC: 84).

6. Office buildings. (12347 §1 3/21/79)

#### **949.05 INDUSTRIAL USER CLASSIFICATION AND MONITORING**

A. All industrial users subject to the operation of this ICRS shall be classified as "Exceptional" or "Normal". An "Exceptional" user is one who discharges waste stronger than any of the following:

1. 300 milligrams per liter of five-day bio-chemical oxygen demand (BOD5)
2. 360 milligrams per liter of suspended solids (SS)
3. 85 milligrams per liter of total Kjeldahl nitrogen (TKN)

B. All industrial users who are classified as "Exceptional" also are subject to Section 941.04 (e) of the Codified Ordinances of the City of Allentown, which provides for a surcharge for pollutant concentrations in excess of these limits. The monitoring under this ICR system and the sampling for waste surcharge shall be the same. For reference only, the following provision, which is set forth in Section 941.04 (e), is repeated here:

"In order to ascertain the strength of every industrial waste requiring a surcharge, the City shall cause appropriate sampling and analyses to be made four (4) times each year. Said appropriate sampling shall consist of seven (7) twenty-four (24) hour composite samples taken every day for seven (7) consecutive days. Results of each analysis shall be used to establish the surcharge for the particular quarter during which the particular sample is taken and quarterly billings shall be made by the City."

The ICR charge shall be computed based on the concentrations found in this sampling program.

C. All other industrial users, may be monitored on a random basis, as the City deems appropriate or at the user's request. The wastewater characteristics for "normal" users shall be assumed to be 150 milligrams per liter of five-day biochemical oxygen demand, 150 milligrams per liter of suspended solids, and 30 milligrams per liter of total Kjeldahl nitrogen, unless the City determines, based on actual monitoring, the specific concentrations of pollutants for a particular "normal" user. (12347 §1 3/21/79)

#### **949.06 COMPUTATION OF INDUSTRIAL COST RECOVERY PAYMENTS**

A. During the ICR 30 year recovery period, each industrial user shall pay for its share of the total amount of Federal grant funds, including amendments to grants, which are allocable to capacity used or reserved for use in the treatment of its process wastewater. The payment for each industrial user shall be computed in accordance with the formula set forth in Section 949.07 of this Article. The average daily poundage of BOD5, suspended solids and total Kjeldahl nitrogen, to be used in said formula, will be based on either the concentrations of pollutants found during actual monitoring or the assumed concentrations for "normal" users. Section 949.05 of the Article sets forth user classification and monitoring.

B. For any industrial user which discharges into the City system of wastewater treatment works subject to this ICRS, the ICR charges for such user shall accrue from the date of the user's initial discharge into the City system or the effective date of this ICRS, whichever occurs later, and shall continue to accrue for the unexpired portion of the ICR period or until the user ceases to use the City system, whichever occurs first.

C. If there is a substantial change in the strength, volume, or delivery flow rate of wastewater introduced into the treatment works by an industrial user, such user's share shall be adjusted accordingly, when the City has made such a determination. If any industrial user knows or has reason to believe that a substantial change has occurred in its waste characteristics, it shall report such knowledge to the City department responsible for assessing ICR charges.

D. If there is an expansion or upgrading of the treatment works, each existing industrial user's share shall be adjusted accordingly.

E. An industrial user's share shall not include any portion of the grant money allocable to capacity not used or not reserved by such user.

F. An industrial user's share shall not include an interest component. (12347 §1 3/21/79)

## 949.07 INDUSTRIAL COST RECOVERY CHARGE FORMULA

A. Each industrial user's share of the applicable Federal grant amount, is based on that proportion of the design capacity represented by such user's discharge. The annual ICR charge shall be computed by the following formula. For charges applicable to periods of less than one (1) year, all references to "annual" or "year" shall be understood to mean the appropriate period of time.

$ICRC = K(Q-QD) \times cq + (BOD5-BOD5D) \times cBOD5 + (SS-SSD) \times css + (N-ND) \times cn$  where,

ICRC = Cost to be recovered from an industrial user per year.

K = 1.0 or less depending on conditions defined in subsection d.

Q = Gallons of wastewater flow contributed by the user during the year, if K = 1.0. Or, gallons of metered water consumption if K is less than 1.0.

