

ORDINANCE NO. 2020-_____

REPEALING AND REENACTING THE CITY OF NEW BRAUNFELS CODE OF ORDINANCES, CHAPTER 130, ARTICLE V, DIVISION 4, RELATING TO WASTEWATER PRETREATMENT BY AMENDING AND ADDING PROVISIONS TO IMPROVE AND UPDATE THE EXISTING ORDINANCE, ESTABLISHING UNIFORM REQUIREMENTS FOR DIRECT AND INDIRECT CONTRIBUTIONS INTO THE WASTEWATER COLLECTION AND TREATMENT SYSTEM OF THE CITY OF NEW BRAUNFELS; PROHIBITING CERTAIN GENERAL DISCHARGES; LIMITING SPECIFIC POLLUTANTS; REQUIRING PROTECTION FROM ACCIDENTAL DISCHARGES; PROVIDING FOR FEES AND CHARGES; PROVIDING FOR WASTEWATER CONTRIBUTION PERMITS; PROVIDING REPORTING REQUIREMENTS; PROVIDING FOR INSPECTION AND SAMPLING; PROVIDING CONFIDENTIALITY REQUIREMENTS; PROVIDING FOR ENFORCEMENT PROCEDURES; REPEALING ALL ORDINANCES INCONSISTENT HERewith; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; AND ORDAINING OTHER MATTERS INCIDENTAL THERETO.

WHEREAS, the City of New Braunfels has heretofore adopted Ordinance. No. 2010-40 on June 28, 2010, which repealed and reenacted City Code, Chapter 130, Article V, Division 4 in its entirety relating to the requirements for the quality of wastewater accepted into the City’s wastewater collection system; and

WHEREAS, New Braunfels Utilities requested that the City Council amend Chapter 130, Article V; Division 4 to reflect changes in applicable regulatory requirements and to clarify selected provisions of the ordinance; and

WHEREAS, in order to better promote the health, safety and general welfare of the community, and its orderly development, it is proposed that said Chapter 130, Article V, Division 4, be repealed and reenacted in the particulars hereinafter set forth:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS:

SECTION 1.

THAT, the recitals set out in the preamble to this Ordinance are hereby found to be true and correct and they are hereby adopted and incorporated as part of this Ordinance.

SECTION 2.

THAT, Chapter 130, Article V, Division 4 of the New Braunfels Code of Ordinances, as heretofore established by ordinance, be and is hereby amended and restated as follows with deleted language signified by strikethrough font and new language signified by underlined font:

ARTICLE V. – SEWER SERVICE

DIVISION 4. - WASTEWATER COLLECTION, TREATMENT

Sec. 130-301. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act as used in this Article V, means the Federal Water Pollution Control Act (PL 92-500), also known as the Clean Water Act of 1977, as amended, 33 USC 1251 et seq.

Applicable Pretreatment Standard means any pretreatment limit or prohibitive standard (federal and/or local) contained in this division deemed to be the most restrictive with which nondomestic users will be required to comply.

Approval Authority means the Chief Administrative Officer of the TCEQ, or a duly authorized representative acting on behalf of the TCEQ, so long as the State has an approved state pretreatment program; otherwise, the regional administrator of the EPA.

Approved Methods means the laboratory procedures and methods approved by the administrator of the EPA and listed in 40 CFR 136.

Authorized representative of the Industrial User means:

- (1) A responsible corporate officer as that term is defined in 40 CFR 403.12(I), if the Industrial User (IU) is a corporation;
- (2) A general partner or proprietor, if the IU is a partnership or proprietorship, respectively, or
- (3) The principal executive officer or director having responsibility for the overall operation of the discharging facility if the IU submitting the reports is a federal, state or local governmental entity, or their agents; or a duly authorized representative of the individual designated above, if the

authorization conforms to the requirements of 40 CFR 403.12(I).

Best Management Practices (BMPs). The schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in sections 130-05 (a) and (b) of this ordinance and 40 CFR 403.5(a)(1) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMPs are only applicable where required by categorical limits or categorical standards. The CA does not currently issue general permits or BMPs for its Industrial Pretreatment Program but may do so in the future.

Biochemical Oxygen Demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for 5 days at 20° centigrade, usually expressed as a concentration (e.g., mg/l).

Categorical Pretreatment Standards means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act which applies to a specific category of IU.

Categorical Industrial User (CIU) means any IU of the City of New Braunfels' POTW (New Braunfels Utilities) which is subject to a national Categorical Pretreatment Standard per 40 CFR §403.3(v)(1)(i).

CEO means the CEO of NBU or that person's authorized representative.

City of New Braunfels means the City of New Braunfels, Texas.

Composite Sample means a sample formed either by continuous sampling or by mixing discrete samples. If discrete sampling is employed, at least 12 aliquots should be composited. The sample may be composited either as a time composite sample: composed of discrete sample aliquots collected at constant time intervals providing a sample irrespective of stream flow; or as a flow proportional composite sample: collected either as a constant sample volume at time intervals proportional to flow, or collected by increasing the volume of each aliquot as the flow increases while maintaining a constant time interval between the aliquots. For wastewater discharges consisting of a single batch discharge in a 24-hour period, a grab sample of the batch discharge may be used to represent the 24-hour composite quality of the wastewater, as long as the batch is mixed prior to sample collection. For wastewater discharges consisting of two or more batch discharges in a 24-hour period, the 24-hour composite quality of the wastewater may be determined via compositing of one grab sample collected from the discharge of each batch, as long as each batch is mixed prior to sample collection.

Control Authority. The Control Authority (CA) for the City of New Braunfels'

POTW means New Braunfels Utilities (NBU), the Chief Executive Officer (CEO) of NBU, the Pretreatment Program Manager, or that person's authorized representative, as long as the City of New Braunfels has an approved pretreatment program. In the absence of an approved POTW pretreatment program, such term shall mean the Approval Authority.

Cooling Water means a significant amount of water discharged from any system of condensation, such as air conditioning, cooling and refrigeration systems.

Daily Maximum Limit means the highest allowable daily discharge.

Discharge Permit means the document issued to control the contribution to the POTW by each Significant Industrial User and other person deemed necessary by the CA to ensure compliance with applicable Pretreatment Standards and requirements.

Dissolved Solids means the total amount of dissolved material, organic and inorganic, contained in water or waste.

Environmental Protection Agency or *EPA* means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, or other duly authorized official of said agency.

Garbage means any solid wastes from the domestic or commercial preparation, cooking or dispensing or manufacturing of food or from the handling, storage, and sale of food products and produce.

Grab Sample means an individual sample which is taken from a wastestream collected over a period of time not exceeding 15 minutes with no regard to the flow of the wastestream and without consideration of time.

Hazardous Waste means those substances described and listed in 40 CFR 261, which is adopted hereby and incorporated by reference in this division, and a copy of which shall be maintained at the offices of NBU.

Holding Tank Waste means any waste from holding tanks, such as vessels, chemical toilets, campers, trailers, septic tanks, vacuum pump tank trucks, or similar type facilities or equipment, other than industrial waste.

Indirect Discharge or *Discharge* means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c), or (d) of the Act.

Industrial User (IU) or *User* means a source of nondomestic waste; any

nondomestic source discharging pollutants to a POTW.

Industrial Waste means any amount of solid, liquid or gaseous substance or form of energy discharged by, disposed of, or permitted to flow or escape from any industrial, manufacturing, trade or commercial establishment, including nonprofit organizations, governmental agencies or business activities or educational institutions. It shall not include sewage discharge from sanitary conveniences on the premises unless the sewage is commingled with industrial waste.

Interference means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

- (1) Inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use, or disposal; and
- (2) Causes a violation of any requirement of the POTW's NPDES permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder, or more stringent state or local regulations: Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA), including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to subtitle D of the SWDA, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research, and Sanctuaries Act.

Monthly Average Limit means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

National Pretreatment Standard or Pretreatment Standard or Standard means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act which applies to a specific category of IUs and provides limitations on the introduction of pollutants into POTWs. This term includes the prohibited discharge standards under 40 CFR 403.5, including local limits.

New Braunfels Utilities means the CA of this Ordinance, NBU.

New Source means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act and any amendments, which will be applicable to such source if standards are thereafter

promulgated in accordance with that section, subject to the conditions and limitations of 40 CFR 403.3(k)(1).

Noncontact Cooling Water means cooling water which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

Nondomestic User means any person who discharges, causes or permits the discharge of wastewater from any facility other than a residential unit.

Normal Domestic Sewage means wastewater, excluding industrial wastewater requiring special treatment, discharged into the POTW and in which the average concentration of total suspended solids is not more than 250 mg/l and COD is not more than 500 mg/l.

NPDES Permit means a permit issued to the POTW pursuant to section 401 of the Act.

Pass Through means a discharge which exits the POTW 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 POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

Permittee means an IU that is granted a control mechanism (permit) to discharge a wastestream into the POTW.

Person means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

pH means a measure of the acidity or alkalinity of a solution, expressed in standard units.

Pollutant means any dredged spoil, spoil waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rocks, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Pollution means the manmade or man-induced alteration of the physical, thermal, chemical, radiological or biological quality of or the contamination of any waters of the State to a degree which unreasonably affects such waters for beneficial uses.

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or

in lieu of discharging or otherwise introducing such pollutants into the POTW. Such reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d).

Pretreatment Program Manager means the individual NBU has assigned to oversee the NBU's Industrial Pretreatment Program, or the Pretreatment Program Manager's authorized representative, as long as the City of New Braunfels has an approved pretreatment program. In the absence of an approved POTW pretreatment program such term shall mean the Approval Authority.

Pretreatment Requirements means any substantive or procedural requirement related to pretreatment, other than a National Pretreatment Standard, imposed on an IU.

