

LEGAL NOTICE
ORDINANCE NO.47
2010
TOWNSHIP OF WAYNE
COUNTY OF PASSAIC
STATE OF NEW JERSEY

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER
159 (SEWERS AND SEWERAGE DISPOSAL) OF THE CODE
OF THE TOWNSHIP OF WAYNE.

BE IT ORDAINED by the Municipal Council of the Township of Wayne in the County of Passaic, State of New Jersey, as follows:

SECTION 1. Chapter 159 (Sewers and Sewerage Disposal), Article I. (General Provisions) of the Code of the Township of Wayne is hereby amended and supplemented by adding the following definitions thereto:

§ 159-48. Definitions and word usage.

Authorized Representative of Industrial User - An authorized representative of an industrial user may be: **a president, secretary, treasurer or vice-president of the corporation in charge of a business function, or a manager authorized to make management decisions which govern the operation of the facility** ~~a principal executive officer of at least the level of vice-president,~~ if the industrial user is a corporation; a general partner or proprietor if the industrial user is a partnership or proprietorship, respectively; a duly authorized representative of the individual designated above, if such representative is responsible for the overall operation of the regulated facility, such as the position of plant manager, superintendent or person of equal responsibility, and the written authorization is submitted to Superintendent.

Best Management Practices of "BMP's" - Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Sections 159-50 and 159-51. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Non-significant Categorical Industrial User - The Township may determine that an Industrial User subject to categorical Pretreatment Standards under 403.6 and 40 CFR Chapter I, subchapter N, is a Non-significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met: (i) the Industrial User, prior to the Township finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements; (ii) the Industrial User annually submits the certification required under 40 CFR 403.12(q) together with any additional information necessary to support the certification statement; and (iii) the Industrial User never discharges any untreated concentrated wastewater. Where the Township has determined that an Industrial User meets the criteria for classification as a Non-Significant Categorical Industrial User, the Township will evaluate, at least once per year, whether an Industrial User continues to meet the criteria in this definition.

§159-50C. The Township may develop Best Management Practices (BMPs) to implement the local limits noted in Sections 159-50 and 159-51. Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this part and Section 307(d) of the Act.

§159-60B. The Superintendent, the Commissioner, and/or the Regional Administrator, or their authorized representative upon the presentation of credentials, may enter upon the premises of any discharger, at any time, for the purpose of inspecting any monitoring equipment or method and/or measuring, sampling, and/or testing any discharge of wastewater to the treatment works in order to determine compliance with any pretreatment standard or other prohibition or limitation contained in this article. **Each industrial user discharging into the Township treatment works, other than a facility discharging only stormwater or non-contact cooling water, shall be inspected at least once a year.** The effluent from each industrial user shall be sampled at least once a year. **An inspection shall be conducted within six months following the submission of an application for a permit, permit renewal or issuance of a permit for a new facility, except that where a scheduled inspection cannot be made for any reason, the inspection shall be rescheduled to be performed within 30 days of the originally scheduled inspection date, or in the case of a temporary shutdown, of resumed operations.**

§159-61B. ~~At least once every two years, the Superintendent shall evaluate whether each industrial user needs a plan to control slug discharges.~~ **Within one year of being designated a significant industrial user, the Superintendent shall evaluate whether such industrial user needs a plan to control slug discharges.** If a slug control plan is required, it shall, at a minimum, contain a description of discharge practices, a description of stored chemicals, procedures for notification to the Superintendent and procedures to prevent adverse impacts from accidental spills.

§159-67B(1). A limitation upon the characteristics and volume of wastes, **including Best Management Practices**, and the rate of flow permitted from the premises.

§159-67B(6). Specifications for monitoring programs which may include sampling locations, frequency and method of sampling, **the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge**, number, type and standards for tests and reporting schedule and resampling in the event of noncompliant sample results.

§159-67C(1). **Pollutant discharge limits in categorical Pretreatment Standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that either limit may be used for enforcement purposes. Limits in categorical Pretreatment Standards shall apply to the effluent of the process regulated by the Standard, or as otherwise specified by the standard.**

§159-67C(2). When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Township may convert the limits to equivalent limitations expressed as either mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

§159-67C(3). To calculate equivalent mass-per-day limitations, the Township shall multiply the limits in the Pretreatment Standard by the Industrial User's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the Industrial User's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

§159-67C(4). To calculate equivalent concentration limitations, the Township shall divide the mass limitations by the average daily flow rate of the Industrial User's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the Industrial User's actual long-term average flow rate, such as the average daily flow rate during the representative year.

