

ARTICLE II. WATER AND SEWER SERVICE

DIVISION 1. GENERALLY

Sec. 23-16. Installation of water meters.

Water meters shall be installed for all customers of the Henderson Water Utility (HWU).

(Ord. No. 06-11, 3-22-11)

Sec. 23-16.1 Cross connections prohibited; installation of backflow prevention devices for water services.

(a) Cross connections between the public water system and any actual or potential source of contamination are prohibited. The General Manager may at his discretion, and after official notice is made, order that public water service be shut off to any premises where a cross connection is found to exist or may potentially exist.

(b) Protection against backflow and back siphonage shall be provided on any potable water opening, outlet, or connection serving a commercial or industrial building or property, in conformance with the Kentucky State Plumbing Code. Backflow and back siphonage devices shall be installed by the owner and shall be properly maintained. For all fire suppression systems, and for all potable water services larger than two inches (2”), backflow and back siphonage devices shall be tested and inspected in conformance with the Kentucky State Plumbing Code. Test results shall be certified by a qualified individual, and shall be made available for inspection by the General Manager or his authorized representative.

(Ord. No. 06-11, 3-22-11)

Sec. 23-17. New premises to provide connection where sewer service available.

All architects, engineers, contractors, builders, or other persons who shall hereafter erect new premises where sewers are available shall, before erecting the same, exhibit to the City, through such officer or employee as may be designated from time to time for such purpose, satisfactory evidence that a means has been or will be provided for connecting all sanitary sewage drains and outlets from such building or structure with the municipal sanitary sewer system.

(Ord. No. 06-11, 3-22-11)

Sec. 23-18. Check valves required for private sewers connecting with city system.

(a) In accordance with subsection (b) private sewers running from private property into sewers of the City shall be equipped with and shall be maintained with check valves or other similar devices as will prevent water or sewage from

flowing or backing from the sewers of the City into private property through such private sewers.

(b) All private sewers, which at the time of heavy rainfall carry back water or sewage from the sewers of the City into private property shall be equipped and maintained with such check valves or other similar devices.

(c) All private sewers draining into public sewers of the City hereafter located or established shall, when necessary to prevent water or sewage from backing or flowing into such private property be equipped and maintained with check valves or other similar devices.

(d) The City reserves the right to refuse a tapping of any public sewers by private sewers unless all check valves or similar devices are properly installed on private sewers at all places where needed. The City shall have the right to discontinue the flow and emptying of all private sewers into its public sewers where check valves or such similar devices are necessary and are not installed and maintained as provided herein.

(Ord. No. 06-11, 3-22-11)

Sec. 23-19. Fluoridation of water.

(a) The water and sewer commission is authorized, directed and empowered to obtain the use of fluoride in the process of treating and preparing water of the public water system for consumption and use by the consumers receiving water from the source and through the facilities of the system in accordance with the specifications, plans and recommendations of the proper and authorized officers of the Kentucky Cabinet for Health and Family Services, insofar as the same may be practicable and the cost thereof is not prohibitive, or disproportionate to the advantages and improvements to be attained thereby.

(b) The water and sewer commission is hereby empowered and directed to negotiate with the board of health in an effort to commence operations under authority of this section as soon as the same shall be enacted and be in force and effect, the commission being further empowered hereby to do all things incident to, and necessary in accomplishing the objectives of this section.

(Ord. No. 06-11, 3-22-11)

Sec. 23-20. Administrative functions.

(1) *Charges to be paid in advance.* All charges other than actual metered usage are payable in advance. Where charges are assessed at "actual cost", any minimum charge shall be payable in advance.

(2) *Establishing service and required deposits.*

(a) The charges for establishing service and for temporarily disconnecting services shall be determined from time to time by the city board of commissioners and shall be kept on file in the city clerk's office.

(b) All customers who are not owners of real estate shall post a deposit of an amount equal to one-sixth (1/6) of the annual water and wastewater charges to the premises, with a minimum deposit of \$ 40. The deposit will

be based on the twelve (12) most recent months, whether consecutive or not, during which water consumption was actually recorded at the premises. If twelve (12) months of water consumption history has not occurred at the premises, or if the past consumption is not believed to be representative of future use, then an approximation of the amount projected over a twelve-month period shall be made and used to calculate the deposit. The deposit shall be pursuant to the provisions of section 23-99 of the Code of Ordinances.

(Ord. No. 06-11, 3-22-11; Ord. No. 56-17, 9-26-17)

Editor's note—

Ord. No. 19-11, § 1 (Exh. A), adopted Aug. 9, 2011 states the following: "The rates and charges for customers outside the City presently set forth in Rate Table B of Ordinance 03-11 are hereby repealed, and the rates and charges set forth in new Rate Table B, a copy of which is attached hereto and made a part hereof marked Exhibit "A", are hereby adopted and substituted as the new water and sewer rates for customers located outside the City limits, which new Rate Table B shall be made a part of Ordinance No. 03-11, and such rates and charges shall be effective for billings on and after September 1, 2011."

