

REGULAR

NUMBER: 208.49

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 2 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO UPDATES TO THE MILPITAS SANITARY ORDINANCE

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas (“City”) contracts for sanitary wastewater treatment at the San Jose/Santa Clara Water Pollution Control Plant (“WPCP”) under the 1983 “Master Agreement for Wastewater Treatment between City of San Jose, City of Santa Clara, and City of Milpitas” (“Agreement”); and

WHEREAS, the Agreement requires that the City and other tributary agencies adopt, amend, and revise their sanitary ordinances whenever the City of San Jose amends their ordinance to comply with current regulatory requirements established by the WPCP’s National Pollutant Discharge Elimination System (“NPDES”) permit; and

WHEREAS, the City of San Jose revised their sanitary ordinance initiated by a combination of recommendations and audit requirements from the United States Environmental Protection Agency; and

WHEREAS, San Jose City Council adopted revisions to their sanitary ordinance on August 13, 2013 and based on those revisions, the City’s sanitary ordinance now requires the same revisions to comply with the Agreement; and

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE ARTICLE V, CHAPTER 2, TITLE VIII

Article V of Chapter 2 of Title VIII of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

VIII-2-5.01 Purpose of Chapter

The purpose of this chapter is to:

(a) Provide for and regulate the disposal of sanitary sewage into the sanitary sewer system of the City in such manner and to such extent as is reasonably necessary to maintain and increase the ability of the sanitary sewer system to handle and dispose of sanitary sewage;

(b) Provide for and regulate the disposal of industrial wastes into the sanitary sewer system of the City in such manner and to such extent as may be reasonably necessary to maintain and increase the ability of such system to handle and dispose of industrial wastes without decreasing the ability of said system to handle and dispose of all sanitary sewage;

(c) Prevent the introduction of pollutants into the sanitary sewer system which will pass through the treatment works of the San Jose/Santa Clara Water Pollution Control Plant (Plant) to the San Francisco Bay, or otherwise be incompatible with such works or interfere with

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the ability of the Plant to treat, discharge and recycle wastewater, or to use or dispose of plant biosolids;

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(d) Improve opportunities to recycle and reclaim treated effluent and wastewater sludge;

(e) Protect the physical structures of the sanitary sewer system and the efficient functioning of its component parts;

(f) Protect the City and its personnel, the personnel of the Plant, and preserve and protect the health, safety and comfort of the public;

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(g) Enable the City and the Plant to comply with all applicable laws, rules, regulations and orders of the State of California and of the United States;

(h) Provide for the charging and collection of various fees and other charges reasonably necessary for the acquisition, construction, reconstruction, maintenance and operation of the sanitary sewer system of the City and the Plant; and

(i) Protect the environmental health of the San Francisco Bay.

VIII-2-5.02 Conflicts with the Plumbing Code

In the event of any conflicts or inconsistencies between the provisions of Chapter 7, Title II, and of this Chapter, the provisions of this Chapter shall control for regulation of the public portion of the sanitary sewer system.

VIII-2-5.03 Responsibility for Enforcement

The primary responsibility for enforcement of the provisions of this Chapter shall be vested in the City Engineer or the Director. Nothing herein is intended to restrict the City Attorney with respect to criminal or civil actions which may be taken to enforce this Chapter.

VIII-2-5.04 Definitions

The definitions set forth below shall govern the application and interpretation of this Chapter.

(1) **Accidental Discharge.** "Accidental Discharge" means any discharge at a flow rate or concentration which could cause a violation of the discharge standards in this Chapter or any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or slug.

(2) **Amalgam Separator.** "Amalgam Separator" means a device that: employs filtration, settlement, centrifugation, or ion exchange to remove dental amalgam and its metal constituents from a dental office vacuum system before it discharges to the sanitary sewer system; has been certified under the International Organization for Standardization's standard for amalgam separators as capable of removing a minimum of ninety-five (95) percent of dental amalgam at flow rates comparable to the flow rate of the actual vacuum suction system in operation; and does not have any automatic flow bypass.

(3) **Amalgam Waste.** "Amalgam Waste" means and includes non-contact dental amalgam (dental amalgam scrap that has not been in contact with the patient); contact dental amalgam (including, but not limited to, extracted teeth containing amalgam); dental amalgam sludge captured by chairside traps, vacuum pump filters, screens, and other dental amalgam trapping devices; and used, leaking or unusable capsules containing dental amalgam.

(4) **Ammonia.** "Ammonia" means that form of nitrogen which is chemically definable as NH₃.

(5) **Audit Protocols.** "Audit Protocols" means the procedures to be followed in performing flow and pollutant audit studies.

(6) **Average Concentration.** "Average Concentration" means the concentration of a pollutant in an industrial user's discharge that is calculated by adding the concentrations of the particular pollutant in all composite samples taken during a given time period, including, but not limited to self-monitoring samples, and dividing the total by the number of samples taken.

(7) **Batch Discharge.** "Batch Discharge" means the discharge of wastewater resulting from an intermittent treatment process in which an identified amount of process wastewater is collected, treated to meet discharge standards, and released to the sanitary sewer system.

(8) **Best Management Practices.** "Best Management Practices" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the introduction of pollutants to the sanitary sewer system which have been determined by the City Engineer or by the Director to be cost effective for particular industry groups, business types, or specific industrial processes.

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(9) **Biochemical Oxygen Demand or BOD.** "Biochemical Oxygen Demand" or "BOD" means the quantity of oxygen expressed in parts per million (ppm) by weight, utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five (5) days at a temperature of twenty degrees Celsius (20°C).

(10) **Categorical Industrial User or CIU.** "Categorical Industrial User" or "CIU" means a source performing any categorical process subject to federal pretreatment standards, as described in 40 CFR 405-471, that has any connection to the sanitary sewer system.

(11) **Categorical Pretreatment Standard or Categorical Standard.** "Categorical Pretreatment Standard" or "Categorical Standard" means any regulation containing pollutant discharge limits promulgated by the U.S. Environmental Protection Agency that apply to specific categories of users and which appear in 40 CFR 405-471.

(12) **City Engineer.** "City Engineer" means the City Engineer of the City of Milpitas or his/her authorized representative or agent.

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(13) **Code of Federal Regulations or CFR.** "Code of Federal Regulations" or "CFR" refers to the Code of Federal Regulations as published by the Office of the Federal Register National Archives and Records Administration. Whenever a reference is made to any portion of said Code, or to any other federal regulation, such reference shall apply to all amendments and additions to such portion of said Code now or hereafter enacted.

(14) **Composite Sample.** "Composite Sample" means a sample that accurately represents the average pollutant concentration during a continuous time period.

(a) A flow-proportional or time-proportional sample may be obtained manually or automatically, and discretely or continuously. For manual compositing, at least six (6) individual samples from each sample point shall be combined and mixed to obtain one (1) composite sample; flow-proportion may be obtained either by varying the time interval between each discrete sample or the volume of each discrete sample.

(b) If multiple batches are discharged over a 24-hour period, then one sample shall be collected from each batch discharged in that 24-hour period and composited into a single sample. A single sample from a batch representing one (1) or more production days will be considered a single composite sample.

(15) **Continuous Discharge.** "Continuous Discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(16) **Critical User.** "Critical User" means a discharger whose wastewater contains priority pollutants, or who discharges any waste which has the potential to cause interference in concentrations above those allowed in this Chapter or who discharges in excess of 100,000 gallons per day.

(17) **Dental Amalgam.** "Dental Amalgam" means an alloy of mercury with another metal used by dentists to fill cavities in teeth.