§159-67D. The Township may convert the mass limits of the categorical Pretreatment Standards at 40 CFR Parts 414, 419 and 455 to concentration limits for purposes of calculating limits applicable to individual Industrial Users. When converting such limits to concentration limits, the Township will use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419 and 455 and document that dilution is not being substituted for pretreatment as prohibited by Section 159-56.

§159-67E. When the limits in a categorical Pretreatment Standard are expressed only in terms of pollutant concentrations, an Industrial User may request that the Township convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Township. The Township may establish equivalent mass limits only if the Industrial User meets all of the following conditions in paragraph (1)(a) through (1)(e) of this section.

- (1) To be eligible for equivalent mass limits, the Industrial User must:
 - a. Employ or demonstrate that it will employ water conservation methods and technologies that substantially reduce water use during the term of its Permit;
 - b. Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;
 - c. Provide sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
 - d. Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and
 - e. Have consistently complied with all applicable categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.
- (2) An Industrial User subject to equivalent mass limits must:
 - a. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
 - b. Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

- c. Continue to record the facility's production rates and notify the Township whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in paragraph (1)c of this section. Upon notification of a revised production rate, the Township will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
 - d. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraph (1)(a) of this section so long as it discharges under an equivalent mass limit.
- (3) Where the Township chooses to establish equivalent mass limits, it will:
- a. Calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average Standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor;
 - b. When notified of a revised production rate, reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and
 - c. Retain the same equivalent mass limit in subsequent control mechanism terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to Section 159-56. The Industrial User must also be in compliance with Section 2.1.8 of the Enforcement Response Plan in Appendix A of Chapter 159 regarding the prohibition of bypass.
- (4) The Township may not express limits in terms of mass for pollutants such as pH, temperature, radiation or other pollutants which cannot appropriately be expressed as mass.

§159-67F. Equivalent limitations calculated in accordance with Sections 159-67.D and 159-67E are deemed Pretreatment Standards for the purposes of section 307(d) of the Act and this part. Once incorporated into its Permit, the Industrial User must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

§159-67G. Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average or 4 day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

§159-67H. Any Industrial User operating under a Permit incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Township within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Township of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

§159-72B.(1)(b)[5][b] The results of sampling and analysis identifying the nature and concentration and/or mass, where required by standard or by the Superintendent, or regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations of mass, where required, shall be reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a Best Management Practice or pollution prevention alternative, the industrial user shall submit documentation as required by the Superintendent or the applicable standard to determine compliance with the standard.

§159-72.B(3). All significant categorical industrial users shall, twice per year (in June and December) submit a report indicating the nature and 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 standard requires compliance with a Best Management Practice (or pollution prevention alternative), the Industrial User shall submit documentation required by the Superintendent or the standard necessary to determine the compliance status of the user. All periodic compliance reports must be signed and certified by an authorized representative of the Industrial User.

§159-72E. The Township may authorize an Industrial user subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

- (1) The Township may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.
- (2) The monitoring waiver is valid only for the duration of the effective period of the Permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.
- (3) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

The request for a monitoring waiver must be signed in accordance with Section 159-72B(1)(b)[8] and include the certification statement in 40 CFR 403.6(a)(2)(ii). Non-detectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

- (4) Any grant of the monitoring waiver by the Township must be included as a condition in the User's control mechanism. The reasons supporting the waiver and any information submitted by the User in its request for a waiver will be maintained by the Township for 5 years after expiration of the waiver.
- (5) Upon approval of the monitoring waiver and revision of the User's control mechanism by the Township, the Industrial User must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard of 40 CFR___(specify applicable National Pretreatment Standard Parts), I certify that, to the best of my knowledge and belief, that there has been no increase in the level of ___(list pollutant) in the wastewaters due to the activities at the facility since the filing of the last periodic report under 40 CFR 403.12(e)(1) and Section 159-72B(3)().

- (6) In the event that a waived pollutant is found to be present or is expected to be present based on the changes that occur in the User's operations, the User must immediately: Comply with the monitoring requirements of 40 CFR 403.12(e)(1) or other more frequent monitoring requirements imposed by the Township and notify the Township.
- (7) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

§159-72F. Significant Non-categorical Industrial users must submit to the Superintendent at least once every six months (on dates specified by the Superintendent) a description of the nature, concentration, and flow of the pollutants required to be reported by the Superintendent. In cases where a local limit requires compliance with a Best Management Practice, or pollution prevention alternative, the User must submit documentation required by the Superintendent to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report.