Sec. 23-21. Charges within the city limits.

Water and wastewater services.

- (a) All water utilized from the Henderson Water Utility system for any purpose shall be metered or identified, and appropriately charged for; except as further defined in this section.
- (b) Water customers within the city limits of Henderson who are not contract customers shall be charged for all metered water usage the rates set forth in table A [attached to Ord. No. 07-17 on file in the clerk's office].
- (c) Wastewater charges shall apply to all metered water service accounts where wastewater collection and treatment services are also provided to the customer. Wastewater contract customers are billed according to their contract and other exceptions are further defined in this section.
- (d) Wastewater customers within the city limits of Henderson who are not contract customers shall be charged the wastewater rates established in table A [attached to Ord. No. 07-17 on file in the clerk's office] for their metered water usage.

Irrigation uses. Separate irrigation charges apply to any meter that is used solely for the irrigation of lawns, gardens, landscaped areas, orchards, and similar horticultural uses; or to private or residential swimming pools where the metered water is not returned to the Henderson Water Utility wastewater system.

Water utilized through a separate irrigation meter shall be charged for all water consumed the rate established in tier 1 of table A [attached to Ord. No. 07-17 on file in the clerk's office] for in city customers and tier 1 of table B [attached to Ord. No. 07-17 on file in the clerk's office] for customers outside the city limits.

No sewer or stormwater charges shall apply to irrigation uses.

Special uses--Temporary water service. Temporary water service to contractors, developers and others for construction purposes shall be metered with a temporary fire hydrant or construction meter permit issued in accordance with the policy of the Henderson Water Utility. All usage shall be charged based upon tier 1 in table A [attached to Ord. No. 07-17on file in the clerk's office] for all water consumed.

Only Henderson Water Utility personnel or those persons with approved and permitted metering devices may take water from fire hydrants or connections where permanent meters are not installed. It is unlawful for anyone other than Henderson Water Utility personnel to operate any valves connected to the distribution system.

No sewer or stormwater charges shall apply to temporary use water meters, unless it is installed to provide temporary service to a dwelling unit under construction.

Fire suppression system uses. Henderson Water Utility provides access and availability to the city water distribution system for commercial and industrial standby fire suppression systems. These fire lines shall be "separate" "closed" systems and utilized only for fire suppression. Utilization of water from the fire suppression system for any purpose other than fire suppression or system testing shall not be allowed and is illegal under this section.

A monthly standby service charge applies to each established fire suppression system. These charges are identified by "connection size" in table C [attached to Ord. No. 07-17on file in the clerk's office].

Only city fire department personnel, Henderson Water Utility personnel or those persons with approved and permitted metering devices may take water from fire hydrants or connections where permanent meters are not installed.

Municipal uses. In order to provide accurate cost analysis and appropriate maintenance and operating records for bondholders and other interested parties, all municipal water uses will be metered or accounted for. This includes all domestic uses at city buildings and facilities, irrigation uses at city facilities, parks, and golf courses, and other municipal uses such as street sweeping and fire fighting.

Only city fire department personnel, Henderson Water Utility personnel or those persons with approved and permitted metering devices may take water from fire hydrants or connections where permanent meters are not installed.

The city's facilities shall be provided water for all approved municipal purposes without charge.

Henderson Area Rapid Transit (HART) and Henderson Municipal Power and Light (HMPL) shall be charged for water and sewer usage as established by separate resolution, contract or agreement.

Wastewater service only. All Henderson Water Utility Customers who do not have metered water service but do receive wastewater services shall be charged a flat rate per month for these services. The rates shall be as defined in table D [attached to Ord. No. 07-17 and on file in the office of the clerk]. Stormwater charges shall not apply.

Stormwater charges. Stormwater charges shall be charged at a flat rate per month for customers inside the City Limits, as shown in Table A. These charges are based on water meter size as a proxy for stormwater impacts.

(Ord. No. 06-11, 3-22-11; Ord. No. 56-17, 9-26-17)

Sec. 23-22. Charges outside city limits.

Rates for outside city limit customers are set forth in table B [attached to Ord. No. 07-17 and on file in the clerk's office]. Stormwater charges shall not apply.

(Ord. No. 06-11, 3-22-11; Ord. No. 19-11, § 2, 8-9-11; Ord. No. 56-17, 9-26-17)

Sec. 23-23. Establishment of other rates, fees and charges.

(1) *Authority.* The water and sewer commission shall have authority to establish specific service fees and charges, and to negotiate agreements and cost-sharing arrangements related to the provision of water and wastewater services for situations not specifically covered by this article.

(2) *Special fees and charges.* Fees for specific services such as drying bed fees, septic tank haulers fees, plan review fees, construction inspection fees, tap fees, wastewater pretreatment penalties and surcharges, and other similar service fees shall be periodically reviewed and approved by the Henderson Water and Sewer Commission. These fees shall adequately reflect the current cost of providing the services plus an appropriate rate of return. Copies of the approved fees and charges shall be kept at the Henderson Water Utility Administration Office located 111 Fifth Street and shall also be kept on file in the city clerk's office.