QD = Gallons of wastewater flow that is certified as domestic waste contributed by the user during the year.

cq = The charge for Federal grant costs allocable to hydraulic capacity in dollars per thousand gallons.

BOD5 = The pounds of five-day biochemical oxygen demand contributed by a user during the year.

BOD5D = The pounds of five-day biochemical oxygen demand contributed by the domestic waste component of a user's waste stream during the year.

cBOD5 = The charge for Federal grant costs allocable to BOD5 removal in dollars per pound.

SS = The pounds of suspended solids contributed by a user during the year.

SSD = The pounds of suspended solids contributed by the domestic waste component of a user's waste stream during the year.

css = The charge for Federal grant costs allocable to suspended solids removal in dollars per pound.

N = The pounds of total Kjeldahl nitrogen contributed by a user during the year.

ND = The pounds of total Kjeldahl nitrogen contributed by the domestic waste component of a user's waste stream during the year.

cn = The charge for Federal grant costs allocable to nitrification in dollars per pound of total Kjeldahl nitrogen.

B. The applicable charges are:

cq = \$0.00805 per thousand gallons

cBOD5 = \$0.00407 per pound

css = \$0.00356 per pound

cn = \$0.03590 per pound

C. The average daily wastewater flow and pollutant poundage due to the domestic wastes shall be computed for each industrial user by multiplying the average number of 40-hour per week employees times 35 gallons per day per employee and assuming the following concentrations:

BOD: 150 mg/l

SS: 150 mg/l

TKN: 30 mg/l

D. If wastewater discharge is actually measured by means of a sewage meter or other device acceptable to the City, then K = 1.0 and Q is the measured wastewater flow. If wastewater is not directly measured, then K shall be 0.95 and Q is the metered water consumption, except that the City may agree with a particular industrial user that K will be some other percentage, based on reasonable estimation of water discharged to other systems than the City sewerage system. (12347 §1 3/21/79)



#### **949.08 ADMINISTRATION**

The Business Administrator is hereby charged with the administration and enforcement of the provisions of this Article. He is empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this Article, subject to the provisions of Article 121.05 Rules, Regulations; Approval, Publication and Record, of the Codified Ordinances of the City of Allentown, and to prescribe forms necessary for the administration of this Article. (12347 §1 3/21/79)

#### **949.09 INDUSTRIAL COST RECOVERY BILLING**

A. The payment of ICR charges shall be deemed a condition of discharge to the City sanitary sewer system. Industrial Waste Discharge Permits issued by the City pursuant to Section 941.07 of the Codified Ordinances of the City of Allentown, are hereby subjected to ICR. The continuation of existing and the issuance of new permits shall require the agreement by each industrial user to pay his share of ICR, as set forth in this Article.

B. Except as provided in paragraph (d) below the first ICR bills shall be issued to industrial users no later than ten (10) months from the effective date of this ICRS. Thereafter, all industrial users shall be billed on their normal wastewater user charge billing dates, or otherwise, but at least annually, as determined by the Business Administrator.

C. Except as provided in paragraph (d) below failure to pay ICR bills within thirty (30) days of billing shall be subject to the same penalty procedures as apply to the sewer rate charges, as set forth in Section 945.05 of the Codified Ordinances of the City of Allentown. Furthermore, the City may employ those lien procedures as are available for the collection of municipal claims. In addition, the City may institute any action at law or equity or employ any other legal remedy available to it for the collection of the ICR charges.

D. Industrial users shall not be required to pay ICR charges incurred during the period after December 31, 1977 and before July 1, 1970, nor for any period during which a federal moratorium pertaining to the Industrial Cost Recovery System exists pursuant to Federal Law. ICR charges accrued during this period or periods shall be payable by the industrial users in a lump sum by June 30, 1980, or at such time as the federal moratorium is lifted, whichever shall last occur. (12347 §1 3/21/79)

#### **949.10 APPEALS**

A. An industrial user or other aggrieved party may appeal to the Hearing Officer, who may be an employee of the City, on the issues of (1) exclusion from operation of this ICRS by reason of contract and/or (2) on the issue of the amount of the ICR assessment with particular regard to flow, five-day bio-chemical oxygen demand, and the concentrations of suspended solids and total Kjeldahl nitrogen.

