

TITLE 13: PUBLIC SERVICES

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TITLE 13: PUBLIC SERVICES

Chapter 13.1 - ELECTRICITY

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History:

<u>Ordinance</u>	<u>Date of adoption</u>	<u>Effect</u>
1	1/17/50	Adopted 13.1.01 through 13.1.8
84-09	6/18/84	Adopted 13.1.09
94-05	7/21/94	Amended 13.1.05
00-01	2/17/01	Amended 13.1.09
02-07	10/17/02	Amended 13.1.05

CODIFIER'S NOTE: The printing of the electric utility franchise ordinance in this Code is a non-substantive revision only, which has not been re-enacted by the governing body of the City of Dalworthington Gardens. The editorial revisions are:

- (1) The chapter designation and section numbers are added to be consistent with the present code format. The original ordinance and section references are parenthetically set out at the end of each section.
- (2) The term "Town" is used in Ordinance #1. The municipality is now known as a "City", and is referred to as such in Ordinance #84-9
- (3) The section catch-lines have been added for convenience of reference but are not a part of the ordinance as adopted.

TITLE 13: PUBLIC SERVICES

Chapter 13.1 - ELECTRICITY

- 13.1.01 Grant of Franchise That the Town of Dalworthington Gardens, Texas, herein call “Town” hereby grants its consent to the use of its present and future streets, alleys, highways and public grounds by Texas Electric Service Company, its successors and assigns, herein called “Company”, for the purpose of construction, maintaining and operating in the present and future streets, alleys, and public places of the Town of Dalworthington Gardens, Texas, and its successors, electric light and power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires and transmission lines, and telegraph and telephone lines for its own use) for the purpose of supplying electricity to the said City, the inhabitants thereof and persons and corporations beyond the limits thereof, for light, heat, power, and other purposes; said consent being granted for a term of fifty (50) years from the date this Ordinance is adopted and approved. (Ordinance 1, Section 1)
- 13.1.02 Poles and Towers Poles or towers shall be so erected as not to be unreasonably interfere with traffic over the streets and alleys. (Ordinance 1, Section 2)
- 13.1.03 City Regulation Company’s property and operation in the Town shall be subject to such regulation by the Town as may be reasonably necessary for the protection of the general public. (Ordinance 1, Section 3)
- 13.1.04 Hold Harmless Company shall hold Town harmless from all expense or disability for any act or neglect of the Company hereunder. (Ordinance 1, Section 4)
- 13.1.05 Franchise Fee
- A. Effective January 1, 2002, the franchise fee due from Oncor shall be a sum comprised of the following:
- (1) a charge, as authorized by Section 33.008(b) of PURA, based on each kilowatt hour of electricity delivered by Oncor to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries and as specified by Oncor to the City by letter dated January 21, 2002.

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(a) The franchise fee due pursuant to Section 33.008(b) of PURA shall be payable in accordance with the existing electric franchise; and

(2) a sum equal to four percent (4%) of gross revenues received by Oncor from services identified in its "Tariff for Retail Delivery Service", Section 6.1.2, "Discretionary Service Charges," items DD1 through DD24, that are for the account or benefit of an end-use retail electric consumer.

(a) The franchise fee amounts based on "Discretionary Service Charges" shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year.

(b) The franchise fee amounts that are due based on "Discretionary Service Charges" shall be paid at least once annually on or before April 30 each year based on the total "Discretionary Service Charges" received during the preceding calendar year.

B. Oncor Franchise Fee Recovery Tariff

(1) Oncor may file a tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.

(2) City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Oncor and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Oncor.

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(3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Oncor.

13.1.06 Non-Exclusivity Nothing herein contained shall ever be held to be or construed to confer upon the Company exclusive rights or privileges of any nature whatsoever. (Ordinance 1, Section 6)

13.1.07 Cumulative This Ordinance shall be cumulative and in addition to the other permits and franchise granted and ordinance owned, held or claimed by the Company provided, however, that all ordinances or parts of ordinances that conflict herewith are hereby repealed. (Ordinance 1, Section 7)

13.1.08 Effective Date This ordinance shall not become effective until the Company has accepted the same in writing. Said acceptance shall be given to the Town by the Company within 30 days after final passage hereof. (Ordinance 1, Section 8)

A. In all respects, except as specifically and expressly amended by this ordinance, the existing effective franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by Oncor shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided therein.

B. This ordinance shall take effect upon its final passage and Oncor's acceptance. Oncor shall, within thirty (30) days from the passage of this ordinance, file its written acceptance of this ordinance with the Office of the City Secretary in substantially the following form:

To the Honorable Mayor and City Council:

Oncor Electric Delivery Company, acting by and through the undersigned authorized officer, hereby accepts in all respects, on this the ____ day of _____, 20____, Ordinance No. _____ amending the current electric franchise between the City and Oncor and the same shall constitute and be a binding contractual obligation of Oncor and the City.

Oncor Electric Delivery Company

By

Vice President

(#02-07)

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- 13.1.09 Tariff Revisions The Revised Tariffs, as are approved by the Public Utility Commission of Texas pursuant to the January 25, 2000 Tariff Filing, are hereby approved for application within the corporate limits of the City. TXU (Ed. Note: Successor to Texas Electric Service Company) is authorized to render service and to collect charges as stated in the Revised Tariffs as approved by the Public Utility Commission of Texas from its customers electing to receive electric service under said Tariffs within the corporate limits of the City until such time as said tariffs may be changed, modified, amended or withdrawn with the approval of the City Council of the City. (#00-01)

TITLE 13: PUBLIC SERVICES

Chapter 13.2 - TELECOMMUNICATIONS

13.2.01	Construction and Maintenance of Telephone Plant and Service
13.2.02	Supervision by Town of Location of Poles and Conduit
13.2.03	Street to be Restored to Good Condition
13.2.04	Operation and Maintenance of Telephone Plant
13.2.05	Temporary Removal of Wires
13.2.06	Tree Trimming
13.2.07	Annual Cash Consideration to be paid by the Telephone Company
13.2.08	Payment of Cash Consideration to be in Lieu of Any Other Payments except Usual, General or Special Ad Valorem Taxes
13.2.09	Facilities to be Furnished to City as Additional Consideration
13.2.10	Attachments on Poles and Space in Ducts not here affected
13.2.11	Period of Time of this Ordinance-Termination
13.2.12	No Exclusive Privileges Conferred by This Ordinance
13.2.13	Successors and Assigns
13.2.14	Partial Invalidation and Repeal Provisions
13.2.15	Acceptance of Agreement

History:

<u>Ordinance</u>	<u>Date of Adoption</u>	<u>Effect</u>
2	3/3/50	Adopted 13.2.01 through 13.2.06 and 13.2.08 through 13.2.15
75-90	10/6/75	Adopted 13.7.07

CODIFIER'S NOTE: The printing of the telephone franchise ordinances in this Code is a non-substantive revision only, which has not been re-enacted by the governing body of the City of Dalworthington Gardens.

The editorial revisions are:

- (1) The chapter designation and section numbers are added to be consistent with the present code format. The original ordinance and section references are parenthetically set out at the end of each section.
- (2) The term "Town" is used in Ordinance #2. The municipality is now known as a "City", and is referred to as such in Ordinance #75-90.

TITLE 13: PUBLIC SERVICES

Chapter 13.2 - TELECOMMUNICATIONS

- 13.2.01 Construction and Maintenance The poles, wires, anchors, cables, manholes, conduits and other plant construction and appurtenances used in or incident to the giving of telephone service and to the maintenance of a telephone business and system by the Telephone Company in the Town, shall remain as now constructed, subject to such changes as under the limitations and conditions herein prescribed may be considered necessary by the Town in the exercise of its lawful powers and by the Telephone Company in the exercise of its business furnishing telephone service; and the Telephone Company shall continue to exercise its right to place, remove, construct and reconstruct, extend and maintain its said plant and appurtenances as the business and purposes for which it is or may be incorporated may from time to time require along, across, on, over, through, above and under all the public streets, avenues, alleys and public grounds and places within the present limits of the Town and within said limits as the same from time to time may be extended, subject to the regulations, limitations and conditions herein prescribed. (Ordinance #2, Section 1)
- 13.2.02 Supervision by Town of Location of Poles and Conduit All poles to be placed shall be of sound material and reasonably straight, and shall be so that they will not interfere with the flow of water in any gutter or drain, and so that the same will interfere as little as practicable with the ordinary travel, on the street or sidewalk. The location and route of all poles, stubs, guys, anchors, conduits and cables to be placed and constructed by the Telephone Company in the construction and maintenance of its telephone system in the Town, and the location of all conduits to be laid by the Telephone Company within the limits of the Town under this ordinance, shall be subject to the reasonable and proper regulation, control and direction of the Board of Alderman or of any Town official to whom such duties have been or may be delegated. (Ordinance #2, Section 2)
- 13.2.03 Street to be Restored to Good Condition The surface of any street, alley, highway, or public place disturbed by the Telephone Company in building, construction, renewing or maintaining its telephone plant and system shall be restored within a reasonable time after the completion of the work to as good a condition as before the commencement of the work and maintained to the satisfaction of the Board of Alderman or of any Town official to whom such duties have been or may be delegated, for one year from the date the surface of said street, alley, highway, or public place is broken for such construction or maintenance work, after which time responsibility for the maintenance shall become the duty of the Town. No street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work. (Ordinance #2, Section 3)

