

**CHAPTER 100**

**INDUSTRIAL SEWER USER  
COMPLIANCE ENFORCEMENT**

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**100.01 DEFINITIONS.** This chapter hereby adopts and incorporates all definitions found in Chapter 95 through 99, except to the extent the following additional terms are defined:

1. “CBOD” means Carbonaceous 5-Day Biochemical Oxygen Demand as measured by the test method set forth in the latest edition of *Standard Methods for the Examination of Water and Wastewater*.
2. “FOG” and “Oil Grease” mean Fats, Oil, and Grease as set forth in EPA Method 1664, Revision A (N-Hexane Extractable Material).
3. “IDNR” refers to the Iowa Department of Natural Resources.
4. “Industrial user” means an individual, partnership, business, corporation or entity who contributes wastewater in an amount or strength of which is greater than normal domestic sewage.
5. “NPDES” means National Pollutant Discharge Elimination System.
6. “Pass through” means the movement of an environmental pollutant that is not affected by the treatment technologies in place at the POTW which would cause the City to be in violation of its NPDES discharge permit.
7. “POTW” means publicly owned treatment works.
8. “TSS” means Total Suspended Solids as measured by the test method set forth on the latest edition of *Standard Methods for the Examination of Water and Wastewater*.

**100.02 APPLICABILITY.** This chapter applies to any industrial user which discharges wastewater into the City’s sewer system under the compliance criteria of an IDNR NPDES permit or a City Wastewater Treatment Agreement (DNR Form 31).

**100.03 PUBLICATION OF USERS IN NONCOMPLIANCE.** The City Administrator may publish one time annually, in the largest local daily newspaper, the names of industrial users found by the City, in accordance with this chapter, to be in significant noncompliance. “Significant noncompliance” means:

1. Chronic violations of wastewater discharge limits, defined herein as those in which 66 percent or more of wastewater measurements obtained from representative samples collected at the permitted discharge point in accordance with accepted sampling protocols, during a six-month period, exceed, by an amount greater than the range of error of the measurement technique, the daily maximum limit for the same pollutant parameter;

2. Technical review criteria (TRC) violations, defined herein as those in which 33 percent or more of wastewater measurements obtained from representative samples collected at the permitted discharge point, in accordance with accepted sampling protocols, for each pollutant parameter during a six-month period equals or exceeds the product of the daily maximum limit multiplied by the applicable criteria (1.4 for CBOD, TSS, FOG, and 1.2 for all other pollutants other than pH);
3. Any other discharge violations that the City can document, based on recognized scientific methodology, which caused (alone or in combination with other discharges) major interference for the POTW or pass through, including endangering the health of POTW personnel or the general public;
4. Any discharge of a pollutant that has caused endangerment to the public or to the environment and has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge;
5. Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction or attaining final compliance, unless such noncompliance has been waived by the City or the City has interfered in the industrial user's ability to comply;
6. Failure to provide, within 60 days after the due date required by the City, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules.

#### **100.04 ADMINISTRATIVE ENFORCEMENT REMEDIES.**

1. **Notices of Violation.** If the City Administrator finds based on scientifically reliable data that any industrial user has violated or is violating a wastewater treatment agreement in a material way, the City Administrator may issue a notice of violation, and such notice shall be served in person on the managing officer of the industrial user or by certified mail on such person with return receipt received. The notice of violation must specify the parameters violated, the date and time of the violation, the data upon which the City relies in finding such violation, and the manner in which such data was collected.
2. **Consent Agreements.** The City Administrator may enter into consent agreements, consent orders, assurances of voluntary compliance, or other similar documents ("consent agreement") establishing an agreement with any industrial user responsible for any such noncompliance as to which notice is given in a notice of violation. Such agreements shall specify the actions to be taken by the industrial user and the time frame for completion of those actions outlined in the consent agreement. In the event a consent agreement is not entered into within 60 days of the service of notice of violation, the City Administrator may seek a compliance order in accordance with subsection 3.
3. **Compliance Orders.** In the event a consent agreement is not entered into, or the industrial user fails to comply with the terms of a consent agreement, the City Administrator may request the City Council to approve the issuance of a compliance order to the industrial user responsible for the discharge, directing that the industrial user submit a plan of action which will include a schedule for the industrial user to