B. Any existing industrial user may apply within one (1) year of the effective date of this ICRS for exclusion from participation in the ICRS on the basis provided above. New industrial users (those who connect to the City service system after the effective date of this ICRS) shall have one (1) year from the date of their initial connection in which to apply for exclusion. An Application for Exclusion shall include a schematic diagram of the user's production process, waste pretreatment and conveyance systems, and a series of waste strength tests in conformance with City accepted procedures and guidelines which shall be available on request, all such diagrams shall be certified as accurate by an engineer licensed in this Commonwealth. All such test results shall be certified as having been performed in accordance with City accepted procedures and their accuracy shall be certified by a qualified chemist or laboratory located within the Commonwealth of Pennsylvania.

C. Within thirty (30) days after the mailing date of each industrial cost recovery bill, an industrial user who is included within this ICRS may file an Application for Exclusion or an Application for Redetermination of Assessment with the Hearing Officer, but only in the event of a substantial change in quality or quantity of effluent discharge by such user arising subsequent to the last redetermination. Such changes shall be certified by a qualified chemist or laboratory as having occurred and such a chemist or laboratory shall also certify that test indicating the substantial changes aforesaid were conducted in accordance with City accepted procedures.

D. All applications shall set forth the industrial user's name, address, and its City account number along with a brief statement of the reasons it is petitioning and the factual basis for the Application. Applications shall set forth the names of the officers, attorneys, employees, and witnesses who will be appearing before the Hearing Officer. Applications shall be filed with three (3) copies and sent by registered mail to the Hearing Officer at the place for which payment of charges is specified in the industrial cost recovery bill from which the appeal is taken.

E. The Hearing Officer shall notify the Applicant by mail of the time and place for hearing, such notice to be given within thirty (30) days after receipt of any application. The hearing shall be conducted on the Application not less than ten (10) days after mailing of such notice. The hearing shall be held as an informal consultation and conference at which time the Applicant, in person or by counsel, shall present his argument, evidence, data, and proof in connection with the issues submitted. A representative from the City may then present its factual basis for the exclusion or assessment under consideration. The Hearing Officer shall not be bound by the usual rules of evidence but may conduct the hearing in such a manner as in his

judgment will expeditiously and accurately determine the substantial rights of the industrial user and the City. All hearings may be stenographically or electronically recorded. The Hearing Officer shall make findings of fact and recommendations which shall be submitted to the Business Administrator for his decision, the results of which shall be made known to the Applicant.

F. Rehearings may be allowed by the City for good cause shown and the procedure for rehearings shall be substantially the same as delineated in paragraphs 10 (a) through to (e), above.

G. No hearing shall be held and no decision shall be rendered by the City with respect to exclusions sought on the basis of reserved capacity contract executed prior to March 1, 1973. Upon receipt of an Application for Exclusion from industrial cost recovery on this ground, the City shall forward the request and appropriate documentation to the Regional Administrator of the United States Environmental Protection Agency within thirty (30) days. The Regional Administrator will make his determination and the Petitioner will be notified by the City. (12347 §1 3/21/79)

#### **949.11 RESERVED CAPACITY AGREEMENTS**

A. Reserved capacity agreement between the City and an industrial user may be established whereby the user shall pay the full ICR payments allocable to the capacity reserved, and, in the event that such an industrial user exceeds its reserved capacity, its full use shall be subject to this ICRS, unless otherwise excluded.

B. If the treatment works are expanded in the future with PL 92-500 grant assistance, an industrial user who has executed a reserved capacity agreement and has made ICR payments based upon reserved capacity, will not incur additional ICR charges associated with the cost of expansion until the industrial user's actual use of the treatment works exceeds its reserved capacity.

C. Nevertheless, such industrial users shall be required to pay any additional ICR charges associated with the cost of upgrading a treatment works.

D. An industrial user may terminate or modify, with the consent of the City, any agreement for reserved capacity; thereafter its ICR payments shall cease or be modified, to the extent of the reserved capacity so terminated or modified. (12347 §1 3/21/79)

#### **949.12 DISPOSITION OF INDUSTRIAL COST RECOVERY REVENUE**

A. All funds recovered during the annual accounting period, with the exception of the discretionary portion, shall be deposited in interest-bearing accounts which are fully collateralized by obligations of the United States Government or by obligations fully guaranteed as to principal and interest by the United States Government or any agency thereof.