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- 13.2.04 Operation and Maintenance of Telephone Plant The Telephone Company shall maintain its system in reasonable operating condition at all normal times during the continuance of this agreement. An exception to this condition is automatically in effect when service furnished by the Telephone Company is interrupted, impaired, or prevented by fires, strikes, riots, or other occurrences beyond the control of the Telephone Company, or by storms, floods or other casualties, in any of which events the Telephone Company shall do all things, reasonably within its power, to do, to restore normal service. (Ordinance #2, Section 4)
- 13.2.05 Temporary Removal of Wire The Telephone Company on the request of any person shall remove or raise or lower its wires temporarily to permit the moving of houses or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and the Telephone Company may require such payment in advance. The Telephone Company shall be given not less than forty-eight hours advance notice to arrange for temporary wire changes. (Ordinance #2, Section 5)
- 13.2.06 Tree Trimming The right, license, privilege and permission is hereby granted to the Telephone Company, its successors and assigns, to trim trees upon and overhanging the streets, alleys, sidewalks and public places of the Town, so as to prevent the branches of such trees from coming in contact with the wires or cables of the Telephone Company, and when so ordered by the Town, said trimming shall be done under the supervision and direction of the Board of Aldermen or of any Town official to whom said duties have been delegated. (Ordinance #2, Section 6)
- 13.2.07 Annual Cash Consideration to be Paid by the Telephone Company To indemnify the Town or any and all possible damages to its streets, alleys and public grounds which may result from the placing and maintenance or thereon of the Telephone Company's poles, conduits, or other telephone equipment or apparatus, and to compensate the Town for its superintendence of this agreement, and as the cash consideration for the same, the Telephone Company agrees to pay to the City annually during the continuance of the agreement a sum of money equal to four per cent (4%) of the annual gross receipts for the preceding year received by the Company from the rendition of local exchange telephone transmission service within the corporate limits of the City. Payment shall be made annually on April 15 as herein provided. (Ordinance #75-90)
- 13.2.08 Payment of Cash Consideration to be in Lieu of Any Other Payments Except Usual. General or Special Ad Valorem Taxes The Town agrees that the consideration set forth in the preceding article hereof, shall be paid and received in lieu of any tax, license, charge, fee, street or alley rental or other character for charge for use and occupancy of the streets, alleys and public places of the Town;

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in lieu of any pole tax or inspection fee tax; in lieu of any easement or franchise tax, whether levied as an ad valorem, special or other character of tax; and in lieu of any imposition other than the usual general or special ad valorem taxes now or hereafter levied. Should the Town not have the legal power to agree that the payment of the foregoing cash consideration shall be in lieu of the taxes, licenses, charges, fees, rentals, and easement or franchise taxes aforesaid, then the Town agrees that it will apply so much of said payment as may be necessary to the satisfaction of the Telephone Company's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, and easement or franchise taxes. (Ordinance #2)

13.2.09 Facilities to be Furnished to Town as Additional Consideration In addition to the consideration set forth in Section 7, the Telephone Company shall hold itself ready to furnish, subject to the use of the Town such wire space as may be required from time to time by the Town upon the poles now opened or hereafter erected by the Telephone Company in the Town for the use of the Town's police and fire alarm system: provided that the required wire space shall not exceed the wire capacity of one cross arm on any one pole. The location on the poles of this fire and police wire shall be determined on specific applications for space, at the time the applications are received from the Town, and will be allotted in accordance with the considerations for electrical construction of the United States Department of Commerce, Bureau of Standards. In its wire construction on the Telephone Company's poles, the Town will follow the suggestions and requirements laid down for wire construction in the Rules and Regulations of the Bureau of Standards of the United States Department of Commerce. Where conduits are laid or are constructed by the Telephone Company, said company shall hold itself ready to furnish sufficient duct space not to exceed capacity of one duct for use by the Town in carrying its police and fire alarm wires. All such wires, whether on poles or in conduits, shall be constructed, maintained and operated in such manner as not to interfere with nor create undue hazard in the operation of the telephone system of the Telephone Company. It is further agreed that the Telephone Company shall not be responsible to any party or parties whatsoever for any claims, demands, losses, suits, judgments for damages or injuries to persons or property by reason of the construction, maintenance, inspection or use of the police and fire alarm wires belonging to the Town, and the Town shall insure, indemnify and hold the Telephone Company harmless against all such claims, losses, demands, suits and judgments. (Ordinance #2 Section 9)

13.2.10 Attachments on Poles and Space in Ducts Not Here Affected Nothing in this ordinance contained shall be construed to require or permit any electric light or power wire attachments by the Town or for the Town, nor to require or permit

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any electric light or power wires to be placed in any duct used by the Town in the Telephone Company's conduits. If light or power attachments are desired by the Town or for the Town, or if the Town desires to place electric light or power wires in any duct used by the Town, then a further separate noncontingent agreement shall be prerequisite to such attachments or such use of any duct used by the Town. Nothing herein contained shall obligate or restrict the Telephone Company in exercising its right voluntarily to enter into pole attachment, pole usage, joint ownership and other wire space and facilities agreements with light and power companies and with other wire using companies which may be privileged to operate within the Town. (Ordinance #2, Section 10)

- 13.2.11 Period of Time of This Ordinance - Termination This agreement shall be in full force and effect for the period beginning with the effective date hereof and ending 20 years after December 31, 1949, provided that at the end of the expiration of the initial period, such term shall be automatically renewed forthwith for successive periods of 20 years, conditioned however, that if during the last four months of the initial period or of any successive 20 year period, not less than ninety days' prior written notice shall be given either to the Telephone Company by the Town or to the Town by the Telephone Company, setting forth the desire of the giver of such notice to terminate this agreement, then in such case this agreement shall terminate at the expiration of the then current period. (Ordinance #2, Section 11)
- 13.2.12 No Exclusive Privileges Conferred by This Ordinance Nothing herein contained shall be construed as giving to the Telephone Company any exclusive privilege. (Ordinance #2, Section 12)
- 13.2.13 Successors and Assigns The rights, powers, limitations, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns. (Ordinance #2, Section 13)
- 13.2.14 Partial Invalidity and Repeal Provisions If any section, sentence, clause or phrase of this ordinance is for any reason held to be illegal, ultra vires or unconstitutional, such invalidity shall not affect the validity of the remaining portions of this ordinance. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are hereby repealed. (Ordinance #21 Section 14)
- 13.2.15 Acceptance of Agreement The Telephone Company shall have sixty (60) days from and after the passage and approval of this ordinance to file its written acceptance thereof with the Town Secretary, and upon such acceptance being filed, this ordinance shall take effect and be in full force from and after the date of its passage and approval by the Mayor and shall effectuate and make binding the agreement provided by the terms hereof. (Ordinance #2, Section 15)

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Chapter 13.3 - GAS

13.3.01	Grant of Consent
13.3.02	Location of Improvements
13.3.03	Excavations and Obstructions
13.3.04	Service and Facilities Charges
13.3.05	Main Extensions
13.3.06	Customer Deposit
13.3.07	Non-Exclusivity
13.3.08	Service and Maintenance
13.3.09	Gross Receipts and Payment
13.3.10	Termination of Prior Franchise
13.3.11	Acceptance of Franchise

History:

<u>Ordinance</u>	<u>Date of Adoption</u>	Effect
88-04	1/18/88	Franchise grant
02-08	7/19/02	Amends 13.3.09

CODIFIER'S NOTE: The printing of the gas franchise ordinance in this Code is a non-substantive revision only, which has not been re-enacted by the governing body of the City of Dalworthington Gardens. Ordinance 02-08 is a substantive revision adopted by the City Council.

The editorial revisions are: The chapter designation and section numbers are added to be consistent with the present code format. The original ordinance and section references are parenthetically set out at the end of each section.

TITLE 13: PUBLIC SERVICES

Chapter 13.3 - GAS

- 13.3.01 Grant of Consent That the City of Dalworthington Gardens, Texas, hereinafter called the “City”, hereby grants to Lone Star Gas Company, a Division of Ensearch Corporation, hereinafter called “Company”, its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public places, public thoroughfares and grounds of City for the purpose of laying, maintaining, constructing, operating and replacing therein and thereon pipelines and all other appurtenant equipment needed and necessary to deliver and sell gas in, out of and through said City and to sell gas to persons, firms and corporations, including all the general public, within the City’s corporate limits, said consent being granted for a term of twenty-five (25) years from and after the date of the final passage and approval of this ordinance. (#88-4, 3.1)
- 13.3.02 Location of Improvements Company shall lay, maintain, construct, operate and replace its pipes, mains, laterals and other equipment so as to interfere as little as possible with traffic and shall promptly clean up and restore to an approximate original condition, at its cost, all thoroughfares and other surfaces which it may disturb. The location of all mains, pipes, laterals and other appurtenant equipment shall be fixed under the supervision of the City Council or an authorized committee or agent appointed by said City Council. (#88-4, 3.2)
- 13.3.03 Excavations and Obstructions When Company shall make or cause to be made excavations or shall place obstruction in any street, alley or other public place, the public shall be protected by barriers and lights placed, erected and maintained by Company; and in the event of injury to any person or damage to any property by reason of the construction, operation or maintenance of the gas distribution plant or system of Company, Company shall indemnify and keep harmless City from any and all liability in connection therewith. Company shall repair, clean up and restore to an approximate original condition all streets and alleys disturbed during the construction and repair of its gas distributing system. (#88-4 3.3)
- 13.3.04 Service Facilities Charges In addition to the rates charged for gas supplied, Company may make and enforce reasonable charges, rules and regulations for service rendered in the conduct of its business including a charge for services rendered in the inauguration of natural gas service, and may require, before furnishing service, the execution of a contract therefor. Company shall have the right to contract with each customer with reference to the installation of, and payment for, any and all of the gas piping from the connection thereof with the Company’s main in the streets or alleys to and

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throughout the consumer's premises. Company shall own, operate and maintain all service lines, which are defined as the supply lines extending from the Company's main to the customer's meter where gas is measured by Company. The consumer shall own, operate, and maintain all yard lines and house piping. Yard lines are defined as the underground supply lines extending from the point of connection with Company's customer meter to the point of connection with consumer's house piping. (#88-4, 3.4)

13.3.05 Main Extensions Company shall not be required to extend mains on any street more than fifty (50) feet for any one consumer of gas. (#88-4, 3.5)

13.3.06 Customer Deposit Company shall be entitled to require from each and every consumer of gas, before gas service is commenced, a deposit in an amount calculated pursuant to the Company's Quality of Service Rules as may be in effect during the term of this franchise, said deposit may be retained and refunded in accordance with such Quality of Service Rules and shall bear interest, as provided in Tex. Rev. Civ. Stat. Ann. art. 1440a (Vernon Supp. 1987) as it may be amended from time to time. Company shall be entitled to apply said deposit, with accrued interest, to any indebtedness owed Company by the consumer making the deposit. (#88-4, 3.6)

13.3.07 Non-Exclusivity The rights, privileges and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights and franchises at it may see fit to any other person or corporation for the purpose of furnishing gas or light, heat and power to and for City and the inhabitants thereof. (#88-4, 3.7)

13.3.08 Service and Maintenance Company shall furnish reasonable adequate service to the public at reasonable rates and Charges therefor; and Company shall maintain its property, equipment and appliances in good order and Condition. (#88-4, 3.8)

13.3.09 Franchise Consideration

A. Effective January 1, 2002, the consideration payable by TXU Gas for the rights and privileges granted to TXU Gas by the franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by TXU Gas is hereby changed to be four percent (4%) of the Gross Revenues, as defined in Section 1.B. below, received by TXU Gas.