§159-72G. A facility determined to be a Non-significant Categorical Industrial User as defined in Section 159-48 must annually submit the following certification statement, signed in accordance with the signatory requirements in 403.12(1). This certification must accompany any alternative report required by the Township:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR _____, I hereby certify, to the best of my knowledge and belief that during the period from _____ to _____ (month, day, year) (a) The facility described as _____ (facility name) met the definition of a non-significant Categorical Industrial User as described in 403.3(v)(2) and Section 159-48; (b) the facility complied with all applicable Pretreatment Standards and the 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 upon the following information: _____.

§159-73A. All industrial users who discharge or propose to discharge wastewaters to the treatment works shall maintain such records of production and related factors, effluent flows, sample analysis and analytical techniques [and] pollutant amounts or concentrations **and documentation associated with Best Management Practices** as are necessary to demonstrate compliance with the requirements of this article and any applicable state or federal pretreatment standards or requirements.

§159-74B. Compliance Determination. Compliance determination by the Superintendent, the Commissioner and/or the Regional Administrator, with respect to 159-50 through 159-55, prohibitions and limitations, shall be made on the basis of either instantaneous grab samples, sequential samples or composite samples, as appropriate. Sequential or composite samples may be taken over a twenty-four hour period or any other specific time span, as deemed appropriate by the Superintendent, the NJDEP or the EPA to meet the requirements of a specific situation.

Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24 hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Superintendent. Where time-proportional composite sampling or grab sampling is authorized by the Superintendent, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the file for that facility or facilities.

Multiple grab samples collected during a 24 hour period may be composited prior to 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 Superintendent, as appropriate.

The Superintendent shall require the number of grab samples necessary to assess and assure compliance with the applicable pretreatment standards and requirements. For sampling required in support of baseline monitoring and 90 day compliance reports, a minimum of four (4) grab samples must be

used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data does not exist; for facilities for which historical sampling data are available, the Superintendent may authorize a lower minimum.

§159-82. The Township shall annually publish, pursuant to 40 CFR 403.8(f)(2)(~~viii~~)(~~vii~~)

§159-82C. Any other violation of a pretreatment limit (**daily maximum, long-term average, instantaneous limit or narrative standard**) that has caused or contributed **alone or in combination with other discharges**, to either interference or pass through;

§159-82H Any other violation, **which may include a violation of Best Management Practices** which the Superintendent determines will adversely affect the operation or implementation of the local pretreatment program.

ENFORCEMENT RESPONSE SUMMARY

| Noncompliance Violation | Nature of | Enforcement | Timeframe | Personnel |
|--|--|--|--|-----------|
| 1. Exceedance Local or Federal Standard (permit limit) | Serious violation individual or monthly) | NOV ; Seek at least a mandatory minimum penalty in Accordance with NJAC 7:14-8.16 | NOV 6 months 60 days; penalty within 6 months | IPPDC, SU |

ENFORCEMENT RESPONSE PLAN

7.0 Public Notification. The Township will publish annually in the newspaper a list of users which were in significant noncompliance pursuant to 40 CFR 403.8(f)(2)(~~viii~~)(~~vii~~)

For purposes of this section, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

*Any other violation or group of violations, **which may include a violation of Best Management Practices**, which the Township determines will adversely affect the operation of implementation the local pretreatment program.

TABLE I

| Chapter | Description | Type | Grace Period |
|-------------|--|------|--------------|
| 159-67.E(2) | Requirements for Equivalent mass Limits | NM | |
| 159-67.H | Failure to give Notice of change In production levels | NM | |
| 159-72.E(5) | Failure to comply With Certification Requirements | NM | |
| 159-72.E(6) | Failure to comply With monitoring Requirements | NM | |
| 159-72.F | Failure to comply With reporting requirements | NM | |

SECTION 2. If any section, sub-section, paragraph, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

SECTION 3. All ordinances or parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 4. This ordinance shall take effect twenty (20) days after final passage and publication as prescribed by law.

ATTEST:

PAUL V. MARGIOTTA
TOWNSHIP CLERK

ALAN PURCELL
PRESIDENT OF THE COUNCIL

NOTICE

I hereby certify that the aforementioned ordinance was published in the Herald News, a newspaper published in the County of Passaic and circulated in the Township of Wayne, in the issue of _____ and _____

PAUL V. MARGIOTTA
Township Clerk

This ordinance is hereby
approved this _____ day
of _____ 2010.

ADOPTED ON:

CHRISTOPHER P. VERGANO, Mayor