B. Within one (1) year of the effective date of this ICRS, and thereafter at least annually and within four (4) months after the close of the City fiscal year, the City shall transfer to the United States Treasury fifty (50%) percent of all ICR revenues collected during such fiscal year and any interest earned thereon. The City shall retain fifty (50%) percent of the amount recovered from industrial users, and shall use these funds as follows:

1. A portion of the amounts which the City retains may be used to pay the incremental costs of administration of the industrial cost recovery system. The incremental costs of administration are those costs remaining after deducting all costs reasonably attributable to the administration of the user charge system. The incremental costs shall be segregated from all other administrative costs of the City.

2. A minimum of eighty (80%) percent of the amounts the City retains after paying the incremental costs of administration, together with any interest earned shall be placed in an industrial cost recovery account entitled "Expansion and Upgrading Account." Funds in this Expansion and Upgrading Account shall be expended only for replacement or expansion of grant-assisted treatment works and shall not be spent without prior written approval of the Environmental Protection Agency's Regional Administrator.

3. The remainder of the amounts retained by the City are discretionary and shall be used in the Sewer Fund for such uses as the City shall deem proper, except it shall not be used for the construction of industrial pretreatment facilities or rebates to industrial users for costs incurred by such users in complying with Federal user charge or industrial cost recovery requirements. (12347 §1 3/21/79)

#### **949.13 PARTIAL INVALIDITY**

If any one or more sections, sentences or parts of this ICRS shall be adjudged invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence or part of this ICRS in one or more instances or

circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance. (12347 §1  
3/21/79)

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## **SECTION 4.0**

### **SEWAGE FACILITIES PLANNING MODULE COMPONENT 4**

**CITY OF ALLENTOWN  
LEHIGH COUNTY, PENNSYLVANIA**

## **SECTION 4.1**

### **4A – MUNICIPAL PLANNING AGENCY REVIEW**

**CITY OF ALLENTOWN  
LEHIGH COUNTY, PENNSYLVANIA**



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF CLEAN WATER

## INSTRUCTIONS FOR COMPLETING COMPONENT 4A MUNICIPAL PLANNING AGENCY REVIEW

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***Remove and recycle these instructions prior to mailing component to the approving agency.***

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### **Background**

This component, Component 4, is used to obtain the comments of planning agencies and/or health departments having jurisdiction over the project area. It is used in conjunction with other planning module components appropriate to the characteristics of the project proposed.

### **Who Should Complete the Component?**

The component should be completed by any existing municipal planning agency, county planning agency, planning agency with areawide jurisdiction, and/or health department having jurisdiction over the project site. It is divided into sections to allow for convenient use by the appropriate agencies.

The project sponsor must forward copies of this component, along with supporting components and data, to the appropriate planning agency(ies) and health department(s) (if any) having jurisdiction over the development site. These agencies are responsible for responding to the questions in their respective sections of Component 4, as well as providing whatever additional comments they may wish to provide on the project plan. After the agencies have completed their review, the component will be returned to the applicant. The agencies have 60 days in which to provide comments to the applicant. If the agencies fail to comment within this 60 day period, the applicant may proceed to the next stage of the review without the comments. The use of registered mail or certified mail (return receipt requested) by the applicant when forwarding the module package to the agencies will document a date of receipt.

After receipt of the completed Component 4 from the planning agencies, or following expiration of the 60 day period without comments, the applicant must submit the entire component package to the municipality having jurisdiction over the project area for review and action. If approved by the municipality, the proposed plan, along with the municipal action, will be forwarded to the approving agency (Department of Environmental Protection or delegated local agency). The approving agency, in turn, will either approve the proposed plan, return it as incomplete, or disapprove the plan, based upon the information provided.

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### ***Instructions for Completing Planning Agency and/or Health Department Review Component***

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#### **Section A. Project Name**

Enter the project name as it appears on the accompanying sewage facilities planning module component (Component 2, 2m, 3, 3s or 3m).

---

#### **Section B. Review Schedule**

Enter the date the package was received by the reviewing agency, and the date that the review was completed.

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#### **Section C. Agency Review**

1. Answer the yes/no questions and provide any descriptive information necessary on the lines provided. Attach additional sheets, if necessary.
2. Complete the name, title, and signature block.

---

#### **Section D. Additional Comments**

The Agency may provide whatever additional comment(s) it deems necessary, as described in the form. Attach additional sheets, if necessary.

