

By..... No.....

**AN ORDINANCE**

Amending Ordinance No. 28892-94 and Chapter 52 of the Revised Code of General Ordinances Pertaining to the Regulation of the Use of Public and Private Sewers and Drains, and the Discharge of Water and Wastes into the Public Sewer System.

WHEREAS, the federal government has enacted and amended the Federal Water Pollution Control Act now known as the Federal Clean Water Act (33 U.S.C. 1150, et. seq.); and

WHEREAS, with the passage of such federal legislation, municipalities are delegated and mandated a more responsible and responsive role in water pollution abatement; and

WHEREAS, the City, to insure its compliance with the Clean Water Act and to prevent the existence of public nuisances, has enacted local legislation to regulate the discharge and disposal of substances into City sewers and wastewater facilities; and

WHEREAS, by enacting such legislation, the City further desires to insure that the use of the public wastewater system operated by it will safeguard the public health and protect the environment; and

WHEREAS, the City desires to regulate to the fullest extent authorized by law the use of the public wastewater system operated by it; and

WHEREAS, amendments to the federal legislation and regulations now require that local ordinances be amended to reflect these changes; and

WHEREAS, the ordinance has been subject to public hearings, review, and comment; and

WHEREAS, these proposed amendments have been approved by the Ohio EPA as consistent with the Federal Clean Water Act; and

WHEREAS, it is determined that such legislation is consistent with the City's policy of protecting its water resources; now, therefore,

**BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:**

**SECTION 1. Section 1 of Ordinance No. 28892-94 and Section 52.02 of the Revised Code of General Ordinances are hereby amended to read as follows:**

**SECTION 52.01 DEFINITIONS.**

**A. SPECIFIC DEFINITIONS.**

Unless the context of usage indicates otherwise, the meaning of specific terms in this ordinance shall be as follows:

1. “Act.” The Federal Clean Water Act, as amended.
2. “ASTM.” The American Society for Testing and Materials.
3. “Authorized Representative.”
  - a) A responsible corporate officer, if the industrial user submitting the reports required by this rule is a corporation. For the purpose of this paragraph, a “responsible corporate officer” means: (a) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty persons or having gross annual sales or expenditures exceeding twenty-five million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - b) A general partner or proprietor if the industrial user submitting the report is a partnership or sole proprietorship respectively.
  - c) A duly authorized representative of the individual designated in paragraph A. 3. a) or A. 3. b) of this section if:
    - (1) The authorization is made in writing by the individual described in paragraph A. 3. a) or A. 3. b) of this section;
    - (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and
    - (3) The written authorization is submitted to the Director.

- d) If an authorization under paragraph A. 3. c) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph A. 3. c) of this section must be submitted to the Director prior to or together with any reports to be signed by an authorized representative.
4. “Best Management Practices.” Measures or practices used to reduce the amount of pollution entering the sanitary sewer system.
  5. “Biosolids.” Municipal sewage solids (sludge) that is a primarily organic product resulting from the wastewater treatment process that can be beneficially recycled under applicable regulations.
  6. “BOD.” (denoting Biochemical Oxygen Demand). The quantity of oxygen used in the biochemical oxidation of a sample under standard laboratory procedure in five days at 20°C, expressed in milligrams per liter as stipulated in 40 CFR, Part 136. When the BOD test is not practical, the COD test may, at the City’s discretion, be used to determine the BOD by applying an appropriate factor on a case by case basis.
  7. “Building Sewers.” The extension (lateral) from a building wastewater plumbing facility to the public wastewater facility.
  8. “Bypass.” Means the intentional diversion of wastestreams from any portion of an industrial user’s treatment facility.
  9. “Categorical Pretreatment Standard.” Any applicable standard, including national and Ohio EPA categorical pretreatment standards, specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a publicly owned treatment works by industrial users in specific industrial categories.
  10. “City.” The City of Dayton, Ohio.
  11. “COD.” (denoting Chemical Oxygen Demand) is a measure of the oxygen equivalent of a sample that is susceptible to oxidation by a strong chemical oxidant. COD is determined by standard laboratory procedure as stipulated in 40 CFR, Part 136.
  12. “Combined Sewer.” A sewer intended to receive both wastewater and storm or surface water.

13. “Commercial User.” A store, office, or recreational property used for transaction of business, sale of merchandise or as a gathering place for people and which is connected to the wastewater facilities and is not within the definition of “Governmental User,” “Industrial User,” or “Residential User.”
14. “Composite Sample.” A combination of individual samples obtained at regular intervals over a specified time period that is representative of the discharge. The volume of each individual sample shall be either proportional to the flow rate during the sample period (flow composite) or constant and collected at equal time intervals during the composite period (time composite).
15. “Contact Cooling Water.” Water used for cooling purposes only, which may become contaminated either through the use of water treatment chemicals used for corrosion inhibitors or biocides, or by direct contact with process materials and/or wastewater.
16. “Day.” A 24-hour period, beginning at 12:01 A.M. or as otherwise specified by the City.
17. “Director.” The Director of the Department of Water for the City of Dayton or an authorized designee.
18. “Easement.” An acquired legal right for the specific use of land owned by others.
19. “EPA.” The United States Environmental Protection Agency.
20. “Exempt by Ruling of the Director.” As used in Section 52.06 D. 2. b) means that upon petition from a user, the Director shall apply the criteria of that section to determine whether to allocate, in terms of concentration, a nickel limit greater than 0.067 mg/l, but in no case greater than 2.60 mg/l, with such limits defined as a 1-day maximum based on a composite sample.
21. “Garbage.” The solid animal and vegetable wastes resulting from the domestic or commercial handling, storage, dispensing, preparation, cooking, and serving of foods.
22. “Governmental User.” Any property used for transaction of governmental business and which is connected to the wastewater facilities and is not within the definition of “Commercial User,” “Industrial User,” or “Residential User.”
23. “Groundwater.” Water within the earth.

24. “Industrial User.” Any non-domestic source of wastewater regulated under Section 307 (b), (c) or (d) of the Clean Water Act who introduces pollutants into the wastewater facility. “Industrial User” shall also include any user which discharges wastewater containing toxic pollutant(s), or any substance(s) which may cause or contribute to interference in the wastewater facilities, and any federal categorical industry that is designated as such by the EPA.
25. “Industrial Wastewater Discharge Permit.” (previously called an Administrative Order). A final determination by the Director establishing discharge limitations, monitoring and sampling requirements, discharge prohibitions, or otherwise regulating a discharge or discharger to the wastewater facility.
26. “Interference.” Any inhibition or disruption of the City’s wastewater facility, its treatment processes or operations, or its sludge processes or disposal which is a cause in whole or in part of a violation of any requirement of the City’s NPDES permit (including an increase in the magnitude or duration of a violation), or to the prevention of sewage sludge or biosolids use or disposal by the City in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent federal, state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II more commonly referred to as the Resource Conservation and Recovery Act (RCRA) as amended; and including state regulations contained in any State of Ohio sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, and the Toxic Substances Control Act.
27. “National Pretreatment Standard.” Any regulation of the EPA containing pollutant discharge limits promulgated in accordance with Sections 307 (b) and (c) of the Act, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 40 CFR Section 403.5.
28. “Natural Outlet.” Any outlet into a watercourse, pond, ditch, lake, or any other body of surface water or groundwater.
29. “New Source.”
- a) The term “New Source” means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
- (1) The building, structure, facility or installation is constructed at a site at which no other source is located; or

- (2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
    - (3) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source will be considered.
  - b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs A. 29. a) (2), or A. 29. a) (3) of this section but otherwise alters, replaces, or adds to existing process or production equipment.
  - c) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
    - (1) Begun, or caused to begin as part of a continuous onsite construction program:
      - (a) Any placement, assembly, or installation of facilities or equipment; or
      - (b) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
    - (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.
- 30. “Non-contact Cooling Water.” Water used for cooling purposes only which has no direct contact with any raw material, intermediate product, waste product, or finished product and which does not contain a level of contaminants detectably higher than that of the intake water.