Process Wastewater means any water which, during manufacturing or processing, comes into direct contact with, or results from, the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

Publicly Owned Treatment Works (POTW) means a treatment works as defined by section 212 of the Act, which is owned by a state or municipality as defined by section 502(4) of the Act. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant.

Receiving Stream means the watercourse, stream, or body of water receiving the treated effluents from the POTW.

Sanitary Convenience means any plumbing fixture (except for a food waste disposal unit) not required to have a sand and/or grease trap (interceptor) according to provisions of the plumbing code of the City of New Braunfels.

Shall, May. The use of the word "shall" indicates a mandatory condition. The use of the word "may" indicates a discretionary condition.

Significant Industrial User (SIU).

- (1) Except as provided in subsection (2) of this definition, the term "Significant Industrial User" means:
 - a. All IUs subject to Categorical Pretreatment Standards under 40 CFR

403.6 and 40 CFR chapter 1, subchapter N, and

b. Any other IU that:

1. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
2. Contributes a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
3. Is designated as such by the CA, in accordance with 40 CFR 403.8(f)(6) if applicable.

- (2) Upon a finding that an IU meeting the criteria in subsection (1)b. of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement, the CA may at any time, on its own initiative or in response to a petition received from an IU or POTW, and in accordance with 40 CFR 403.8(f)(6) if applicable, determine that such IU is not a SIU.

Significant Non-compliance. An IU is in "significant noncompliance" if its violation meets one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant during a six-month period exceed, by any magnitude, a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined by ORD Section 130-305;
- (2) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements for each pollutant parameter taken for each pollutant parameter during a six-month period equal or exceed the product of a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined by ORD Section 130-305, multiplied by the applicable TRC (TRC equal to 1.4 BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a numeric Pretreatment Standard or Requirement, as defined by ORD Section 130-305 (daily maximum, long-term average, Instantaneous Limits, or narrative standard) that the CA determines has caused, alone or in combination with other discharges, interference or pass through

(including endangering the health of POTW personnel or the general public);

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under 40 CFR 403.8(f)(1)(vi)(B) to halt or prevent such a discharge;

(5) Failure to meet within 90 calendar days after the scheduled date a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide, within 45 calendar days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; and

(8) Any other violation or group of violations which may include a violation of BMPs that the CA determines will adversely affect the operation or implementation of the pretreatment program.

Slug Discharge or Slug Loading means any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause an interference or pass through, or in any other way violate the CA's regulations, local limits, or permit conditions.

Standard Industrial Classification (SIC) means a classification scheme based on the type of manufacturing or commercial activity at a facility pursuant to the Standard Industrial Classification Manual prepared by the Executive Office of the President, Office of Management and Budget, 1987 (NIS Order no. PB 87-10001Z). Some facilities have several activities which will cause them to have more than one classification code number.

State means the State of Texas.

Storm Water means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

Surcharge means the additional sewer service charge levied against any person for discharging into a sanitary sewer waste greater in strength than the concentration of values established as representative of normal charges or are greater in flow.

Total Suspended Solids (TSS) means a measure of the suspended solids in wastewater, effluent, or water bodies, determined by tests for "total suspended non-

filterable solids."

Toxic Pollutant means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under the provisions of section 307(a) of the Clean Water Act.

Waters of the State means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, the Edwards and Trinity Aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Texas or any portion thereof.

Sec. 130-302. - Purpose and Objectives.

- (a) This division sets forth uniform requirements for users of the wastewater collection and treatment systems (Publicly Owned Treatment Works, POTW) for the City of New Braunfels operated by New Braunfels Utilities (NBU) as the CA and enables the CA to comply with all applicable state and federal laws required by the Clean Water Act of 1977 (33 USC 1251 et seq.) and the general pretreatment regulations (40 CFR 403).
- (b) The objectives of this division are to:
 - (1) Prevent the introduction of pollutants into the POTW which will interfere with the operation of the POTW, including interference with its use or disposal of resulting sludge;
 - (2) Prevent the introduction of pollutants into the POTW which will pass through the POTW inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the POTW;
 - (3) Improve the opportunity to recycle and reclaim wastewaters and sludges from the POTW;
 - (4) Ensure the quality of sludge to allow its use and disposal in compliance with statutes and regulations;
 - (5) Provide for equitable distribution of the cost of the POTW;
 - (6) Prevent pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems from being introduced into a POTW; and
 - (7) Protect both POTW personnel who may be affected by wastewater and

sludge in the course of their employment and the general public.

- (c) This division provides for the regulation of users of the POTW through the issuance of permits to certain nondomestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customer's capacity will not be preempted, and provides for the setting of fees for the equitable distribution of costs resulting from the program established in this division.
- (d) This division shall apply within the City of New Braunfels and to persons outside the corporate boundaries of the City of New Braunfels who are, by contract or agreement with the City of New Braunfels, users of the POTW of the City of New Braunfels operated by NBU as the CA. Except as otherwise provided in this division, the CEO of NBU shall administer, implement, and enforce the provisions of this division.
- (e) The pretreatment program is intended to enable the POTW to comply with the NPDES permit conditions, sludge use and disposal requirements and federal and state laws in accordance with 40 CFR § 403.2.

Sec. 130-303. - Administration.

Except as otherwise provided herein, the CA shall administer, implement, and enforce the provisions of this division. Any powers granted to or duties imposed upon the CA may be delegated by the Pretreatment Program Manager to other CA personnel.

The Pretreatment Program Manager will evaluate the data furnished by the user and may require additional information. Within 45 calendar days of receipt of a complete permit application, the Pretreatment Program Manager will determine whether to issue an individual wastewater discharge permit. The Pretreatment Program Manager may deny any application for an individual wastewater discharge permit.

Sec. 130-304. - Abbreviations.

The following abbreviations, when used in this division, shall have the meanings designated in this section:

ASTM means American Society for Testing and Materials.

BOD means Biochemical Oxygen Demand.

CA means Control Authority.

CEO means Chief Executive Officer of New Braunfels Utilities.

CFR means Code of Federal Regulations.

COD means Chemical Oxygen Demand.

EPA means the United States Environmental Protection Agency.

l means liter.

mg means milligrams.

mg/l means milligrams per liter.

NBU means New Braunfels Utilities.

NPDES means National Pollutant Discharge Elimination System.

ORD means Sewer Use Ordinance of the City of New Braunfels Municipal Code.

POTW means Publicly Owned Treatment Works.

SIC means Standard Industrial Classification.

SWDA means the Solid Waste Disposal Act, 42 USC 6901 et seq.

TCEQ means the Texas Commission on Environmental Quality.

TSS means Total Suspended Solids.

USC means the United States Code.

WEF means the Water Environment Federation.

Sec. 130-305. - Compliance with Pretreatment Standards.

- (a) *Prohibited discharges and limitations in general.* No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will cause pass through or interference. These general prohibitions and the specific prohibitions listed in this section apply to all such users of a POTW whether or not the user is subject to other National Pretreatment Standards or any other national, state, or local Pretreatment Standards or requirements. The following substances are specifically prohibited and shall not be introduced into the POTW:
- (1) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to

the operation of the POTW, including but not limited to waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) as determined by the testing methods specified in 40 CFR 261.21. At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the POTW or at any point in the POTW, be more than five percent nor shall any single reading be over ten percent of the lower explosive limit (LEL) of the meter. Prohibited materials include substances in sufficient quantities that the CA, the State or the EPA has notified the user that the materials constitute a fire hazard or a hazard to the POTW.

- (2) Solid or viscous substances in amounts which will cause obstruction to the flow in the POTW resulting in interference with the operation of the wastewater treatment facilities, including, but not limited to, grease, garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, plastics, gas, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.
- (3) Any wastewater having a pH less than 5.0 or more than 11.0, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW. Samples used shall be grab samples.
- (4) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or to exceed the limitation set forth in a Pretreatment Standard. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to section 307(a) of the Act.
- (5) Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
- (6) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the POTW cause the POTW to be in

noncompliance with (a) sludge use or disposal criteria, guidelines or regulations developed under section 405 of the Act, (b) any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or (c) state criteria applicable to the sludge management method being used.

- (7) Any substance which will cause the POTW to violate its NPDES and/or state disposal system permit or the receiving water quality standards.
- (8) Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
- (9) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40 degrees Celsius (104 degrees Fahrenheit) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits.
- (10) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference to the POTW. In no case shall a slug load have a flow rate or contain concentration or quantities of pollutants that exceed for any time period longer than 15 minutes more than five times the average 24-hour concentration, quantities, or flow during normal operation, as permitted by the CA.
- (11) Any wastewater which causes a hazard to human life or creates a public nuisance.
- (12) Water or waste containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of the state and other agencies having jurisdiction over discharge to the receiving waters.
- (13) Any trucked or hauled pollutants, except at discharge points designated by the POTW. Any hauled septic, industrial, or other wastes or pollutants shall not be discharged to the POTW. Any removal of manhole lids or other access to the POTW for the purpose of discharging wastes at times and/or locations other than those designated by the CA shall be considered a violation and shall be subject to enforcement action including

finest and penalties.