## SEWAGE FACILITIES PLANNING MODULE

### COMPONENT 4A - MUNICIPAL PLANNING AGENCY REVIEW

**Note to Project Sponsor:** To expedite the review of your proposal, one copy of your completed planning module package and one copy of this *Planning Agency Review Component* should be sent to the local municipal planning agency for their comments.

#### SECTION A. PROJECT NAME (See Section A of instructions)

Project Name

Five City Center 7<sup>th</sup> & Walnut

#### SECTION B. REVIEW SCHEDULE (See Section B of instructions)

1. Date plan received by municipal planning agency 12/6/2018
2. Date review completed by agency 12/10/2018

#### SECTION C. AGENCY REVIEW (See Section C of instructions)

- | Yes                                 | No                                  |   |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 1. Is there a municipal comprehensive plan adopted under the Municipalities Planning Code (53 P.S. 10101, <i>et seq.</i> )?               |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 2. Is this proposal consistent with the comprehensive plan for land use?<br>If no, describe the inconsistencies _____                     |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 3. Is this proposal consistent with the use, development, and protection of water resources?<br>If no, describe the inconsistencies _____ |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 4. Is this proposal consistent with municipal land use planning relative to Prime Agricultural Land Preservation?                         |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 5. Does this project propose encroachments, obstructions, or dams that will affect wetlands?<br>If yes, describe impacts _____            |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 6. Will any known historical or archaeological resources be impacted by this project?<br>If yes, describe impacts _____                   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 7. Will any known endangered or threatened species of plant or animal be impacted by this project?<br>If yes, describe impacts _____      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 8. Is there a municipal zoning ordinance?   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 9. Is this proposal consistent with the ordinance?<br>If no, describe the inconsistencies _____   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 10. Does the proposal require a change or variance to an existing comprehensive plan or zoning ordinance?                                 |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 11. Have all applicable zoning approvals been obtained?   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 12. Is there a municipal subdivision and land development ordinance?  |

**SECTION C. AGENCY REVIEW (continued)**

Yes	No	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	13. Is this proposal consistent with the ordinance? If no, describe the inconsistencies _____
<input checked="" type="checkbox"/>	<input type="checkbox"/>	14. Is this plan consistent with the municipal Official Sewage Facilities Plan? If no, describe the inconsistencies _____
<input type="checkbox"/>	<input checked="" type="checkbox"/>	15. Are there any wastewater disposal needs in the area adjacent to this proposal that should be considered by the municipality? If yes, describe _____
<input type="checkbox"/>	<input type="checkbox"/>	16. Has a waiver of the sewage facilities planning requirements been requested for the residual tract of this subdivision? <i>N/A</i>
<input type="checkbox"/>	<input type="checkbox"/>	If yes, is the proposed waiver consistent with applicable ordinances? If no, describe the inconsistencies _____
17. Name, title and signature of planning agency staff member completing this section:		
Name: <u>DAVID KIMMELLY</u>		
Title: <u>CHIEF PLANNER</u>		
Signature: <u><i>David Kimmelly</i></u>		
Date: <u>12/10/2018</u>		
Name of Municipal Planning Agency: <u>CITY OF ALLENTOWN</u>		
Address <u>435 HAMILTON ST. ALLENTOWN, PA 18101</u>		
Telephone Number: <u>610-437-7613</u>		

**SECTION D. ADDITIONAL COMMENTS (See Section D of instructions)**

This component does not limit municipal planning agencies from making additional comments concerning the relevancy of the proposed plan to other plans or ordinances. If additional comments are needed, attach additional sheets.

The planning agency must complete this component within 60 days.

This component and any additional comments are to be returned to the applicant.



## **SECTION 4.2**

### **4B – COUNTY PLANNING AGENCY REVIEW**

**CITY OF ALLENTOWN  
LEHIGH COUNTY, PENNSYLVANIA**



## INSTRUCTIONS FOR COMPLETING COMPONENT 4B COUNTY PLANNING AGENCY REVIEW (or Planning Agency with Areawide Jurisdiction)

***Remove and recycle these instructions prior to mailing component to the approving agency.***

### Background

This component, Component 4, is used to obtain the comments of planning agencies and/or health departments having jurisdiction over the project area. It is used in conjunction with other planning module components appropriate to the characteristics of the project proposed.