31. “NPDES.” The National Pollutant Discharge Elimination System permit program, whether administered by the EPA or by the State of Ohio Environmental Protection Agency (OEPA).
32. “Owner.” The person or persons who legally own, lease, or occupy private property with wastewater facilities that discharge, or will discharge to the City’s wastewater facilities.
33. “Oil and Grease.” A group of substances including hydrocarbons, fatty acids, soaps, fats, waxes, oils or any other material that is extracted by a solvent from an acidified sample and that is not volatilized during the laboratory test procedures. Oils and greases are defined by the method of their determination in accordance with procedures set forth in 40 CFR 136.
34. “Pass-Through.” Any discharge of pollutant(s) through the City’s wastewater facility into navigable waters in quantities or concentrations which are a cause in whole or in part of a violation of any requirement of the City’s NPDES permit. This includes, but is not limited to, an increase in the magnitude or duration of violation.
35. “Person.” Any individual, firm, company, association, society, partnership, corporation, or other similar organization, agency, or group, or federal, state, municipal or other political subdivision, and also referred to in this ordinance as “discharger” and “user.”
36. “pH.” The logarithm of the reciprocal of the hydrogen ion concentration expressed in moles per liter of solution as determined by 40 CFR, Part 136.
37. “Pollutant.” Any of the following:
- a) Any liquid waste containing animal or vegetable matter in suspension or solution, and may include household wastes as commonly discharged from residences and from commercial, institutional, or similar facilities;
  - b) Any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, construction, agriculture, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present;
  - c) Any garbage, refuse, decayed wood, sawdust, shavings, bark, or other wood debris, lime, sand, ashes, offal, night soil, oil, tar, coal dust, dredged or fill material, or silt, other substances that are not sewage or industrial waste;
  - d) Any man-made or man-induced alteration of the chemical, physical, biological, or radiological properties of water.

38. “Pollution Prevention.” Source reduction and other practices that reduce or eliminate the creation of pollutants through:
- a) Increased efficiency in the use of raw materials, energy, water, or other resources; or,
  - b) Protection of natural resources by conservation.
39. “Pretreatment.” The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to discharge to the City of Dayton wastewater facilities.
40. “Pretreatment Standard.” Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users, or any other standard required by the City of Dayton.
41. “Properly Shredded Garbage.” Garbage that has been shredded to such a degree that all particles will be carried freely under flow conditions normally prevailing in the wastewater sewers, with no particle greater than 1/2 inch in any dimension.
42. “Recycling.” The use, reuse or reclamation of a material. A material is used or reused if it is either employed as an ingredient to make a product or employed in a particular function as an effective substitute for a commercial product. A material is reclaimed if it is processed to recover a useful product or if it is regenerated.
43. “Residential User.” All premises used only for human residency and which are connected to the wastewater facilities and discharge wastes typical of household activities.
44. “Sanitary Wastewater.” Wastewater discharged from the sanitary conveniences of dwellings, office buildings, industrial plants, or institutions.
45. “Shall” is mandatory; “May” is permissible.
46. “Significant Industrial User.”
- a) Except as provided in paragraph A. 46. b) of this section, the term Significant Industrial User includes:
    - (1) All industrial users subject to categorical pretreatment standards;

- (2) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the wastewater facility (excluding sanitary, non-contact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the wastewater facility treatment plant; or has a reasonable potential, in the opinion of the Director, to adversely affect the wastewater facility's operation or for violating any pretreatment standard or requirement.
  - b) The Director may on his own initiative or in response to a petition received from an industrial user, determine that a non-categorical industrial user is not a Significant Industrial User if the industrial user has no reasonable potential to adversely affect the wastewater facility's operation or for violating any pretreatment standard or requirement.
47. "Slugload." Any substance or pollutant released in a discharge at a rate and/or concentration which may cause or contribute to interference and/or could result in pass-through of the wastewater treatment facility.
48. "Source Reduction." Any practice which:
- a) Reduces the amount of any pollutant or contaminant entering any wastestream or which is otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and,
  - b) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants or contaminants.
49. "State." The State of Ohio.
50. "Storm Sewer." A sewer for conveying storm, surface, and other waters, that are not intended to be transported to a treatment facility.
51. "Surface Water." Water which occurs when the rate of precipitation exceeds the rate at which water may infiltrate into the soil.
52. "Suspended Solids." The total suspended matter that either floats on the surface of, or is in suspension in, water or wastewater, as determined by 40 CFR, Part 136; also known as "Total Suspended Solids (TSS)" or "Non-filterable Residue."
53. "Toxic Pollutants." Any of the pollutants designated by federal regulations pursuant to Section 307(a)(1) of the Act.

- 54. “Waste Minimization.” An activity which eliminates or reduces the amount of any pollutant from entering the wastestream or the environment. This may include a change in raw materials, operational improvement, process improvement, product improvement, product reformulation, reuse or reclamation.
- 55. “Wastewater.” A combination of sanitary sewage, industrial wastes, water carried wastes from residences, commercial buildings, industries, and institutions, together with any groundwater, surface water, or storm water that may be introduced into the wastewater facility.
- 56. “Wastewater Facility.” The combination of the wastewater sewers and treatment facilities.
- 57. “Wastewater Sewer.” (Sanitary sewer). The structures, processes, equipment, piping and arrangements necessary to collect and transport wastewaters to the treatment facility.
- 58. “Wastewater Treatment Facility.” The structures, land, processes, equipment and arrangements necessary to treat and discharge wastewaters.
- 59. “WEF.” The Water Environment Federation, formerly known as the Water Pollution Control Federation, or any successor organization.

**B. GENERAL DEFINITIONS.**

Unless the context of usage indicates otherwise, the meaning of terms in this ordinance and not defined in Section 52.01 A. above, shall be as defined in the Glossary: Water and Wastewater Control Engineering, prepared by Joint Editorial Board of the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and Water Pollution Control Federation, copyright 1969.