- (14) Any waters or wastes containing any toxic substances in quantities that are sufficient to interfere with the biochemical processes of the wastewater treatment plant, that will pass through the plant into the receiving stream in amounts exceeding the standards set by federal, state or other competent authority having jurisdiction, that contaminate sewage sludge, or that contain iron or any other toxic ions, compounds, or substances that exert an excessive chlorine or disinfectant requirement on the POTW due to concentrations or amounts exceeding the limits established from time to time by the CA.
- (15) Any slug load, which shall mean any pollutant, including oxygen demanding pollutants (BOD or any other similar pollutant), released in a single extraordinary discharge episode of such volume or strength as to cause interference to the POTW.
- (16) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water or other unpolluted water, unless first approved by the CA.
- (17) Any water or waste containing suspended solids or dissolved solids of such character and quantity that unusual provisions, attention, and expense would be required to handle such materials at the wastewater treatment plant, its pumping stations, or other facilities.
- (18) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
- (19) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

When the CA determines that a user is contributing any of the above specifically prohibited pollutants to the POTW in such amounts as to cause interference or pass through, the CA shall: (i) advise the user of the impact of the contribution on the POTW. (ii) develop effluent limitations for such user to correct the interference or pass through, and (iii) take appropriate enforcement action if the user does not comply or make a reasonable effort to eliminate the prohibited

discharge.

(b) *Specific pollutant limitations.*

- (1) Without limiting the generality of the prohibited discharges set out in subsection 130-305(a), no person shall discharge over a 24-hour period any of the following elements in solution or suspension in concentrations exceeding the limits for the specific wastewater treatment plant which serves such user, as follows:

Constituent	Daily Maximum (mg/l)
Arsenic, Total	0.10
Cadmium, Total	0.11
Chromium (Tot)	2.96
Copper	2.21
Cyanide, Total	1.60
Lead, Total	0.33
Mercury, Total	0.06
Molybdenum	0.59
Nickel, Total	1.99
Selenium, Total	0.055
Silver, Total	2.03
Zinc, Total	2.84

Dilution of these elements in solution or suspension in lieu of treatment or

removal is specifically prohibited. The CA may further restrict the discharges of those wastes which contain these elements to a definite limit expressed in the units of "pounds per day" to prevent the employment of dilution of such pollutants in order to meet the concentration limits of this subsection.

- (2) Phenols or other substances in such concentrations as to produce odor or taste in the waters receiving wastewater treatment effluent if the water is used as drinking water for human consumption.
 - (3) Phosphorous in excess of 15 milligrams per liter or phosphates in excess of 46 milligrams per liter.
 - (4) Sulphates at a concentration that will increase the concentration at the treatment plant influent to 50 milligrams per liter or higher.
 - (5) Fluorides in excess of five milligrams per liter.
 - (6) Any herbicides, pesticides, fungicides and similar poisonous or toxic substances in quantities that would injure or interfere with the wastewater treatment process or constitute a hazard to human or animal plant life, including aquatic organisms, or create any hazards in the waters receiving the wastewater treatment plant effluent.
 - (7) Polychlorinated biphenyls (PCB) in excess of 0.0001 milligrams per liter.
 - (8) Waste containing radioactive materials or isotopes in concentrations greater than allowable under applicable state and federal regulations.
- (c) *Preemption of limitations.* Upon the promulgation of federal Pretreatment Standards for a particular industrial category, the federal standard, if more stringent than the limitations imposed under this division for sources in that category, shall immediately supersede the limitations imposed under this division. The CEO shall notify all affected users of the applicable reporting requirements under 40 CFR 403.12. Further, State requirements and limitations on discharges shall apply in any case where those requirements are more stringent than federal requirements and limitations or those in this division.
- (d) *Accidental discharges.*
- (1) Each permitted user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this division. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner's or user's own cost and expense.

Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the CEO for review, and shall be approved by the CEO before construction of the facility. No user who commences contribution to the POTW after the effective date of Ordinance No. 92-22 shall be permitted to introduce pollutants into the POTW until accidental discharge procedures have been approved by the CEO. Review and approval of such plans and operating procedures shall not relieve the IU from the responsibility to modify the user's facility as necessary to meet the requirements of this division. In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the CA of the incident. The notification shall include location of the discharge, type of waste, concentration and volume, and corrective actions taken.

- (2) Within 5 days following an accidental discharge, the user shall submit to the CEO a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to persons or property. Such notification shall not relieve the IU of any fines, civil penalties, or other liability that may be imposed by this division or other applicable law.
 - (3) A notice shall be permanently posted on the user's bulletin board or other prominent place informing employees whom to call in the event of a harmful discharge. Employers shall ensure that all employees who may cause or suffer such a harmful discharge to occur are informed of the emergency notification procedure.
- (e) *Ordinance amendments.* The City of New Braunfels and the CA reserve the right to establish by ordinance more stringent limitations or requirements on discharges to the POTW if deemed necessary to comply with the objectives presented in section ORD §130-302. References in this division to sections of 40 CFR shall include those sections as they are currently promulgated and as subsequently amended from time to time.
- (f) *Special agreements.* The CA is authorized to enter into special agreements with IUs setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a Pretreatment Standard or requirement. However, the IU may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. It may also request a variance from the Categorical Pretreatment Standard from EPA. Such a request will be approved only if the IU can prove that factors relating to its discharge are fundamentally different from the factors considered by EPA when establishing

that Pretreatment Standard. An IU requesting a fundamentally different factor variance must comply with the procedural and substantive provisions in 40 CFR 403.13.

- (g) *Best Management Practices.* The CA may develop best management practices for general use or as applicable to individual discharge permits to enforce the Local Limits and the requirement of § 130-305(a) and (b). The CA will provide specific notice to IUs of BMP requirements and enforceability. This notice will be provided through the CA's SUO and/or individual or general control mechanisms, and will make clear which IUs are subject to the BMPs, and what affected IUs must do to comply with their requirements. The CA will specify reporting requirements for IUs to follow as well as a time frame that IUs must retain records of compliance to BMPs. In order to be enforceable by the CA, a BMP must include the following (i) EPA Categorical Standards which contain BMP's or pollution prevention alternatives and/or (ii) Local Limits and/or (iii) other Pretreatment Standards. BMPs may be used in lieu of numeric local limits if: (i) developed by the CA to protect against pass through and interference, (ii) used where numeric limits are infeasible or impractical, and (iii) terms of BMP are verifiable. When issuing BMPs, the CA will specify the enforceable BMPs and those IUs they cover in the legal authority (SUO) and any individual or general control mechanism (permit). The BMPs will be verifiable and the CA is authorized to evaluate BMP self-reporting in order for the CA to determine compliance or noncompliance with BMP requirements.

Sec. 130-306. - Pretreatment and Disposal of Prohibited Wastes.

- (a) *Pretreatment of prohibited wastes.* The CA may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants to the POTW by non-domestic users where such contributions do not meet applicable Pretreatment Standards and requirements or where such contributions would cause the POTW to violate its NPDES permit.

Any person contributing waste prohibited from discharge into a sanitary sewer by this division shall pretreat or otherwise dispose of the prohibited waste so as to make the waste to be discharged into the POTW acceptable under the standards established in this division and in compliance with all federal Pretreatment Standards. All facilities required to pretreat wastewater to a level acceptable to the standards of this division shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facility and operating procedures shall be submitted to the CA for review, and shall be acceptable to the CA before construction of such facility. However, the review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce effluent acceptable to the CA under the provisions of this division. Any subsequent changes in the

pretreatment facilities or methods of operation shall be reported to and be acceptable to the CA prior to the user's initiation of the changes.

- (b) *Materials removed from pretreatment facilities.* Storage, handling, disposal and transportation of wastes shall be done according to all applicable federal, state and local regulations and statutes that pertain to the type and/or class of waste generated.
- (c) *National Pretreatment Standards.* Any IU subject to Categorical Pretreatment Standards promulgated pursuant to section 307(b) and (c) of the Act shall comply with all regulations, pretreatment requirements, and/or discharge limits applicable to that particular industrial category. National Pretreatment Standards take precedence over this division; provided, however, that the IU shall continue to meet specific discharge limits set forth in this division which are not inconsistent with the Categorical Pretreatment Standards applicable to that industry, and more stringent local standards. The Categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated.
 - (1) Where a Categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the CA may impose equivalent concentration or mass limits in accordance with CFR 40 403.6(c).
 - (2) When wastewater subject to a Categorical Pretreatment Standard is mixed with wastewater not regulated by the same standard, the CA shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
 - (3) A user may obtain a variance from a Categorical Pretreatment Standard if the user can prove, pursuant to the procedural and substantive provisions in CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the Categorical Pretreatment Standard.
 - (4) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.
- (d) *Hazardous waste activity.* Any IU or person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR 261 or whose act or process first causes a hazardous waste to become subject to regulation, shall provide the CA with the United States EPA Identification Number assigned to that generator as notice of conformance with applicable state and federal regulations regarding the disposal of hazardous waste. An IU shall provide the proper notices required by 40 CFR 403.12(p) with respect to substances discharged into

the POTW otherwise considered hazardous waste as provided in subsection 130-310(g).

- (e) *Dilution limitations.* Dilution as a means of meeting concentration limits shall be prohibited. No user shall ever increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the applicable Pretreatment Standards, or in any other pollutant-specific limitation developed by the CA or State. However, dilution under certain circumstances may be an acceptable means of complying with pretreatment of some of the substances described in section 130-305 if such dilution is used in connection with procedures approved by the CA consistent with this division. The CA may impose mass limitations on users that are using dilution to meet applicable Pretreatment Standards, or in other cases, where the imposition of mass limitations is appropriate. In such cases, the periodic compliance report shall indicate the mass of pollutants regulated by Pretreatment Standards in the effluent of the user. These reports shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production in mass, where requested by the CA of pollutants contained therein which are limited by the applicable Pretreatment Standards.

- (f) *Hauled wastewater.*
 - (1) Septic tank waste may be accepted into the POTW at a designated receiving structure within the treatment plant area, and at such times as are established by the CA, provided such waste does not violate section 130-305 or any other requirements established or adopted by NBU. Wastewater discharge permits for individual vehicles to use such facilities shall be issued by the CA.