### Who Should Complete the Component?

The component should be completed by any existing municipal planning agency, county planning agency, planning agency with areawide jurisdiction, and/or health department having jurisdiction over the project site. It is divided into sections to allow for convenient use by the appropriate agencies.

The project sponsor must forward copies of this component, along with supporting components and data, to the appropriate planning agency(ies) and health department(s) (if any) having jurisdiction over the development site. These agencies are responsible for responding to the questions in their respective sections of Component 4, as well as providing whatever additional comments they may wish to provide on the project plan. After the agencies have completed their review, the component will be returned to the applicant. The agencies have 60 days in which to provide comments to the applicant. If the agencies fail to comment within this 60 day period, the applicant may proceed to the next stage of the review without the comments. The use of registered mail or certified mail (return receipt requested) by the applicant when forwarding the module package to the agencies will document a date of receipt.

After receipt of the completed Component 4 from the planning agencies, or following expiration of the 60 day period without comments, the applicant must submit the entire component package to the municipality having jurisdiction over the project area for review and action. If approved by the municipality, the proposed plan, along with the municipal action, will be forwarded to the approving agency (Department of Environmental Protection or delegated local agency). The approving agency, in turn, will either approve the proposed plan, return it as incomplete, or disapprove the plan, based upon the information provided.

### ***Instructions for Completing Planning Agency and/or Health Department Review Component***

#### **Section A. Project Name**

Enter the project name as it appears on the accompanying sewage facilities planning module component (Component 2, 3, 3s or 3m).

#### **Section B. Review Schedule**

Enter the date the package was received by the reviewing agency, and the date that the review was completed.

#### **Section C. Agency Review**

1. Answer the yes/no questions and provide any descriptive information necessary on the lines provided. Attach additional sheets, if necessary.
2. Complete the name, title, and signature block.

#### **Section D. Additional Comments**

The Agency may provide whatever additional comment(s) it deems necessary, as described in the form. Attach additional sheets, if necessary.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF POINT AND NON-POINT SOURCE MANAGEMENT

DEP Code #

2-3900/202-3

**SEWAGE FACILITIES PLANNING MODULE**  
**COMPONENT 4B - COUNTY PLANNING AGENCY REVIEW**  
**(or Planning Agency with Areawide Jurisdiction)**

**Note to Project Sponsor:** To expedite the review of your proposal, one copy of your completed planning package and one copy of this *Planning Agency Review Component* should be sent to the existing county planning agency or planning agency with areawide jurisdiction for their comments.

**SECTION A. PROJECT NAME** (See Section A of instructions)

Project Name

Five City Center 7<sup>th</sup> & Walnut

**SECTION B. REVIEW SCHEDULE** (See Section B of instructions)

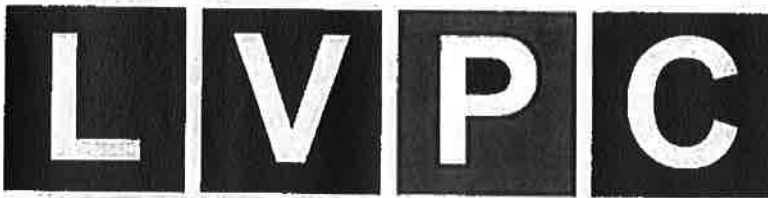
1. Date plan received by county planning agency. ----
2. Date plan received by planning agency with areawide jurisdiction November 21, 2018  
Agency name Lehigh Valley Planning Commission
3. Date review completed by agency December 3, 2018

**SECTION C. AGENCY REVIEW** (See Section C of instructions)

Yes No

- |                                     |                                     |   |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 1. Is there a county or areawide comprehensive plan adopted under the Municipalities Planning Code (53 P.S. 10101 <i>et seq.</i> )?   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 2. Is this proposal consistent with the comprehensive plan for land use? <i>See attached Act 247 review letter dated 11/6/18</i>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 3. Does this proposal meet the goals and objectives of the plan?<br>If no, describe goals and objectives that are not met ----  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 4. Is this proposal consistent with the use, development, and protection of water resources?<br>If no, describe inconsistency ----  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 5. Is this proposal consistent with the county or areawide comprehensive land use planning relative to Prime Agricultural Land Preservation?<br>If no, describe inconsistencies: ---- |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 6. Does this project propose encroachments, obstructions, or dams that will affect wetlands?<br>If yes, describe impact ----  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | 7. Will any known historical or archeological resources be impacted by this project? <i>PHMC determination</i><br>If yes, describe impacts ----                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | 8. Will any known endangered or threatened species of plant or animal be impacted by the development project? <i>See PNDI results</i>   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 9. Is there a county or areawide zoning ordinance?  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | 10. Does this proposal meet the zoning requirements of the ordinance? <i>N/A</i><br>If no, describe inconsistencies ----  |