**SECTION 2. Section 2 of Ordinance No. 28892-94 and Sections 52.01, 52.03, 52.85, 52.86, 52.87, 52.88, and 52.89 of the Revised Code of General Ordinances are hereby amended to read as follows:**

**SECTION 52.02 GENERAL PROVISIONS.**

**A. PURPOSE.**

The purpose of this ordinance is to provide for the maximum possible beneficial public use of the City’s wastewater facilities through regulation of sewer construction, sewer use, and wastewater discharges; to provide for equitable distribution of the costs of the City’s wastewater facilities; and to provide procedures for complying with the requirements contained herein.

**B. SCOPE.**

1. The definitions of terms used in this ordinance are found in Section 52.01. The provisions of this ordinance shall apply to the discharge of all wastewater to facilities of the City. This ordinance provides for use of the City's wastewater facilities, regulation of sewer construction, control of the quantity and quality of wastewater discharged, wastewater pretreatment, equitable distribution of costs, assurance that existing customers capacity will not be preempted, approval of sewer construction plans, issuance of sewer use rules and regulations, minimum sewer connection standards and conditions, and penalties and other procedures in cases of violation of this ordinance.
2. This ordinance shall apply to persons in the City of Dayton and to persons outside the City, who are by contract or agreement with the City, users of the City's wastewater sewers or wastewater treatment facilities.
3. Nothing contained in this ordinance shall be construed so as to interfere with any existing or future lawful requirements that may be, or heretofore were, imposed by the Combined General Health District or other public body authorized to enact sanitary, health or water pollution abatement restrictions, so long as such requirements are consistent with the stated purpose of this ordinance.
4. Nothing contained in this ordinance shall be construed so as to interfere with the duties and powers of the Director of Water as set forth in R.C.G.O. 50.40.

**C. ADMINISTRATION.**

Except as otherwise provided herein, the Director of the Department of Water for the City of Dayton shall administer, implement, and enforce the provisions of this ordinance.

**D. VIOLATION OF ORDINANCE, ORDER, RULE OR REGULATION.**

Any person found in violation of any provision of this ordinance or any order, requirement, rule or regulation issued under the authority of this ordinance may be served with a written notice stating the nature of the violation, provided, however, written notice of violation may be dispensed with under the conditions described in Section 52.99 F. of this ordinance. The notice shall be served in person or by registered or certified mail. When the notice is served by mail, it shall be sent to the last address of the violator known to the Director. Where the address of the violator is unknown, service may be made upon the owner of the property involved at the tax-mailing address of the owner as shown on the County tax duplicate.

**E. FEES AND CHARGES.**

1. All fees and charges payable under the provisions of this ordinance shall be paid into the City of Dayton Sanitary Sewer Fund. Such fees and charges shall be as set forth herein or as established in the latest edition of the City's wastewater service charge ordinance, Section 50.03 of the Revised Code of General Ordinances: Assessment Rates And User Charge System.
2. All fees and charges payable under the provisions of this ordinance are due and payable upon the receipt of notice of charges, or as otherwise specified by the Director. Unpaid charges shall be deemed delinquent and shall be subject to penalty and interest charges as provided for in the latest edition of the City's Wastewater Service Charge Ordinance and may be assessed against the property served on the County tax duplicate.

**F. INSPECTIONS.**

1. The Director, bearing proper identification, shall be permitted to enter properties at any reasonable time for the purposes of inspection, observation, measurement, sampling, and records examination and copying pertaining to the wastewater discharge to ensure that discharge to the City's wastewater facilities is in accordance with the provisions of this ordinance. If the owner does not consent to the entry of the Director for the above stated purposes, the Director may apply to a court of competent jurisdiction for authority to enter said property. Each user shall maintain his property and records in such condition as to permit access for inspection and copying within ten minutes of arrival of the Director at the user's property. The failure of a user to maintain his property or to allow entrance, inspection, sampling, examination or copying as required by this paragraph is a violation of this ordinance.
2. The Director, bearing proper identification, shall be permitted to enter all private property through which the City holds an easement for the purposes of inspection, observation, measurement, sampling, repair, and maintenance of any of the City's wastewater facilities lying within the easement. All entry and any subsequent work within the easement shall be done in full accordance with the terms of the easement pertaining to the private property involved.
3. While performing the necessary work on private properties referred to in paragraphs F. 1. and F. 2. above, the Director shall observe all safety rules established by the owner or occupant of the property and applicable to the premises.

4. During the performance on private properties of inspections, wastewater sampling, or other similar operations referred to in paragraphs F. 1. and F. 2. above, the owner or occupant shall be indemnified against loss of or damage to property of the owner or occupant by the Director, except as such may be caused by negligence or failure of the owner or occupant to maintain safe conditions as required by Section 52.07 B. of this ordinance.
5. No person shall assault, abuse, harass, or otherwise interfere with the Director's performance of any activity authorized by this ordinance.

**G. VANDALISM.**

No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, interfere with the operation of, or tamper with any structure, appurtenances or equipment which is a part of and/or used in conjunction with the City's wastewater facilities.

**H. SEVERABILITY.**

A finding by any court or other jurisdiction that any part or provision of this ordinance is invalid shall not affect the validity of any other part or provision of this ordinance which can be given effect without the invalid parts or provisions.

**I. AMENDMENTS OF THE ORDINANCE.**

Public notice of any amendments of this ordinance shall be given in accordance with applicable provisions of the City Charter, other City ordinances, state and federal law.

**SECTION 3. Section 3 of Ordinance No. 28892-94 and Sections 52.10, 52.11, 52.12, and 52.13 of the Revised Code of General Ordinances are hereby amended to read as follows:**

**SECTION 52.03 USE OF CITY'S WASTEWATER FACILITIES.**

**A. WASTE DISPOSAL.**

No person shall place, deposit, or permit to be deposited in any non-sanitary manner on public or private property within the City of Dayton, or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.

**B. WASTEWATER DISCHARGES.**

Any person discharging wastewater to the City's wastewater facilities shall comply with the provisions of this ordinance; provided, however, all industrial users must have the approval of the Director prior to any discharges. No person shall discharge wastewater to any outlet except in compliance with federal and state NPDES permit requirements.

**C. WASTEWATER DISPOSAL.**

Except as provided in this ordinance, no person shall construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

**D. CONNECTION TO WASTEWATER SEWER REQUIRED.**

The owner of any house, building, or property which is used for human occupancy, employment, recreation, or other purposes, and abutting on any street, alley, right-of-way, or easement in which there is or may be located a wastewater sewer connected to the treatment facility of the City, is required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities by means of a building sewer (lateral) directly to the wastewater sewer in accordance with the provisions of this ordinance, within 90 days after official notice to do so, provided that the proper wastewater sewer is within 200 feet of the property line. The owner is responsible for maintenance of the building sewer (lateral) to the point of connection with the publicly-owned wastewater sewer. This section shall not apply to any person served by a privately constructed, owned, operated, and maintained wastewater sewer and wastewater treatment facility which discharges directly to an outlet in accordance with the provisions of this ordinance and applicable state and federal laws.

**SECTION 4. Section 4 of Ordinance No. 28892-94 and Section 52.14 of the Revised Code of General Ordinances are hereby amended to read as follows:**

**SECTION 52.04 PRIVATE WASTEWATER DISPOSAL.**

**A. EXCLUSIONS.**

This section shall not apply to any private system which discharges to wastewater facilities of the City or which discharges directly to a natural outlet by authority of a separate NPDES permit and in compliance with applicable state and federal laws.