(3) *Repairs and damages.* Repairs to any water utility property or equipment including but not limited to water meters, fire hydrants, water and sewer lines, and manholes damaged by the activities of other parties shall be charged to the responsible party at the actual cost to the Henderson Water Utility for making repairs or replacing the damaged facilities, plus fifteen percent (15%) for administrative costs.

(4) *Contract rates.* The water and sewer commission shall have authority to establish written agreements and/or cost-sharing arrangements with utility customers that have their own water distribution and/or wastewater collection systems or large commercial or industrial customers that have specific requirements or concerns that are not addressed by the standard city rate structure. Contract rates shall adequately reflect the actual cost of providing the services plus an appropriate rate of return on the utility's investment.

(Ord. No. 06-11, 3-22-11; Ord. No. 56-17, 9-26-17)

Sec. 23-24. Reporting requirements.

Henderson Water and Sewer Commission shall be responsible for presenting periodic reports to the city board of commissioners indicating the utility's financial condition, updates on regulatory issues, and progress on budgeted capital improvement and critical maintenance projects. At least annually, the utility will review their strategic plan for future capital improvement projects and provide the city commission the opportunity for input prior to budget adoption and project implementation.

(Ord. No. 06-11, 3-22-11; Ord. No. 56-17, 9-26-17)

Sec. 23-25. Enforcement.

It shall be unlawful for any person to violate or fail to comply with the provisions of this article. The violation of any provisions of this article shall be punishable by a fine not exceeding five hundred dollars (\$500.00) per offense. Each day that a violation of this article continues shall constitute a separate offense.

(Ord. No. 06-11, 3-22-11)

DIVISION 2. SEWER USE REGULATIONS

Sec. 23-26. General provisions; definitions.

(a) *Purpose and policy.* This ordinance sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system and into the municipal separate storm sewer system (MS4) for the City and enables the City to comply with all applicable state and federal laws required by the Clean Water Act of 1977 as amended, and the general Pretreatment Regulations (40 CFR, Part 403). This ordinance also establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) – Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges (under 40 CFR Parts 9, 122, 123, and 124).

The objectives of this ordinance are to:

- (1) Prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- (2) Prevent the introduction of pollutants into the municipal wastewater system which will pass through the system inadequately treated into receiving waters so as to cause violations of the City's KPDES permits or the atmosphere or otherwise be incompatible with the system;
- (3) Improve the opportunity to recycle and reclaim wastewaters and sludges from the system;
- (4) Provide for equitable distribution of the cost of the municipal wastewater system;
- (5) Provide for the safety of all treatment plant employees;

- (6) Regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
- (7) Prohibit illicit connections and discharges to the municipal separate storm sewer system; and,
- (8) Establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

This ordinance provides for the regulation of direct and indirect contributions to the municipal wastewater system through the issuance of permits to certain nondomestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user sampling and reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This ordinance shall apply to the City and to persons outside the City who are, by contract or agreement with the City, users of the City publicly owned treatment works (POTW). Except as otherwise provided herein, the General Manager of the Henderson Water Utility (HWU) shall administer, implement, and enforce the provisions of this ordinance.

(b) *Definitions.* Unless the context specifically indicates otherwise, the following terms and phrases, as used in this ordinance, 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 Secretary of the Kentucky Natural Resources and Environmental Protection Cabinet or an authorized representative thereof.

Agency. Any governmental or quasi-governmental entity.

Ammonia (or NH 3 -N) Shall mean the same as ammonia-nitrogen and shall be measured using laboratory procedures in accordance with 40 CFR 136.

Authorized enforcement agency. Employees or designees of the General Manager of the Henderson Water Utility.

Authorized representative. An authorized representative of a user may be: (1) A principal executive officer of at least the level of vice president, if the industrial user is a corporation; (2) a general partner or proprietor if the user is a partnership or proprietorship, respectively; (3) a duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the discharge originates.

An authorized representative of the City may be any person designated by the City to act on its behalf.

Baseline monitoring report (BMR). A report submitted by categorical industrial users within one hundred eighty (180) days after the effective date of a categorical standard which indicates the compliance status of the user with the applicable categorical standard (40 CFR 403.12(b)).

Best management practices (BMPs). Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMPs also include alternative means of complying with certain established categorical pretreatment standards and effluent limits.

Biochemical oxygen demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at twenty (20) degrees Celsius expressed in terms of weight and concentration in milligrams per liter (mg/l).

Building drain. That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, water, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall. Conveys sanitary and industrial sewage only.

Building sewer. The extension from the building drain to the public sewer or other place of disposal, also called "house connection." Conveys sanitary and industrial sewage only.

Building sewer permit. As set forth in Building sewers and connections (section 23-29).

Categorical industrial user. An industrial user subject to categorical pretreatment standards which have been promulgated by the U.S. EPA.