(18) **Diluting Waters.** "Diluting Waters" means non-contact cooling water, boiler blowdown, domestic sewage, groundwater, stormwater, surface drainage, reverse osmosis reject, water softener regeneration, potable waters, or any waters which are not part of an industrial process and which do not contain priority pollutants but are combined with industrial wastewater prior to the monitoring point for industrial wastewater discharge. "Diluting Waters" also includes excess water used in production processes, such as rinse tanks or rinse water running when in production in excess of operational or quality requirements.

(19) **Director.** "Director" means the City of San Jose's Director of Environmental Services or his/her authorized representative or agent.

(20) **Discharger.** "Discharger" means any person discharging wastewater into the sanitary sewer system.

(21) **Domestic Wastewater.** "Domestic Wastewater" means wastewater from private residences and other premises resulting from the use of water for personal washing, sanitary purposes or the elimination of human wastes and related matter.

(22) **Existing Source.** "Existing Source" means any source of discharge that is not a new source.

(23) **Fixer Solution.** "Fixer Solution" means a solution containing silver used in the photographic processing of dental X-rays, X-rays, and photographs.

(24) **Food Service Establishment.** "Food Service Establishment" means a commercial discharger that prepares and/or sells food for consumption either on or off the premises or washes utensils or dishes on premises that may contribute grease to the sanitary sewer system, including, but not limited to, restaurants, sandwich shops, delicatessens, bakeries, cafeterias, markets, bed and breakfast inns, motels, hotels, meeting halls, caterers, retirement and nursing homes, and pizzerias. The term, as used in this Chapter, does not refer to food stores or establishments that do not prepare food on premises and do not process food in a manner which may contribute grease to the sanitary sewer system. A food service establishment shall be deemed to be contributing grease to the sanitary sewer system where a sanitary sewer overflow has occurred due to grease, or there has been a loss of twenty-five (25) percent or more of sewer line capacity due to grease, downstream of the food service establishment.

(25) **Garbage.** "Garbage" as used in this chapter, means waste from preparing, cooking and dispensing of foods, and from the handling, storing and selling of produce.

(26) **Grab Sample.** "Grab Sample" means a single discrete sample collected at a particular time and place that represents the composition of the wastestream only at that time and place.

(27) **Grease.** "Grease" means liquid or other waste containing floatable and/or dispersed grease, vegetable oil, petroleum oil, non-biodegradable cutting oil; or fat, oil or grease product of animal, vegetable or mineral origin which is detectable and measurable using analytical test procedures established in 40 CFR 136.

(28) **Grease Control Device.** "Grease Control Device" means a grease interceptor, grease trap, mechanical grease removal device or other device recommended by the San Jose Director of Environmental Services and approved for use by the City Engineer.

(29) **Grease Interceptor.** "Grease Interceptor" means a tank installed underground and designed to collect and control solid-food wastes and floating-grease from wastewater prior to discharge into the sanitary sewer system. Grease interceptors are normally installed outside the building and use gravity to separate grease from the wastewater as it moves from one compartment of the interceptor to the next.

(30) **Grease Trap.** "Grease Trap" means a device placed under or in close proximity to sinks or other fixtures likely to discharge grease to separate, trap and hold grease substances.

(31) **Industrial User.** "Industrial User" means any non-residential user that discharges industrial wastes to the sanitary sewer system.

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(32) **Industrial Wastes.** "Industrial Waste(s)" means the wastes produced by industrial users from producing, manufacturing, and processing operations of every kind and nature.

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(33) **Interference.**

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(a) "Interference" means a discharge which alone, or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the processes or operation of the sanitary sewer system, including the plant, or causes or significantly contributes to a violation of any requirement of the National Pollutant Discharge Elimination System (NPDES) permit, which is a permit issued to the plant pursuant to Section 402 of the Clean Water Act.

(b) "Interference" also includes prevention of biosolids use or disposal by the plant in accordance with published regulations providing guidelines under Section 405 of the Clean Water Act or in regulations developed pursuant to the Solid Waste Disposal Act (SWDA), the Clean Water Act, the Toxic Substances Control Act, or more stringent state regulations (including those contained in any state biosolids management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the plant.

(34) **Low Flow Discharger.** "Low Flow Discharger" means an industrial discharger whose average process flow, as shown on the dischargers' application to discharge and as measured as a rolling six-month average, is less than one thousand (1,000) gallons per day.

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(35) **Maximum Allowable Concentration.** "Maximum Allowable Concentration" means the highest permissible concentration or other measure of pollutant magnitude taken at a specific point in time or period of time.

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(36) **Mechanical Grease Removal Device.** "Mechanical Grease Removal Device" means a power-operated device or combination of devices using electrical equipment to heat, filter, siphon, skim or otherwise separate and retain floating grease and solid food waste from wastewater prior to discharge from the trap to the sanitary sewer system.

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(37) **New Source.** "New Source" means:

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(a) Any building, structure, facility or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Clean Water Act that 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, should be considered.

(b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection (36)(a)2. or (36)(a)3. above 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, excavating, 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 building 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.

~~(38)~~ **Owner.** "Owner" means any person who owns private premises that contain a source as defined in this section.

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~~(39)~~ **Operator.** "Operator" means any person who owns, leases, operates, controls, or supervises a source as defined in this section.

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~~(40)~~ **Pass-Through.** "Pass-Through" means a discharge which exits the plant into waters of the United States in quantities or concentrations which alone, or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the plant's NPDES permit, including an increase in the magnitude or duration of a violation.

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~~(41)~~ **pH.** "pH" means the logarithm of the reciprocal of the concentration of hydrogen ions in moles per liter of solution.

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~~(42)~~ **Plant.** "Plant" means the San Jose/Santa Clara Water Pollution Control Plant, jointly owned by the Cities of San Jose and Santa Clara and operated by the City of San Jose Department of Environmental Services.

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~~(43)~~ **Pollutant Not Present.** "Pollutant Not Present" means a pollutant regulated by a categorical pretreatment standard that is not used or stored in a categorical industrial user's facility, is not added to or created by any industrial or pretreatment process at the facility, and is not present above the background level of the water supply.

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~~(44)~~ **Pretreatment Standard.** "Pretreatment Standard" means prohibited discharge standards, categorical pretreatment standards, and local limits.

~~(45)~~ **Pretreatment Requirements.** "Pretreatment Requirements" means any substantive or procedural requirement related to pretreatment imposed on an industrial user other than a pretreatment standard.

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~~(46)~~ **Priority Pollutants.** "Priority Pollutants" means all pollutants as defined by the "General Pretreatment Regulations" of the U.S. Environmental Protection Agency, found at 40 CFR 401 and 403.

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~~(47)~~ **Process Flow.** "Process Flow" means the daily, twenty-four-hour, flow of wastewater from any kind or nature of production, manufacturing or processing operation, including industrial and commercial operations where water is used for the removal of any type of waste other than sanitary sewage. "Process Flow" does not include diluting waters.

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~~(48)~~ **Reasonable Control Measures.** "Reasonable Control Measures" means control technologies, Best Management Practices, source control practices and waste minimization procedures which prevent or reduce the introduction of pollutants to the sanitary sewer system and are recommended by the San Jose Director of Environmental Services and approved by the City Engineer to be cost effective for particular industry groups, business types or specific industrial processes.

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~~(49)~~ **Sanitary Sewage.** "Sanitary sewage" means water-carried wastes from residences, business buildings, institutions and industrial establishments, excluding groundwaters, surface waters, stormwaters, subsurface drainage and industrial waste.

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(50) Sanitary Sewer Overflow. "Sanitary Sewer Overflow" is any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system, including overflows or releases that reach waters of the United States; overflows or releases that do not reach waters of the United States; and backups into buildings and/or private property caused by conditions within the publicly-owned portion of the sanitary sewer system.