**B. DESIGN REQUIREMENTS.**

The type, capacities, location, and layout of a private wastewater disposal system shall comply with all requirements of the Combined General Health District of Montgomery County, Ohio, and/or applicable federal and state law. This requirement excludes deep well disposal as defined by state and federal laws.

**C. CONNECTION TO CITY’S SYSTEM WHEN AVAILABLE.**

At such time as a wastewater sewer becomes available as defined in Section 52.03 D., to a property served by a private wastewater disposal system, a direct connection shall be made to the wastewater sewer within 90 days after official notice to do so, and any septic tanks, cesspools, and similar wastewater disposal facilities shall be emptied and filled with suitable material.

**SECTION 5. Section 5 of Ordinance No. 28892-94 and Sections 52.25, 52.26, 52.27, 52.28, 52.29, 52.30, 52.31, 52.32, 52.33, 52.34, and 52.35 of the Revised Code of General Ordinances are hereby amended to read as follows:**

**SECTION 52.05 BUILDING SEWERS AND CONNECTIONS.**

**A. CONNECTION APPROVAL.**

1. No person shall uncover, make any connections with or opening into, use, alter, or disturb any wastewater sewer or a storm sewer without first obtaining written approval from the Department of Building Services, Department of Public Works, or Department of Water, as appropriate.
2. There shall be four (4) types of connections to the City’s wastewater facilities: Residential, Commercial, Governmental, and Industrial. The Industrial User shall file an Application for Industrial Wastewater Service on a special form furnished by the City. The application shall include wastewater disclosure information as required by the provisions of this ordinance. Exceptions to this provision may be made by the Director.

**B. CONNECTION COSTS.**

The costs and expenses incidental to the building sewer installation and connection to the City’s wastewater facilities shall be borne by the owner. The owner shall indemnify the City for any loss or damage incurred by the City that is directly or indirectly caused by the installation of the building sewer.

**C. SEPARATE CONNECTIONS REQUIRED.**

A separate and independent building sewer shall be provided for every building separately owned, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court yard, or driveway, the building sewer serving the front building may be extended to the rear building and the whole considered as one building sewer. The City assumes no obligation or responsibility for damage caused by or resulting from any single building sewer that serves two or more buildings.

**D. EXISTING BUILDING SEWERS.**

Existing building sewers may be used for connection of new building only on approval of the Director.

**E. BUILDING SEWER DESIGN.**

The size, slope, alignment, construction materials, trench excavation and backfill methods, pipe placement, jointing and testing methods used in the construction and installation of a building sewer shall conform to the building and plumbing code or other applicable requirements of the City. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WEF shall apply.

**F. BUILDING SEWER ELEVATION.**

Whenever practicable, the building sewer shall be brought to a building at an elevation below the basement floor. In buildings in which any building drain is too low to permit gravity flow to the City's wastewater sewer, wastewater carried by such building drain shall be lifted by an approved means and discharged to a building sewer draining to the City sewer.

**G. SURFACE RUNOFF, GROUNDWATER, AND NON-CONTACT COOLING WATER DRAINS.**

No person shall connect roof, foundation, areaway, parking lot, roadway, or other surface runoff or groundwater or non-contact cooling water drains to any sewer that is connected to the City's wastewater facility. The Director may approve the connection of such drains only when he has explicitly approved the waters intended for such drains for discharge to the wastewater facility, under the provision found in Section 52.06 B.2. of this ordinance.

**H. CONFORMANCE TO APPLICABLE CODES.**

1. The connection of a building sewer into a wastewater sewer shall conform to the requirements of the building and plumbing code or other applicable requirements of the City, or the procedures set forth in appropriate specifications of the ASTM or the WEF. The connections shall be made gas-tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved in writing by the Director before installation.
2. The connection of a surface runoff, groundwater, or non-contact cooling water drain to a storm sewer or outlet designed to transport surface runoff or groundwater drainage shall conform to the requirements of the applicable building code of the City and other applicable federal, state, and local requirements.

**I. CONNECTION INSPECTION.**

The applicant for a building sewer or other drainage connection permit shall notify the Director when such sewer or drainage connection is ready for inspection prior to its connection to the City's facilities. Such connection and testing as deemed necessary by the Director shall be made under the supervision of the Director.

**J. EXCAVATION GUARDS AND PROPERTY RESTORATION.**

Excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

**K. ALLOCATION OF CAPACITY.**

The Director shall not accept discharges of any wastewater to the City's wastewater sewers or wastewater treatment facilities unless there is sufficient capacity in the wastewater sewers and treatment facilities to convey and adequately treat the quantity of wastewater which the requested connection will add to the system. Where the Director determines that a discharge from a new source will utilize an unreasonable proportion of the reserve capacity of the wastewater sewers or wastewater treatment facilities, the Director shall not accept the discharge from the new source.

**SECTION 6. Section 6 of Ordinance No. 28892-94 and Sections 52.45, 52.46, 52.47, 52.48, 52.49, and 52.50 of the Revised Code of General Ordinances are hereby amended to read as follows:**

**SECTION 52.06 CONDITIONS TO USE THE CITY'S WASTEWATER SEWERS.**

**A. USE OF STORM SEWERS.**

All discharges of stormwater, surface water, groundwater, roof runoff, subsurface drainage, or other waters not intended to be treated in the treatment facility shall be made to storm sewers or outlets designed for such discharges. No person shall allow or cause to be discharged any such waters to any wastewater sewer.

**B. PROHIBITED DISCHARGES.**

- 1.** No person shall discharge or cause to be discharged to any of the City's wastewater facilities any substances, materials, waters, or wastes in such quantities or concentrations which in whole or in part:

- a) Create a fire or explosion hazard including, but not limited to, gasoline, benzene, naphtha, fuel oil, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit using the test method specified in 40 CFR 261.21, or other flammable or explosive liquid, solid, or gas;
- b) Contain corrosive properties causing damage or hazard to structures, equipment, or personnel of the wastewater facilities; however, in no case shall discharges have a pH lower than 6.0 or greater than 12.0 unless the Director orders specific alternate limitations or conditions. pH shall be determined by analytical methods defined by 40 CFR Part 136 or alternate methods approved by the Director;
- c) Cause obstruction to the flow in sewers, or other interference with the operation of wastewater facilities;
- d) Constitute a rate of discharge or substantial deviation from normal rates of discharge, (“slug-load”) which may cause or contribute to interference with the operation or performance of the wastewater facilities;
- e) Contain heat in amounts which will accelerate the formation of excessive amounts of hydrogen sulfide in the wastewater sewer, inhibit sampling efforts, endanger wastewater treatment facility personnel, or inhibit biological activity in the wastewater treatment facilities. A discharge of wastewater in excess of 60°C (140°F) may be prohibited by the Director. In no case shall a discharge of wastewater cause the temperature of the influent to the wastewater treatment facility to exceed 40°C (104°F);
- f) Contain any type of oils, fat, grease, solid or viscous material which may cause or contribute to the obstruction of the flow in sewers or which may cause or contribute to interference with the operation or performance of, or pass-through, the wastewater facilities; and, at the discretion of the Director, water or wastes containing fats, wax, grease, or oils regardless of origin, and whether emulsified or not, in excess of 100 mg/l, as determined using methods specified by 40 CFR 136;
- g) Contain noxious, malodorous gas or substance that creates a public nuisance or a hazard;
- h) Contain radioactive wastes in quantities prohibited by applicable state and federal regulations, or which, in the determination of the Director, will interfere with operation of the wastewater facility, or the safety of the workers or public, or the marketability or safety of sewage sludge and biosolids;
- i) Contain any garbage that has not been properly shredded;