Categorical pretreatment standards. National categorical pretreatment standards or pretreatment standard. Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307 (b) and (c) of the Act (33 U.S.C. 1347) which applies to a specific category of industrial users.

City. The duly constituted municipal corporation of the City of Henderson, Henderson County, Kentucky acting by and through its Henderson Water and Sewer Commission (HWSC), the Henderson Water Utility (HWU), the General Manager or his designee, and also acting by and through its City Code Enforcement Officer or designee.

City Engineer. The City Engineer of the City, or his authorized deputy, agent or representative. In the absence of a City Engineer, the term General Manager shall be used.

Clean Water Act (CWA or "Act" or "the Act"). Also known as the Federal Water Pollution Control Act, enacted by Public Law 92-500. October 18, 1972. 33 USC 1251 et seq; as amended by PL 95-217. December 27, 1977; PL 97-117 December 29, 1981; PL 97-440, January 8, 1983, and PL 100-04, February 4, 1987, PL 100-653, November 14, 1988, PL 106-457, November 7, 2000, PL 107-303, November 27, 2002, PL 110-288, July 29, 2008.

Combined sewer. Any conduit designed to carry both sanitary sewage and storm water or surface water.

Combined wastestream formula (CWF). Procedure for calculating alternative discharge limits at industrial facilities where a regulated wastestream is combined with other non-regulated wastestreams prior to treatment (40 CFR 403.7).

Compatible pollutant. Pollutant(s) identified in the POTW's NPDES/KPDES permit that the POTW is designed to treat and, in fact, does treat so as to ensure compliance with the POTW's NPDES/KPDES permit. The following pollutants may be considered as compatible:

- (1) Biochemical oxygen demand (BOD);
- (2) Total suspended solids (TSS);
- (3) Fecal coliform bacteria;
- (4) Chemical oxygen demand (COD);
- (5) Total organic carbon (TOC);
- (6) Ammonia-nitrogen;
- (7) Fats, oils and greases of animal or vegetable origin (except in amounts that interfere with the operation of the treatment works); and,
- (8) Phosphorus and phosphorus compounds.

Concentration-based limit. An effluent discharge limit based on the relative strength of a pollutant in a wastestream, usually expressed in mg/l.

Construction activity. Activities subject to NPDES Construction Permits. These include construction projects resulting in a total land disturbance of 1 acre or more for any and all project phases. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Control authority. The term "control authority" shall refer to the City when there exists an approved pretreatment program under the provisions of 40 CFR 403.11.

Cooling water. The water discharge from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

Daily maximum. The maximum allowable value for any single observation in a given day.

Dilute wastestream. Boiler blowdown, sanitary wastewater, noncontact cooling water and certain process wastestreams that have been excluded from regulation in categorical pretreatment standards because they contain none or only trace amounts of the regulated pollutant.

Discharge. Shall mean to emit a substance into the sanitary sewer.

Direct discharge. The discharge of treated or untreated wastewater directly to the Waters of the State.

Discharger. Any person that discharges or causes a discharge to a public sewer.

Domestic wastewater. The water-carried wastes produced from noncommercial or nonindustrial activities and which result from normal human living processes.

Easement. An acquired legal right for the specific use of land owned by others.

Effluent. The liquid overflow of any facility designed to treat, convey or retain wastewater.

Environmental Protection Agency or EPA. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator or other duly authorized official of said agency.

Equipment. All movable, non-fixed items necessary to the wastewater treatment process.

Fecal coliform. Any of a number of organisms, common to the intestinal tract of man and animals, whose presence in sanitary sewage is an indicator of pollution.

Floatable oil. Any oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in a pretreatment facility approved by the HWU.

Flow proportional composite sample. Combination of individual samples proportional to the flow of the wastestream at the time of sampling.

Flow weighted averaging formula (FWA). A procedure used to calculate alternative limits for a categorical pretreatment standard where regulated and nonregulated wastestreams combine after treatment, but prior to the monitoring point as defined in 40 CFR 403.

Garbage. The animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.

General Manager. The General Manager of the Henderson Water Utility of the City or his authorized deputy, agent or representative.

Grab sample. A sample which is taken from a wastestream on a one-time basis with no regard to the flow of the wastestream and without consideration of time.

Hazardous materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Holding tank waste. Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

Illegal discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Sec. 23-27 (b) (2) of this ordinance.

Illicit connections. An illicit connection is defined as either of the following:

(1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

(2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans,

maps, or equivalent records and approved by an authorized enforcement agency.

Incompatible pollutant. All pollutants other than compatible pollutants as defined in this section.

Indirect discharge. The discharge or the introduction of nondomestic pollutants from any source regulated under section 307(b) or (c) of the Act, (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).

Industrial activity. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

Industrial user (IU). A source of indirect discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to Section 402 of the Clean Water Act.

Industrial user permit (IUP). A permit issued to industrial users which authorizes discharges to the public sewer as set forth in section 23-31 of this ordinance.