(51) Sanitary Sewer System. "Sanitary Sewer System" means all sewers, pump stations, and other facilities of the collection system owned or operated by the City of Milpitas and all plant facilities operated by the City of San Jose that together serve to carry, collect, pump, treat and dispose of sanitary sewage and industrial wastes.

(52) Sewer. "Sewer" means a pipe or conduit for carrying sewage.

(53) Significant Change. "Significant Change" means any change in an industrial user's operation that results in any of the following:

(a) An increase or decrease in annual average process flow of twenty-five percent (25%) over the standard discharger's average process flow for the dischargers' most immediate preceding twelve (12) months.

(b) An increase or decrease in annual average process flow that results in a change from low flow discharger to standard discharger or from standard discharger to low flow discharger.

(c) An increase or decrease in annual average process flow that results in a change from nonsignificant industrial user to significant industrial user or from significant industrial user to nonsignificant industrial user.

(d) An increase or decrease in annual production rate of twenty-five percent (25%) for any industrial user subject to production-based limits over the industrial user's production rate for the most immediately preceding twelve (12) months.

(e) Adding or deleting process discharge or sample points.

(f) Waiver of monitoring requirements for any pollutant not present.

(54) Significant Industrial User. "Significant Industrial User" means:

(a) An industrial user that has processes subject to categorical pretreatment standards except as provided under subsection c; or

(b) An industrial user that:

1. Discharges an average of twenty-five thousand (25,000) gallons per day (gpd) or more of process wastewater to the sanitary system (excluding sanitary, noncontact cooling and boiler blowdown wastewater); or

2. Contributes a process wastestream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the Plant; or

3. Is designated as such by the Director or the City Engineer on the basis that it has a reasonable potential for adversely affecting the Plant's operation or for violating any pretreatment standard or requirement.

(c) The Director or the City Engineer may determine that a categorical industrial user is not a Significant Industrial User (i.e. non-significant categorical industrial user) if the categorical industrial user meets the following conditions:

1. Does not discharge more than one hundred (100) gpd of total categorical process wastewater;

2. Has complied with all applicable categorical pretreatment standards;

3. Never discharges any untreated concentrated wastewater; and

4. Submits annually a certification statement pursuant to 40 CFR 403.12(q).

(55) Significant Noncompliance. An industrial user is in "Significant Noncompliance" if it has a violation or violations meeting one or more of the following criteria:

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(a) Chronic violations of wastewater discharge limits defined here as those in which sixty-six (66) percent or more of all the measurements taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

(b) Technical review criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l), multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a pretreatment standard or requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the director determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of the director, personnel or the general public);

(d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or environment, or has resulted in the plant's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days after the scheduled due date, a compliance schedule milestone contained in a discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide, within forty-five (45) days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; and

(h) Any other violation or group of violations, which may include a violation of reasonable control measures, which the San Jose Director of Environmental Services determines will adversely affect the operation or implementation of the pretreatment program.

(56) **Slug Control Plan.** "Slug Control Plan" means the document prepared pursuant to 40 CFR 403.8(f)(1)(iii)(B)(6) by a Significant Industrial User that describes the procedural and operational controls in place to prevent a slug load or slug discharge.

(57) **Slug Load or Slug Discharge.** "Slug Load" or "Slug Discharge" means any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or non-customary batch discharge, which has a reasonable potential to cause interference or pass-through or in any other way cause a violation of the provisions of this Chapter or applicable permit conditions.

(58) **Source.** "Source" means any building, structure, facility or installation from which there is or may be a potential as identified by the San Jose Director of Environmental Services and determined by the City Engineer to discharge pollutants above the local limits included in this Chapter or state or federal limits or wastewater of such volume or strength that it may cause interference, pass-through or operational problems in the sanitary sewer system or at the Plant.

(59) **Standard Discharger.** A "Standard Discharger" means any industrial discharger who is not a low flow discharger.

(60) **Standard Methods.**

(a) "Standard Methods" means the procedures set forth in the CFR, unless another method for the analysis of industrial wastewater has been approved, in writing, in advance of use of the procedure by the Director or the City Engineer.

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(b) All analyses shall be performed by a laboratory certified by the state for the specific pollutants and matrix to be analyzed, unless otherwise approved in writing, by the Director or the City Engineer, prior to performance of a sample analysis.

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(61) **Stormwater.** "Stormwater," as used in this Chapter, means the flow across any surface or in storm drains resulting from rainfall.

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(62) **Suspended Solids.** "Suspended Solids" means solids that either float on the surface of, or are suspended in, water, sewage, or other liquids and which are removable by laboratory filtering.

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(63) **Total Toxic Organics or TTOs.** "Total Toxic Organics" or "TTOs" are the sum of the concentrations of each of the regulated toxic organic compounds listed at 40 CFR 401.15 and are found in the discharge at a concentration greater than ten (10) micrograms per liter. Some categorical standards (40 CFR 405-471) list the specific toxic organic compounds that are to be included in the summation.

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(64) **Trucked or Hauled Waste.** "Trucked or Hauled Waste" means any waste discharged into the sanitary sewer system after being placed in a motorized vehicle for removal from the location where the waste was generated or produced.

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(65) **Upset.** "Upset" means an unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

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(66) **Yellow Grease.** "Yellow Grease" means grease which is associated with food preparation or processing, which has not been contaminated with wash water or chemicals, or by being spilled or otherwise fouled.

(67) **Zero Discharger.** "Zero Discharger" means an industrial facility that does not discharge any wastewater except domestic wastewater into the sanitary sewer system.

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(68) **Zero Discharge Categorical User or ZDC.** "Zero discharge categorical user" or "ZDC" means an industrial facility that performs any categorical process subject to federal pretreatment standards, as described in 40 CFR 405-471, that has any connection to the sanitary sewer system, but does not discharge wastewater from the categorical process to the sanitary sewer.

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SEWER USE REGULATIONS

VIII-2-5.05 Limitations on Point of Discharge

No person shall discharge any substances directly into a manhole or other opening into a City sewer other than through a City-approved sewer connection.

VIII-2-5.06 Authority to Limit Excess Industrial Use

(a) Unless approved by the City Council, no industrial connection shall be allowed if the City Engineer estimates that said connection will have an estimated flow which exceeds either twelve thousand (12,000) gallons per day per acre or eight-tenths (0.8) gallons per day per square foot of building area. However, the City Council may approve or disapprove said connection, notwithstanding the above, after a public hearing upon published notice (in accordance with Section I-20-2.05 of the Milpitas Municipal Code) considering the following criteria:

1. Whether the specific use will overload the City's sewer collection system or the contractually available treatment capacity;

2. Whether the specific use will require an inequitable appropriation of water and sewage capacity compared to present and reasonably anticipated future needs of the other existing or future users (individual, commercial or industrial); or

3. Whether the specific use will hamper the present and future development of land or facilities because the use preempts capacity required by said development.

(b) The City Council may require any applicant for an excess use connection to provide the City with a sewer master plan study by a consultant approved by the City and paid for by the applicant. The scope of said study shall be determined by the City. The City may impose a reasonable fee for filing of any application hereunder. The City Council may impose conditions upon the grant of said application to protect and provide for the City's present and future water availability and sewage treatment capacity.

VIII-2-5.07 Discharge into Storm Drain Prohibited

It shall be unlawful to discharge any sewage, Industrial Waste or other polluted waters into any storm drain, natural outlet or channel without a valid National Pollutant Discharge Elimination System permit issued by the State of California.