 - (2) The discharge of hauled industrial waste as industrial septage requires prior approval and a wastewater discharge permit from NBU. The CA shall have authority to prohibit the disposal of such waste if such disposal would interfere with the treatment plant operation. Waste haulers are subject to all other sections of this division.

 - (3) Fees for dumping septage will be established as part of the IU fee system as authorized in section 130-313.

Sec. 130-307. - Pretreatment Facilities.

- (a) *Adequate Industrial User Pretreatment Facilities.* Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all Categorical Pretreatment Standards, local limits, and the prohibitions set out in Section 130-305 (a) of this ordinance within the time limitations specified by the EPA, the State, or the CA, whichever is the most stringent. Any facilities necessary for compliance must be provided, operated and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the CA for review, and shall be acceptable to the CA before such are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the CA under the provisions of this ordinance.
- (b) *Vandalism of POTW.* No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment, or other part of the POTW. Any person found in violation of this subsection shall be subject to the sanctions set out in section 130-314.

Sec. 130-308. - Additional Pretreatment Measures.

- (a) Whenever deemed necessary, the CA may require users to restrict their discharge during peak flow periods, to designate that a certain wastewater be discharged only into specific sewers, to relocate and/or consolidate points of discharge, and to separate sewage from industrial wastestreams, and impose such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this division.
- (b) The CA may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
- (c) Grease, oil, and sand interceptors shall be provided when, in the opinion of the CA, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the CA and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense. Interceptors shall be

cleaned and serviced at a minimum frequency of 90 calendar days or more often if necessary. All waste haulers and interceptor/trap service companies are required to provide the Pretreatment Program Manager with waste hauling manifests containing at a minimum the date of service and the volume of waste removed for work performed within the jurisdiction of the CA. This is to be done monthly by the 10th of each month.

- (d) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detector meter, or other control device as deemed necessary by the CA.

Sec. 130-309. - Discharge Permits.

- (a) *Wastewater analysis.* When requested by the CA, a user must submit information on the nature and characteristics of its wastewater within 30 calendar days of the request. The CA is authorized to prepare a form for this purpose and may periodically require users to update this information.
- (b) *Permit requirements.*
 - (1) Non-domestic users must notify the CA of the nature and characteristics of their wastewater by completing a wastewater survey prior to commencing their discharge. The CEO is authorized to prepare a form for this purpose and may periodically require IUs to update the survey. Failure to complete this survey shall be reasonable grounds for terminating service to the IU and shall be considered a violation of this division.
 - (2) It shall be unlawful for IUs to discharge wastewater, either directly or indirectly, into the POTW without first obtaining a discharge permit from the CA. Any violation of the terms and conditions of an IU discharge permit shall be deemed a violation of this division. Obtaining a discharge permit does not relieve a permittee of its obligation to obtain other permits required by federal, state or local law.
 - (3) The CA may require that other IUs, including liquid waste haulers, obtain discharge permits as necessary to carry out the purposes of this division.
 - (4) Any SIU located beyond the city limits shall obtain a permit application in accordance with subsection (b) of this section. New IUs located beyond the city limits shall submit such applications to the CA 90 calendar days prior to discharging into the sanitary sewer. Upon review and approval of such application, the CA may enter into a contract with the user which requires the user to subject itself to and abide by this division, including all permitting, compliance monitoring, reporting, and enforcement provisions

of this division.

- (5) Any entity which collects wastewater from a SIU(s) outside of the CA's jurisdiction that requires treatment in the POTW must enter into an Interjurisdictional Agreement with the CA and meet the following requirements:
 - a. Adopt and enforce ordinances (including local limits) that are least as stringent as the wastewater collection and treatment ordinance of New Braunfels, being Article V, Division 4, Section 130-301 et seq. of its Code of Ordinances. The entity must enact any amendments to its ordinance within 45 business days after the City of New Braunfels amends its wastewater collection and treatment ordinance.
 - b. Perform technical and administrative duties necessary to implement and enforce its ordinance against IUs in drainage area including: updating industrial waste survey, issue permits to all users required to obtain a permit, conduct inspections, sampling and analysis, perform enforcement actions and any other technical or administrative duties that the CA and the entity deem appropriate.
 - c. Any other application regulations to assure compliance with federal, state and the CA regulations.
- (6) Existing connections. Any SIU which discharges non-domestic waste into the POTW prior to the effective date of this division and that wishes to continue such discharges in the future shall apply to the CA for a discharge permit and shall not cause or allow discharges to the POTW to continue, except in accordance with the permit issued by the CA.
- (7) New connections. Any SIU proposing to begin or recommence discharging non-domestic waste into the POTW must obtain a discharge permit prior to beginning or recommending such discharge. An application for this permit must be filed at least 90 calendar days prior to the anticipated start-up date.
- (8) Minor contributors as defined in this section may also be required to obtain a discharge permit in accordance with this division. A "minor contributor" is defined as a person/entity that has potential for discharging pollutants that exceed specific local ordinance limits and/or has potential for accidental spillage of slug discharges of pollutants into the POTW.

(c) *Permit application.*

- (1) In order to be considered for a discharge permit, persons required to obtain a discharge permit shall submit the following information on an application form approved by the CA:
 - a. Name, address and location (if different from the address),
 - b. Standard industrial classification (SIC) code of both the industry as a whole and any processes for which federal categorical standards have been promulgated,
 - c. Wastewater constituents and characteristics including any pollutants in the discharge which are limited by any federal, state or local standards. Sampling and analysis will be undertaken in accordance with 40 CFR Part 136,
 - d. Time and duration of discharge,
 - e. Daily maximum, daily average, and monthly average wastewater flow rates, including daily, monthly and seasonal variations, if any,
 - f. Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains and appurtenances by size, location and elevation,
 - g. Description of activities, facilities and plant processes on the premises, including a list of all materials and chemicals used at the facility which are or could accidentally or intentionally be discharged to the POTW,
 - h. Each product produced by type, amount, process or processes and rate of production,
 - i. Type and amount of raw materials processed (average and maximum per day),
 - j. Number and type of employees, and hours of operation and proposed or actual hours of operation of the pretreatment system, and
 - k. Compliance schedule. Whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet all applicable federal, state and local standards. If additional pretreatment and/or O&M will be required to meet the

standards, then the IU shall indicate the shortest time schedule necessary to accomplish installation or adoption of such additional treatment and/or O&M. The completion date in this schedule shall not be longer than the compliance date established for the applicable Categorical Pretreatment Standard. The following conditions apply to this schedule:

1. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable Pretreatment Standards (such events include hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, beginning operation, and conducting routine operation). No increment referred to in this subsection shall exceed 9 months.
 2. No later than 14 calendar days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the CA including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than 9 months elapse between such progress reports to the CA.
- (2) All plans required in subsection (b)(1) of this section must be certified for accuracy by a state registered professional engineer.
 - (3) All applications must contain the following certification statement and be signed by an authorized representative of IU:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with the system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the

possibility of fine and imprisonment for knowing violations."

- (4) If an authorization under subsection (b)(3) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subsection (b)(3) must be submitted to the CA prior to or together with any reports to be signed by an authorized representative.
 - (5) The CA will evaluate the data furnished by the IU and may require additional information. After evaluation of the data furnished, the CA may issue an IU a discharge permit subject to the terms and conditions provided in this section.
- (d) *Contents of permit.* Discharge permits shall include such conditions as are reasonably deemed necessary by the CA to prevent pass through or interference, protect the quality of the water body receiving the POTW's effluent, protect worker health and safety, facilitate POTW sludge management and disposal, protect ambient air quality, and protect against damage to the POTW collection system or plant. Permits shall contain, but need not be limited to, the following:
- (1) Statement of duration - in no case more than 5 years.
 - (2) Statement of non-transferability without first obtaining the prior approval of the CA in accordance with subsection 130-309(e)(5).
 - (3) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
 - (4) Limits on the average and/or maximum concentration, mass, or other measure of identified wastewater constituents or properties including BMPs, if applicable.
 - (5) Self-monitoring, sampling, reporting, notification, and record-keeping requirements for 3 years or more, including BMPs. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law.
 - (6) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment

works.

- (7) Development and implementation of spill control plans or other special conditions including additional management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges.
- (8) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW.
- (9) Requirements for installation and maintenance of inspection and sampling facilities.
- (10) Specifications for monitoring programs, which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
- (11) Compliance schedules.
- (12) Requirements for submission of technical analytical reports or discharge reports.
- (13) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the CA and affording access to the NBU CEO or the CEO's representatives.
- (14) Requirements for notification of any new introduction of wastewater constituents or of any substantial change in the volume or character of the wastewater being introduced into the POTW.
- (15) Requirements for the notification of any change in the manufacturing and/or pretreatment process used by the permittee.
- (16) Requirements for notification of excessive, accidental, or slug discharges.
- (17) Statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.
- (18) Other conditions as deemed appropriate by the CA to ensure compliance with this division and state and federal laws, rules, and regulations.
- (19) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal Pretreatment Standards, including those which become effective during the term of the

permit.

- (20) Specific waived pollutant (delisted) identified in the individual control mechanism and resume monitoring if waived pollutant is found to be present. Non-detectable results may only be used to demonstrate a pollutant is not present if EPA [most sensitive] analytical method from 40 CFR 136 with lowest minimum detection level for that pollutant was used in the analysis.
- (21) The process for seeking a waiver for pollutants not present or expected to be present.