come into compliance. The industrial user shall be notified in writing of any such request at least seven days prior to the Council's consideration of the request by personal service on the managing officer or by certified mail on such person with return receipt requested. The notice shall include the time, date, and location of the meeting at which the request will be considered, the proposed compliance order being requested and the basis therefor, including all data. The industrial user shall have the opportunity to present information and argument at such meeting. In the event a compliance order is issued in the form approved by the Council, and the industrial user does not submit an acceptable plan of action or come into compliance within the agreed upon schedule, the City Administrator may seek a cease and desist order pursuant to subsections 4 and 5, or request the issuance of a municipal infraction citation pursuant to subsection 6.

4. Cease and Desist Orders. The City Administrator may request that the City Council approve a cease and desist order per the criteria set forth in subsection 3 above, directing the industrial user to cease its failure to comply with a compliance order or desist unlawful discharging of industrial waste to the City's sewer system. Such order shall not be issued until such time as a show cause hearing has been held as set out below in subsection 5.

5. Show Cause Hearings. The City Administrator may order any industrial user that fails to comply with a compliance order to appear before the City Council and show cause why a cease and desist order should not be issued. Notice shall be served on the industrial user specifying the time and place for the meeting, the proposed order, the basis for such action including all data, and a request that the industrial user show cause why this proposed order should not be issued. Such written notice must be served personally at least fourteen (14) days prior to the hearing on the managing officer of the industrial user or by certified mail on such person with return receipt received. The industrial user shall have the opportunity to present information and argument at such hearing. Whether or not the industrial user appears as ordered, immediate enforcement action in the form of a cease and desist order may be issued by the City Council following the hearing date. The industrial user may also request a hearing before the City Council to show cause why a proposed cease and desist order should not be issued, and the City Council shall notify the City Administrator and industrial user of any such hearing in the manner set out in this section.

6. Municipal Infractions. In the event an industrial user fails to comply with the terms and conditions of a compliance order within the specified period of time, the City Administrator may request the City Council to authorize the issuance of a civil citation for a municipal infraction for an environmental violation. The industrial user shall be notified in writing of any such request at least 14 days prior to the Council consideration of the request, by personal service on its managing officer or by certified mail on such person with return receipt requested, and such notice shall include the time, date, and location of the meeting at which the request will be considered, the reasons for such action, the proposed action being requested and the basis therefor including supporting data. The industrial user shall have the opportunity to present information and argument at the meeting. In the event the City Council grants the request, which decision must be in writing, the City Administrator may issue the citation in accordance with Chapter 4 of this Code of Ordinances.

7. Administrative Penalty Charges. An industrial user contributing wastewater to the POTW in excess of the limitations contained within its wastewater discharge agreement may be assessed a penalty charge, based on the schedule below, which shall be in addition to the rates and charges ordinarily billed to such users for sewer use:

- A. \$0.50 per 1,000 gallons for flow in excess of a 30-day average discharge limit;
- B. \$0.50 per 1,000 gallons for flow in excess of a daily maximum discharge limit;
- C. \$0.10 per pound of CBOD in excess of a 30-day average discharge limit;
- D. \$0.10 per pound of CBOD in excess of a daily maximum discharge limit;
- E. \$0.10 per pound of TSS in excess of a 30-day average discharge limit
- F. \$0.10 per pound of TSS in excess of a daily maximum discharge limit
- G. \$25.00 per occurrence for oil and Grease discharged in excess of a daily maximum discharge limit based upon data from a compliance sampling event;
- H. \$100.00 per occurrence for discharges with a pH in violation of a discharge limit.