VIII-2-5.08 Regulation of Trucked or Hauled Waste

No person shall discharge, cause, allow or permit any Trucked or Hauled Waste to be discharged into the sanitary sewer system, except at a site specifically designated in a wastewater discharge permit issued pursuant to this Chapter.

VIII-2-5.09 Protection from Accidental Discharge

(a) Each industrial user shall provide protection from accidental discharge of prohibited materials or other wastes regulated by this Chapter into either the storm drain or sanitary sewer system.

(b) Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the industrial user's expense.

(c) All industrial users shall notify the City and Plant personnel by telephone or in person within one (1) hour of becoming aware of accidentally discharging wastes of reportable quantities as determined in 40 CFR 117 or discharge of any substance, which, if otherwise disposed of would be a hazardous waste under 40 CFR Part 261, to enable countermeasures to be taken by the City to minimize damage to the sanitary sewer collection system, plant or treatment processes, and the receiving waters. If hazardous waste is discharged, the industrial user shall be subject to all requirements in 40 CFR 403.12(p).

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(d) Telephone notification shall be followed, within five (5) days of the date of occurrence, by a detailed written statement to the City Engineer and to the Director describing the causes of the accidental discharge and the measures being taken to prevent future occurrences.

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(e) Notification to the City and/or to the Plant will not relieve industrial users of notification requirements under any other federal, state or local law; nor of liability for any expense, loss, or damage to the storm drain system, sanitary sewer collection system, plant, treatment process, or receiving waters; or from any fines or penalties imposed on the City or the Plant on account thereof under applicable provisions of liability for state or federal law.

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(f) All permitted facilities must maintain a spill control plan for protection against accidental discharges, including, but not limited to, berming of chemical and waste material storage areas. The review of such plans and procedures by the City and/or the Plant personnel shall not relieve the industrial user from the responsibility of modifying the facility as necessary

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to provide the protection necessary to meet the requirements of this Code or other state or federal regulations.

(g) This plan must be reviewed and revised as needed within thirty (30) days after an accidental discharge has occurred or as required by the City Engineer or the ~~Director~~.

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VIII-2-5.10 Pretreatment by Owner

Each owner shall, at the owner's own expense, provide such treatment or take such other measures as the Chief Building Official may require to prevent accidental discharge; and to reduce objectionable characteristics, contents, or rates of discharge into the sanitary sewer system to prevent damage to or interference with the sanitary sewer system.

VIII-2-5.11 Monitoring Facilities

(a) The City Engineer may require any discharger to the sanitary sewer system to construct, at the discharger's own expense, and at an approved location, monitoring facilities to allow inspection, sampling and flow measurement of the building sewer or internal drainage systems.

(b) The discharger shall maintain the monitoring facilities, sampling and measurement equipment and access thereto at all times in a safe and proper operating condition at the discharger's expense.

(c) Any required monitoring facilities shall be specified in the wastewater discharge permit issued pursuant to this Chapter.

(d) Dischargers shall retain sufficient wastewater in their sample boxes at all times to allow sample collection representative of the last wastewater discharge.

VIII-2-5.12 Stormwater and Other Waters

(a) No person shall discharge, cause, allow or permit any stormwater, surface water, groundwater, subsurface drainage or roof water to be discharged into the sanitary sewer system or any part thereof without a wastewater discharge permit.

(b) A wastewater discharge permit for the discharge of groundwater, subsurface drainage, surface water, roof water, or stormwater shall only be issued if there is no reasonable alternative method for disposal of such water.

(c) If permitted, discharge of groundwater, subsurface drainage, surface water, roof water, or stormwater shall be subject to all applicable requirements of this Chapter, including but not limited to the payment of applicable permit fees and such terms and conditions as the City Engineer and the San Jose Director of Environmental Services may impose on the wastewater discharge permit.

VIII-2-5.13 Obstructing or Injurious Substances

No person shall discharge, cause, allow or permit to be discharged, thrown or deposited into the sanitary sewer system or any part thereof, or into any plumbing fixture or private sewer or drain connected either directly or indirectly to the sanitary sewer system, any substance of any kind whatsoever tending to obstruct or injure the sanitary sewer system, or to cause a nuisance or hazard, or which will in any manner interfere with the proper operation and maintenance of the sanitary sewer system.

VIII-2-5.14 Flammable or Explosive Substances

No person shall discharge, cause, allow or permit to be discharged into the sanitary sewer system any wastewater containing any flammable liquid, solid, vapor, gas or other substance, including, but not limited to any substance having a closed cup flashpoint of less than one

hundred forty degrees Fahrenheit (140°F) or sixty degrees Celsius (60°C), using the latest test methods specified in 40 CFR 261.21.

VIII-2-5.15 Hot Substances

No person shall discharge, cause, allow or permit to be discharged into the sanitary sewer system any liquid, solid, vapor, or gas having or developing a temperature of one hundred fifty degrees Fahrenheit (150°F) or more, or which may cause the temperature of wastewater at the Plant to exceed one hundred four degrees Fahrenheit (104°F).

VIII-2-5.16 Grease

(a) No person shall discharge, cause, allow or permit to be discharged into the sanitary sewer system any liquid or other waste containing grease in excess of one hundred fifty (150) parts per million by weight.

(b) No person shall discharge, cause, allow, or permit any grease discharge from a food service establishment into the sanitary sewer system, unless such discharge has first been processed through an approved grease control device.

(c) No person shall discharge, cause, allow, or permit to be discharged any yellow grease, or any waste or material mixed with yellow grease, into the sanitary sewer system from a food service establishment. No yellow grease from a food service establishment shall be mixed with grease trap or grease interceptor waste.

VIII-2-5.17 Solid or Viscous Matter

No person shall discharge, deposit, throw, or cause to be discharged, deposited or thrown into the sanitary sewer system or any part thereof any ashes, cinders, pulp, paper, sand, cement, soil, mud, straw, shavings, metal, glass, rags, feathers, tar, asphalt, resins, plastics, wood, animal hair, paunch manure, or any heavy solid or viscous substance capable of causing obstruction to the flow in the sanitary sewer system or any part thereof, or which would interfere with the proper operation of the plant or the treatment of sanitary sewage or industrial waste.

VIII-2-5.18 Corrosive Matter

No person shall discharge, cause, allow or permit to be discharged into the sanitary sewer system or any part thereof any liquid, solid, vapor, gas or thing having or causing a pH lower than six (6.0) or equal to or greater than twelve and one-half (12.5) or having any other corrosive property capable of causing damage or hazard to the sanitary sewer system or any part thereof, or to any personnel operating, maintaining, repairing, constructing said sanitary sewer system or any part thereof, or working in or about the sanitary sewer system.

VIII-2-5.19 Toxic Gases, Vapors or Fumes

No person shall discharge, cause, allow or permit to be discharged into the sanitary sewer system any substance of any kind whatsoever which results in the presence of toxic gases, vapors or fumes within the sanitary sewer system in a quantity that may cause acute health and/or safety problems for workers in the sanitary sewer system.