(e) *Issuance of permits.*

- (1) *Permit duration.* Permits shall be issued for a specified time period, not to exceed 5 years. A permit may be issued for a period less than five years at the discretion of the CA. Each wastewater discharge permit will indicate a specific expiration date.
- (2) *Public notification.* The CA will publish in the newspaper in Comal County, Texas, with the largest circulation, notice of intent to issue a pretreatment permit, at least 14 calendar days prior to issuance. The notice will indicate a location where the draft permit may be reviewed and an address where written comments may be submitted.
- (3) *Appeals.* The CA will provide all interested persons with notice of a final permit decision. Within 30 calendar days of the date the CA issues a decision, any person, including an IU, may petition for a review of the CA's permit decision as outlined below. Failure to submit a timely petition shall be considered waiver of an appeal.
 - a. The appealing party shall submit a written petition for review to the CEO of NBU at the administrative offices of NBU.
 - b. The petition for review must identify the specific permit provision(s) objected to, the reasons for each objection, and the relief sought, including any alternative permit provision(s) requested, if any.
 - c. The CEO shall issue a written decision on the petition for review within 14 calendar days of receipt of the petition. The CEO may request additional information from the appealing party or CA staff while the review is pending at the CEO's discretion.
 - d. The appealing party may seek a re-consideration of the CEO's

decision by submitting a written request for re-consideration to the NBU Board of Trustees. The Board of Trustees may request a written response from the CA or may convene a hearing on the re-consideration request, or both, at the sole discretion of the Board of Trustees. The Board of Trustees shall affirm the decision of the CEO or remand the permit to the CEO with instructions for modification of the permit in accordance with the ruling of the Board of Trustees.

- e. The NBU Board of Trustees shall issue a written decision concerning the appeal and its decision shall be considered the final administrative decision on the permit for purposes of judicial review.
 - f. The appealing party seeking judicial review of the final administrative decision on the permit must file a petition in the District Court, Comal County Texas, within 30 calendar days of the date the final administrative decision is signed.
 - g. Filing an appeal shall not suspend or stay the permit issued by the CA. However, enforcement of the specific provision or provisions subject to appeal shall be stayed during the pendency of an appeal.
- (4) *Permit modifications.* The CA may modify the permit for good cause, including, but not limited to, the following:
- a. To incorporate or implement any new or revised federal, state, or local Pretreatment Standards or requirements.
 - b. To address material or substantial alterations or additions to the discharger's operation processes, discharge volume, or discharge character that were not considered in the provisions of a current permit.
 - c. To address a change in any condition in either the IU or the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge.
 - d. To evaluate information indicating that the permitted discharge poses a threat to the CA's POTW, POTW personnel or the receiving waters.
 - e. To adjudicate a violation of any terms or conditions of the permit.
 - f. To assess a misrepresentation or failure to disclose fully all relevant

facts in the permit application or in any required reporting.

- g. To consider a revision or grant of variance from such categorical standards pursuant to 40 CFR 403.13.
- h. To correct typographical or other errors in the permit.
- i. To reflect transfer of the facility ownership and/or operation to a new owner/operator.
- j. To respond to the request of the permittee, provided such request does not create a violation of any applicable requirements, standards, laws, or rules and regulations.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition or provision.

- (5) *Transfer of permit.* Permits may be reassigned or transferred to a new owner and/or operator with prior approval by the CA, as follows:
 - a. The permittee must give at least 30 calendar days advance notice to the CA.
 - b. The notice must include a written certification by the new owner which:
 - 1. States that the new owner has no immediate intent to change the facility's operations and processes;
 - 2. Identifies the specific date on which the transfer is to occur; and
 - 3. Acknowledges that the new owner and/or operator accepts full responsibility for complying with the existing permit.
- (6) *Termination of permit.* Pretreatment permits may be terminated as provided in subsection 130-314(a)(8).
- (7) *Reissuance of permit.* The user shall apply for permit reissuance by submitting a complete permit application a minimum of 90 calendar days prior to the expiration of the user's existing permit.
- (8) *Continuation of expired permits.* An expired permit will continue to be

effective and enforceable until the permit is reissued if:

- a. The IU has submitted a complete permit application at least 90 calendar days prior to the expiration date of the user's existing permit; and
- b. The failure to reissue the permit, prior to expiration of the previous permit, is not due to any act or failure to act on the part of the IU.

(9) *Special agreements.* Nothing in this division shall be construed as preventing any special agreement or arrangement between the CA and any user whereby wastewater of unusual strength or character is accepted into the POTW and specially treated and subject to any payments or user charges as may be applicable. However, no discharge which violates Pretreatment Standards will be allowed under the terms of such special agreements. If, in the opinion of the CA, the wastewater may have the potential to cause or result in any of the following circumstances, no such special agreement will be made:

- a. Pass through or interference;
- b. Endangering of municipal or utility employees or the public.

Sec. 130-310. - Reporting Requirements.

(a) *Baseline Monitoring Reports (BMRs).* Within 180 calendar days after the effective date of a Categorical Pretreatment Standard, or 180 calendar days after the final administrative decision made upon a category determination submission under 40 CFR 403.6(a)(4), whichever is later, existing IUs subject to such Categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the CA a report which contains the information listed in 40 CFR 403.12(b)(1)-(7). Where reports containing this information already have been submitted to the Director of the EPA or regional Administrator of the EPA in compliance with the requirement of 40 CFR 128.140(b)(1977), the IU will not be required to submit this information again. At least 90 calendar days prior to commencement of discharge, new sources, and sources that become IUs subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the CA a report which contains the information listed in 40 CFR 403.12(b)(1)-(5). New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable Pretreatment Standards. New sources shall describe operations and other permits held, give estimates of flow measurements and measurement of pollutants as required in 40 CFR 403.12(b)(4) and (5), submit documentation to demonstrate compliance

with a BMP where a required BMP or pollution prevention (P2) alternative is part of the categorical standard, and certify compliance with Pretreatment Standards.

- (b) *Compliance reports.* Within 90 calendar days following the date for final compliance with applicable Categorical Pretreatment Standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any IU subject to Pretreatment Standards and requirements shall submit to the CA a report containing the information described in 40 CFR 403.12(b)(4)—(6). For IUs subject to equivalent mass or concentration limits established by the CA in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long term production rate. For all other IUs subject to Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period and documentation demonstrating compliance with BMPs or P2 alternative, if applicable.
- (c) *Periodic reports on continued compliance by Categorical Industrial Users.*
- (1) Any IU subject to a Categorical Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the CA during the months of June and December, unless required more frequently in the Pretreatment Standard or by the CA or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such Categorical Pretreatment Standards. In addition, this report shall include documentation to demonstrate compliance with BMPs or P2 alternative (if applicable), and a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in 40 CFR 403.12(b)(4), except that the CA may require more detail reporting of flows. At the discretion of the CA and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the CA may agree to alter the months during which the above reports are to be submitted.
 - (2) Where the CA has imposed mass limitations on IUs, the report required by subsection (c)(1) of this section shall indicate the mass of pollutants regulated by Pretreatment Standards in the discharge from the IU.
 - (3) For IUs subject to equivalent mass or concentration limits established by the CA, the report required by subsection (c)(1) of this section shall contain a reasonable measure of the user's long-term production rate. For all other IUs subject to Categorical Pretreatment Standards expressed

only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by subsection (c)(1) of this section shall include the user's actual average production rate for the reporting period.

The CA may impose mass limitations in addition to, or in place of, the concentration-based limitations above. When the limits in a Categorical Pretreatment Standard are expressed only in terms of pollutant concentrations, an IU may request that the CA convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits shall be determined with the discretion of the CA. The CA may establish equivalent mass limits only if the IU meets all the following conditions in 40 CFR § 403.6 (c)(5)(i) and is subject to the conditions described on (c)(5)(ii) of the same section.

The CA may convert the mass limits of the Categorical Pretreatment Standards at 40 CFR parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual IUs under the conditions described in 40 CFR §403.6(c)(6). When converting such limits to concentration limits, the City of New Braunfels shall use the concentrations listed in the applicable subparts of 40 CFR parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by 40 CFR §403.6 (d).

- (d) *Reporting requirements for Significant Industrial Users not subject to Categorical Pretreatment Standards.* Non-categorical SIUs are required to submit to the CA at least once every 6 months on dates specified by the CA a description of the nature, concentration, and flow of the pollutants required to be reported by the CA. The report shall be based on sampling and analysis performed in the period covered by the report, and, where possible, performed in accordance with the techniques described in 40 CFR 136. The sampling and analysis may be performed by the CA in lieu of the non-categorical SIU.
- (e) *Notice of potential problems.* All categorical and non-categorical SIUs shall notify the CA immediately of all discharges that could cause problems to the POTW, including any slug loadings by the IU.
- (f) *Compliance monitoring and analysis.*
 - (1) The reports required in subsections (a), (b), (c) and (d) of this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production in mass where requested by the CA, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This sampling and analysis may

be performed by the CA in lieu of the IU. Where the CA performs the required sampling and analysis in lieu of the IU, the user will not be required to submit the compliance certifications required by this division. In addition, where the CA itself collects all the information required for the report, including flow data, the IU will not be required to submit the report.