Unpaid penalty charges shall, after 60 calendar days, be assessed an additional penalty of 10 percent for the unpaid balance, and interest shall accrue thereafter at a rate of 1 percent per month, compounded monthly. Industrial users desiring to dispute such penalty charges must file written request with the City Administrator to reconsider the penalty charges along with full payment within thirty (30) days of being notified of the penalty charges. The City Administrator shall convene a hearing before the City Council on the matter within 30 days of receiving the request from the industrial user, with notice to be given in writing at least seven (7) days in advance of the hearing in the same manner as provided for in Section 100.04(1). The industrial user may present information and argument at such hearing. The City Council shall issue its decision on any such request within twenty (20) days of such hearing. In the event the industrial user's request results in a full or partial refund, the refund, together with any interest accruing thereto, shall be returned to the industrial user within ten (10) days of the City Council's decision. An industrial user which is denied, in whole or in part, the relief sought in any such request for reconsideration may seek further and additional relief through any and all other remedies available under applicable law. Issuance of an administrative penalty charge shall not be a prerequisite for the City taking any other action against the industrial user; however, if the City elects to impose administrative penalty charges, it cannot also cause a citation for municipal infraction to be issued for the same alleged violations of the industrial user's wastewater treatment agreement. All penalty charges collected under the guidelines of this chapter shall be directed to the operating budget of the City's wastewater treatment plant.

8. Emergency Service Suspensions.
- A. The City Administrator may immediately suspend an industrial user's sewer service at a particular discharge point (after notice to the industrial user's managing officer) when such a suspension: (i) is necessary in order to stop an actual or threatened discharge which, based on data collected in accordance with recognized scientific methodology, presents or causes an imminent substantial endangerment to the health or welfare of the general public or to the environment; or (ii) when the discharge threatens to cause undue, substantial, irreversible damage to the equipment within the City's POTW or harm to its personnel.
- B. Any industrial user notified of a suspension shall immediately stop or eliminate its contribution to the sewer system at that discharge point. In the event of an industrial user's failure to immediately comply with the suspension order, the City Administrator shall take such steps as deemed necessary including immediate severance of the designated sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals or the environment. The City Administrator shall allow the industrial user to recommence its discharge when industrial user has demonstrated to the City Administrator that the period of endangerment has passed. The City Administrator must accept or deny the request of the industrial user to recommence its discharge within forty-eight (48) hours of such a request. If the City Administrator refuses the industrial user's request to recommence discharge, a hearing must be held within 48 hours of that refusal before the City Council, with notice to be given immediately in the same manner as provided in Section 100.04(1), at which time the City Administrator must show cause why suspension must be continued and the industrial user shall have the opportunity to present information and argument. The City Council shall issue its decision on the request to lift the suspension at that hearing, stating the basis therefor. In the event the industrial user's request is granted, the City Administrator shall immediately allow the discharge to recommence. In the event the industrial user's request is denied, the industrial user may seek further and additional relief through any and all other remedies available under applicable law.
- C. An industrial user that is responsible, in whole or in part, for any discharge which results in the emergency suspension of its sewer service at a particular discharge point shall submit to the City Administrator a detailed written statement describing the causes of the harmful condition and the measures taken to prevent any future occurrence prior to any show cause or termination hearing provided for under other sections of this chapter.
- D. Nothing in this section shall be interpreted to require a hearing prior to any emergency suspension under this section.
9. Terminations of Industrial Waste Discharge. In addition to the circumstances upon which the City may suspend sewer service under Section 100.04(8), any industrial user which commits the violations set forth below may be subject to termination of its wastewater treatment agreement:
- A. Violation of a cease and desist order;