VIII-2-5.20 Interfering Substances

(a) No person shall discharge, cause, allow or permit to be discharged into the sanitary sewer system or any part thereof any industrial waste containing any of the following toxic substances exceeding the concentrations set forth below:

Toxic Substance	Standard Discharger Maximum Allowable Concentration	Low Flow Discharger Maximum Allowable Concentration
Antimony	5.0 mg/l	5.0 mg/l
Arsenic	1.0 mg/l	1.0 mg/l
Beryllium	0.75 mg/l	0.75 mg/l
Cadmium	0.7 mg/l	0.7 mg/l
Chromium, Total	1.0 mg/l	1.0 mg/l
Copper	2.3 mg/l	2.7 mg/l
Cyanides	0.5 mg/l	0.5 mg/l
Lead	0.4 mg/l	0.4 mg/l
Mercury	0.010 mg/l	0.010 mg/l
Nickel	0.5 mg/l	2.6 mg/l
Phenol and derivatives	30.0 mg/l	30.0 mg/l
Selenium	1.0 mg/l	1.0 mg/l
Silver	0.7 mg/l	0.7 mg/l
Zinc	2.6 mg/l	2.6 mg/l

(b) No person shall discharge, cause, allow or permit to be discharged into the sanitary sewer system or any part thereof, any toxic or poisonous substances or any other pollutant or waste constituent, including biochemical oxygen demand, in sufficient quantity to injure or cause an interference with the sewage treatment process, or pass-through the plant, or in sufficient quantity to constitute a hazard to humans or animals, or in sufficient quantity to create a hazard for humans, or aquatic life in any waters receiving effluent from the sanitary sewer system, or which may create a hazard in the use or disposal of sewage sludge.

(c) All samples, both grab and composite, shall demonstrate compliance with the above limits.

(d) Any industrial user that violates any of the interfering substances limits must resample and submit sample reports for all pollutants in violation of any applicable permit limits or any other pollutants as required by the San Jose Director of Environmental Services within thirty (30) days of becoming aware of the violation.

VIII-2-5.21 Prohibition on Use of Diluting Waters

No industrial user shall ever increase the use of process water, or in any way use diluting waters as a partial or complete substitute for adequate treatment, or to meet local limits or achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement.

VIII-2-5.22 Suspended ~~Solids; Dissolved~~ Matter

No person shall discharge, cause, allow or permit to be discharged into the sanitary sewer system or any part thereof any liquid containing suspended solids or dissolved matter of such character and quantity that unusual attention or expense is required to handle, process, or treat such matter at the plant.

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VIII-2-5.23 Noxious or Malodorous Matter

No person shall discharge, cause, allow or permit to be discharged into the sanitary sewer system or any part thereof any solid, liquid, vapor, or gas which is so malodorous or noxious that its discharge into the sanitary sewer system would cause a public nuisance.

VIII-2-5.24 Radioactive Matter

No person shall discharge, cause, allow, or permit to be discharged any radioactive waste into the sanitary sewer system, except, that:

(a) Persons authorized to use radioactive materials by the State Department of Public Health or other governmental agency empowered to regulate the use of radioactive materials may discharge, cause to be discharged, or permit to be discharged such wastes, provided that such wastes are discharged in strict conformance with the California radiation control regulations (California Code of Regulations, Title 17, Chapter 5, Subchapter 4), and federal regulations and recommendations for safe disposal of such wastes; and

(b) The person so acting does so in compliance with all applicable rules and regulations of all other regulatory agencies having jurisdiction over such discharges.

VIII-2-5.25 Colored Matter

No person shall discharge, cause, allow or permit to be discharged into the sanitary sewer system any wastewater with objectionable color not removed in the treatment process such as, but not limited to, dye wastes and vegetable tanning solutions.

VIII-2-5.26 Fixer Solution Prohibition

No person shall discharge, cause, allow, or permit fixer solution to be discharged into the sanitary sewer system without prior pretreatment to meet all applicable limits.

VIII-2-5.27 Garbage

(a) No person shall discharge, cause, allow or permit to be discharged, deposited, or thrown into the sanitary sewer system any garbage, fruit, vegetable, animal, or other solid material from any industrial plant or retail grocery store, irrespective of whether or not it first passed through a mechanical grinder.

(b) No person shall install, operate, use or maintain upon the premises of any food-processing plant, or any industrial plant or retail grocery store, any mechanical grinder or waste grinder that is connected directly or indirectly to the sanitary sewer system.

(c) No person shall discharge, deposit, throw or cause, allow or permit to be discharged, deposited, or thrown into the sanitary sewer system any garbage, fruit, vegetable, animal or other solid kitchen waste material resulting from the preparation of any food or drinks, in any dwelling, restaurant or eating establishment, unless the same shall have first been passed through a mechanical garbage or waste grinder in conformance with the provisions of Chapter II-7, Uniform Plumbing Code of the City of Milpitas Municipal Code.

VIII-2-5.28 Screened Industrial Wastes

(a) No person shall discharge, cause, allow or permit to be discharged into the sanitary sewer system or any part thereof any garbage, fruit, vegetable, animal, or other solid industrial wastes resulting from the processing, packaging, or canning of fruits, vegetables, or other foods or products, unless such wastes have first been passed through screens having openings not exceeding one thirty-second ($1/32$) of an inch in dimension.

(b) The City Engineer may authorize, in writing, the discharge into the sanitary sewer system of such wastes if they are first passed through screens having larger openings than one thirty-second (1/32) of an inch, if the City Engineer is satisfied that such larger openings will provide screening efficiency and effectiveness equal to or better than that provided by the above-specified openings of one thirty-second (1/32) of an inch in dimension.

(c) Each person who discharges, causes, allows or permits to be discharged into the sanitary sewer system or any part thereof any such wastes shall install and maintain in good operating order, screens as hereinabove specified and appurtenances thereto, including, but not limited to all necessary conveyors and elevators, all in sufficient quantity and of sufficient size and quality to continuously and effectively screen not less than one hundred (100) percent of the peak hydraulic and solids loading imposed on such screens and appurtenances during any processing period.

(d) No person shall discharge any such screened wastes into the sanitary sewer system or any part thereof, unless and until he or she has obtained a wastewater discharge permit pursuant to this Chapter granting approval to do so. The City Engineer and/or the San Jose Director of Environmental Services may require such person to provide a report prepared by a registered professional engineer which shows, to the satisfaction of the City Engineer and/or the San Jose Director of Environmental Services, that the provisions of this Chapter have been complied with, before the wastewater discharge permit is granted.

VIII-2-5.29 Installation of Grease Control Devices

(a) Any food service establishment, or other type of business or establishment where grease or other viscous, obstructing, or objectionable materials may be discharged into a public or private sewage main or disposal system, shall have a grease control device and related plumbing of a size and design recommended by the San Jose Director of Environmental Services and approved by the City Engineer.

(b) Mechanical grease control devices shall meet the specifications and be installed in accordance with their manufacturers' specifications and, in addition, their installation shall provide for the following:

1. The grease control device shall be so installed and connected that it shall be at all times easily accessible for visual inspection, sampling, cleaning and removal of grease, and other matter from all surfaces.

2. The grease control device shall be situated on the discharger's premises, except when such a location would be impractical or cause undue hardship on the discharger. The city may issue an encroachment permit to allow the grease control device to be installed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

3. Waste discharge from fixtures and equipment in establishments which may contain grease or other materials including, but not limited to, scullery sinks, pot and pan sinks, dishwashers, food waste disposals, soup kettles, and floor drains located in areas where such objectionable materials may exist, may be drained into the sanitary sewer system through the grease control device if approved by the city engineer, provided that toilets, urinals, wash basins, and other fixtures containing fecal material shall not be allowed to flow through the grease control device.

(c) Grease interceptors shall meet the specifications and be constructed in accordance with the applicable provisions of the Plumbing Code (Chapter 7, Title II), and in addition, shall meet the following requirements:

1. They shall be designed to have a retention time of no less than thirty (30) minutes.

2. Effluent from the device must flow through an approved sample box.

3. They shall be installed with at least two (2) manholes for access, situated so that all standpipes can be fully observed, and all internal surfaces can be reached, without confined space entry.