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B. "Gross Revenues" shall mean all revenue derived or received, directly or indirectly, by the Company from or in connection with the operation of the System within the corporate limits of the City and including, without limitation:

(1) all revenues received by the Company from the sale of gas to all classes of customers within the City;

(2) all revenues received by the Company from the transportation of gas through the pipeline system of Company within the City to customers located within the City;

(3) the value of gas transported by Company for Transport Customers through the System of Company within the City ("Third Party Sales"), with the value of such gas to be reported by each Transport Customer to the Company, provided, however, that should a Transport Customer refuse to furnish Company its gas purchase price, Company shall estimate same by utilizing TXU Gas Distribution's monthly industrial Weighted Average Cost of Gas, as reasonably near the time as the transportation service is performed; and

(4) "Gross revenues" shall include:

(a) other revenues derived from the following 'miscellaneous charges':

i. charges to connect, disconnect, or reconnect gas within the City;

ii. charges to handle returned checks from consumers within the City;

iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and

iv. contributions in aid of construction" ("CIAC"); revenues billed but not ultimately collected or received by the Company; and,

(b) gross receipts fees.

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- (5) “Gross revenues” shall not include:
- (a) the revenue of any Person including, without limitation, an affiliate, to the extent that such revenue is also included in Gross Revenues of the Company;
 - (b) sales taxes; and
 - (c) any interest income earned by the Company; and
 - (d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's right of way.

C. Calculation and Payment of Franchise Fees Based on CIAC

(1) The franchise fee amounts based on “Contributions in aid of Construction” (“CIAC”) shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year.

(2) The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year.

D. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by TXU Gas

(1) If TXU Gas should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by TXU Gas to City pursuant to this Ordinance shall be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

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(2) The provisions of this Subsection D apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, including without limitation the timing of such payments.

E. TXU Gas Franchise Fee Recovery Tariff

(1) TXU Gas may file with the City a tariff amendment(s) to provide for the recovery of the franchise fees under this amendment.

(2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of TXU Gas' rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of TXU Gas' franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by TXU Gas and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by TXU Gas.

(3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by TXU Gas.

F. Lease of Facilities Within City's Rights-of-Way. TXU Gas shall have the right to lease, license or otherwise grant to a party other than TXU Gas the use of its facilities within the City's public rights-of-way provided: (i) TXU Gas first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) TXU Gas makes the franchise fee payment due on the revenues from such lease pursuant to Sections I.A. and I.B. of this Ordinance. This authority to Lease Facilities Within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

(Ord. #02-08)

13.3.10

Termination of Prior Franchise When this franchise ordinance shall have become effective, all previous ordinances of said City granting franchises for gas distribution purposes which were held by Company shall be automatically cancelled and annulled, and shall be of no further force and effect. (Ordinance #88-4, 3.10)

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- 13.3.11 Acceptance of Franchise Company shall file its written acceptance of this franchise ordinance within thirty (30) days after its final passage and approval by said City. (Ordinance #02-08)

TITLE 13: PUBLIC SERVICES

Chapter 13.4 - WATER AND SEWER

PART I - WATER AND SEWER SERVICES

ARTICLE I - DEFINITIONS

- 13.4.01 Person
- 13.4.02 Water Utility and Waterworks
- 13.4.03 Director of Public Works
- 13.4.04 - 13.4.19 (Reserved)

ARTICLE II - METERS

- 13.4.20 Control of Meters
- 13.4.21 Purchase and Repair of Meters
- 13.4.22 Charge in Case of Faulty Meter
- 13.4.23 - 13.4.29 (Reserved)

ARTICLE III - BILLING, RATES, DEPOSITS AND MISCELLANEOUS CHARGES

- 13.4.30 Billing and Collection Procedures
- 13.4.31 Water and Sewer Rates
- 13.4.32 New Accounts
- 13.4.33 Service Outside Corporate Limits
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History:

<u>Ordinance</u>	<u>Date of adoption</u>	<u>Effect</u>
89-02	5/15/89	Codified #63 as amended
89-14	11/20/89	Amended 13.4.30a; 13.4.31a&b; 13.4.45
02-03	4/18/02	Added Art. VII, water sources protection
03-103	7/17/03	Amended Part II, Industrial waste
03-106	11/20/03	Repealed easement requirement
04-15	10/21/04	Adopted new Part II, Industrial waste
05-06	4/21/05	Amended 13.4.61 & 62 re water rationing

TITLE 13: PUBLIC SERVICES

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PART I - WATER AND SEWER SERVICES

ARTICLE I - DEFINITIONS

- 13.4.01 Person The term “person”, as used in this chapter, shall mean any person, firm, association of persons, or corporation, including a public, private or municipal corporation.
- 13.4.02 Water Utility and Waterworks The terms “Water Utility”, “Water Utilities” or “Waterworks,” as used in this chapter, shall mean the City waterworks system and mains, and all other works of the City directly connected with the operation of such Water System, including the sanitary sewer system of the City.
- 13.4.03 Director of Public Works The term “Director of Public Works” or “Director” shall mean the person designated by the City Council to manage and administer the water and sewer system of the City.
- 13.4.04 - 13.4.19 (Reserved)

ARTICLE II - METERS

- 13.4.20 Control of Meters All water furnished by the Water Utility to its consumers shall be measured by meters. The size, type and right to own and control all meters installed or used by consumers shall be determined by the Water Utility.
- 13.4.21 Purchase and Repair of Meters All meters shall be purchased by the water users through the Water Utility, and in the event repairs on the same become necessary, such repairs shall be made by the Water Utility at its expense. The meters shall remain the property of the City, whether purchased by the water user or the City.
- 13.4.22 Charge in Case of Faulty Meter Should any meter fail to register correctly the amount of water used by a consumer since the previous reading, the right shall exist on the part of the Water Utility to average the month and charge for water on the basis of any three months average; provided, however, that the months used for the purpose of making the average are comparable to the month(s) the water is used. The Director is authorized

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to adjust disputed charges upon evidence satisfactory to the Director of a meter malfunction, misreading or other documented error, provided that such adjustment shall not exceed the sum of \$50.00.

13.4.23 - 13.4.29 (Reserved)

ARTICLE III - BILLING, RATES, DEPOSITS AND MISCELLANEOUS CHARGES

13.4.30 Billing and Collection Procedures Meters shall be read to the nearest 1,000 gallons monthly at approximately the same time each month and the consumer notified in writing of the applicable charges and the due date for payment of such charges.

- a. Utility bills shall be due and payable on or before the 10th day of the month next following the month for which the charges are made. Utility bills not paid by the said 10th day of the month shall be deemed delinquent, and the City shall collect thereon an additional amount equal to 10% of the bill inclusive of water, sewer, and solid waste collection charges, before delinquency, as penalty for late payment. The total amount due to the City at the time of service cutoff shall accrue interest at 10% per annum from such cutoff date until paid.
- b. Water service on accounts not paid by the 10th day after the due date shall be cut off, after 7 days notice, and a charge therefor in the amount prescribed in Title 3, Chapter 3.3 of this Code shall be paid to the City before said water service is reconnected.
- c. Water and/or sewer rates shall apply to any customer using water and sewer service. Customers who have occupied the service address for less than a full billing cycle and have used less than the minimum amount of water shall be charged for 1/4 month, 1/2 month, or 3/4 month billing, or as near to one of the above as possible.
- d. Should service be discontinued as above stated, applicable service charges will be added to the delinquent amount due and the delinquent amount plus service charges must be paid before service is resumed. Additionally, if at the time of discontinuation of service the customer has not previously paid a service deposit as required by this Code, such deposit shall be paid before service is resumed.

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- e. The utility deposit shall be held by the City until such time as the customer closes the account, discontinues service and demands refund of the deposit. If the account has been paid in full at closing, including the final billing, the deposit shall be refunded in full. Should the account not be paid in full, the City may apply the deposit to the account balance and either refund the surplus deposit or bill for the excess account balance.
- f. Deposits shall be refundable under the conditions described herein. Charges are not refundable, and shall be cumulative.
- g. The schedule of customer deposits and charges shall be as provided in Title 3, Chapter 3.3 of this Code, the fee ordinance of the City.

13.4.31 Water and Sewer Rates

- a. Water rates
 - 1. The rates charged for water service furnished to customers within the corporate limits of the City shall be as provided in Title 3, Chapter 3.3 of this Code.
 - 2. The water rates are based upon the size of meter service and the amount of water used, as measured by a single meter, in increments of one thousand (1000) gallons.
- b. Sewer rates The rates charged for sewer service furnished to customers within the corporate limits of the City, shall be as provided in Title 3, Chapter 3.3 of this Code.
 - 1. All water usage necessary for the normal construction of water, sewer, street, and other public works projects shall be measured by meters furnished by the Water Utility and billed to the contractor's account based on the City's prevailing rates. Upon payment of the deposit, the contractor shall obtain a meter from the Water Utility and shall be responsible for the meter, valve, fittings, and hydrant. Any damages that may occur to the meter shall be repaired by the City at the contractor's expense. The contractor's deposit, less repair costs, if applicable, shall be refunded provided that the account has been paid in full.