- j)** Contain any odor or color producing substances exceeding concentration limits or other applicable standards which are established by the Director for the purposes of meeting the City's NPDES permit;
  - k)** Cause the City's effluent or residues, biosolids, sludges, grit, or scums, to be unsuitable for reclamation and reuse or interferes with the sludge, grit, and scum disposal practices;
  - l)** Cause the City to violate any limits in the City's NPDES permit, or any requirement of the permit, or otherwise pass-through or interfere with the City's wastewater treatment facility, or significantly contribute to any such violation, pass-through, or interference;
  - m)** Contain polychlorinated biphenyls, or isomers thereof, in any quantity or concentration above method detection limits delineated in 40 CFR Part 136 or which are detected by any other method;
  - n)** Contain materials which may result in the presence of toxic gases, vapors, or fumes within the wastewater facilities or which may cause acute worker health and safety problems or which may cause violations of applicable occupational health and safety regulations.
- 2.** No person shall discharge or cause to be discharged to any of the City's wastewater facilities any roof, foundation, areaway, parking lot, roadway, or other surface runoff or groundwater or non-contact cooling water. The Director may approve the discharge of such water only when he determines that the quantity and quality of the discharge will not unreasonably burden the capabilities of the wastewater facility and no alternate method of disposal or reuse is reasonably available, or to mitigate an environmental risk or health hazard. All such approved discharges shall be flow measured by the discharger, using a measuring device or other method approved by the City, and shall be subject to the City's applicable schedules of sewer rates and charges.
- 3.** Industrial and/or commercial wastes, and by-products and other materials originating from industrial and/or commercial operations outside the City of Dayton and the City of Dayton contract service areas shall not be discharged in any form into the wastewater facilities or storm sewer. Written exceptions to this provision may be made by the Director.
- 4.** No person shall access the wastewater facilities for any activity including discharge of hauled septic, industrial, or other wastes except at locations and at times as designated by the Director. Any removal of manhole lids, or other access to the wastewater facilities for the purpose of discharging wastes at times and/or locations other than those designated by the Director, or without the expressed permission of the Director, shall be considered a violation and shall be subject to enforcement action including fines and penalties.

5. If, in establishing discharge restrictions, discharge limits, or pretreatment standards pursuant to this section, the Director establishes concentration limits to be met by an industrial user, the Director in lieu of or in addition to concentration limits, may establish mass limits of comparable stringency for an individual industrial user. Limits established by the Director pursuant to this paragraph shall be deemed pretreatment standards for the purposes of Section 307(d) of the Act and this ordinance. Industrial users will be required to comply with the limits established pursuant to this paragraph.

**C. FEDERAL CATEGORICAL PRETREATMENT STANDARDS.**

1. No person shall discharge or cause to be discharged to any wastewater facilities, wastewaters containing substances subject to an applicable federal categorical pretreatment standard promulgated by EPA in excess of the limit prescribed in such applicable pretreatment standards except as otherwise provided in this Section 52.06, paragraphs C. 1. through C. 5. Compliance with such applicable pretreatment standards shall be within the time required by federal law. New Sources shall install and have in operating condition, and shall “start-up” all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable pretreatment standards.
2. Upon application by an industrial user, the Director may revise any limitations on substances specified in the applicable pretreatment standards to reflect removal of the substances by the wastewater treatment facility. The revised discharge limit for specified substances shall be derived in accordance with federal law.
3. Upon application by an industrial user, the Director may adjust any limitation on substances specified in the applicable pretreatment standards to consider factors relating to such user which are fundamentally different from the factors considered by EPA during the development of the pretreatment standard. Requests for and determinations of such adjustments shall be in accordance with federal law.
4. The Director shall notify all industrial users affected by the provisions of this paragraph and establish an enforceable compliance schedule for each user.
5. A person discharging combined wastewaters shall be subject to the federal requirements in 40 CFR, Section 403.6 as they pertain to determining the alternative pollutant limits of the combined wastewater.

**D. LOCAL LIMITS.**

1. The Director shall, from time to time, adopt, revise, or rescind local limits based upon the exercise of scientific and technical discretion as he or she deems appropriate to prevent pass-through, interference, or accumulation of pollutants in the wastewater treatment sludge or biosolids. All persons discharging to wastewater facilities owned by or under the jurisdiction of the City of Dayton shall meet the applicable local limits as developed by the City and set forth in the document “*Local Limits for the Discharge of Wastewater under the Industrial Pretreatment Program, Division of Wastewater Treatment, City of Dayton,*” unless otherwise authorized under the provisions of this ordinance. The Director shall give written notice of any new, revised, or rescinded local limits to each Significant Industrial User known to be affected by the limit and shall publish notice of the new or revised local limits in a newspaper of general circulation at least thirty days prior to the effective date of the new or revised local limits. Prior to the effective date of such new or revised local limits, the limits previously established by ordinance or the Director shall remain in effect.
  
2. The following local limits are established for the City of Dayton and shall remain in effect until they are revised or rescinded by the Director:
  - a) On or after October 1, 1995, no person shall discharge or cause to be discharged to any wastewater facilities, wastewaters with concentrations that exceed the following local limits:

1-Day Maximum based on a Composite Sample (mg/l)

Cadmium (Total)	0.30
Chromium (Total)	4.00
Copper (Total)	2.00
Lead (Total)	1.00
Mercury (Total)	0.0025
Molybdenum (Total)	0.30
Zinc (Total)	5.00

1-Day Maximum based on a Grab Sample (mg/l)

Cyanide (Total)	3.00
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or such limits as may be established in an administrative order issued by the Director.

**b) Local limits for Nickel.**

**(1)** On or after October 1, 1995, the following Nickel limits are established:

**(a)** No person, unless EXEMPT BY RULING OF THE DIRECTOR, shall discharge or cause to be discharged to any wastewater facilities, wastewaters with concentrations that exceed the following local limit:

1-Day Maximum based on a Composite Sample (mg/l)

Nickel (Total) 0.067

or such limit as may be established in an administrative order issued by the Director.

**(b)** Persons EXEMPT BY RULING OF THE DIRECTOR, shall not discharge or cause to be discharged to any wastewater facilities, wastewaters with concentrations that exceed the following local limit:

1-Day Maximum based on a Composite Sample (mg/l)

Nickel (Total) 2.60

or such limit as may be established in an administrative order issued by the Director.