Industrial wastewater. The wastewater from industrial or commercial processes as distinct from domestic or sanitary wastes.

Infiltration. The water entering a sewer system, including building drains and sewers, from the ground through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls. Infiltration does not include, and is distinguished from, inflow.

Infiltration/inflow. The total quantity of water from both infiltration and inflow without distinguishing the source.

Inflow. The water discharged into a sewer system, including building drains and sewers, from such sources as, but not limited to, roof leaders, basements, cellars, yard and area drains, foundation drains, unpolluted cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers, combined sewers, catch basins, storm waters, surface run-off, street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration.

Inspector. The person or persons duly authorized by the City to inspect and approve: (i) the installation of building sewers and their connection to the public sewer system; and, (ii) to perform inspections for the Henderson Pretreatment Program as required by 40 CFR 403.

Interceptor. A device designed and installed so as to separate and retain deleterious, hazardous or undesirable matter from normal wastes which permits normal sewage or liquid wastes to discharge into the sewer or drainage system by gravity. Interceptor as defined herein is commonly referred to as a grease, oil, or sand trap.

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

- (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (2) Therefore is a cause of a violation of any requirement of the POTW's NPDES/KPDES permit (including an increase in the magnitude or

duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA)(including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act (40 CFR 403.3).

May. This is permissive (see "shall").

Monthly average. The maximum allowable value for the average of all observations obtained during one month.

MS4. Means the municipal separate storm system, or the drainage conveyance system that carries only stormwater and not sanitary sewage, as defined in 401 KAR 5:002, Section 1, (187) and (188) et seq.

Multi-Unit sewer consumer. Any location served where there are two (2) or more residential units or apartments, two (2) or more businesses in the same building or complex or where there is any combination of business and residence in the same building or complex. Each resident or business shall be considered as a separate customer.

National categorical pretreatment standard or pretreatment standard. Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Clean Water Act which applies to a specific category of industrial users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5.

National (or Kentucky) pollutant discharge elimination system or NPDES/KPDES permit. A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1332), or a permit issued by the Commonwealth of Kentucky under this authority and referred to as KPDES.

Natural outlet. Any outlet, including storm sewers, into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

New source. 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:

- (1) The building, structure, facility or installation is constructed at a site at which no other source is located; or,
- (2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or,
- (3) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing

source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

Ninety (90) day compliance report. A report submitted by a categorical industrial user, within ninety (90) days following the date for final compliance with applicable categorical standards that documents and certifies the compliance status of the user (40 CFR 403.12(d)).

Non-storm water discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

North American Industry Classification System (NAICS). A system developed by the U.S. Office of Management and Budget that is used to classify business establishments based on the type of industry or process at a facility.

Ordinance. This ordinance, unless otherwise specified.

Pass through. A discharge of a pollutant or pollutants which cannot be treated adequately by the POTW, and therefore exits into Waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES/KPDES permit (including an increase in the magnitude or duration of a violation) (40 CFR 403.3).

Periodic compliance report. A report on compliance status submitted by significant industrial users to the HWU at least semiannually (40 CFR 403.12(e)).

Person. Any individual, property owner, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estates, governmental entity or any other legal entity, or their legal representatives, agent or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

pH. The logarithm of the reciprocal of the hydrogen ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution.

Phosphorus. The chemical element phosphorus. The laboratory analysis of this pollutant shall be made in accordance with the procedures approved by the EPA and set forth in 40 CFR 136.

Pollution. The man-made or man-induced alteration of the chemical, physical, biological, and radiological properties of water.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paint, oil, petroleum-based substances, toxic chemicals, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste, pesticides, herbicides, fertilizers or any substance defined in KRS 224.01-010 (35) discharged into water.

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Pretreatment or treatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes by other means, except as prohibited by 40 CFR Section 403.6 (d).

Pretreatment requirements. Any substantive or procedure requirement related to pretreatment, other than a national categorical pretreatment standard imposed on a significant industrial user.

Private sewer. A sewer which is not owned by a government agency or public utility.

Private stormwater system: Any facilities by which stormwater is collected, conveyed and/or treated, including parking lots, curbs, gutters, inlets, stormwater pipes, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, treatment facilities, and other drainage structures, that are not owned by the City of Henderson or the Henderson Water Utility.

Process wastewater. Any water which, during manufacturing or processing, comes into direct contact with or results from the production of or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Production-based standard. A discharge limitation expressed in terms of allowable pollutant mass discharge rate per unit of production and is applied directly to an industrial user's manufacturing process.

Prohibitive discharge standard. Any regulation developed under the authority of 307(b) of the Act and 40 CFR, Section 403 (5).

Properly shredded garbage. The wastes from the preparation, cooking, and dispensing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

Publicly owned treatment works (POTW). A treatment works as defined by Section 212 of the Act, (33 U.S.C. 1292) which is owned in this instance by the City. This definition includes any sewers that convey wastewater to the treatment plant, but does not include pipes, sewers, or other conveyances not connected to a facility providing treatment. For the purpose of this ordinance, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the City who are, by contract or agreement with the City, users of the City's POTW.