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2. A meter may be moved to various locations but the contractor shall report its location to the Water Utility at the time of any relocation. The contractor shall assure that the meter is read on or about the 15th day of each month by notifying the Water Utility of its location or bringing it to the Water Utility to be read. Failure to comply with this provision shall result in a penalty charge to the contractor's account in an amount equal to the monthly billing for 100,000 gallons of water.

13.4.32 New Accounts

- a. To open a new water account, water customers shall be required to make a deposit with the City that conforms to the established policy of the Water Utility.
- b. Bills may be paid by cash, check, or money order. The Water Utility reserves the right to refuse payment by personal check if through experience or other information there is reason to believe the check will not be honored at the payer's bank.
- c. A charge shall be made by the Water Utility for each new tapping of or connection to any water main or sanitary sewer line of the City, said charge to be determined by the size of the connection in accordance with the schedule therefor provided in Title 3, Chapter 3.3 of this Code.
 1. Condition (I) shall exist when a service line is in place, complete with angle stop or curb stop, and the Water Utility sets a meter and box.
 2. Condition (II) shall exist when the City main must be tapped for service, no street cut is required for the service line, and the meter is set within eight (8) feet of the tap.
 3. Condition (III) shall exist when a street cut is required for the tap. This charge shall include patching of the street and a maximum of 40 feet of service line.
 4. Condition (IV) shall exist when the street proposed to be cut is a major thoroughfare. In such event, no cut shall be

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made if boring is possible in the judgment of the City. Boring fees shall be as provided in Title 3, Chapter 3.3 of this Code.

5. A credit will be given when the property owner has met all of the following conditions:
 - a. City is provided with invoices and written proof that all costs of tap installation, both labor and materials, have been paid; and
 - b. All work done, both labor and materials, complies with City specifications therefor.

No credit shall have the effect of reducing the tap and meter fee to an amount less than the fees herein provided for in Condition I.

For tap and/or meter sizes other than those described above, the Water Utility shall charge the actual cost of furnishing and installing the tap and meter, including all labor, materials, and equipment necessary to make the tap, run the service line, set the meter and box, and any other work reasonably necessary thereto.

On sewer services 5” and larger in size, a manhole approved by the Director shall be installed at the City sewer main over the sewer service unless a wye has been installed at the time the main was laid.

It shall be the responsibility of the property owner to maintain the sewer service from the sewer main to and on his property, including the connection to the sewer main.

The cost of the manhole and sewer service shall be paid by the customer.

13.4.34 Service Outside Corporate Limits

- A. Water Rates The rate charged by the City for water outside the corporate limits of the City shall be determined by the City Council.

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- B. Sewer Rates The rates charged by the City for sewer service outside the corporate limits of the City shall be determined by the City Council.

13.4.34 - 13.4.39 (Reserved)

ARTICLE IV - REGULATIONS AND RESTRICTIONS ON SERVICE

- 13.4.40 Responsibility for Leakage All property owners, their agents and ‘tenants, shall be held responsible as consumers for loss of water due to leakage in pipe or plumbing. If lost water is not paid for according to the rates provided therefor, when payment is due, the water service shall be cut off by the Water Utility and not turned on again until all claims are paid. In the event of any change in tenancy in rental property where there exists, at such time, leakage, such condition shall be corrected to the satisfaction of the Water Utility before service will be restored.

If any customer shall be indebted to the Water Utility on any account at his current or previous place of consumption, such service shall be discontinued by the City until payment in full, plus any service charge, is made.

- 13.4.41 Opening Curb-Stop No plumber or any other person shall open the street curb-stop after same has been closed by the Water Utility without a written permit first being obtained from the Water Utility.
- 13.4.42 Extension of Water Service Prohibited After water is introduced into a building or upon any premises, the same shall not be extended by any plumber or any other person to any other premises for additional fixtures.
- 13.4.43 Separate Service Pipe for Each House Two houses shall not be permitted to be supplied with one service pipe where there is a water main in front of the premises, but shall have separate service pipes, unless approved otherwise by the Director of Utilities.
- 13.4.44 Repair and Renewal of Service Pipes The Water Utility reserves the right to make all repairs and renewals of service pipes from main to meter, and it shall be unlawful for any other persons to repair or renew service pipes from main to meter without first obtaining the written consent of the Water Utility.

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- 13.4.45 Connection for Multi Units All buildings used as duplexes, townhouses, shopping malls, apartment houses, etc., shall be required to provide a separate connection and meter with the main for each dwelling or rental unit, if each tenant is responsible for his own water account. Upon non-compliance with this provision, the Water Utility shall cut off the supply for the entire building or any portion thereof deemed by it to be proper. If the entire water service to a multiple unit building is provided through one meter and connection, the charges for water and sewer shall be the obligation of and paid by the building owner. If payment is to be made by the building owner through an agent, the owner shall furnish to the City written proof of the agent's authority prior to initiation of utility service, or upon demand of the City.
- 13.4.46 Interruption of Service by the Water Utility The right is reserved in the Water Utility to temporarily discontinue and to re-connect, without notice, water supply to all consumers for the purpose of making repairs, connections, extensions, cleaning of mains, machinery, reservoir or any part of said Water System.
- 13.4.47 Tapping of Street Mains It shall be unlawful for any plumber or person, other than a contractor employed by the Water Utility to tap any street main, make connections with the street mains or extend service pipes from mains to the meters, and to place a curb-stop and meter box at the point, and all of such equipment shall be under the exclusive control of the Water Utility. Said tap and service shall be paid for by the person ordering the work done before work is commenced, according to schedule of prices shown in Title 3, Chapter 3.3 of this Code.
- 13.4.48 Use of Fire Hydrants It shall be unlawful for any person except a member of the Fire Department or employees of the Water Utility to open or use water from a fire hydrant or to take off the cap without permission from the Water Utility except for the use of construction water with the proper construction meter attached to the fire hydrant.
- 13.4.49 Malicious Interference With Water Service It shall be unlawful for any person, individually or in association with others, to willfully break, injure or tamper with any part of the Water Utility System for any purpose whatsoever, in or any other manner to maliciously interfere with or prevent the running and operating of such system.

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- 13.4.50 Diversion of Water from Metered Flow Whoever by any means or device prevents water from passing through any meter belonging to the Water Utility, or prevents any meter used in connection with the supply of water to any consumer by the Utility from registering the amount of water passing through such meter, or prevents a meter from duly registering the quantity of water supplied or in any way interferes with its proper action or just registration, or, without the consent in writing of the Director, diverts the water from any pipe or pipes of the Water Utilities, or otherwise uses, or causes to be used, without the consent of the Director and water produced or distributed by said Water Utility Department, or retains possession of, or refuses to deliver, any meter or other appliance loaned to him by the Water Utility for the purpose of furnishing water through same, shall be in violation of these rules and regulations and shall be deemed guilty of a misdemeanor. The presence at any time on or about any such meter or pipe of any device or pipes resulting in the diversion of water or prevention of its free passage and registration by the meter as above defined, or prevention of the water reaching the meter, or resulting in the prevention of the just registration of the meter or meters or the taking of any water except through a meter as above set forth, shall constitute prima facie evidence on the part of the person owning or having custody and control of the room, building, place or premises where such device or pipe is, or knowledge of the existence thereof and knowledge of such existence to the person who would be benefited by the failing of the water to be properly metered, and shall further constitute prima facie evidence of the intention on the part of such person or persons to defraud, and shall bring such person prima facie within the scope, meaning and penalties of this section and chapter.
- 13.4.51 Water Used in Construction Charged to Property Owner Where water is used in the construction or repair of property or where water has not been turned on by the Water Utility for construction use on the premises, water shall not be turned on until a charge for service is paid. The Water Utility reserves the right to estimate the amount of water used.
- 13.4.52 Repairing Meters and Meter Boxes; Testing Meters; Fee
- A. All water meters and meter boxes furnished by the City shall remain at all times the property of the City, and shall be maintained and repaired by the City and shall be replaced, when rendered by the Director to be unserviceable through fair

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wear and tear. When replacements, repairs, or adjustments of any meter or meter box are rendered necessary by the act, neglect, or carelessness of the owner or occupant of any premises, and if not paid, service shall be disconnected.

- b. When any consumer of water is of the opinion that the meter through which the water is supplied is incorrect for any reason, he may make application to the Water Utility to have the meter examined and tested. It is provided further that the Director may require such customer to pay a fee for removing and testing the meter. The fee for removing and testing the water meter shall be as provided in Title 3, Chapter 3.3 of this Code.

If any meter one (1") inch or smaller shall, upon testing, have been found to register over two percent more water than actually passed through it, bases on a series of tests over the range of flow recommended by its manufacturer, another meter will be substituted therefor and the fee charged in the application for such test will be credited to the person making the application and the account adjusted for a period not exceeding the most recent three month's billing period prior to such test. If any meter one (1") inch or larger (upon examination and test), is found to register over three percent more water than actually passed through it, the same adjustment shall apply.

13.4.53 Installation of Check Valve or Back Siphonage Prevention Devices If, in the judgment of the Director, a check valve or backflow and back siphonage device is necessary for the safety of the water system, he will give notice in writing to the customer to install such device immediately. Any such device shall be of a type approved by the Director. The customer will install such approved device at his own expense, and failure, refusal, or inability of the customer to install such device immediately shall constitute a ground for discontinuing water service to the premises until such device has been installed.