**(2)** For purposes of this subsection, the following criteria shall be used in determining whether a user is "EXEMPT BY RULING OF THE DIRECTOR":

**(a)** The user requests a higher Nickel limit; and,

**(b)** The user demonstrates, to the satisfaction of the Director, that pollution prevention, recycling, source reduction, waste minimization, or best management practices will not reduce Nickel concentration to acceptable levels; or, the user presents other mitigating factors, acceptable to the Director, that justify a higher Nickel limit; and,

**(c)** As determined by the Director, mass of Nickel will not cause interference, pass-through, inhibition, or other deleterious effect at the wastewater facilities; and,

(d) As determined by the Director, safety and expansion factors of the wastewater facility allow the assignment of the higher Nickel limit.

3. Users that are required to also meet a federal categorical pretreatment standard must meet the stricter between the local limit and the federal categorical pretreatment standards referred to in paragraph C. of this section.

**E. WRITTEN EXCEPTIONS.**

Nothing in this section shall be construed as preventing any special agreement or arrangement between the City and any user of the wastewater facilities whereby wastewater of unusual strength or character is accepted into the system provided however, any such special agreement or arrangement shall be in accordance with the applicable federal categorical pretreatment standards and general or specific discharge prohibitions and other federal, state or City pretreatment requirements or limits. Wastewaters of unusual strength or character discharged to the wastewater facility may be subject to such fees and user charges as may be applicable.

**F. DILUTION PROHIBITION AND COMBINED WASTEWATER FLOWS.**

1. No person shall increase the use of potable or process water in any way, nor mix separate waste streams for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment, to achieve compliance with the standards set forth in this section, or to avoid or reduce the assessment of an extra-strength surcharge.
2. A person discharging combined wastewaters, some or all of which are not subject to categorical pretreatment standards, may be subject to supplemental or alternative pollutant limitations based on character, quality, or quantity of the combined wastewater streams.

**SECTION 7. Section 7 of Ordinance No. 28892-94 and Sections 52.60, 52.61, 52.62, and 52.63 of the Revised Code of General Ordinances are hereby amended to read as follows:**

**SECTION 52.07 INDUSTRIAL USERS.**

**A. WASTEWATER DISCHARGE DATA DISCLOSURE.**

**1. Disclosure Forms and Reports.**

All industrial users shall complete and file with the City the applicable disclosure declarations, required in Section 52.07, paragraphs A. 1. a), b), c), d), e), f), g), and h), in the forms prescribed by the City unless waived by the Director in accordance with federal law or regulations. The applicable report forms furnished

by the City to the users of the City's publicly-owned treatment works shall require, at a minimum, the information that is required by 40 CFR 403.12(b)(1) through (7), and (c) and any other information required by the Director. The Director may return any incomplete applications, forms or reports to the user with an indication of the deficiency. Where a person owns, operates or occupies properties designated as an industrial user at more than one location, separate information submittals shall be made for each location. All disclosure forms and reports required by this ordinance shall be signed in ink by an authorized representative of the industrial user. The City shall evaluate the complete application, disclosure forms and data furnished by the discharger and take such action, or issue such orders that it deems necessary.

- a) The City may require any user to complete and submit to the City an Industrial User's Survey providing information needed by the City to properly regulate the business, including, but not limited to, the nature of the business, water use, wastewater quantity and characteristics, and potential for pollutants to enter the City's wastewater facilities.
- b) Proposed new significant industrial users shall file disclosure forms entitled Application for Industrial Wastewater Service at least 90 days prior to connecting to the City's wastewater treatment facility. Those significant industrial users proposing changes in ownership, occupancy, or use, shall also complete and file said forms at least 90 days prior to implementing said changes.
- c) Existing industrial users subject to categorical pretreatment standards and currently discharging to or scheduled to discharge to the City shall file the disclosure forms entitled Pretreatment Baseline Report within 180 days after the effective date of the categorical pretreatment standards, or 180 days after the final administrative decision made upon a category determination submission under paragraph 40 CFR 403.6(a)(4), whichever is later. Such reports shall contain all of the information as required by federal law. At least 90 days prior to commencement of discharge, New Sources and sources that become industrial users subsequent to the promulgation of an applicable categorical standard shall submit to the Director a Pretreatment Baseline Report. New Sources shall include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give reasonable estimates of the information required in the circumstance where actual data is impossible to obtain.
- d) Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a New Source within 90 days following commencement of the introduction of wastewater into the City's wastewater facility, all users subject to categorical pretreatment standards shall submit to the City a report entitled Report on Compliance

with Categorical Pretreatment Standard Deadline (90-day compliance report), completed and signed by an authorized representative of the user identifying the nature and concentration of all pollutants in the discharge from the regulated process which are limited by applicable categorical pretreatment standards, the average and maximum daily flow for these process lines, and all other information required by 40 CFR Sec. 403.12(b)(4)-(6), as amended. For industrial users subject to equivalent limits established by the Director, this report shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

- e) All Significant Industrial Users shall submit to the City at least once every six months, unless required more frequently in the pretreatment standards or by the City, a report entitled Periodic Report on Continued Compliance, indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards. In addition, this report shall include a record of measured or verifiable estimated average and maximum daily flows for the reporting period for the discharge, except that the City may require more detailed reporting of flows. At the discretion of the Director, and in consideration of such facts as, but not limited to, local high or low flow rates, holidays and budget cycles, the City may specify the particular months for which the above reports are to be submitted. Such reports shall be in compliance with federal and state law. All reports required by this subparagraph shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by this report, which data is representative of conditions occurring during the reporting period. Industrial users shall conduct monitoring of sufficient frequency to assure compliance with applicable pretreatment standards as shall be required by the Director. Industrial users who monitor more frequently than required by the Director shall include the results of all monitoring in the Periodic Report on Continued Compliance.
  
- f) If sampling performed by an industrial user indicates a violation, the user shall notify the Director within 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 within 30 days after becoming aware of the violation. Upon request of the user, the Director may waive the requirement of resampling and reanalysis if he determines that the criteria of 40 CFR Sec. 403.12(g)(2)(i) and (ii) are met.

- g)** All industrial users shall promptly notify the Director in advance of any substantial change in the volume or character of pollutants in their discharge including, but not limited to, the listed or characteristic hazardous wastes for which the industrial user has submitted notification under 40 CFR Sec. 403.12(p).
- h)** Industrial users shall submit such additional reports as the Director shall require.

**2.** Confidential Information.

Information and data furnished to the City with respect to the nature and frequency of discharge shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the City at the time of submission that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets or proprietary information of the user. When requested by a user furnishing a report, the portions of a report which may disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this ordinance, the NPDES permit, State Disposal System permit and/or the pretreatment program; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the user furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

**3.** Falsifying Information.

No person shall knowingly make any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this ordinance, or falsify, tamper with, or knowingly render inaccurate any monitoring device or method used to determine compliance or extra-strength surcharge.

**4.** Retention of Records.

Any reports or records of wastewater characteristics compiled or submitted pursuant to this ordinance shall be maintained by the user for a minimum of three (3) years or so long as enforcement or judicial proceedings are being pursued, whichever is longer.