4. They shall include double-sweep clean-outs on the interceptor inlet and the sample box outlet.

(d) Grease traps shall meet the specifications and be constructed in accordance with the manufacturer's specifications and the applicable provisions of the Plumbing Code (Chapter 7, Title II) and, in addition, shall meet the following minimum requirements:

1. They shall not have injection ports for chemicals or bacteria.
2. Appropriate flow restrictors, whether integral or external to the trap, must be installed.

VIII-2-5.30 Maintenance and Operation of Grease Control Devices

(a) Grease control devices shall be maintained by the owner or operator in efficient operating condition by periodic removal of the accumulated grease. The use of chemicals, bacteria, enzymes, or other additives that have the effect of emulsifying or dissolving grease is prohibited. No accumulated grease shall be introduced into any drainage piping or public or private sewer.

(b) Grease control devices shall be cleaned on a sufficient frequency to prevent objectionable odors, surcharge of the grease control device, or interference with the operation of the sanitary sewer system. Users with grease control devices shall maintain them in good operating condition at all times.

1. Grease traps shall be cleaned at least once every thirty (30) days.
2. Grease interceptors shall be cleaned once every ninety (90) days.
3. Mechanical grease removal devices must be maintained in a manner and frequency consistent with the manufacturer's specifications and guidance.
4. Grease control devices shall be cleaned when their last chamber is filled to twenty-five (25) percent or more of capacity with grease or settled solids. Grease interceptors with a sample box shall be cleaned immediately when grease is evident in the sample box.
5. Grease control devices shall be cleaned by being pumped dry and all accumulated sludge on all surfaces shall be removed by washing down the sides, baffles and tees. No water removed from the device during cleaning shall be returned to the grease control device.

(c) The City Engineer may grant an exception to the requirements of subsections (b)(1) and (b)(2) where the he/she finds, based on evidence presented by the discharger, that a less frequent cleaning schedule will be sufficient to assure that not more than twenty-five (25) percent of the capacity of the grease control device will be filled with grease or settled solids.

(d) All dischargers shall implement best management practices in their operations to minimize the discharge of grease to the sanitary sewer system.

(e) Dischargers shall maintain records on site for a period of at least three (3) years as follows:

1. Dischargers with an installed grease control device shall maintain records showing that the grease control device has been properly maintained and cleaned as required by subsections (a) and (b); and
2. Food service establishments shall maintain records showing the following related to all grease hauled off site: date and time was material removed off site, volume removed, hauler name, truck license number, type of grease removed, and final destination of material collected.

(f) Abandoned grease control devices shall be emptied and filled as required for abandoned septic tanks.

VIII-2-5.31 Installation and Maintenance of Amalgam Separators

(a) Except as provided in the subsections (b) and (c) below, no person shall discharge, cause, allow or permit any discharge into the sanitary sewer system from a dental vacuum system, unless such discharge has first been processed through an amalgam separator.

(b) No dental vacuum system shall be installed on or after April 1, 2010 without an amalgam separator. Existing dental vacuum system shall have an amalgam separator installed on or before July 1, 2010. Proof of certification and installation records shall be submitted to the City Engineer and the San Jose Director of Environmental Services within thirty (30) days of installation.

(c) A dental vacuum system may be operated without an amalgam separator provided that the system is not used in connection with the removal or placement of fillings that contain dental amalgam more than three (3) days per calendar year and the system is used exclusively by the following types of dental practices: (1) orthodontics, (2) periodontics, (3) oral and maxillofacial surgery, (4) radiology, (5) oral pathology or oral medicine, (6) endodontistry and prosthodontistry.

(d) The owner or operator shall maintain the amalgam separators in accordance with manufacturer recommendations. The owner or operator shall maintain installation, certification, and maintenance records for a minimum of five (5) years and shall make these available for immediate inspection upon request by the City Engineer or the San Jose Director of Environmental Services or designee during normal business hours.

VIII-2-5.32 Mandatory Wastewater Discharge Permits

No critical user or significant industrial user shall connect, discharge, cause, allow or permit any discharge into the sanitary sewer system except in accordance with a wastewater discharge permit approved by the City Engineer and issued by the San Jose Director of Environmental Services.

VIII-2-5.33 Delinquent Fees

(a) Discharge permit applications are due ninety (90) days prior to (1) commencing discharge to Sanitary System, (2) commencing operation of a zero discharging categorical process, or (3) expiration of existing discharge permit. Any person who fails to file a discharge permit application by the application due date prior to discharge shall be assessed a penalty for delinquent filing as follows:

1. Up to and including thirty (30) days after the application due date, the penalty shall be fifty percent (50%) of the permit fee.

2. Thirty-one (31) to ninety (90) days after the application due date, the penalty shall be one hundred percent (100%) of the permit fee.

3. Ninety-one (91) days to one (1) year after the application due date, the penalty shall be two hundred percent (200%) of the permit fee.

4. More than one (1) year after the application due date, the penalty shall be one thousand percent (1,000%) of the permit fee.

(b) Such penalties shall be in addition to any other penalties or fines that may be levied, and in addition to any other remedies that the City or the Plant may have with respect to the discharge.

(c) The City Engineer or the Director may waive the assessment of penalty if the industrial discharger meets all of the following requirements:

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1. The industrial discharger has submitted a completed application to the Plant no later than thirty (30) days from the date the application was due;
2. The industrial discharger has applied to the Director for a waiver no later than (30) days from the date the application was due;
3. The industrial discharger has submitted timely applications for (a) the five (5) years immediately prior to the present late application, or (b) the two (2) years immediately prior to the present late application if the industrial discharger has discharged for less than five (5) years; and
4. The industrial discharger can provide documentation that (a) the application was postmarked or received by the Plant no alter than three (3) days after the application due date, or (b) failure to submit a timely application was due to circumstances beyond the control of the industrial discharger, and occurred despite the exercise of ordinary care and the absence of willful neglect.

VIII-2-5.34 Permit Application

- (a) All persons requiring a wastewater discharge permit shall file a complete application in the form prescribed by the Director and shall pay the applicable fees.
- (b) Permit applications are due ninety (90) days prior to commencing discharge to the sanitary sewer system or expiration of existing discharge permit. For new construction, permit applications shall be filed with the Director at the time that the application to the City for a building permit for a new building or structure is made.
- (c) All persons discharging wastewaters into the sanitary sewer system for which a wastewater discharge permit has been issued must apply for a new permit prior to making a significant change in the operations affecting their discharge.

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VIII-2-5.35 Additional Information May Be Required for Permit Application

- (a) If the City Engineer or the Director is not satisfied that the permit application has sufficient information to determine whether the permit should be issued, either the City Engineer or the Director may refuse to approve or issue the permit or may request that the applicant submit further information.
- (b) The applicant shall have thirty (30) working days, or such longer period of time as allowed by the City Engineer, after reviewing a request for further information, to complete the application.
- (c) If the returned application is not resubmitted within the specified time period, then a new application for discharge permit must be submitted along with the application fees and any delinquent fees for a new permit.