13.4.54 Liability for Interrupted Service All persons operating boilers, air-conditioning equipment or other water consuming devices, and which may become damaged due to the interruption of water service, and which are supplied directly with city water, do so at their own risk. The City shall not be liable for any damage that may occur on account of the water being cut off for any purpose, or on account of the breaking of any pipe or fixture by pressure of the water from the City mains.

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- 13.4.55 Exposing Meter or Fire Hydrant to Damage: Moving Meters or Hydrants It shall be unlawful to build driveways or other driving surfaces or areas in such manner as to expose any meter or fire hydrant to damage from traffic. Whenever the property owner requests the moving of any meter or fire hydrant, such cost shall be the expense of the property owner.
- 13.4.56 Vending Water It shall be unlawful for any person to sell or resell water from the City Water Utility for domestic or any other uses within or without the City without receiving a permit to do so from the City.
- 13.4.57 Compulsory Sanitary Sewer Connection
- A. The use of any premises in the City in such manner that sewage is allowed to accumulate or flow upon the surface of any such property, or the discharge of sewage done in such a manner as to pollute the surface soil, the contamination of any drinking water supply, the infection of flies, cockroaches or the creation of any other nuisance within the City is hereby declared a nuisance, if connection with any line of the sanitary sewer system of the City exists which is adequate to handle such sewage.
 - B. It shall be the duty of any persons owning or occupying improved property within the City which can be feasibly connected to the City sewer system, to connect such property and the improvements thereon with the City water services if the same exist in the street, alley, or other public way or water right-or-way abutting the premises.
 - C. Where City sanitary sewer service is not available in the abutting streets, alleys, or other public ways, or other utility rights-of-ways, but subsequently are laid therein it shall be the duty of the owner or occupant of such property whose sewage disposal is a nuisance as herein defined within one year after the same becomes available, to connect therewith. Such connections shall be made subject to the applicable charges provided by the then current ordinances of the City.
 - D. It shall be the duty of the Director to notify the owner or occupant of every building situated where there has been laid a sanitary sewer, and where there is sufficient water service from the City's

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waterworks, to make connections with the City's sanitary sewer. Any such owner or occupant of any building so situated who shall fail to make connection with the City sanitary sewer within sixty (60) days after receipt of such notice from the Director, shall be deemed guilty of a misdemeanor.

13.4.58 Fire Sprinkler System or Fire Service

- A. No connection for a fire sprinkler or fire service shall be permitted unless application therefor has been made and granted by the Water Utility and approved by the Building Official of the City. In no instance shall any connection be made with any fire sprinkler or fire service without the written consent of the Water Utility. Should it be found that any unauthorized connection has been made, or that any water has been used from a sprinkler or fire service for any other purposes than extinguishing a fire, or that a waste of water is permitted from such connection through leaks in the pipes or fixtures, the water service shall be cut off and not turned on until a meter of the size and kind prescribed by the Director shall have been furnished and installed at the expense of the customer.
- B. The furnishing, installation, maintenance and inspection of all meters and services, checks, bypasses, valves, piping, and other appurtenances, necessary for the installation and operation of fire sprinkler systems and fire services shall be the expense of the customer.

13.4.59 - 13.4.60 (Reserved)

ARTICLE V - WATER RATIONING

13.4.61 Plan adoption

- A. Water Conservation Plan The document of 20 pages captioned "Water Conservation Plan" promulgated by the City of Fort Worth and adopted by its City Council in April, 2005 is hereby adopted as the water conservation plan of the City, and is incorporated herein

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and specifically made a part of this chapter. A copy of the plan shall be maintained on file in the office of the City Secretary. The restrictive, prohibitive or otherwise regulatory measures contained in the plan, when implemented as therein provided, shall have the same force and effect as any other exercise of the police power of the City.

- B. Drought Contingency/Emergency Water Management Plan The document of 14 pages captioned "Drought Contingency/Emergency Water Management Plan" promulgated by the City of Fort Worth and adopted by its City Council in April, 2005 is hereby adopted as the drought contingency and emergency water management plan of the City, and is incorporated herein and specifically made a part of this chapter. A copy of the plan shall be maintained on file in the office of the City Secretary. The restrictive, prohibitive or otherwise regulatory measures contained in the plan, when implemented as therein provided, shall have the same force and effect as any other exercise of the police power of the City.

13.4.62 Plan implementation and reporting The plans adopted in 13.4.61 shall be implemented in accordance with the procedures set forth therein. The City shall make in a timely manner such reports concerning the plans and/or their implementation as may be required from time to time by statute or contract.

13.4.63 Enforcement Official The Mayor is designated as the official responsible for implementation and enforcement, according to the guidelines contained in the Plan.

13.4.64 Penalty for Violations Users of city water, other than the City, that do not comply with the mandatory provisions of this chapter, the Plan and orders issued pursuant thereto, shall be guilty of a Class C misdemeanor. Each day such violation shall exist shall be deemed a separate offense.

13.4.65 - 13.4.66 (Reserved)

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ARTICLE VI - PRIVATELY OWNED WELLS

13.4.67 Bond and Permit to Dig or Drill Well Any person, firm, or corporation proposing to dig, bore, or drill a well within the corporate limits of the City, shall, before doing so, obtain from the City Council a permit to do so. Any person desiring to drill deeper than 250 feet or below the woodbine sand shall execute and deliver to the City a good and sufficient bond in the sum of \$50,000.00 with two or more sureties, to be approved by the City Council, payable to the City and conditioned as hereinafter provided.

13.4.68 Application for Permit An application for a permit shall be in writing, and shall state the purpose or purposes for drilling such well, and the proposed depth to which same is to be dug or drilled, and shall attest that a well driller licensed by the State of Texas shall drill the well.

The application shall be presented to the Director, who shall present the same to the City Council for its consideration and action. The application shall be submitted with the permit fee provided in Title 3, Chapter 3.3 of the Code.

13.4.69 Compliance standards; well report All well drilling shall comply with applicable provisions of Chapter 287 (Water Well Drillers) of 31 Texas Administrative Code, Texas Water Commission Permanent Rules, in effect at the time of the application and permit. The permittee shall provide to the Director a copy of the official State of Texas well report within seven days after completion of drilling.

13.4.70 - 13.4.79 (Reserved)

PART II - INDUSTRIAL WASTE AND WATER POLLUTION CONTROL

ARTICLE I - GENERAL PROVISIONS

13.4.101 Purpose and Policy This sub-chapter sets forth uniform requirements for users of the Publicly Owned Treatment Works for the City and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code § 1251 *et seq.*) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). The objectives of this sub-chapter are:

- A. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;
- B. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;
- C. To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
- D. To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;
- E. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and
- F. To enable the Control Authority to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.

This sub-chapter shall apply to all users of the Publicly Owned Treatment Works. The sub-chapter authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

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13.4 102 Administration Except as otherwise provided herein, the Designated City Official (DCO) shall administer, implement, and enforce the provisions of this sub-chapter. Any powers granted to or duties imposed upon the DCO may be delegated by the DCO to other City personnel. For the purpose of this sub-chapter, the Designated City Official shall be that person designated by the city council of the City to serve as such, in consultation with the City Engineer from time to time as deemed appropriate by the DCO.

13.4.103 Definitions Unless a provision explicitly states otherwise, the following terms and phrases, as used in this sub-chapter, shall have the meanings hereinafter designated.

Act or "the Act." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.*

Approval Authority. The Regional Administrator of EPA or the Director of a state agency delegated to act on EPA's behalf with an approved pretreatment program (e.g. Director of TCEQ).

Authorized Representative of the User.

(1) If the user is a corporation:

(a) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(b) The manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five (25) million dollars (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(3) If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(4) The individuals described in paragraphs 1 through 3, above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

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

Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

City. The City of Dalworthington Gardens or the City Council of the City, a Contracting Party of the Trinity River Authority's Central Regional Wastewater System.

Composite Sample. A sample that is collected over time, formed either by continuous sampling or by mixing discrete samples. 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.

Control Authority. Trinity River Authority of Texas as holder of the NPDES permit.

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

Existing Source. Any source of discharge, the construction or operation of which commenced prior to the publication by EP A of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

Grab Sample. A sample which is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.

Industrial User. An industry that discharges wastewater into the wastewater system.

Instantaneous Maximum Allowable Discharge Limit The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

Interference. A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the Control Authority's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); 40 CFR 503 sludge regulations; any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act and 30 TAC 312; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

NPDES (National Pollutant Discharge Elimination System). The National Pollutant Discharge Elimination System permit program of the Environmental Protection Agency, and/or the permit program of the state agency delegated to act on EPA's behalf with an approved pretreatment program (e.g. TPDES or Texas Pollutant Discharge Elimination System).

New Source.

- (1) 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 which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
 - (a) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - (b) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (c) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

- (a) Begun, or caused to begin, as part of a continuous onsite construction program
 - (i) any placement, assembly, or installation of facilities or equipment; or
 - (ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- (b) Entered into a binding contractual obligation for the purchase of facilities or equipment that are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

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

Normal Wastewater. Wastewater which the average concentration of suspended solids and five-day BOD does not exceed 250 mg/l each.

Pass Through. 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 Control Authority's NPDES permit, including an increase in the magnitude or duration of a violation.

Person Any individual, partnership, copartnership, 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 A measure of the acidity or alkalinity of a solution, expressed in standard units.

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Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

Pretreatment. 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, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

Pretreatment Standards or Standards. Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.

Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 13.4.110 of this chapter.

Publicly Owned Treatment Works or POTW. A "treatment works," as defined by Section 212 of the Act (33 U.S.C. §1292) which is owned by the City and/or the Control Authority. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

Sewage. Human excrement and gray water (household showers, dishwashing operations, etc).

Shall is mandatory; **May** is permissive.

Significant Industrial User.

- (1) A user subject to categorical pretreatment standards; or
- (2) A user that:
 - (a) Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);
 - (b) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
 - (c) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
- (3) Upon a finding that a user meeting the criteria in Subsection (2) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CPR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

Slug Load or Slug. Any discharge at a flow rate or concentration that could cause a violation of the prohibited discharge standards in Section 2.1 of this chapter.