- (2) If sampling performed by an IU indicates a violation, the user shall notify the CA within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the CA within 30 calendar days after becoming aware of the violation.
- (3) The reports required in subsections (c) and (d) of this section shall be based upon data obtained through appropriate sampling (including sampling location, including non-categorical SIUs) and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period.
- (4) All analyses shall be performed in accordance with procedures established by the Regional Administrator of the EPA pursuant to section 304(h) of the Act and contained in 40 CFR 136 and amendments thereto, or with any other test procedures approved by the Administrator of the EPA. Sampling shall be performed in accordance with the techniques approved by the Administrator. Where such regulations do not include sampling or analytical techniques for the pollutants in question, or where the Administrator determines that 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.
- (5) If an IU subject to the reporting requirements of subsections (c) and (d) of this section monitors any pollutant more frequently than required by the CA, using the procedures prescribed in subsection (f)(4) of this section, the results of this monitoring shall be included in the applicable reports.
- (6) All signification industrial users subject to national categorical pretreatment standards, and other non-categorical SIUs as identified by the CA shall during the months of June and December, unless required more frequently by the CA, submit a report indicating the nature and concentration of any regulated pollutants at the appropriate sampling location in the discharge which are limited by pretreatment standards. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User

must submit documentation required by the CA or the Pretreatment Standard necessary to determine the compliance status of the User. In addition, this report shall include a record of measured or estimated average and maximum daily flows and data obtained through appropriate sampling and analysis performed during the reporting period. At the discretion of the CA and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the CA may agree to alter the months during which reports under this subsection are to be submitted.

(g) *Sample collection.*

- (1) Except as indicated below, the IU must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, or time-proportional composite sampling or grab sampling is authorized by the CA in the permit. Note: Daily discharge is required to be defined as “the discharge of a pollutant” measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. Where time-proportional composite sampling or grab sampling is authorized by the CA, the samples must be representative of the discharge. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by CA, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits, if applicable. Total residual chlorine, pH, and temperature samples cannot be composited under any circumstance.
- (2) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection technique.
- (3) For sampling required in support of baseline monitoring reports (BMRs) and 90-day compliance reports required in Section 130-310 (a) and (b) and 40 CFR §403.12(b) and (d), a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist, existing IUs that make changes or install new treatment; for facilities for which historical sampling data are available, the CA may authorize a lower minimum. Sampling requirements, which previously only applied to BMRs and 90-day reports, extend to Reports on continued compliance and Noncategorical SIU reports [40 CFR §403.12(g)(1) and (3)]. For the reports required by paragraphs in Section 130-310 (a, b and c) and 40 CFR §403.12(e) and §403.12(h)), the IU is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements. The CA may

require that more than four grab samples be taken and separately analyzed to ensure that sampling is representative (where the CA cannot verify that previous techniques were representative, such data will not support the use of this alternative practice). Where there is a change to existing IU operation, (for example, the addition of treatment) historic data that does not represent the current discharge will not be able to be used to justify a lower minimum of grab samples.

- (4) Non-detectable sample results. Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.
 - (5) Where the CA has performed the sampling and analysis in lieu of the IU, then the CA shall perform the repeat sampling and analysis. If the CA notifies the IU of the violation and requires the IU of the violation and requires the IU to perform repeat sampling and analysis then submission of the results are due within a 30 day time frame. Resampling is not required if the following are performed (1) the CA performs the sampling at the IU at a frequency of at least once per month or (2) the CA performs sampling at the IU between the time when the initial sampling was conducted and the time when the IU or the CA receives the results of this sampling [40 CFR §403.12(g)(2)].
 - (6) Sampling must be taken within a 24-hour period, however, the sample should only be collected during the portion of the 24-hour period that the IU is discharging from the regulated process and/or pretreatment unit (as long as regulated process wastewater is flowing through the pretreatment unit). During parts of the day when there is no discharge of process wastewater, standing water shall not be disproportionately sampled and analyzed as it would not be representative of the discharge from the IU. The CA shall only approve a sampling protocol that produces representative results and is based on operation conditions and physical configuration of the IU facility. The CA shall require documentation of site-specific circumstances prior to allowing alternate sampling by including the alternate sampling in the IU control mechanism. The CA shall require documentation of how alternate sampling techniques are representative of the discharge.
- (h) *Timing.* Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

- (i) *Notification of changed discharge.* All IUs shall promptly notify the CA in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous waste for which the IU has submitted initial notification under 40 CFR 403.12(p). An IU shall notify the CA, the EPA regional waste management division director and the Approval Authority in writing of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261. Such notification shall be in accordance with 40 CFR 403.12(p). The IU must also notify the CA of changes at the IU facility affecting potential for a slug discharge. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this division, a permit issued hereunder, or any applicable Federal or State law.
- (j) *Certification and signatory requirements.* The reports required by subsections (a), (b), (c) and (d) of this section shall include the certification set out in subsection 130-309(c)(3) and be signed by an authorized representative of the IU.
- (k) *Fraud and false statements.* The reports and other documents required to be submitted or maintained under this section shall be subject to:
 - (1) The provisions of 18 USC 1001 relating to fraud and false statements;
 - (2) The provisions of section 309(c)(4) of the Act, as amended, governing false statements, representation or certification; and
 - (3) The provisions of section 309(c)(6) of the Act regarding responsible corporate officers.

Sec. 130-311. - Recordkeeping Requirements.

- (a) Users shall maintain suitable operating records of all pretreatment facilities. Such records shall include summary reports of the character of the influent and effluent as the POTW may prescribe. All records relating to compliance with Pretreatment Standards shall be made available to officials of the Approval Authority upon request.
- (b) Any IU subject to the reporting requirements established in this division shall maintain records of all information resulting from any monitoring activities required by this division. Such records shall include for all samples:
 - (1) The date, exact place, method, and time of sampling and the name of the

person taking each sample;

- (2) The dates analyses were performed;
 - (3) The name and title of the person who performed the analyses;
 - (4) The analytical techniques or methods used; and
 - (5) The results of such analyses.
- (c) Any IU subject to the reporting requirements established in this division shall be required to retain for a minimum of 3 years any records of monitoring activities and results, whether or not such monitoring activities are required by this division, and shall make such records available for inspection and copying by the Director of the EPA and the Regional Administrator of the EPA (and CA in the case of an IU). This period of retention shall be extended during the course of any unresolved litigation regarding the IU or CA or when requested by the Director or the regional administrator of the EPA.
- (d) Any reports submitted to the CA by an IU shall be retained for a minimum of 3 years and the CA shall make such reports available for inspection and copying by the Director and the Regional Administrator of the EPA. This period of retention shall be extended during the course of any resolved litigation regarding the discharge of pollutants by the IU or the operation of the CA pretreatment program or when requested by the Director or the Regional Administrator of the EPA. The CA shall also maintain documentation of compliance with BMP requirements as part of the IU's and CA's record-keeping requirements.

Sec. 130-312. - Inspection, Sampling and Monitoring.

- (a) *Inspection of user facilities.* The CA shall have the right to inspect the facilities of any IU at least once per year to ascertain whether the requirements of this division are being met. Persons or occupants of premises where wastewater is created or discharged shall allow the CA or its representatives ready access at all reasonable times to all parts of the premises for the purpose of inspection, sampling, records examination and copying, or in the performance of any of their duties. The CA, the TCEQ and the EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling inspections, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that upon presentation of suitable identification, personnel from the CA, the TCEQ and the EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. The CA has the right to

take independent samples and inspect and copy records.

- (b) *Monitoring facilities.* The CA shall require user to provide and operate, at the user's expense, monitoring facilities to allow inspection, sampling and flow measurement of the premises' sewer and internal drainage systems. The monitoring facility shall normally be situated on the user's premises, but the CA may, when such a location would be impractical or cause undue hardship on the user, allow the monitoring facility to be constructed in public areas. There shall be ample room in or near such sampling manholes or other monitoring facilities to allow accurate sampling and preparation of samples for analysis. The monitoring facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user. The sampling and monitoring facility shall be provided in accordance with the requirements of the CA and all applicable City of New Braunfels construction standards and specifications. Construction shall be completed within 90 calendar days following written notification by the CA. Any relocation expense of monitoring facilities from public property to the user's property shall be the responsibility of the user.
- (c) *Laboratory procedures.* Analysis shall be performed in accordance with procedures established by the administrator pursuant to section 304(g) of the Act and contained in 40 CFR 136 and amendments thereto, or with any other test procedures approved by the Regional Administrator of the EPA. The CA may charge the user a fee for the standard initial analyses of the user's wastes, as well as for other nonstandard tests as required by the user's specific process waste loading. Regular periodic check analysis and analysis made by the POTW at the request of the user may be charged to the user according to standard work order billing practice. All such analysis shall be binding in determining strength of waste surcharges and other matters dependent upon the character and concentration of wastes.
- (d) *Use of representative analysis.* Until an adequate analysis of a representative sample of the user's wastes has been obtained, the CA shall, for the purpose of this division, make a determination of the character and concentration of the IU's wastes by using data based on analysis of similar processes or data for this type of business that are available from the EPA or from industry-recognized authoritative sources. This method, if selected by the CA, shall continue at the CA's discretion or until an adequate analysis has been made.
- (e) *Public identification of Industrial Users in significant noncompliance (SNC).* All data collected pertaining to industrial wastes, including records kept by each IU, shall be subject to audit, review and copying by the EPA, the TCEQ or the CA upon request. The CA shall annually publish in the newspaper of general circulation that provides meaningful notice within jurisdiction of the CA, a list of

those IUs who are deemed in significant noncompliance during the 12 previous months. The published notice shall also summarize any enforcement action taken against such IUs in significant noncompliance during the same 12-month period.