**B. PROVISION FOR MONITORING.**

1. The owner or occupant of any property serviced by a building sewer carrying industrial user wastewater discharges shall provide suitable access to the Director, and where deemed necessary by the Director, such meters, equipment and appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastewater. Such access shall be in a secure, readily and safely accessible location and shall be provided in accordance with plans approved by the Director. The access shall be provided and maintained at the owner's expense so as to be safe and accessible at reasonable times.
2. The Director shall consider such factors as the volume and strength of discharge, rate of discharge, quantities of toxic materials in the discharge, wastewater treatment facility removal capabilities, and cost effectiveness in determining whether or not access and equipment for monitoring industrial user wastewater discharges shall be required. The Director may dispense with discharge monitoring done for the sole purpose of determining wastewater surcharges when, in his sole discretion, he determines that such monitoring will not be cost effective.
3. Where the Director determines access and equipment for monitoring or measuring industrial wastewater discharges is not practical, reliable, or cost effective, the Director may specify alternative methods of determining the characteristics of the wastewater discharge which will, in the Director's judgment, provide an equitable measurement of such characteristics; provided however, this action is in compliance with federal and state law.

**C. DETERMINATION OF WASTEWATER CHARACTERISTICS.**

1. All measurements, tests, and analyses for determining compliance with discharge limitations shall be performed in accordance with procedures contained in 40 CFR 136 and amendments thereto. Where 40 CFR Part 136 does not include sampling or analytical techniques for the regulated pollutant(s), alternative procedures shall be approved by the Director. Sampling methods, locations, times, duration, and frequencies are to be determined on an individual basis subject to approval by the Director. Users cannot use samples taken by the City to fulfill self-monitoring requirements. The Director may require the user to install, at its own expense, more comprehensive sampling methods.
2. When self-monitoring analyses are required of a user, the user may, upon approval of the Director, make arrangements with a laboratory, including that of the user, to perform such analyses. The measurements, tests, and analyses of the characteristics of wastewater required by this ordinance shall be performed by a laboratory acceptable to the Director.

3. Monitoring of wastewater characteristics for any purpose shall be conducted on a frequency deemed necessary by the Director.
4. In determining the discharge characteristics, factors such as (a) continuous or batch operation, (b) seasonal operation and (c) the information requirements of other provisions of this ordinance shall be considered by the Director. The Director is authorized to obtain wastewater samples as required to verify the consistency of discharge characteristics.
5. The Director is authorized to charge fees for any given measurement, test, or analysis of wastewater required by this ordinance and performed by the City. When charges are imposed they shall be the same for all types of users, regardless of the quantity or quality of the discharge and shall reflect the direct and overhead costs incurred by the City. The City shall bill the user for costs incurred under this paragraph, and refusal by the user to pay said costs shall constitute a violation of this ordinance. Costs of measurements, tests, or analyses performed by an independent laboratory or contractor at the option of the user shall be borne directly by the user. All measurements, tests, and analyses of the characteristics of wastewater performed by an industrial user shall be at the user's expense.

**D. RECOVERY OF COSTS INCURRED BY THE CITY.**

Any user violating any of the provisions of this ordinance, or who causes a discharge which results in or contributes to pass-through, interference, accumulation in sludge or biosolids, violation of any federal, state or local requirement, a deposit or obstruction, or causes damages to or impairs the City wastewater sewers or wastewater treatment facility shall be liable to the City for any expense, loss, fine or damage caused by such discharge including the costs incurred in investigating, monitoring, and prosecuting such violation or discharge. The City shall bill the user for costs incurred as a result of the violation or discharge. Refusal to pay the assessed costs shall constitute a violation of this ordinance. The Director may disconnect from the City's wastewater facilities any user who refuses or fails to pay the assessed costs.

**SECTION 8. Section 8 of Ordinance No. 28892-94 and Sections 52.75, 52.76, 52.77, 52.78 and 52.79 of the Revised Code of General Ordinances are hereby amended to read as follows:**

**SECTION 52.08 PRETREATMENT.**

**A. WASTEWATERS WITH SPECIAL CHARACTERISTICS.**

1. The Director is authorized to:
  - a) Require pretreatment to a condition acceptable for discharge to the wastewater facility;

- b)** Require control over the quantities and rates of discharge to a condition acceptable for discharge to the wastewater facility;
- c)** Require any user to prepare and submit plans or implement measures which provide for pollution prevention, recycling, source reduction, waste minimization, or best management practices to reduce the amount or concentration of pollutants discharged to the wastewater treatment facility;
- d)** Require payment to cover the added cost of handling and treating the wastewaters not covered by existing fees or charges; provided however, any such wastewater discharges shall be in compliance with the federal categorical pretreatment standards and general or specific discharge prohibitions;
- e)** Require the development of compliance schedules to meet applicable pretreatment requirements;
- f)** Require the submission of reports sufficient to ascertain compliance status relative to applicable pretreatment requirements;
- g)** Carry out inspection, surveillance, and monitoring sufficient to determine compliance with applicable pretreatment requirements;
- h)** Pursue any actions that are legally available, such as, administrative remedies or enforcement actions including, but not limited to, injunctive relief, or the penalties specified in Section 52.99 of this ordinance;
- i)** Reject any wastewater that will create hazards or have deleterious effects on the wastewater facilities;
- j)** Issue Industrial Wastewater Discharge Permits establishing maximum quantities or rates of discharge or otherwise controlling the wastewater discharges to the wastewater facility by each person to ensure compliance with applicable pretreatment standards, requirements, or limitations. The Director may establish mass discharge limits for pollutants that are present or anticipated in any user's discharge; or
- k)** Require as a condition of any Industrial Wastewater Discharge Permit, that the permittee indemnify and hold harmless the City from any and all damages, liabilities, fines, penalties and costs resulting from violations of federal or state law which were caused or contributed to by the permittee's discharge.

2. When considering the imposition of any of the above requirements or actions, the Director shall assure that conditions of the City's NPDES permit are met. The Director shall also take into consideration any evidence presented by the user regarding cost effectiveness and the economic impact imposed by the requirements or actions. The Director shall allow a reasonable time consistent with EPA regulations for compliance with the imposed requirements or actions.
3. Where pretreatment or flow-equalizing facilities are provided or required for any wastewater, they shall be installed, maintained and operated in compliance with this ordinance at the expense of the user.

**B. COMPLIANCE WITH PRETREATMENT REQUIREMENTS.**

Persons required to pretreat wastewater in accordance with paragraph A. above, shall provide a statement, certified to by an authorized representative of the user indicating whether applicable pretreatment requirements are being met on a consistent basis and, if not, describing the additional operation and maintenance or additional pretreatment required for the user to meet the pretreatment requirement. This statement shall be provided with each Baseline Monitoring Report and each Report on Compliance with Categorical Pretreatment Standard Deadline. If additional pretreatment or operation and maintenance will be required to meet the pretreatment requirements the user shall submit a plan therefore (including schedules), to the Director. The plan (including schedules) shall comply with applicable conditions of the City's NPDES permit or other local, state, or federal laws.

