

Article XII — Administrative Enforcement Remedies

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Article XII — Administrative Enforcement Remedies

§ 65-1201 Notification of Violation.

(a) **Notice.** When the Borough's enforcement official or the City Director of Public Works finds that a User or other Person has violated, or continues to violate, any provision of this Chapter, a Wastewater Discharge Permit or order issued under this Chapter, or any other Pretreatment Standard or Requirement, the official or the City Director of Public Works may serve upon that User or other Person a written Notice of Violation.

(b) **Response.** The User or other Person receiving a written Notice of Violation shall submit a response to the Notice, including an explanation of the alleged violation and a plan for the satisfactory correction and prevention of violations (including specific required actions), to the Borough and the City Director of Public Works within twenty (20) days after receipt of the Notice. Submission of this plan in no way relieves the User or other Person of liability for any violations occurring before or after receipt of the Notice of Violation.

(c) **Notice Not Required.** Nothing in this Section shall limit the authority of the Borough or the City Director of Public Works to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

§ 65-1202 Publication of Users in Significant Noncompliance.

The Borough or the City Director of Public Works shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Users which, during the previous twelve (12) months, were in significant noncompliance with applicable Pretreatment Standards and Requirements. The term “significant noncompliance” shall be applicable to all Significant Industrial Users (or any other Industrial User that violates subsections (c), (d), or (h) of this Section), and shall mean:

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

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

(c) Any other violation of a Pretreatment Standard or Requirement (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the Borough or the City Director of Public Works determines has caused, alone or in conjunction with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

(d) Any discharge of a Pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the exercise of emergency authority by the Borough or the City Director of Public Works to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a Wastewater Discharge Permit or enforcement order for starting construction, completing construction, or attaining final compliance;

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

(g) Failure to accurately report noncompliance; or

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

§ 65-1203 Consent Orders.

The Borough and/or the City Director of Public Works may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with

any User or other Person responsible for noncompliance. Such documents will include specific action to be taken by the User or other Person to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to § 65-1205 and § 65-1206 and shall be judicially enforceable.

§ 65-1204 Show Cause Hearing.

(a) **In General.** The Borough's enforcement official or agent, or the City Director of Public Works, may order a User which has violated, or continues to violate, any provision of this Chapter, a Wastewater Discharge Permit or order issued under this Chapter, or any other Pretreatment Standard or Requirement, to appear before that person or entity and show cause which the proposed enforcement action should not be taken.

(b) **Notice.** Notice of a hearing under subsection (a) shall be served on the User specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the User show cause why the proposed enforcement action should not be taken. The notice shall be served on any Authorized Representative of the User personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing.

(c) **Hearing Not Required.** A hearing under this Section shall not be a bar against, or a prerequisite for, the Borough or the City taking any other action against the User.

§ 65-1205 Compliance Orders.

(a) **In General.** When the Borough's enforcement official or agent, or the City Director of Public Works, finds that a User has violated, or continues to violate, any provision of this Chapter, a Wastewater Discharge Permit or order issued under this Chapter, or any other Pretreatment Standard or Requirement, the Borough's enforcement official or agent, or the City Director of Public Works may issue an order to the User responsible for the discharge directing that the User come into compliance within a specified time. Compliance orders also may contain other requirements to address the noncompliance, including additional self monitoring and management practices designed to minimize the amount of Pollutants discharged to the POTW.

(b) **Restrictions.** A Compliance Order under this Section may not extend the deadline for compliance established for a Pretreatment Standard or Requirement.

(c) **Effect.** A Compliance Order does not relieve a User of liability for any violation, including any continuing violation.

(d) **Order Not Required.** A Compliance Order under this Section shall not be a bar against, or a prerequisite for, the Borough or the City taking any other action against the User.

(e) **Failure to Comply.** If the User does not come into compliance with a Compliance Order within the time specified, the Borough may discontinue Sewer service to the User unless and until adequate treatment facilities, devices, and other related appurtenances are installed and properly operated

§ 65-1206 Cease & Desist Orders.

(a) **In General.** When the Borough's enforcement official or agent, or the City Director of Public Works, finds that a User has violated, or continues to violate, any provision of this Chapter, a Wastewater Discharge Permit or order issued under this Chapter, or any other Pretreatment Standard or Requirement, or that the User's past violations are likely to recur, the Borough's enforcement official or agent, or the City Director of Public Works may issue an order to the User directing it to cease and desist all such violations and directing the User to:

- (1) Immediately comply with all requirements; and
- (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

(b) **Order Not Required.** Issuance of a Cease and Desist Order under this Section shall not be a bar against, or a prerequisite for, the Borough or the City taking any other action against the User.

§ 65-1207 Performance Bonds.

The Borough or the City Director of Public Works may decline to issue or reissue a Wastewater Discharge Permit to any User who has failed to comply with any provision of this Chapter, a previous Wastewater Discharge Permit, or order issued under this Chapter, or any other Pretreatment Standard or Requirement, *unless* such User first files a satisfactory bond, payable to the Borough or its designee, in a sum not to exceed a value determined by the Borough or the City Director of Public Works to be necessary to achieve consistent compliance.