(f) *Surveillance of Industrial Users.*

- (1) Surveillance of IUs for the purposes of verifying industry self-monitoring information will be done at such intervals as determined by the CA to be necessary to detect prohibited discharges.
- (2) A 7- day monitoring period shall be allowed if deemed warranted in order to obtain representative data. The surveillance period will normally be for a period of 1 day, representative of the normal production day, but can be of longer duration at the discretion of the CA. In cases where the surveillance period extends for more than 7 consecutive days, the CA shall have the prerogative of selecting the 7 consecutive days of its choice for establishing rates and charges.
- (3) The CA may sample and conduct surveillance and inspection activities on any IU when deemed necessary by the CA to verify, independent of information supplied by IUs, compliance or noncompliance with applicable Pretreatment Standards. For scheduled surveillance, the user shall be given the option of splitting the obtained sample such that it may be analyzed by the user.
- (4) In addition to surveillance monitoring conducted by the CA, an SIU shall conduct self-monitoring and submit monthly monitoring reports to the POTW unless specified otherwise in the user's permit conditions or by the CA and report the results of all applicable monitoring to the CA.
- (5) Within one year of being designated an SIU, the CA shall inform the SIU if the SIU will be required to implement a plan or other action to control slug discharges. The CA shall keep records of the activities associated with slug control evaluation and results. The CA shall also maintain records of all information resulting from any monitoring activities required by 40 CFR Part 403, (including documentation associated with BMPs with other IU or CA records of monitoring activities and results, for a minimum of 3 years.).

- (g) *Search warrants.* If the CA has been refused access to a building, structure or property or any part thereof, and if the CA has demonstrated probable cause to believe that there may be a violation of this division or that there is a need to inspect as part of a routine inspection program of the CA designed to verify compliance with this division or any permit or order issued under this division, or

to protect the overall public health, safety and welfare of the community, then upon application by counsel for the City of New Braunfels and the CA, the municipal court judge of the City of New Braunfels shall issue a search and/or seizure warrant describing therein the specific location subject to the warrant. The warrant shall specify what, if anything, may be searched and/or seized on the property described. Such warrant shall be served at reasonable hours by the Pretreatment Program Manager in the company of a Law Enforcement Officer. In the event of an emergency affecting public health and safety, inspections shall be made without the issuance of a warrant.

Sec. 130-313. - Fees and Costs.

- (a) *Purpose.* It is the purpose of this section to recover from users of the POTW the costs for the implementation of the program established in this division. The applicable charges or fees may be set forth in the CA's schedule of charges and fees. (SOP's and Forms, Form 18).
- (b) *Charges and fees.* The CA may adopt charges and fees to include:
- (1) Fees for reimbursement of costs of setting up and operating the CA pretreatment program;
 - (2) Fees for monitoring, sampling, testing, inspections and surveillance procedures;
 - (3) Fees for reviewing accidental discharge procedures and construction;
 - (4) Fees for permit applications;
 - (5) Fees for filing appeals;
 - (6) Fees for consistent removal of pollutants otherwise subject to federal Pretreatment Standards;
 - (7) Other fees as deemed necessary to carry out the requirements contained in this division.

These fees relate solely to the matters covered by this division, are separate from all other fees chargeable by the CA, and intended to be used by the CA for the costs of the pretreatment program.

(c) *Surcharges.*

- (1) *Cost calculations.* Users that are discharging COD or TSS in excess of "normal domestic sewage" as defined in section 130-301 shall be required

to pretreat the industrial wastes to meet the requirements of normal domestic sewage. However, such wastes may be accepted for treatment if all the following requirements are met:

- a. The waste will not cause damage to the POTW;
- b. The waste will not impair the treatment process; and
- c. The user agrees to pay a surcharge over and above the existing sewer rates with the basis for surcharge on the industrial waste to be computed in the following manner:

\$ Surcharge =

(Volume in 1000 gallons)COT/1000 gal +

(Avg. COD mg/l × 8.34 × Q mgd)COT/lb +

(Avg. TSS mg/l × 8.34 × Q mgd)COT/lb

Cost of treatment (COT): Determined annually

- (2) *Volume determination.* The volume of wastes may be determined by the same methods used to calculate the regular sewer service charge, or as a percentage of user's water bill. For users discharging less than 20,000 gallons/day, the COD and TSS values may be determined from standard values for various industries established by the CA. All Industrial Users shall install at user's expense a sampling point after treatment prior to connection with the POTW sanitary sewer. COD and TSS calculated from samples collected from any user shall be determined by the CA or a qualified professional. Each sampling point shall be installed and shall be so maintained by the user so that any authorized representative of the CA may readily and safely obtain samples at all times. Plans and location of such sampling points shall be approved by the CA prior to construction.
- (3) *Annual review.* All IU flow rates and COD and TSS in determination of the sewer surcharge shall be re-evaluated on an annual basis whenever possible. If there is a major change in the operation to cause changes in value, however, the values may be increased or decreased on a study of changes or actual measurements.
- (4) *Surcharge review.* The basis for determining the surcharge shall be reviewed annually and shall be adjusted to reflect any increase or decrease in wastewater treatment costs based on the previous year's experience.

Sec. 130-314. - Remedies and Enforcement.

(a) *Administrative enforcement remedies.*

- (1) *Notification of violation (NOV).* Whenever the CA finds that any IU has violated or is violating this division or a discharge permit or order issued under this division, the CA may serve upon such user written notice of the violation. Within 14 calendar days of the receipt date of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the CA. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the CA to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.
- (2) *Consent orders.* The CA is authorized to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the IU responsible for the noncompliance. Such orders will include the specific action to be taken by the IU to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to subsection (a)(4) of this section.
- (3) *Show cause hearing.* The CA may order any IU which causes or contributes to violation of this division or discharge permit or order issued under this division to show cause why a proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail, return receipt requested, at least 14 calendar days prior to the hearing. Such notice may be served on any principal executive, general partner or corporate officer of the IU. Whether or not a duly notified IU appears as noticed, immediate enforcement action may be pursued.
- (4) *Compliance order.* When the CA finds that an IU has violated or continues to violate this division or a permit or order issued under this division, the CA may issue an order to the IU responsible for the discharge directing that, following a specified time period, sewer service shall be discontinued unless adequate treatment facilities, devices, or other related appurtenances have been installed and are properly operated. Such orders may also contain such other requirements as may be reasonably

necessary and appropriate to address the noncompliance, including the installation of pretreatment technology, additional self-monitoring, and management practices.

- (5) *Cease and desist orders.* When the CA finds that an IU has violated or continues to violate this division or any permit or order issued under this division, the CA may issue an order to cease and desist all such violations and direct those persons in noncompliance to:
 - a. Comply immediately;
 - b. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.
- (6) *Administrative fines.* Notwithstanding any other section of this division, any user who is found to have violated any provision of this division, or permits or orders issued under this division, shall be fined in an amount not to exceed \$1,000.00 per violation. Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation. Such assessments may be added to the user's next scheduled sewer service charge and the CA shall have such other collection remedies as available to collect other service charges. Unpaid charges, fines, and penalties shall constitute a lien against the individual user's property as permitted by law. IUs desiring to dispute such fines must submit to the CA a request for reconsideration of the fine within 10 calendar days of being notified of the fine. If the CA determines a request has merit, the CA shall convene a hearing on the matter within 15 calendar days of receiving the request from the IU.
- (7) *Emergency suspensions.*
 - a. The CA may suspend the wastewater treatment service and/or discharge permit of an IU whenever such suspension is necessary in order to stop an actual or threatened discharge presenting or causing an imminent or substantial endangerment to the health or welfare of persons, the POTW, or the environment.
 - b. Any user notified of a suspension of the wastewater treatment service and/or the discharge permit shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the CA shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage

to the POTW, its receiving waters, or endangerment to any individuals. The CA shall allow the user to recommence its discharge when the endangerment has passed, unless the termination proceedings set forth in subsection (a)(8) of this section are initiated against the user.

- c. An IU which is responsible, in whole or in part, for 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 CA no later than 2 business days prior to the date of the hearing described in subsection (a)(3) of this section.

Nothing in this subsection shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

- (8) *Termination of permit.* Significant IUs proposing to discharge into the POTW must first obtain a wastewater discharge permit from the CA. Any IU who violates the following conditions of this division or a discharge permit or order, or any applicable state and federal law, is subject to permit re-opening or termination:
 - a. Violation of permit conditions.
 - b. Failure to accurately report the wastewater constituents and characteristics of its discharge.
 - c. Failure to report significant changes in operations or wastewater constituents and characteristics.
 - d. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling.
 - e. Falsifying self-monitoring reports.
 - f. Tampering with monitoring equipment.
 - g. Refusing to allow timely access to the facility premises and records.
 - h. Failure to meet effluent limitations.
 - i. Failure to pay fines.
 - j. Failure to pay sewer charges.

k. Failure to meet compliance schedules.

Noncompliant IUs will be notified of the proposed termination of their wastewater permit and be offered an opportunity to show cause under subsection (a)(3) of this section why the proposed action should not be taken.

- (9) Use of Enforcement Response Guide (ERG) for evaluation and enforcement of BMP requirements. Where a facility subject to BMPs has not satisfied the requirements of the SUO or control mechanism, the CA shall use its enforcement response guide (ERG) to determine the appropriate response and significant noncompliance (SNC) criteria to assess whether the facility is in SNC. The CA shall ensure that the ERG includes criteria in order to enforce non-numeric BMP and other requirements.

(b) *Judicial remedies.*

- (1) *Commencement of action in district court.* If any person discharges sewage, industrial wastes, or other wastes into the POTW contrary to the provisions of this division, or any order or permit issued under this division, the NBU CEO, through the attorney for NBU or the attorney for the City of New Braunfels, may commence an action for appropriate legal and/or equitable relief in the district court for Comal County, Texas.
- (2) *Injunctive relief.* When an IU has violated or continues to violate the provisions of this division, or any permit or order issued under this division, the CEO, through counsel, may petition the court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, which restrains or compels activities on the part of the IU. The CA may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.
- (3) *Civil penalties.*
- a. Any IU who has violated or continues to violate this division or any order or permit issued under this division shall be liable for a civil penalty of not more than \$1,000.00 plus actual damages incurred by the POTW per violation per day for as long as the violation continues. In addition to the above-described penalty and damages, the CEO may recover on behalf of the CA reasonable attorney's fees, court costs and other expenses associated with the

enforcement activities, including sampling and monitoring expenses. The CA is entitled to such remedies for collection of these fees as is provided for collection of other sewer service charges and as may be permitted by law. Penalties recovered under this subsection are intended to be used for the operation of the POTW by the CA.