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VIII-2-5.36 Permit Conditions

- (a) Discharge permits shall be expressly subject to all provisions of this Chapter and all other regulations, user charges, discharge limitations, and fees established by the Plant, or the City, and all applicable local, state and federal laws and regulations.
- (b) The permit may include such terms and conditions as the City Engineer or the Director may deem necessary to implement this Chapter, or any other applicable local, state or federal laws and regulations, including but not limited to:
 1. Limits on the average and maximum wastewater volume, constituents and characteristics;
 2. Requirements for installation and maintenance of flow monitoring, inspection and sampling facilities;

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3. Specifications and pretreatment requirements for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for tests and reporting schedule;

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4. Compliance schedules;

5. Requirements for submission of technical reports or discharge reports;

6. Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the City and/or the Plant and affording the City and the Plant personnel access thereto;

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7. Requirements for notification to the City and the Plant of any new introduction of wastewater constituents or any significant change in the volume or character of the wastewater constituents being introduced into the wastewater stream;

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8. Requirements and plans for protection against accidental discharges, including, but not limited to, berming of chemicals and waste materials. The review and approval of such plans and operating procedures shall not relieve the user from the responsibility of modifying the facility as necessary to provide the protection necessary to meet the requirements of this Code or other state or federal regulations;

Deleted: The installation and maintenance by the discharger, at discharger's expense, of facilities or equipment for intermittent or continuous measurement of the quantity or quality of sewage, industrial waste or other wastes discharged into the sanitary sewer system from such premises; ¶ 11.

9. Requirements for notification of accidental discharges; and

10. Requirements for submission of a Slug Control Plan or specific elements thereof.

Deleted: The installation and maintenance by the discharger, at discharger's expense, of such preliminary treatment facilities as may be required by the plant personnel; ¶ 12.

VIII-2-5.37 Permit Duration and Amendment

(a) Discharge permits shall be issued for a specific duration, not to exceed five (5) years.

(b) Permits shall be subject to amendment as limitations or requirements for discharge are modified and changed.

(c) The holder of a discharge permit shall be informed of any proposed amendment to its permit at least thirty (30) days prior to the effective date of the amendment.

(d) A compliance schedule may be included in an amended permit.

Deleted: The installation and maintenance by the discharger, at discharger's own expense, of a suitable control manhole in the portion of the side sewer lateral located on private property to facilitate observation, sampling and measurement of the waste. Such manhole, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the plant personnel; ¶ 13.

VIII-2-5.38 No Transfer of Wastewater Discharge Permit Allowed

Wastewater discharge permits are issued to a specific user for a specific operation. No user shall assign, transfer, or sell its discharge permit, or use the permit for premises, facilities, or operations not covered by the permit.

Deleted: The installation and maintenance by the discharger, at discharger's expense, of grease control devices as necessary for the proper handling of liquid wastes containing grease or excessive amounts of any inflammable waste, or other harmful ingredients; ¶ 14.

VIII-2-5.39 Denial of Permit

The City Engineer may deny a wastewater discharge permit if one or more of the following conditions exist:

(a) The application is not accompanied by the required fee(s).

(b) The application contains false or misleading information.

(c) The issuance of the permit would result in the discharge of industrial wastes of such quantity or strength that the public health or safety, or public or private property is endangered, or that would not comply with the City municipal code requirements.

(d) The issuance of the permit would cause the city or the Plant to violate any permit conditions, laws, or regulations of the state and/or federal government.

(e) The applicant has not provided adequate information to establish that its discharge will comply with all requirements of this Chapter and with such other terms and

Deleted: The submission to the San Jose Director of Environmental Services of the plans for any of the above facilities or equipment required to be installed and maintained by the discharger; and/or ¶ 15.

Deleted: Such other terms and conditions as may be necessary to protect the sanitary sewer system and carry out the provisions of this Chapter

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conditions as the City Engineer or the Director may deem necessary to include in the discharger's permit.

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(f) The applicant has not provided plans for sufficient protection from accidental discharges to the land, storm drain system or sanitary sewer system.

(g) There is insufficient remaining allocable treatment capacity for the City of Milpitas as previously defined and more precisely explained in the Fourth Amendment to the Master Agreement for Wastewater Treatment between the Cities of San Jose and the City of Milpitas Providing Allocation of Treatment Capacity dated August 5, 2009.

(h) Application fees shall not be returned if the permit is denied, unless a permit is not required to discharge the wastewater for which the permit application is made.

VIII-2-5.40 Termination of Service and Permit Revocation

Deleted: VIII-2-5.40 Permit Revocation¶
(a)

Deleted: Any user who violates the conditions of the industrial wastewater discharge permit, any provisions of this Chapter or any provisions of applicable state and federal regulations; or who engages in any of the following conduct may be subject to permit revocation or termination: ¶
1.

(a) The City may revoke any wastewater discharge permit and may terminate, or cause to be terminated wastewater service to any premises:

1. If a discharge of wastewater from the premises causes or threatens to cause a violation of any provision of this Chapter or applicable local, state or federal regulations; or

Deleted: Failure to factually report the wastewater constituents and characteristics of the discharge;¶
2.

2. If a discharge of wastewater from the premises causes or threatens to cause a condition of contamination, pollution, or nuisance.

Deleted: Failure to report significant changes in operations or wastewater constituents and characteristics;¶
3.

(b) Written notice of the permit revocation or service termination, and a statement of the grounds therefore, shall be delivered to the discharger. The notice shall be effective ten (10) calendar days after it is served on the discharger, unless the City Engineer or the Director determines that immediate permit revocation or suspension of service is necessary for the preservation of public health or safety or for the protection of public or private property. If the City Engineer or the Director determines that immediate permit revocation or suspension of service is necessary, he/she may act to revoke the permit or suspend service immediately after written notice is delivered to the discharger.

Deleted: Refusal of reasonable access to user's premises for the purpose of inspection, monitoring, or verification of records; and/or¶
4.

(d) It shall be unlawful for any person to discharge any material into the sanitary sewer system from any premises for which the permit has been revoked or wastewater service has been suspended or terminated.

Deleted: Nonpayment of fees and charges.¶
(b)

VIII-2-5.41 Appeals

Deleted: If a discharger of wastewater from the premises causes or threatens to cause a condition of contamination, pollution, or nuisance, the discharger may be subject to permit revocation or termination. ¶
(c)

(a) Any permittee or permit applicant may appeal a notice of revocation of a discharge permit, notice of denial of a permit, any term or condition of a permit, amendment of a permit or notice of termination of service to the City Manager or the Director.

Deleted: It is unlawful for any person to discharge any material into the sanitary sewer system from any premises for which the permit has been revoked or wastewater service has been suspended or terminated.

(b) Failure of a permittee or applicant to timely request a hearing shall be deemed acceptance of the City's or the Plant's decision and such decision shall be deemed final and effective.

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(c) A request for hearing on a decision to revoke a permit or terminate service shall be filed, in writing, with the City Manager within ten (10) days after the date the notice of revocation or termination of service is served on the permittee. A request for hearing on a decision to revoke a permit or terminate service shall, except in the case of immediate permit revocation or suspension of service for the preservation of public health or safety or for the protection of public or private property, stay the effect of the notice of revocation or termination of service, during the pendency of the appeal.

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(d) A request for hearing on a decision to deny a permit, on the terms or conditions in a permit, on an amendment to a permit, shall be filed, in writing, with the City Manager or the Director within thirty (30) days after the date the notice of decision is served on the applicant.

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(e) At the hearing, the applicant shall be given an opportunity to present evidence. The hearing will be conducted informally and technical rules of evidence shall not apply. Any and all evidence which the City Manager or the Director deems reliable, relevant, and not unduly repetitious, may be considered.

(f) The City Manager shall provide written notice of decision on the appeal to the permittee or applicant. The decision of the City Manager shall be deemed final and effective three (3) days after notice of the decision and no appeal to the City Council shall be allowed.

(g) Filing of a request for hearing shall not entitle any person to discharge in violation of any of the provisions of this code.

VIII-2-5 42 Publication of Significant Industrial Users in Significant Noncompliance

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The Director is authorized to publish annually, a list of the significant industrial users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term "significant noncompliance" is defined in 40 CFR 403.8.