**C. EFFECT OF FEDERAL AND STATE LAW.**

If the federal or state government promulgates a regulation for a given new or existing user in a specific industrial category that establishes pretreatment standards or establishes that such a user is exempt from pretreatment standards, and such regulation is in conflict with the terms of this ordinance, then such federal or state regulation will be submitted to the City Commission for consideration of adoption as an amendment to this ordinance.

**D. REVISION OF PRETREATMENT STANDARDS.**

The Director may apply for and obtain authorization from the EPA to revise discharge limitations for those substances listed in the federal categorical pretreatment standards for which consistent removal occurs in the wastewater treatment facilities.

**E. ACCIDENTAL DISCHARGES, SLUGLOADS, AND OTHER CHANGES IN EFFLUENT.**

The user shall notify the City immediately of any quantity or quality of wastewater discharge not previously submitted in an Industrial User's Survey, an Application for Industrial Wastewater Service or other applicable reports.

Users shall notify the Manager of the City's Division of Wastewater Treatment, or the supervisor on duty at the wastewater treatment facility by telephone immediately upon the occurrence of a slugload or accidental discharge, or bypass of substances prohibited or limited by this ordinance. The notification shall include, at a minimum, location of discharge, name and telephone number, date and time thereof, type of discharge, concentration and volume, and control or corrective actions taken.

No industrial user shall permit a bypass to occur which causes pretreatment standards or requirements to be violated or which may cause or contribute to a violation of the City's NPDES permit. The Director may approve a bypass if: (a) bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; (b) there was no feasible alternative to the bypass; and (c) the industrial user submitted the notices required by this section.

Any user who discharges a slugload, accidental discharge, or bypass shall be liable for any expense, or loss or damage to the City, in addition to the amount of any fines imposed on the City on account thereof under state or federal law. Such expense, loss, damage or fine shall be collected from the user in the same manner as set forth in Section 52.07 D. of this ordinance.

The user shall document and maintain sufficient records so as to reflect fairly and accurately any such discharge, including, but not limited to, bypasses of pretreatment facilities.

Each user shall provide spill prevention control and other pollution abatement methods or facilities to eliminate the accidental discharge of prohibited or regulated materials or substances. Such control, abatement methods and facilities shall be provided and maintained at the user's cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review, and shall be approved by the City before construction of the facility. Review and approval by the City of such plans and operating procedures shall not relieve the user from the responsibility to modify and operate its facility as necessary to meet the requirements of this ordinance.

Signs shall be permanently posted in conspicuous places on the user's premises, advising employees whom to call or procedures to follow in the event of a slugload or accidental discharge. Users shall instruct all persons who may cause or discover such a discharge with respect to emergency procedures.

**SECTION 9. Section 9 of Ordinance No. 28892-94 and Section 52.99 of the Revised Code of General Ordinances are hereby amended to read as follows:**

**SECTION 52.99 PENALTIES FOR VIOLATIONS - PUBLICATION OF NAMES.**

- A.** A violation of the provisions of Section 52.02 G. of this ordinance shall constitute a misdemeanor of the fourth degree, punishable as provided for in Section 2929.21, Ohio Revised Code.
- B.** A violation of the provisions of Section 52.07 A.3. of this ordinance shall constitute a misdemeanor of the first degree, punishable as provided in Section 2929.21, Ohio Revised Code.
- C.** Any person who violates or continues to violate any provisions, other than Section 52.02 G., of this ordinance, or any person who violates or continues to violate any provisions, other than Section 52.02 G., of this ordinance beyond any applicable time limit for compliance set forth in an Industrial Wastewater Discharge Permit, Notice of Violation or Compliance Schedule established by the Director, shall be subject to the following:

  - 1.** A fee in the amount not to exceed One Thousand Dollars (\$1,000.00) per day of violation may be assessed by the Director for each violation. A subsequent violation of the same provision of this ordinance shall constitute a misdemeanor of the first degree, punishable as provided in Section 2929.21, Ohio Revised Code. If the subsequent violation is a continuing one, each day of such violation shall constitute a separate violation.
  - 2.** The property may be subject to disconnection from the City's wastewater facilities.
  - 3.** The City may seek injunctive relief to stop the violation.
- D.** At least annually, the Director shall publish a list of all industrial users that at any time during the previous twelve months were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violations meet one or more of the following criteria:

  - 1.** Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

2. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);
  3. Any other violation of a pretreatment effluent limit (daily maximum or longer term average) that the Director determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of the wastewater facility's personnel or the general public);
  4. Any discharge of a pollutant that has caused imminent endangerment of human health, welfare or to the environment or has resulted in the wastewater facility's exercise of emergency authority to halt or prevent such a discharge;
  5. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a wastewater discharge administrative order, permit or enforcement order for starting construction, completing construction, or attaining final compliance;
  6. Failure to provide, within 30 days after the due date, required reports such as Baseline Monitoring Reports, 90-day compliance reports (Report on Compliance with Categorical Pretreatment Standard Deadline), periodic self-monitoring reports (Periodic Report on Continued Compliance), and reports on compliance with compliance schedules;
  7. Failure to accurately report noncompliance;
  8. Any other violation or group of violations, which the Director determines, will or has adversely affected the operation or implementation of the City's pretreatment program.
- E.** A user who has violated, or continues to violate, any provision of this ordinance or an order issued hereunder, or any other applicable pretreatment standard or requirement shall be liable to the City for a civil penalty which shall be assessed by the Director in an amount up to \$1,000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of violation. In addition to any civil penalty, the Director may recover from the user an additional civil penalty equal to the economic benefit obtained by the user as a result of its violation.

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

In determining the amount of civil liability, the Director may take into consideration all relevant information, including, but not limited to, information provided by the user, 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 to collect unpaid civil penalties shall not be a bar against, or a prerequisite for, taking any other action to enforce the provisions of this ordinance against a user.

- F. The Director may suspend the wastewater treatment service to an industrial user when it appears to the Director that an actual or threatened discharge presents or threatens an imminent or substantial danger to the health or welfare of persons, or a substantial danger to the environment, or will interfere with the operation of the wastewater facility owned and operated by the City. When such conditions are present, the Director may dispense with the written notice provided for in Section 52.02 D. and order immediate suspension of service. In the event of failure of the user to comply voluntarily with the suspension order, the Director may commence judicial proceedings to compel compliance with such order. The Director may reinstate the wastewater treatment service and terminate judicial proceedings upon receipt of proof of the elimination of the non-complying discharge or conditions creating the threat of imminent or substantial danger as set forth above.

**SECTION 10. Ordinance No. 28892-94 as passed by the Commission on September 21, 1994 and Sections 52.01 through 52.99, inclusive, of the Revised Code of General Ordinances, as were previously in effect, are hereby repealed.**

Passed by the Commission \_\_\_\_\_, 1998

Signed by the Mayor \_\_\_\_\_, 1998

\_\_\_\_\_  
MAYOR OF THE CITY OF DAYTON, OHIO

Attest:

\_\_\_\_\_  
Clerk of Commission

Approved as to form:

\_\_\_\_\_  
City Attorney