Standard Industrial Classification (SIC) Code. A classification pursuant to the *Standard Industrial Classification Manual* issued by the United States Office of Management and Budget.

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

Superintendent, Director, Supervisor The person designated by the City who is charged with certain duties and responsibilities by this chapter, or a duly authorized representative.

Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

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Total Toxic Organics. The sum of the masses or concentration of the toxic organic compounds listed in 40 CPR 122 Appendix D, Table II, excluding pesticides, found in industrial users' discharge at a concentration greater than 0.01 mg/L. Only those parameters reasonably suspected to be present, at the discretion of the DCO, if any, shall be analyzed for with non-categorical industries. With Categorical industries, TTOs will be sampled for as stipulated in the particular category or those parameters reasonably suspected to be present, at the discretion of the DCO, where not stipulated.

User or Industrial User. A source of indirect discharge.

Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

Wastewater Treatment Plant or Treatment Plant. That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

13.4.104 **Abbreviations** The following abbreviations, when used in this chapter, shall mean:

BOD - Biochemical Oxygen Demand

CFR - Code of Federal Regulations

COD - Chemical Oxygen Demand

EPA - U.S. Environmental Protection Agency

gpd - gallons per day

mg/l - milligrams per liter

NPDES - National Pollutant Discharge Elimination System

POTW - Publicly Owned Treatment Works

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RCRA - Resource Conservation and Recovery Act

SIC - Standard Industrial Classification

SIU - Significant Industrial User

TCEQ - Texas Commission on Environmental Quality

TPDES - Texas Pollutant Discharge Elimination System

TRA - Trinity River Authority

TSS - Total Suspended Solids

TTO - Total Toxic Organics

U.S.C. - United States Code

13.4.105 - 13.4.109 (Reserved)

ARTICLE II - GENERAL SEWER USE REQUIREMENTS

13.4.110 Prohibited Discharge Standards

- A. General Prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements.
- B. Specific Prohibitions. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
 - (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a

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closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;

(2) Wastewater having corrosive properties capable of causing damage or injury to structures, equipment and/or personnel of the POTW, as per the specific prohibition in the applicable local limits in Section 2.4. In no case shall wastewater containing a pH less than 5.0 be discharged unless the works is specifically designated to accommodate such discharges;

(3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, blockage, or damage to the POTW.

(4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;

(5) Wastewater having a temperature greater than 150°F (65°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C);

(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;

(7) 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;

(8) Trucked or hauled pollutants, except at discharge points designated by the DCO and the Control Authority in accordance with Section 3.4 of this chapter;

(9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

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- (10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the applicable NPDES permit;
- (11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations;
- (12) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, and unpolluted wastewater, unless specifically authorized by the DCO and the Control Authority;
- (13) Sludges, screenings, or other residues from the pretreatment of industrial wastes;
- (14) Medical wastes, except as specifically authorized by the DCO and/or the Control Authority in a wastewater discharge permit;
- (15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;
- (16) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;
- (17) Fats, oils, or greases of animal or vegetable origin in concentrations greater than that specified in the applicable local limits in Section 2.4;
- (18) A discharge of water, normal domestic wastewater, or industrial waste that which in quantity of flow exceeds, for a duration of longer than fifteen minutes, more than four times the average twenty four hour flow during normal operations of the industry;
- (19) Insecticides and herbicides in concentrations that are not amenable to treatment.
- (20) Polychlorinated biphenyls;

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(21) Garbage that is not properly shredded to such an extent that all particles will be carried freely under the flow conditions normally prevailing in wastewater mains, with no particle having greater than one-half (1/2") inch cross-sectional dimension;

(22) Wastewater or industrial waste generated or produced outside the City, unless approval in writing from the DCO and the Control Authority has been given to the person discharging the waste; or,

(23) Without the approval of the DCO and the Control Authority, a substance or pollutant other than industrial waste, normal domestic wastewater, septic tank waste or chemical toilet waste that is of a toxic or hazardous nature, regardless of whether or not it is amenable to treatment, including but not limited to bulk or packaged chemical products.

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

13.4.111 National Categorical Pretreatment Standards The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated.

A. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the DCO may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

B. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the DCO shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).

C. A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.

D. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

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13.4.112 Local Limits The following pollutant limits are established to protect against pass through and interference. No person shall discharge or cause or permit to be discharged, wastewater containing in excess of the following instantaneous maximum allowable discharge limits:

- 0.2 mg/l arsenic
- 0.1 mg/l cadmium
- 2.9 mg/l chromium
- 2.3 mg/l copper
- 0.5 mg/l cyanide
- 0.9 mg/l lead
- 0.0004 mg/l mercury
- 0.2 mg/l Molybdenum
- 4.6 mg/l nickel
- 2.1 mg/l oil and grease
- 0.1 mg/l selenium
- 0.8 mg/l silver
- 8.0 mg/l zinc
- 2.1 mg/l TTO
- 5.5 pH 11.0

The above limits apply at the point where the wastewater is discharged to the POTW. All concentrations for metallic substances are for "total" metal unless indicated otherwise. The DCO may impose mass limitations in addition to, or in place of, the concentration-based limitations above.

13.4.113 City's Right of Revision The City reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

13.4.114 Dilution 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 a discharge limitation unless expressly authorized by an applicable pretreatment standard or

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requirement. The DCO may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

- 13.4.115 Plant Loading No industry shall discharge wastewater containing a BOD or TSS loading that causes the City's prorata share of the total BOD or TSS loading to the POTW System to exceed the City's prorata share of the total flow to the POTW System. (Example: If the City contributes 25% of the total wastewater flow to the System, the City's cumulative BOD or TSS loading to the System, as measured at the City's points of entry to the System, shall not exceed 25% of the total BOD or TSS loading to the System.)

Any industry with a wastewater strength that will cause the City's cumulative wastewater loading, at the City's points of entry, to exceed the City's prorata share of the total wastewater loading based upon flow, shall be required to install pretreatment facilities to reduce its wastewater strength to an acceptable level.

13.4.116 - 13.4.119 (Reserved)

ARTICLE III - PRETREATMENT OF WASTEWATER

- 13.4.120 Pretreatment Facilities Users shall provide wastewater treatment as necessary to comply with this chapter and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in Section 13.4.110 of this chapter within the time limitations specified by EPA, the State, the Control Authority, or the DCO, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the DCO for review, and shall be acceptable to the DCO before such facilities 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 City under the provisions of this chapter.

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13.4.121 Additional Pretreatment Measures

- A. Whenever deemed necessary, the DCO may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and require such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this chapter.
- B. The DCO 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 DCO, 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 DCO 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.
- D. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter, or other control device as deemed necessary by the DCO.

13.4.122 Accidental Discharge/Slug Control Plans At least once every two (2) years, the DCO shall evaluate whether each permitted significant industrial user needs an accidental discharge/slug control plan. The DCO may require any user to develop, submit for approval, and implement such a plan. An accidental discharge/slug control plan shall address, at a minimum, the following:

- A. Description of discharge practices, including nonroutine batch discharges;

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- B. Description of stored chemicals;
- C. Procedures for immediately notifying the DCO and Control Authority of any accidental or slug discharge, as required by Section 13.4.151 of this chapter; and
- D. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

13.4.123 Hauled Wastewater

- A. Septage waste may be introduced into the POTW only at locations designated by the DCO and Control Authority, and at such times as are established by the DCO and Control Authority. Such waste shall not violate Article II of this chapter or any other requirements established by the City. The DCO and/or Control Authority may require septic tank waste haulers to obtain wastewater discharge permits.
- B. Septage waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of generator, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

13.4.124 - 13.4.125 (Reserved)

ARTICLE IV - WASTEWATER DISCHARGE PERMIT APPLICATION

- 13.4.126 Wastewater Analysis When requested by the DCO, a user must submit information on the nature and characteristics of its wastewater by the deadline stipulated. The DCO is authorized to prepare a form for this purpose and may periodically require users to update this information.

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13.4.127 Wastewater Discharge Permit Requirement

A. No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the DCO, except that a significant industrial user that has filed a timely application pursuant to Section 13.4.128 of this chapter may continue to discharge for the time period specified therein.

B. The DCO may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of this chapter.

C. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this chapter and subjects the wastewater discharge permittee to the sanctions set out in Articles VII through X of this chapter. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State pretreatment standards or requirements with any other requirements of Federal, State, and local law.

13.4.128 Wastewater Discharge Permitting: Existing Connections Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this chapter and who wishes to continue such discharges in the future, shall apply to the DCO for a wastewater discharge permit in accordance with Section 13.4.130 of this chapter, and shall not cause or allow discharges to the POTW to continue after ninety (90) days of the effective date of this chapter except in accordance with a wastewater discharge permit issued by the DCO. If, in the judgment of the DCO, the adoption of this chapter does not significantly affect the Industrial Users current permit, then the existing permit will continue through to the expiration date.

13.4.129 Wastewater Discharge Permitting: New Connections Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit, in accordance with Section 13.4.130 of this chapter, must be filed prior to the date upon which any discharge will begin or recommence.

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13.4.130 Wastewater Discharge Permit Application Contents All users required to obtain a wastewater discharge permit must submit a permit application. The DCO may require all users to submit as part of an application the following information:

- A. All information required by Section 13.4.146 (B) of this chapter;
- B. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
- C. Number and type of employees, hours of operation, and proposed or actual hours of operation;
- D. Each product produced by type, amount, process or processes, and rate of production;
- E. Type and amount of raw materials processed (average and maximum per day);
- F. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
- G. Time and duration of discharges; and
- H. Any other information as may be deemed necessary by DCO to evaluate the wastewater discharge permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

13.4.131 Application Signatories and Certification All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons

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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."