Yes	No	SECTION C. AGENCY REVIEW (continued)
<input type="checkbox"/>	<input type="checkbox"/>	11. Have all applicable zoning approvals been obtained? <i>N/A</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	12. Is there a county or areawide subdivision and land development ordinance? <i>Not applicable to City of Allentown</i>
<input type="checkbox"/>	<input type="checkbox"/>	13. Does this proposal meet the requirements of the ordinance? <i>N/A</i> If no, describe which requirements are not met ----
<input type="checkbox"/>	<input type="checkbox"/>	14. Is this proposal consistent with the municipal Act 537 Official Sewage Facilities Plan? <i>See municipal interpretation</i> If no, describe inconsistency ----
<input type="checkbox"/>	<input checked="" type="checkbox"/>	15. Are there any wastewater disposal needs in the area adjacent to this proposal that should be considered by the municipality? If yes, describe ----
<input type="checkbox"/>	<input type="checkbox"/>	16. Has a waiver of the sewage facilities planning requirements been requested for the residual tract of this subdivision? <i>N/A</i>
<input type="checkbox"/>	<input type="checkbox"/>	If yes, is the proposed waiver consistent with applicable ordinances. If no, describe the inconsistencies ----
<input checked="" type="checkbox"/>	<input type="checkbox"/>	17. Does the county have a stormwater management plan as required by the Stormwater Management Act?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	If yes, will this project plan require the implementation of storm water management measures?
		18. Name, Title and signature of person completing this section:
		Name: <u>Susan L. Rockwell</u>
		Title: <u>Senior Environmental Planner</u> Signature: <u><i>S L. Rockwell</i></u>
		Date: <u>December 3, 2018</u>
		Name of County or Areawide Planning Agency: <u>Lehigh Valley Planning Commission</u>
		Address: <u>961 Marcon Blvd, Suite 310, Allentown PA 18109</u>
		Telephone Number: <u>610-264-4544</u>
<b>SECTION D. ADDITIONAL COMMENTS (See Section D of instructions)</b>		
This Component does not limit county planning agencies from making additional comments concerning the relevancy of the proposed plan to other plans or ordinances. If additional comments are needed, attach additional sheets.		
The county planning agency must complete this Component within 60 days.		
This Component and any additional comments are to be returned to the applicant.		



## Lehigh Valley Planning Commission

STEPHEN REPASCH  
Chair

JOHN DIACOGIANNIS  
Vice Chair

STEVEN GLICKMAN  
Treasurer

BECKY A. BRADLEY, AICP  
Executive Director

November 6, 2018

Mr. Douglas Stewart, Director of Planning  
City of Allentown  
City Hall, 435 Hamilton Street  
Allentown, Pennsylvania 18101

**RE: Five City Center (7<sup>th</sup> & Walnut) – Land Development  
City of Allentown  
Lehigh County**

Dear Mr. Stewart:

The subject application proposes to construct a multi-story apartment building with a parking deck below. The residential component will include a total of 220 apartment units. The parking deck will have a lower level accessible from Walnut Street and an upper level accessible from 7<sup>th</sup> Street, with a total of approximately 239 parking spaces. The proposed development is located at the northwest corner of 7<sup>th</sup> and Walnut Streets. This is consistent with the County Comprehensive Plan.

Our review does not include an in-depth examination of the plan relative to subdivision design standards or ordinance requirements since these items are covered in the municipal review.

In order to better meet the needs of all involved, the LVPC is now requiring an appointment for plan signings. Please call the office and ask for a Community Planning staff person. Generally, your appointment will be within two business days.

Feel free to call me if you have any questions about this review.

Sincerely,

Jillian Seitz  
Community Planner

cc: Craig Messinger, City of Allentown  
David Miller, PE, RETTEW

RECEIVED  
NOV 21 2018