§ 65-1208 Liability Insurance.

The Borough or the City Director of Public Works may decline to issue or reissue a Wastewater Discharge Permit to any User who has failed to comply with any provision of this Chapter, a previous Wastewater Discharge Permit, or order issued under this Chapter, or any other Pretreatment Standard or Requirement, *unless* such User first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

§ 65-1208.1 Water Supply Severance.

Whenever a User has violated or continues to violate any provision of this Chapter, a Wastewater Discharge Permit, or order issued under this Chapter, or any other Pretreatment Standard or Requirement, the Borough may sever water service to the User. Service will recommence, at the User's expense, only after the User has demonstrated satisfactorily its ability to comply.

§ 65-1209 Contractor Listing.

Users who have not achieved compliance with applicable Pretreatment Standards and Requirements are not eligible to receive a contractual award for the sale of goods or services to the Borough.

§ 65-1210 Administrative Civil Penalties.

(a) **In General.** When the Borough's enforcement official or agent finds that a User has violated, or continues to violate, any provision of this Chapter, a Wastewater Discharge Permit or order issued under this Chapter, or any Pretreatment Standard or Requirement, the enforcement official or agent may fine such User in an amount not to exceed \$25,000, regardless of jurisdictional boundaries. Such penalties shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation. The penalties may be assessed whether or not the violation was willful or negligent.

(b) **Relationship to City Administrative Penalties.** The authority granted in subsection (a) is in addition to the separate authority of the City Director of Public Works or other City officials to impose administrative civil penalties under City ordinances. However, in no case shall the total of the penalties imposed under subsection (a) and the administrative civil penalties imposed by the City exceed \$25,000 per violation, per day.

(c) **Amount of Penalty.** The amount of the civil penalty shall be assessed in accordance with the following official Borough assessment policy, considering damage to air, water, land, or other natural resources, cost of restoration and abatement, savings resulting to the User for the violation, history of past violations, deterrence of future violations, and other relevant factors:

(1) **Damage to Environment.** The User shall be assessed between 1 and 5 points depending on the degree of damage to the environment, according the following table:

<u>Damage</u>	<u>Points</u>
Extreme	5
Severe	4
Moderate	3
Slight	2
None	1

(2) **Cost of Restoration/Abatement.** The User shall be assessed between 1 and 5 points depending on the cost of restoration or abatement due to the violation, according the following table:

<u>Cost</u>	<u>Points</u>
Over \$10,000	5
\$7,000 to \$10,000	4
\$5,000 to \$6,999	3
\$2,500 to \$4,999	2
\$0 to \$2,500	1

(3) **Savings to Violator.** The User shall be assessed between 1 and 5 points depending on the amount of savings resulting to the User due to the violation, according the following table:

<u>Savings</u>	<u>Points</u>
Over \$10,000.....	5
\$7,000 to \$10,000	4
\$5,000 to \$6,999	3
\$2,500 to \$4,999	2
\$0 to \$2,500	1

(4) **Recent Past Violations.** The User shall be assessed between 1 and 5 points depending on the number of past violations in the 365 days before the violation in question, according the following table:

<u>Damage</u>	<u>Points</u>
5 or more	5
4.....	4
3.....	3
2.....	2
1.....	1

(5) **Other Factors.** The User shall be assessed between 1 and 5 additional points based on the severity of other factors, including, without limitation, damage to the POTW, willfulness, concealment of the violation, and endangerment to the public and/or POTW personnel.

(6) **Fractional Points.** The assessment of points may include numbers which are not whole, such as 1.5, to allow flexibility and discretion by the enforcement official or agent in arriving at a fair and appropriate penalty.

(7) **Computation of Penalty.** The amount of the civil penalty shall be equal to the total number of points assessed under this subsection (c) *multiplied by* \$1,000.

(d) Notice of Assessment and Appeal Process.

(1) **In General.** A notice of the assessment of a civil penalty under this Section shall be served personally on the violator or shall be sent by certified mail to the address of the permit holder as noted on the permit, and shall contain—

- (A) the date(s) of violation;
- (B) the permit requirement(s) that was/were violated;
- (C) the amount of the civil penalty assessed;
- (E) the time frame in which an appeal may be filed; and

(E) a description of the appeal process to be followed, including the name, address, and telephone number of the person responsible for accepting such appeal.

(2) **Address for Service.** Each permit holder shall keep the Borough apprised in writing of any change in mailing address. The address on the permit may be used to send correspondence and notices of civil penalty assessment to permit holders. The sending of a notice of civil assessment to a permit holder's address as stated on the permit shall be conclusively pre-

sumed to be valid service. If the certified mail sent to such address is not accepted or picked up by the permit holder, the date of service shall be the date that the certified mail was rejected or returned unclaimed.

(e) Appeal.