13.4.132 Wastewater Discharge Permit Decisions The DCO will evaluate the data furnished by the user and may require additional information. Within sixty (60) days of receipt of a complete wastewater discharge permit application, the DCO will determine whether or not to issue a wastewater discharge permit. The DCO may deny any application for a wastewater discharge permit.

13.4.133- 13.4.135 (Reserved)

ARTICLE V- WASTEWATER DISCHARGE PERMIT ISSUANCE PROCESS

13.4.136 Wastewater Discharge Permit Duration A wastewater discharge permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than five (5) years at the discretion of the DCO. Each wastewater discharge permit will indicate a specific date upon which it will expire.

13.4.137 Wastewater Discharge Permit Contents A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the DCO to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

A. Wastewater discharge permits must contain:

- (1) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;
- (2) A statement that the wastewater discharge permit is nontransferable without prior notification to the City in accordance

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with Section 13.4.139 of this chapter, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

(3) Effluent limits based on applicable pretreatment standards;

(4) Self monitoring, sampling, reporting, notification, and record-keeping requirements. 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; and

(5) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.

B. Wastewater discharge permits may contain, but need not be limited to, the following conditions:

- (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- (2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- (3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;
- (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
- (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;

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- (7) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit; and
- (8) Other conditions as deemed appropriate by the DCO to ensure compliance with this chapter, and State and Federal laws, rules, and regulations.

13.4.138 Wastewater Discharge Permit Modification The DCO may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- A. To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;
- B. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- D. Information indicating that the permitted discharge poses a threat to POTW, POTW personnel, or the receiving waters;
- E. Violation of any terms or conditions of the wastewater discharge permit;
- F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
- G. Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;
- H. To correct typographical or other errors in the wastewater discharge permit; or
- I. To reflect a transfer of the facility ownership or operation to a new owner operator.

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13.4.139 Wastewater Discharge Permit Transfer Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives advance notice to the DCO and the DCO approves the wastewater discharge permit transfer. The notice to the DCO must include a written certification by the new owner or operator which:

- A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
- B. Identifies the specific date on which the transfer is to occur; and
- C. Acknowledges full responsibility for complying with the existing wastewater discharge permit.

Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

13.4.140 Wastewater Discharge Permit Revocation The DCO may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- A. Failure to notify the DCO of significant changes to the wastewater prior to the changed discharge;
- B. Failure to provide prior notification to the DCO of changed conditions pursuant to Section 13.4.150 of this chapter;
- C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- D. Falsifying self-monitoring reports;
- E. Tampering with monitoring equipment;
- F. Refusing to allow the DCO timely access to the facility premises and records;
- G. Failure to meet effluent limitations;
- H. Failure to pay fines;

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- I. Failure to pay sewer charges;
- J. Failure to meet compliance schedules;
- K. Failure to complete a wastewater surveyor the wastewater discharge permit application;
- L. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
- M. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this chapter.

Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

13.4.141 Wastewater Discharge Permit Reissuance A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with Section 14.4.137 of this chapter prior to the expiration of the user's existing wastewater discharge permit.

13.4.142 - 13.4.145 (Reserved)

ARTICLE VI - REPORTING REQUIREMENTS

13.4.146 Baseline Monitoring Reports

- A. Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the DCO a report which contains the information listed in paragraph B, below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that will become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the DCO a report which

contains the information listed in paragraph B, below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

B. Users described above shall submit the information set forth below.

(1) Identifying Information. The name and address of the facility, including the name of the operator and owner.

(2) Environmental Permits. A list of any environmental control permits held by or for the facility.

(3) Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

(4) Flow Measurement. Information showing the measured or estimated average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).

(5) Measurement of Pollutants.

(a) The categorical pretreatment standards applicable to each regulated process.

(b) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the DCO, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 13.4.155 of this chapter.

(c) Sampling must be performed in accordance with procedures set out in Section 13.4.156 of this chapter.

(6) Certification. A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

(7) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 13.4.147 of this chapter.

(8) Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with Section 13.4.131 of this chapter.

13.4.147 Compliance Schedule Progress Reports The following conditions shall apply to the compliance schedule required by Section 13.4.146B(7) of this chapter:

A. 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, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

B. No increment referred to above shall exceed nine (9) months;

C. The user shall submit a progress report to the DCO no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it

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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; and

D. In no event shall more than nine (9) months elapse between such progress reports to the DCO.

13.4.148

Reports on Compliance with Categorical Pretreatment Standard Deadline Within ninety (90) days following the date formal 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 user subject to such pretreatment standards and requirements shall submit to the DCO a report containing the information described in Section 13.4.146(B)(4-6) of this chapter. For users subject to equivalent mass or concentration limits established 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 users 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. All compliance reports must be signed and certified in accordance with Section 13.4.131 of this chapter.

13.4.149

Periodic Compliance Reports

A. All significant industrial users shall, at a frequency determined by the DCO but in no case less than twice per year, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with Section 13.4.131 of this chapter.

B. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

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C. If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the DCO, using the procedures prescribed in Sections 13.4.155 and 13.4.156 of this chapter, the results of this monitoring shall be included in the report.

13.4.150 Reports of Changed Conditions Each user must notify the DCO of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater before the change is made.

A. The DCO may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 13.3.137 of this chapter.

B. The DCO may issue a wastewater discharge permit under Section 13.4.132 of this chapter or modify an existing wastewater discharge permit under Section 13.4.138 of this chapter in response to changed conditions or anticipated changed conditions.

C. For purposes of this requirement, significant changes include but are not limited to, flow increases of twenty percent 20 % or greater, and the discharge of any previously unreported pollutants that are determined to be of concern.

13.4.151 Reports of Potential Problems

A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the City and the Control Authority of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

C. Within five (5) days following such discharge, unless waived by the Director, the user shall submit a detailed written report describing the cause(s) of the discharge and the measures to be

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taken by the user to prevent similar 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, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this chapter.

C. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

13.4.152 Reports from Unpermitted Users All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the DCO as the DCO may require.

13.4.153 Notice of Violation/Repeat Sampling and Reporting If sampling performed by a user indicates a violation, the user must notify the DCO within twenty-four (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 DCO within thirty (30) days after becoming aware of the violation. The user is not required to resample if the DCO monitors at the user's facility at least once a month, or if the DCO samples between the user's initial sampling and when the user receives the results of this sampling.

13.4.154 Notification of the Discharge of Hazardous Waste

A. Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such

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waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 13.4.150 of this chapter. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of Sections 13.4.146, 13.4.148, and 13.4.149 of this chapter.

B. Dischargers are exempt from the requirements of paragraph A, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

C. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the DCO, the POTW, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

D. In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

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E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this chapter, a permit issued thereunder, or any applicable Federal or State law.

13.4.155 Analytical Requirements All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA.

13.4.156 Sample Collection

A. Except as indicated in Section B, below, the user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the DCO and/or Control Authority may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be used to show compliance with instantaneous discharge limits.

B. Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

13.4.157 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.

13.4.158 Record Keeping Users subject to the reporting requirements of this chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities

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required by this chapter and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the City, or where the user has been specifically notified of a longer retention period by the DCO and/or Control Authority.

13.4.159 - 13.4.160 (Reserved)

ARTICLE VII - COMPLIANCE MONITORING

13.4.161 Right of Entry: Inspection and Sampling The DCO and/or the Control Authority, TCEQ, or USEPA or their designated representative shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this chapter and any wastewater discharge permit or order issued hereunder. Users shall allow inspecting or sampling person ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

A. Where a user has security measures in force which 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, the City, Control Authority, TCEQ or USEPA will be permitted to enter without delay for the purposes of performing specific responsibilities.

B. The DCO and/or Control Authority shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations. All sampling and analysis performed by the DCO and/or Control Authority to monitor compliance shall be at the expense of the industrial user.

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C. The DCO and/or Control Authority may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated, at a minimum, annually to ensure their accuracy.

D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the DCO and/or Control Authority and shall not be replaced. The costs of clearing such access shall be born by the user.

E. Unreasonable delays in allowing the inspecting or sampling person access to the user's premises shall be a violation of this chapter.

F. In accordance with 40 CPR 403, the City shall inspect and monitor each permitted Industrial User a minimum of once per year. If the City elects to perform compliance monitoring for the industry then the City will monitor the industry a minimum of semi annually.

13.4.162 Search Warrants If the DCO and/or Control Authority has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this chapter or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the DCO and/or Control Authority may seek issuance of a search warrant from the an appropriate court.

13.4.163 Confidential Information Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the City and/or Control Authority, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State

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law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user 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 available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment 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.

13.4.164 Publication of Users in Significant Noncompliance The DCO shall publish annually, in the largest daily newspaper published in the municipality where the POTW is located, a list of the users which, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall mean:

A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of wastewater measurements taken during a six- (6-)month period exceed the daily maximum limit or average limit for the same pollutant parameter by any amount;

B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33 %) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

C. Any other discharge violation that the DCO and/or Control Authority believes has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;

D. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the DCO's or Control Authority's exercise of its emergency authority to halt or prevent such a discharge;

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

F. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

G. Failure to accurately report noncompliance; or

H. Any other violation (one or more) which the DCO determines will adversely affect the operation or implementation of the local pretreatment program.

ARTICLE VIII - ADMINISTRATIVE ENFORCEMENT REMEDIES

13.4.165 Notification of Violation When the DCO finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the DCO may serve upon that user a written Notice of Violation. Within the time frame specified in the notice, which is usually, but not always, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the DCO. 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 DCO to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

13.3.166 Show Cause Hearing The DCO may order a user which has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the DCO and show cause why the proposed enforcement action should not be taken. Notice shall be served I on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The

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notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

13.4.167 Compliance Orders When the DCO finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the DCO may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

13.4.168 Cease and Desist Orders When the DCO finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the DCO may issue an order to the user directing it to cease and desist all such violations and directing the user to:

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

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

13.4.169 Emergency Suspensions The DCO may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably

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appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The DCO may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

A. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the DCO or Control Authority may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The DCO may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the DCO that the period of endangerment has passed, unless the termination proceedings in Section 13.4.170 of this chapter are initiated against the user.