Public sewer. A common sewer controlled by a governmental agency or public utility. The public sewer shall include the main sewer in the street and the service branch to the curb or property line, a main sewer on private property and the service branch to the extent of ownership by public authority, and the following:

- (1) Collector sewer--A sewer whose primary purpose is to collect wastewaters from individual point source discharges;
- (2) Interceptor sewer--A sewer whose primary purpose is to transport wastewater from collector sewers to a treatment facility;

- (3) Force main--A pipe in which wastewater is carried under pressure; and,
- (4) Pumping or Lift Station --A station positioned in the public sewer system at which wastewater is pumped to a higher elevation.

Regulated wastestream. An industrial process wastestream regulated by a national categorical pretreatment standard.

Sanitary sewer. A sewer that carries liquid and water-borne wastes from residences, commercial buildings, industrial plants, and institutions, and carries only domestic and industrial wastewater and to which storm, surface and ground waters are not intentionally admitted.

Sewage. The spent water of a community. Domestic or sanitary waste shall mean the liquid or water-borne wastes from residences, industrial facilities, commercial buildings, and institutions as distinct from industrial sewage. The terms "sewage" and "wastewater" are used interchangeably. The term "combined sewage" shall mean wastewater including sanitary sewage, industrial sewage, storm water, infiltration and inflow carried to the wastewater treatment facilities by a combined sewer.

Sewage treatment plant. That portion of the POTW designed to provide treatment to wastewater.

Sewer user charges. A system of charges levied on users of a POTW for the cost of operation and maintenance, including replacement, of such works.

Sewer system or works. All facilities for collecting, transporting, pumping, treating and disposing of sewage and sludge, namely the POTW.

Sewer. A pipe or conduit that carries wastewater or drainage water.

Shall. Is mandatory (see "may").

Significant industrial user (SIU). Defined by federal regulations as: (a) all industrial users subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter 1, Subchapter N; and (b) any noncategorical industrial user that (i) discharges twenty-five thousand (25,000) gallons per day or more of process wastewater ("process wastewater" excludes sanitary noncontact cooling, and boiler blowdown wastewaters) or (ii) contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic (BOD, TSS, etc.) capacity of the treatment plant or (iii) has a reasonable potential, in the opinion of the control or approval authority, to adversely affect the sewage treatment plant (i.e., cause inhibition, pass through of pollutants, sludge contamination or endangerment of POTW workers) or violates any requirements of this article.

Slug discharge. Any discharge of a nonroutine episodic nature including, but not limited to, an accidental spill or noncustomary batch discharge or any discharge of water or wastewater in which the concentration of any given constituent or quantity of flow exceeds, for any period of duration longer than fifteen (15) minutes, more than five (5) times the average twenty-four (24) hour concentration or flow rate during normal operation which adversely affects the POTW.

Slug load. Any pollutant (including biochemical oxygen demand) released in a discharge at a flow rate or concentration that will cause interference with the operation

of the treatment works or which exceeds limits set forth in the industry's industrial user permit (including accidental spills).

Spill prevention and control plan. A plan prepared by an industrial user to minimize the likelihood of a spill and to expedite control and cleanup activities should a spill occur, and to promptly notify HWU of the spill.

Split sample. Portion of a collected sample given to the industry or to another agency to verify or compare laboratory results.

Standard methods. The examination and analytical procedures set forth in the recent editions of Standard Methods for the Examination of Water and Wastewater, published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and as set forth in the Congressional Record 40 CFR 136.

State. The Commonwealth of Kentucky.

Storm drain (also termed "storm sewer"). A drain or sewer for conveying water, groundwater, surface water, or unpolluted water from any source, excluding domestic and industrial wastewater.

Storm drainage system. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm water (also termed "stormwater"). Any flow occurring during or following any form of natural precipitation and resulting therefrom.

Storm water pollution prevention plan (SWPPP). A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Surcharge. A charge for services in addition to the basic sewer user and debt service charges, for those industrial users whose contributions contain biochemical oxygen demand (BOD 5), chemical oxygen demand (COD), total suspended solids (TSS), oil and grease (O&G) or ammonia-nitrogen (NH₃ -N) in concentrations which exceed limits specified herein for such pollutants. Where authorized by the HWU, payment of a surcharge will authorize the discharge of the referenced pollutants so long as the discharge does not cause pass through or interference.

Total suspended solids (TSS). Total suspended matter that either floats on the surface of, or is in suspension in, water, wastewater, or other liquids and that is removable by laboratory filtering as prescribed in Standard Methods for the Examination of Water and Wastewater.

Time proportional composite sample. Combination of individual samples with fixed volumes taken at specific time intervals.

Toxic organic management plan. Written plan submitted by industrial users as an alternative to TTO monitoring, which specifies the toxic organic compounds used,

the method of disposal used and procedures for assuring that toxic organics do not routinely spill or leak into wastewater discharged to the POTW.