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VIII-2-5 43 Federal Pretreatment Regulations

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No industrial user shall discharge, cause, allow or permit a discharge, into the sanitary sewer system in violation of any federal or state regulation regulating discharges by such users, including, but not limited to the Federal Pretreatment Regulations found in Title 40 of the CFR.

VIII-2-5 44 Signature requirements

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(a) Permit applications, discharge reports and any other reports required by the City or the Director shall be signed by an executive officer of the business filling the application.

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(b) Such executive officer shall be at least of the level of vice president, general partner, president, or an individual responsible for the overall operation of the facility applying for said permit, or meet federal requirements for NPDES applications as contained in Title 40 of the CFR.

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(c) Reports subject to the requirements of Title 40 of the CFR shall include the certification statement as contained in Title 40 of the CFR.

VIII-2-5 45 Record Keeping

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All industrial users subject to the reporting requirements of this Chapter shall retain and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Chapter, and any additional records of information obtained pursuant to monitoring activities undertaken by the industrial user independent of such requirements. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any enforcement action concerning the industrial user, or where the industrial user has been specifically notified of a longer retention period by the City Engineer or the Director.

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VIII-2-5 46 Discharge Reports

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(a) Dischargers are subject to the reporting requirements as contained in Title 40 of the Code of Federal Regulations. The Director or the City Engineer may require that any person connected to or discharging wastewater into the sanitary sewer system file additional periodic discharge reports or a zero discharge report.

(b) The periodic discharge report may be required to include, but need not be limited to nature of process, volume, rates of flow, mass emission rate, hours of operation, number of

employees, hauling records, potential for slug discharge or other information which relates to the generation of waste, including wastewater constituents and characteristics in the wastewater discharge and the ability of the discharger to meet applicable discharge limits.

(c) The zero discharge report ~~shall certify that the~~ zero discharge user does not discharge any process water to sanitary sewer, ~~or for a zero discharge categorical user does not~~ discharge any categorical process water or ancillary process water to the designated zero discharge categorical sample point or into the sanitary sewer system. ~~This report~~ may be required to include, but need not be limited to, nature of process, hours of operation, number of employees, hauling records, or other information that relates to the generation of wastes.

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(d) The ~~Director or the~~ City Engineer may also require such periodic discharge reports and zero discharge reports to include information concerning the chemical constituents and quantity of chemicals stored on-site, including waste hauling records or other information, which relates to the generation of waste even though they may not normally be discharged.

(e) In addition to discharge reports, ~~the Director or~~ the City Engineer may require dischargers to submit such additional reports as may be necessary to allow the ~~Plant or the~~ City to evaluate the discharger's ability to comply with this Chapter, including but not limited to best management practice or self-monitoring reports.

(f) It ~~shall be unlawful for any person who has discharged wastewater to the sanitary sewer system to refuse to file any report requested by the Director or the City Engineer, or to file any report or application after the due date specified by the Director or the City Engineer.~~

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(g) Sampling and analysis shall be performed in accordance with 40 CFR 136 and amendments thereto. Where 40 CFR 136 does not contain sampling or analytical methods for the pollutant in question, or where the ~~Director or the City Engineer~~ determines that 40 CFR 136 are inappropriate for the pollutant in question, sampling and analysis shall be performed by using analytical methods validated by the ~~Director or the~~ City Engineer.

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VIII-2-5.47 Falsification of Information

(a) It is unlawful for any person to make any false statement, representation, record, report, plan or other document or to tamper with or render inaccurate or divert flow from any monitoring device or equipment installed or operated pursuant to this Chapter or to any permit issued under this Chapter.

(b) In addition to any other punishment or remedy provided by law, any such falsification or tampering shall be grounds for revocation of any permit issued under this Chapter.

VIII-2-5.48 Power to Inspect

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(a) The City Engineer shall have the right to access upon all properties for the purpose of inspecting any sewer or storm drain connection, including all discharge connections of roof and surface drains and plumbing fixtures; inspecting, observing, measuring, photographing, sampling, and testing the quality, consistency and characteristics of sewage and industrial wastewaters being discharged into any public sewer or natural outlet; and inspecting and copying any records relating to quantity and quality of wastewater discharges, including but not limited to water usage and effluent discharged, chemical usage, and hazardous waste records.

(b) The City Engineer may terminate service or revoke the permit of any person who has discharged wastewater to the sanitary sewer system and has unreasonably refused access to the City for inspection of any sewer connection.

(c) The ~~Director may~~ terminate service or revoke the plant wastewater discharge permit of any person who has discharged wastewater to the sanitary sewer system and has unreasonably refused access to the WPCP for inspection of any permitted sewer connection.

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VIII-2-5.49 Correction of Violations; Collection of Costs; Injunction

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- (a) The City may abate any violation of this Chapter.
- (b) The cost of such abatement may be added to the sewer service charge of the owner or tenant of the property upon which the violation occurred, and the City shall have all available remedies for the collection of such costs as it has for the collection of sewer service charges.

VIII-2-5.50 Civil Penalties

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Any person who intentionally, accidentally or negligently violates any provisions of this Chapter, any provision of any permit issued pursuant to this Chapter, or who intentionally, accidentally, or negligently discharges waste or wastewater which causes pollution, or violates any effluent limitation, national standard of performance, or national pretreatment or toxicity standard, shall be civilly liable to the City in a sum up to ten thousand dollars (\$10,000) for the first day in which such violation occurs, up to twenty-five thousand dollars (\$25,000) for the second day in which such violation occurs, and fifty thousand dollars (\$50,000) for each additional day.

VIII-2-5.51 Upset-Rebuttal

The following circumstances may be raised as an affirmative defense to an action brought for noncompliance with categorical pretreatment standards:

- (a) The industrial user can demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - 1. The industrial user can identify the cause(s) of the Upset;
 - 2. When the Upset occurred, the facility was being operated in a prudent and workman-like manner, and in compliance with applicable operation and maintenance procedures;
 - 3. The industrial user has submitted the following information to the Plant:
 - a. A description of the discharge to the Plant and the City and the cause of the noncompliance;
 - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - c. Steps being taken and/or planned to be taken to reduce, eliminate and prevent recurrence of the noncompliance.
 - 4. The industrial user shall report the information specified in subsection a.3 to the Director or the City Engineer within twenty-four (24) hours of becoming aware of the Upset, and provide written notice within five (5) days of becoming aware of the Upset.
- (b) The industrial user seeking to establish the occurrence of an Upset as an affirmative defense shall have the burden of proof.
- (c) The industrial user shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facilities until the facility is restored or an alternative method of treatment is provided. The requirement under this Section applies even in a situation where the primary source of power of the treatment facility is reduced, lost or fails.

VIII-2-5.52 Waiver of Pollutants Not Present

(a) A categorical industrial user seeking to request a waiver of monitoring requirements for pollutants not present must submit the following with its permit application:

1. Data from at least one (1) sampling of the facility's process wastewater prior to any treatment that is representative of all wastewater from all processes;
2. Signature in compliance with Section VIII-2-5.44;
3. Certification statement as specified under 40 CFR 403.6(a)(2)(ii); and;
4. Other technical factors as may be required by the Director or the City Engineer to demonstrate that the pollutant is not present in the industrial user's discharge.

(b) If approved, the waiver shall be included as part of the categorical industrial user's discharge permit. The categorical industrial user must certify in each self monitoring report with the statement set forth in 40 CFR 403.12(e)(2)(v) that there has been no increase in the wastewater due to the activities of the user of the pollutant that was waived.

(c) The waiver shall only be valid for the term of the permit, and a new request for waiver must be submitted for each new permit.

A flow that exceeds the expected peak flow as shown in the sewage treatment plant connection allocation for the property on which the industrial user is located. (b)