- B. Refusal of reasonable access to the industrial user's premises for the purpose of inspection, monitoring, or sampling;
  - C. Falsifying self-monitoring reports; or
  - D. Failure to pay fees, sewer user charges, or administrative penalty charges within sixty (60) days of written notice of same.
10. Procedures for Termination of Industrial Waste Discharge. The City may terminate an industrial user's wastewater treatment agreement pursuant to Section 100.04 (9) based on the following procedures:
- A. The City shall issue a written notice to the industrial user a minimum of twenty (20) days prior to the date set for a hearing before the City Council. Such notice shall notify the industrial user of the time, date, and place of hearing, the purpose for the hearing, the proposed action, and the basis for such proposed action including the information upon which the City relies in proposing such action. Such written notice shall be served in the same manner as provided for in Section 100.04(1).
  - B. If after such hearing, the City Council makes a finding in writing based on substantial evidence that actions subject to the termination of industrial waste discharge under Section 100.04(9) have occurred as alleged and are not remedied as of the time of such hearing or to be remedied within a reasonable period thereafter, the City Council may direct the City Administrator to terminate the industrial user's wastewater treatment agreement subject to the requirements set forth below. The City Council shall set out its decision and the basis therefor in writing.
  - C. Written notice of the City Council's decision shall be served on the managing officer of the industrial user by registered mail, return receipt requested, or by personal service. If termination is ordered, the effective date of such termination can be no sooner than forty-five (45) days after the date of receipt of the notice by the industrial user. At any time, the industrial user may challenge that decision through any and all remedies available to it under applicable law.
  - D. In the event of termination of the industrial user's wastewater treatment agreement, the agreement shall be reinstated once the industrial user has provided information to the City Administrator that the user has remedied the circumstances which resulted in the City's decision to terminate. The City Administrator must accept or deny the request within 48 hours. If the City Administrator refuses to reinstate, a hearing must be held within 48 hours of that refusal before the City Council, at which time the City Administrator must show cause why termination must be continued. The procedures shall be in accordance with those set out in Section 100.04(8)(B) to the extent applicable.

**100.05 OTHER REMEDIES.** In addition to other remedies provided for in Chapter 99, including but not limited to in Section 99.10, an industrial user may be charged by the City for all or part of any administrative penalty or fine imposed on the City by a State or Federal agency for violations of the City's obligations, but only to the extent the City proves based on

scientifically reliable data that the City's violation was caused by the industrial user's unlawful discharges. The remedies provided in Chapter 100 shall not be exclusive, and the City may pursue other remedies, as are authorized by applicable law, against any persons violating the provisions in this chapter, including injunctive relief.

**100.06 AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS.** In addition to any and all other defenses that an industrial user may have to any action undertaken pursuant to this chapter or Chapter 4, an industrial user may assert the following affirmative defenses. Proof of any such affirmative defense shall be a bar against any and all action by the City pursuant to this chapter or Chapter 4.

1. Upset. For the purpose of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with discharge limits because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, lack of preventative maintenance, or careless or improper operation. An upset shall constitute an affirmative defense if the following requirements are met:

A. An upset occurred and the industrial user has reasonably identified the causes of the upset;

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

C. The industrial user submitted the following information to the City Administrator as soon as possible following the upset:

(1) A description of the upset and reasonable cause of noncompliance;

(2) The period of noncompliance, including dates and times;

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

2. Prohibited Discharge Standards. An industrial user shall have an affirmative defense to any action brought against it pursuant to this chapter or Chapter 4 if it can prove that it did not know or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause major interference with the City's POTW.

3. Bypass. For the purpose of this section, "bypass" means the intentional diversion of waste streams from any portion of an industrial user's treatment system; and "severe property damage" means substantial physical damage to property, damage to the treatment facility which causes it to become inoperable, or substantial and permanent loss of natural resources, which can reasonably be expected to occur in the absence of the bypass. Bypass is an affirmative defense to actions under this chapter and Chapter 4 only in the following limited circumstances:

A. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

B. There were no feasible alternatives to bypass; and

- C. Catastrophic failure of primary equipment and backup systems occurred due to unforeseen causes or natural disasters; or
- D. Upon prior written notice to the Superintendent, bypass occurs for the purpose of essential maintenance to assure efficient operation of treatment equipment.

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