Toxic pollutant. Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of EPA under the provisions of the Clean Water Act 307(a) or any amendments thereto.

Unpolluted water. Water of quality equal to or better than the treatment works effluent criteria in effect, or water that would not cause violation of receiving water quality standards and would not be benefitted by discharge to the sanitary sewers and wastewater treatment facilities.

Unregulated wastestream. A wastestream that is not regulated by national categorical pretreatment standards.

User. Any person who contributes, causes or permits the contribution of wastewater into the POTW.

Volatile organic matter. The material in the sewage solids transformed to gases or vapors when heated to five hundred (500) degrees Celsius for twenty (20) minutes.

Wastewater. The spent water of a community derived from human and industrial sources including domestic and industrial wastewaters. Rainwater, groundwater or drainage of unpolluted waters is excluded.

Wastewater Application (WA). An application submitted by industrial users providing basic information, production schedules, and details specific to the facility's process, which is used as the basis for issuance or revision of an Industrial User Permit.

Wastewater facilities. The structures, equipment, and processes required to collect, carry away, treat domestic and industrial wastes, and dispose of the effluent.

Wastewater treatment works. An arrangement of devices and structures for treating wastewater, industrial wastes, and sludge. Sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant" or "sewage treatment plant".

Watercourse. A natural or artificial channel for the passage of water either continuously or intermittently.

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

Yard Waste. Means and includes grass clippings, leaves, limbs, plants, bushes, flowers or shrubs.

(c) Abbreviations. The following abbreviations shall have the designated meaning:

ASTM--American Society for Testing and Materials

AWWA – American Water Works Association

BMP--Best management practices

BOD--Biochemical oxygen demand
CFR--Code of Federal Regulations
CIU--Categorical industrial user
COD--Chemical oxygen demand
CWA--Clean Water Act (33 USC 1251 et seq.)
CWF--Combined wastestream formula
EPA--Environmental Protection Agency
ERP--Enforcement response plan
FWA--Flow weighted average
FR--*Federal Register*
gpd--gallons per day
HWSC--Henderson Water and Sewer Commission
HWU--Henderson Water Utility
IU--Industrial user
l--Liter
mg--Milligrams
mg/l--Milligrams per liter
MS4--Municipal Separate Storm Sewer System
NPDES--National pollutant discharge elimination system
KPDES--Kentucky pollutant discharge elimination system
KRS – Kentucky Revised Statutes
NAICS – North American Industry Classification System
POTW--Publicly owned treatment works
PPM – Part per million
QA--Quality assurance
QC--Quality control
RCRA--Resource Conservation and Recovery Act
SIU--Significant industrial user
SWDA--Solid Waste Disposal Act, 42 U.S.C. 6901, et seq.
SWPPP--Stormwater pollution prevention plan
TSS--Total suspended solids
TTO--Total toxic organics
USC--United States Code

(Ord. No. 06-11, 3-22-11; Ord. No. 33-12, 12-11-2012; Ord. No. 20-14, 6-24-14)

Sec. 23-27. Use of public sewers.

(a) *Mandatory sewer connections.*

(1) The owner(s) of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the city and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the city, is hereby required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper sewer in accordance with the provisions of this division, within ninety (90) days after date of official notice to do so, provided that said public sewer is within one hundred (100) feet of the property line measured along the most feasible route of connection to the public sewer, except when the following conditions are present:

- a. The lot is a minimum of five (5) acres in size; and
- b. The toilet facilities of the current or proposed structure on the property, as measured from the ground floor elevation, cannot gravity flow to the existing public sewer and must be mechanically assisted by way of a private sewer pump or lift station.

When both conditions delineated in subsections a. and b. of (a)(1) above are present, an on-site sewage disposal system (private wastewater disposal system) complying with all governmental regulations may be constructed and used until such time that (i) the lot is subdivided into two (2) or more lots, irrespective of the size of the subdivided lots, or (ii) until such time that a public sewer system, located within one hundred (100) feet of the property line as measured from the ground floor elevation of the structure permits the toilet facilities, to gravity flow to the public sewer system without a mechanical assist from a private sewer pump or lift station. Upon the occurrence of (i) or (ii) above, the structure shall be connected to the public sewer system and the on-site sewage disposal system shall be taken out of service and cleaned or removed as provided in subsection (3) below.

(2) It shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, on-site sewage disposal facility, or other facility intended or used for the disposal of wastewater, except as provided in subsection (a)(1) above and in the private wastewater disposal section (23-28).

(3) Except for the limited exception permitted in subsection (a)(1) above, when a public sewer is located within one hundred feet (100) of the property line as measured along the most feasible route of connection to the public sewer of property served by an on-site sewage disposal system, a direct connection shall be made to the public sewer system within ninety (90) days of official notice to do so in compliance with this division, and any septic tanks, cesspools and similar private wastewater disposal

facilities shall be cleaned of sludge and filled with suitable material or salvaged and removed.