- b. The CA shall petition the court to impose, assess, and recover such sums. In determining the amount of liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the IU's violation, corrective actions by the IU, the compliance history of the user, and any other factor as justice requires.

(4) *Criminal prosecution.*

- a. Any IU who willfully or negligently violates any provision of this division or any orders or permits issued under this division shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not to exceed \$1,000.00 per violation per day.
- b. Any IU which knowingly makes any false statements, representations, or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this division or its discharge permit, or which falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this division shall, upon conviction, be punished by a fine of not more than \$1,000.00 per violation per day.

(c) *Supplemental enforcement remedies.*

- (1) *Annual publication of users in significant non-compliance (SNC).* The CEO shall publish a description of those IUs which are found to be in significant noncompliance, as set out in subsection 130-312(e).
- (2) *Performance bonds and assurances.* The CA may decline to reissue a permit to any IU which has failed to comply with the provisions of this division or any order or previous permit issued under this division unless such user first delivers to the CA a satisfactory bond, in an amount not to exceed a value determined by the CA to be necessary to ensure consistent compliance, or such user first submits proof that it

has obtained other financial assurances sufficient to restore or repair POTW damage caused by its discharge.

- (3) *Water supply severance.* When an IU violates or continues to violate the provisions of this division, or an order or permit issued under this division, water service to the IU may be severed and service will only recommence, at the user's expense, after such user has satisfactorily demonstrated its ability to comply with this division.
 - (4) *Public nuisances.* Any violation of the prohibitions or effluent limitations of this division, or any permit or order issued under this division, is hereby declared a public nuisance and shall be corrected or abated as directed by the CA or the CA's designee. Any person(s) creating a public nuisance shall be subject to the provisions of the Code of the City of New Braunfels governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating, or remedying such nuisance.
 - (5) *Monetary Assessment.* The CA may impose monetary assessment or conditions on an IU that is in addition to a fine or penalty authorized by statutes to assure noncompliance is corrected.
- (d) *Remedies nonexclusive.* The remedies provided for in this division are not exclusive. The CA may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the enforcement response plan. However, the CA may take other action against any user when the circumstances warrant. Further, the CA is authorized to take more than one enforcement action against any noncompliant user.
- (e) *Applicability of more stringent regulations.*
- (1) If national Pretreatment Standards, categorical or otherwise, more stringent than the discharge limits prescribed in this division are promulgated by the United States Environmental Protection Agency for certain industries, the more stringent national Pretreatment Standards will apply to the affected IU. A violation of the more stringent national Pretreatment

Standards will also be considered a violation of this division.

- (2) If more stringent Pretreatment Standards, Texas surface water quality standards, or Texas Pollutant Discharge Elimination System permit conditions are promulgated, the CA reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.
- (3) An IU within the City of New Braunfels who discharges industrial waste ultimately received and treated by another governmental entity pursuant to a wholesale wastewater contract or a reciprocal agreement with the City of New Braunfels is subject to the following additional rules:
 - a. If the governmental entity has more stringent discharge limits than those prescribed by this division, or by a discharge permit issued hereunder, because the United States Environmental Protection Agency requires the more stringent discharge limits as part of the governmental entity's wastewater pretreatment program, the more stringent discharge limits shall prevail.
 - b. The Pretreatment Program Manager is authorized to issue a discharge permit to an IU affected by subsection (e)(3)a above, to insure notice of and compliance with the more stringent discharge limits. If the IU already has a discharge permit, the CA may amend the permit to apply and enforce the more stringent discharge limits. An IU shall submit to the CA an expected compliance date and an installation schedule if the more stringent discharge limits necessitate technological or mechanical adjustments to discharge facilities or plant processes.
 - c. If the CA chooses not to issue or amend a permit under subsection (e)(3)b above, the Pretreatment Program Manager shall notify the affected IU in writing of the more stringent discharge limits and their effective date. Regardless of whether or not a permit is issued or amended, an IU shall be given a reasonable opportunity to comply with the more stringent

discharge limits.

- d. The more stringent discharge limits cease to apply upon termination of the City of New Braunfels' wholesale wastewater contract or reciprocal agreement with the governmental entity, or upon modification or elimination of the limits by the government entity or the United States Environmental Protection Agency. The CA shall take the appropriate action to notify the affected IU of an occurrence under this subsection.
- (4) Variances in compliance dates. The CA may grant a variance in compliance dates to an industry when, in the Pretreatment Program Manager's opinion, such action is necessary to achieve pretreatment or corrective measures. In no case shall the Pretreatment Program Manager grant a variance in compliance dates to an industry affected by national Categorical Pretreatment Standards beyond the compliance dates established by the United States Environmental Protection Agency.
 - (5) Authority to regulate. The CA may establish regulations, not in conflict with this division or other laws, to control the disposal and discharge of industrial waste into the POTW and to insure compliance with the pretreatment enforcement program with all applicable pretreatment regulations promulgated by the United States Environmental Protection Agency. The regulations established shall, where applicable, be made part of any discharge permit issued to an IU by the CA.
- (f) *Affirmative defenses.*
- (1) *Act of God defense.* The Act of God defense constitutes a statutory affirmative defense pursuant to Texas Water Code Section § 7.251 in an action brought in municipal or State court. If a person can establish that an event that would otherwise be a violation of a pretreatment ordinance, or a permit issued under the ordinance, was caused solely by an Act of God, war, riot, or other catastrophe, the event is not a violation of the ordinance or permit.

An IU who wishes to establish the Act of God affirmative defense shall demonstrate, through relevant evidence that:

- a. An event that would otherwise be a violation of a pretreatment ordinance or a permit issued under the ordinance occurred, and the sole cause of the event was an act of God, war, strike, riot or other

catastrophe; and

- b. The IU has submitted the following information to the CA and the City of New Braunfels within 24 hours of becoming aware of the event that would otherwise be a violation of a pretreatment ordinance or a permit issued under the ordinance. If this information was provided orally, a written submission with the information below was provided within 5 calendar days.
 - 1. A description of the event;
 - 2. The time period of the event, including exact dates and times or, if still continuing, the anticipated time the event is expected to continue; and
 - 3. Steps being taken or planned to reduce eliminate and prevent recurrence of the event.
- c. In any enforcement proceeding, the IU seeking to establish the Act of God affirmative defense shall have the burden of proving by a preponderance of evidence that an event that would otherwise be a violation of a pretreatment ordinance, or a permit issued under the ordinance was caused solely by an act of God, war, strike, riot or other catastrophe.

(2) *Treatment bypasses.*

- a. A bypass of the POTW is prohibited unless all of the following conditions are met:
 - 1. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - 2. There was no feasible alternative to the bypass, including the use of auxiliary treatment or retention of the wastewater; and
 - 3. The IU properly notified the CA as described in subsection (2)b below.
- b. IUs must provide immediate notice to the CA upon discovery of an unanticipated bypass. If necessary, the CA may require the IU to submit a written report explaining the cause(s), nature, and duration of the bypass, and the steps being taken to prevent its recurrence.
- c. IUs may allow a bypass to occur which does not cause Pretreatment

Standards or requirements to be violated, but only if it is for essential maintenance to ensure efficient operation of the POTW. IUs anticipating a bypass must submit notice to the CA at least 14 calendar days in advance. The CA may only approve the anticipated bypass if the circumstances satisfy those set forth in subsection (2)a above.

Sec. 130-315. - Confidential Information.

- (a) Information and data provided to the CA pursuant to this division which is effluent data shall be available to the public without restriction. All other information which is submitted to the state or the POTW shall be available to the public at least to the extent provided by 40 CFR 2.302.
- (b) Information and data on an IU obtained from reports, surveys, questionnaires, permit applications, permits and monitoring programs and from inspections and sampling shall be available to the public without restriction unless the subject IU specifically requests and is able to demonstrate to the satisfaction of the CA that the release of such information will divulge information, processes or methods of production entitled to protection as trade secrets of the IU under applicable state law. When requested and demonstrated by the IU furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made immediately available upon request to the EPA and other governmental agencies for uses related to the NPDES program and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

Sec. 130-316. - Effective Date.

This division shall be in full force and effective immediately following the passage, and approval of New Braunfels Utility's (NBU) Texas Pollutant Discharge Elimination System (TPDES) permit issued by the Texas Commission on Environmental Quality (TCEQ), as provided by law.

Secs. 130-317—130-335. - Reserved.

SECTION 3.

THAT, this ordinance shall be and is hereby declared to be cumulative to all other ordinances of the City of New Braunfels relating to the quality of wastewater accepted into the City's wastewater collection system and same shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinance or ordinances are inconsistent or in conflict with the provisions of this ordinance, in which instance or instances those provisions shall be and they are hereby repealed.

SECTION 4.

THAT, if any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 5.

THAT, this ordinance shall be in full force and effect from and after the passage.

SECTION 6.

THAT, unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

SECTION 7.

PASSED AND APPROVED: First Reading this ____ day of _____, 2020.

PASSED AND APPROVED: Second Reading this ____ day of _____, 2020.

CITY OF NEW BRAUNFELS, TEXAS

RUSTY BROCKMAN, Mayor

ATTEST:

_____, **Interim/Acting City Secretary**

APPROVED AS TO FORM:

VALERIA ACEVEDO, City Attorney