(1) In General. Any Person seeking to appeal the assessment of a civil penalty under this Section shall do so by filing a Notice of Appeal with the Borough Manager (with a copy to the Borough's enforcement official or agent who assessed the civil penalty) within thirty (30) days after receipt or service of the notice under subsection (d).

(2) Hearing. Borough Council shall hear all appeals under this Section in accordance with the Local Agency Law, 2 PA. CONS. STAT. § 551 *et seq.* A transcript shall be made of the hearing at the sole expense of the appellant. Appellant shall pay an estimate of the stenographic costs at the time the appeal is filed, and shall pay any balance when billed. Failure to pay an estimate of the costs at the time the appeal is filed shall render the appeal void. Failure to pay any additional stenographic costs within ten (10) days after receipt of a bill for the same shall render the appeal null and void *ab initio*. Borough Council shall either affirm, reverse, or modify the penalty assessed by the Borough's enforcement official or agent based on the evidence received at the hearing and in accordance with the Borough's official civil penalty assessment policy under subsection (c).

(3) Further Appeals. Appeals from the decision of Borough Council shall be made in accordance with applicable law.

(f) Use of Penalties. All civil penalties collected under this Section shall be placed in a restricted account and shall only be used by the Borough (or any owner or operator of any portion of the POTW)—

(1) for the repair of damage and any additional maintenance needed or any additional costs incurred as a result of the violation for which the penalty was imposed;

(2) to pay any penalties imposed on the Borough (or any owner or operator of any portion of the POTW) by the federal or state government for violation of Pretreatment Standards;

(3) for the costs incurred by the Borough (or any owner or operator of any portion of the POTW) to investigate and take the enforcement action that resulted in a penalty being imposed;

(4) for monitoring of discharges in the pretreatment program; and

(5) for capital improvements to the POTW, including Sewage collection lines, which may be required by the pretreatment program.

(g) Civil Penalty Procedure Not Required. Assessment of Civil Penalties under this Section shall not be a bar against, or a prerequisite for, the Borough or the City taking any other action against the User.

§ 65-1211 Costs to Re-Establish POTW Operations.

The Borough and the City shall charge a User for all costs for re-establishing the operation of the POTW after the User has violated, or continues to violate, any provision of this Chapter, a

Wastewater Discharge Permit, any order issued under this Chapter, or any other Pretreatment Standard or Requirement. These costs shall be paid by the User within ten (10) days after notice of assessment of the same. Notice and appeal rights shall be the same as in the case of the assessment of civil penalties. (See § 65-1210(e).) Any User not paying the assessment in a timely manner shall pay an additional penalty of five percent (5%) of the penalty per month or any part thereof.

§ 65-1212 Emergency Suspensions of Discharge.

(a) **In General.** The Borough or the City Director of Public Works may immediately suspend a User's Discharge, after informal notice to the User, whenever such suspension is necessary to stop an actual or threatened Discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Borough or the City Director of Public Works may also immediately suspend a User's Discharge, after notice and an opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

(b) **Immediate Response.** Any User notified of a suspension of its Discharge shall immediately stop or eliminate its contribution. In the event of a User's failure to comply voluntarily and immediately with the suspension order, the Borough or the City Director of Public Works may take such steps as deemed necessary, including immediate severance of the connection to the Sewer System, to prevent or minimize damage to the POTW or its receiving stream, or endangerment to any individuals.

(c) **Recommendation.** The Borough and the City Director of Public Works may allow the User to recommence its Discharge when the User has demonstrated to the satisfaction of the Borough and the City Director of Public Works that the period of endangerment has passed, unless termination proceedings have been initiated against the User under § 65-1213.

(d) **Report.** A User that is responsible, in whole or in part, for any Discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Borough and the City Director of Public Works prior to the date of any show cause hearing under § 65-1204 or termination hearing under § 65-1213.

(e) **No Prior Hearing Required.** Nothing in this Section shall be interpreted as requiring a hearing prior to any emergency suspension under this Section.

§ 65-1213 Termination of Discharge.

(a) **In General.** In addition to the provisions of § 65-909 (relating to Revocation of Wastewater Discharge Permit), a User is subject to termination of its Discharge to the Sewer System for any of the following reasons:

- (1) violation of Wastewater Discharge Permit conditions;
- (2) failure to accurately report the Wastewater constituents and characteristics of its Discharge;
- (3) failure to report significant changes in operations or Wastewater volume, constituents, and characteristics prior to Discharge;
- (4) refusal of reasonable access to the User's premises for the purpose of inspection, monitoring, or sampling; or
- (5) violation of the Pretreatment Standards in Article VI of this Chapter.

(b) **Due Process.** A User will be notified of the proposed termination of its Discharge and be offered an opportunity to show cause under § 65-1204 why the proposed action should not be taken.

(c) **Termination Not Required.** Termination of Discharge to the Sewer System under this Section shall not be a bar to, or a prerequisite for, the Borough or the City taking any other action against the User.