B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the DCO prior to the date of any show cause or termination hearing under Sections 13.4.166 or 13.4.170 of this chapter.

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

13.4.170 Termination of Discharge In addition to the provisions in Section 13.4.140 of this chapter, any user who violates the following conditions is subject to discharge termination:

A. Violation of wastewater discharge 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 volume, constituents, and characteristics prior to discharge;

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D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or

E. Violation of the pretreatment standards in Article II of this subchapter.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 13.4.166 of this chapter why the proposed action should not be taken. Exercise of this option by the DCO shall not be a bar to, or a prerequisite for, taking any other action against the user.

13.4.171 - 13.4.174 (Reserved)

ARTICLE IX - JUDICIAL ENFORCEMENT REMEDIES

13.4.175 Injunctive Relief When the DCO finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the DCO may petition the appropriate Court through the City's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this chapter on activities of the user. The DCO 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.

13.4.176 Civil Penalties

A. A user who has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the City for a maximum civil penalty of One Thousand Dollars (\$1,000.00) per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

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B. The DCO may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.

C. In determining the amount of civil 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 user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

13.4.177 **Criminal Prosecution**

A. A user who violates any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than Two Thousand Dollars (\$2,000.00) per violation, per day, or imprisonment as decided by an appropriate court, or both.

B.A user who negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to the same penalties described in 13.4.177A of this chapter. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

C.A user who makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this chapter, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be subject to the same penalties described in 13.4.177 A of this chapter.

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D. A culpable mental state is not required to prove an offense under this chapter. A person is criminally responsible for a violation of this chapter if:

- (1) the person commits or assists in the commission of a violation, or causes or permits another person to commit a violation; or
- (2) the person owns or manages the property or facilities determined to be the cause of the illegal discharge under Section 13.4.110, 13.4.111, 13.4.112, 13.4.123, or 13.4.127.

13.4.178 Remedies Nonexclusive The remedies provided for in this chapter are not exclusive. The DCO 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 City's enforcement response plan. However, the DCO may take other action against any user when the circumstances warrant. Further, the DCO is empowered to take more than one enforcement action against any noncompliant user.

13.4.179 Applicability of More Stringent Regulations

A. If national pretreatment standards, categorical or otherwise, more stringent than the discharge limits prescribed in this chapter are promulgated by the United States Environmental Protection Agency for certain industries, the more stringent national pretreatment standards will apply to the affected industrial user. A violation of the more stringent national pretreatment standards will also be considered a violation of this chapter.

B. Applicability of more stringent discharge limits. An industrial user within the city 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 is subject to the following additional rules:

- (1) If the governmental entity has more stringent discharge limits than those prescribed by this chapter, or by a discharge permit issued hereunder, because the United States Environmental Protection Agency requires the more

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stringent discharge limits as part of the governmental entity's wastewater pretreatment program, the more stringent discharge limits shall prevail.

(2) The DCO is authorized to issue a discharge permit to an industrial user affected by Subsection (I), to insure notice of and compliance with the more stringent discharge limits. If the industrial user already has a discharge permit, the DCO may amend the permit to apply and enforce the more stringent discharge limits. An industrial user shall submit to the DCO 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.

(3) If the DCO chooses not to issue or amend a permit under Subsection (2), the DCO shall notify the affected industrial user in writing of the more stringent discharge limits and their effective date. Regardless of whether or not a permit is issued or amended, an industrial user shall be given a reasonable opportunity to comply with the more stringent discharge limits.

(4) The more stringent discharge limits cease to apply upon termination of the city's 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 DCO shall take the appropriate action to notify the affected industrial user of an occurrence under this Subsection (4).

D. The DCO may grant a variance in compliance dates to an industry when, in the DCO's opinion, such action is necessary to achieve pretreatment or corrective measures. In no case shall the DCO 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.

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- E. The DCO may establish regulations not in conflict with this chapter or other laws, to control the disposal and discharge of industrial waste into the wastewater system and to insure compliance with the city's 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 industrial user by the DCO.

ARTICLE X - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

13.4.180 Upset Provision In an action brought in federal court only:

- A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (C), below, are met.
- C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and the user can identify the cause(s) of the upset;
 - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
 - (3) The user has submitted the following information to the DCO within twenty-four (24) hours of becoming aware of the upset, if this information is provided orally, a written submission must be provided within five (5) days:

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(a) A description of the indirect discharge and cause of noncompliance;

(b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

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

D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

E. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

F. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

13.4.181 Acts of God In an action brought in municipal or state court only:

A. An event that would otherwise be a violation that is caused solely by an act of God, war, strike, riot, or other catastrophe is not a violation.

B. In any enforcement proceeding, the user seeking to establish the occurrence of an act of God, war, strike, riot, or other catastrophe shall have the burden of proof.

C. In the event that A. and B. above has been demonstrated the user shall control production of all discharges to the extent necessary to maintain compliance with pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided.

13.4.182 Bypass

A. For the purposes of this section:

(1) "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

B. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.

C. Notice of Bypass

(1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the DCO, at least ten (10) days before the date of the bypass, if possible.

(3) A user shall submit oral notice to the DCO of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The DCO may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

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F. Bypass prohibition

(1) Bypass is prohibited, and the DCO may take an enforcement action against a user for a bypass, unless

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The user submitted notices as required under paragraph (C) of this section.

(2) The DCO may approve an anticipated bypass, after considering its adverse effects, if the DCO determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

ARTICLE XI - WASTEWATER TREATMENT RATES

13.4.183 Pretreatment Charges and Fees

A. The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's Pretreatment Program which may include:

1. Fees for wastewater discharge permit applications including the cost of processing such applications;

2. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users;

3. Fees for reviewing and responding to accidental discharge procedures and construction;

4. Fees for filing appeals; and
5. Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this chapter and are separate from all other fees, fines, and penalties chargeable by the City.
6. Fees for treating abnormal strength wastes
7. Fees incurred from an upset, bypass or unauthorized discharge.

B. Surcharge: The city may surcharge industrial users for the treating of abnormal strength wastes. Water or wastes having (1) a five day biochemical oxygen demand greater than two hundred fifty (250) parts per million (ppm) by weight or (2) containing more than two hundred fifty (250) parts per million by weight of total suspended solids shall be subject to the review and approval of the DCO. Where the DCO has approved the admission of (1) or (2) above into the POTW, that discharge may be subject to a surcharge as determined by the DCO. In no case shall a discharge be accepted that will prevent the POTW from meeting its limits.

The surcharge will be assessed according to the following formula each month using the most current pollutant concentration data and the current months' wastewater flow:

$$\text{Surcharge} = \frac{Q}{1,000,000} \times [a(\text{BOD} - x) + b(\text{TSS} - y)][8.34]$$

Where:

Q = flow in gallons

8.34 = weight in pounds of one gallon of water

x = normal limits of BOD in domestic wastewater expressed in milligrams per liter

y = normal limits of TSS in domestic wastewater expressed in milligrams per liter

a = unit cost of treatment per pound of BOD

b = unit cost of treatment per pound of TSS

BOD = measured amount of BOD, in mg/l

TSS = measured amount of TSS, in mg/l

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A surcharge is an additional charge by the POTW for the increased cost of handling discharge of unusual strength and character and shall not serve as a variance to the requirements of this chapter. Exercise of this provision shall not be a bar to, or a prerequisite for, taking any other action against the user.

13.4.185 - 13.4.189 (Reserved)

ARTICLE XII - WATER SOURCES PROTECTION

- 13.4.190 Ground Water Source Protection Ground water sources shall be located so that there will be no danger of pollution from flooding or from insanitary surroundings, such as privies, sewage, sewage treatment plants, livestock and animal pens, solid waste disposal sites or underground petroleum and chemical storage tanks and liquid transmission pipelines, or abandoned and improperly sealed wells.
- 13.4.191 Wells Near Sanitary Sewer Lines No well site which is within 50 feet of a tile or concrete sanitary sewer, sewerage appurtenance, septic tank, storm sewer, or cemetery; or which is within 150 feet of a septic tank perforated drainfield, areas irrigated by low dosage, low angle spray on-site sewage facilities, absorption bed, evapotranspiration bed, improperly constructed water well or underground petroleum and chemical storage tank or liquid transmission pipeline will be acceptable for use as a public drinking water supply. Sanitary or storm sewers constructed of ductile iron or PVC pipe meeting AWWA standards, having a minimum working pressure of 150 psi or greater, and equipped with pressure type joints may be located at distances of less than 50 feet from a proposed well site but in no case shall the distance be less than 10 feet.
- 13.4.192 Wells Near Sewage Treatment and Other Systems No well site shall be located within 500 feet of a sewage treatment plant or within 300 feet of a sewage wet well, sewage pumping station or a drainage ditch which contains industrial waste discharges or the wastes from sewage treatment systems.
- 13.4.193 Minimum Distances from Waste Locations No water wells shall be located within 500 feet of animal feed lots, solid waste disposal sites, lands on which sewage plant or septic tank sludge is applied, or lands irrigated by sewage plant effluent.

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13.4.194 Distance from Livestock Livestock in pastures shall not be allowed within 50 feet of water supply wells.

13.4.195 Reporting to TCEQ All known abandoned or inoperative wells (unused wells that have not been plugged) within one quarter mile of a proposed wellsite shall be reported to the TCEQ along with existing or potential pollution hazards. These reports are required for community and nontransient, noncommunity ground water sources. Examples of existing or potential pollution hazards which may affect ground water quality include, but are not limited to: landfill and dump sites, animal feedlots, military facilities, industrial facilities, wood-treatment facilities, liquid petroleum and petrochemical production, storage, and transmission facilities. Class 1, 2, 3, and 4 injection wells, and pesticide storage and mixing facilities. This information must be submitted to the TCEQ prior to construction or as required by the executive director of the TCEQ.