(4) No unauthorized person(s) shall remove any sanitary sewer manhole covers in the City's sanitary sewer collection system unless written permission is first obtained from the General Manager or his/her designee. Any violation of the above provision shall be subject to any and all civil and criminal penalties as outlined under section 23-34 and the penalty provisions outlined in section 23-35.

(b) *Illegal discharge to storm sewers or natural outlets.*

(1) No user shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

(2) The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

(a) Allowable Non-Stormwater Discharges. The following discharges are permissible under this chapter:

- i. Landscape irrigation;
- ii. Discharges from unmodified potable water sources, including discharge from fire fighting activities, and water line flushing;
- iii. Diverted stream flows;
- iv. Ground water infiltration to separate storm sewers;
- v. Springs, or flows from riparian habitats and wetlands;
- vi. Foundation and footing drains;
- vii. Air conditioning condensation;
- viii. Sump pump discharges;
- ix. Draining of swimming pools (if de-chlorinated to less than 2 PPM chlorine);
- x. Non-commercial car washing;
- xi. Street wash waters, not including dumping of street sweeper wastes;
- xii. Discharges associated with emergency removal and treatment activities for hazardous materials, authorized by the federal, state, or local government on-scene coordinator;
- xiii. Flushing and cleaning of storm water conveyances with unmodified potable water; and

- xiv. Wash water from the cleaning of the exterior of buildings, including gutters provided that the discharge does not pose an environmental or health threat.
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- (b) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
 - (c) Dye testing is an allowable discharge, but requires a verbal notification to the Henderson Water Utility prior to the test.
 - (d) If any of the above non-stormwater exceptions are found to be polluted and thus cause a negative impact on the quality of the Waters of the State, that occurrence shall be deemed a violation of this chapter and discharge to the MS4 shall not be allowed. Such situations or occurrences shall be considered an illicit connection or illegal disposal as defined in this chapter.
 - (e) If a valid KPDES Stormwater Discharge Permit has been approved and issued by the Kentucky Division of Water, additional Stormwater Discharge Permits from HWU are not required in order to discharge into the MS4, provided that the discharge is in compliance with the terms of the KPDES Permit.
- (c) *Compliance with local, state, and federal laws.* The discharge of any wastewater into the public sewer system by any person is unlawful except in compliance with the provisions of this division, and any more stringent state or federal standards promulgated pursuant to the Federal Water Pollution Control Act Amendments of 1972, the Clean Water Act of 1977, and subsequent amendments, and 40 CFR 403.
- (d) *Discharge of unpolluted waters into sanitary sewer and combined sewer.*
- (1) No person(s) shall discharge or cause to be discharged, through any leak, defect, or connection any unpolluted waters such as storm water, groundwater, roof runoff or subsurface drainage to any sanitary sewer, building sewer, building drain or building plumbing. The General Manager or his representative shall have the right, at any time, to inspect the inside or outside of buildings or smoke test for connections, leaks, or defects to building sewers and require disconnection or repair of any such pipes carrying such water to the public sewer. No sanitary drain sump or sump pump discharge by manual switch-over of discharge connection shall have a dual use for removal of such water.
 - (2) The owners of any building sewers having such connections, leaks, or defects shall bear all costs incidental to removal of such sources.
- (e) *Prohibited discharges into sanitary sewer and combined sewer.* No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with performance of the POTW. These general prohibitions apply to all such users of a POTW whether or not the user is subject to national categorical pretreatment standards or any other national, state, or

local pretreatment standards or requirements. A user shall not contribute the following substances to the POTW:

- (1) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time shall the wastewater exhibit a closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit or sixty (60) degrees Centigrade using the test methods specified in 40 CFR 261.21.
- (2) Any waters or wastes having a pH lower than 5.5 or higher than 11.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the POTW.
- (3) Any slug load of pollutants, including oxygen demanding pollutants (BOD, etc.), released at a flow rate and/or concentration that will cause interference with the normal operation of the POTW.
- (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, cinders, sand, rocks, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unshredded garbage, whole blood, paunch manure, hair and flesh, entrails, paper products such as cups, dishes, napkins, and milk containers, etc.
- (5) Any wastewater having a temperature which will inhibit biological activity in the sewage treatment plant resulting in interference, but in no case wastewater with a temperature at the introduction into the POTW that will result in a treatment plant influent temperature which exceeds forty (40) degrees Centigrade (one hundred four (104) degrees Fahrenheit).
- (6) Any pollutant(s) 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.
- (7) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scum, to be unsuitable for reclamation and reuse or to interfere with the reclamation process where the POTW is pursuing a reuse and reclamation program. In no case shall a substance discharged to the POTW cause the POTW to be in non-compliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used.
- (8) Any substance which will cause the POTW to violate its NPDES/KPDES permit and/or sludge disposal system permit.

- (9) Any trucked or hauled pollutants except at discharge points designated by the General Manager.
- (f) *Prohibition of illicit connections to the storm drainage system (MS4).*
- (1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
- (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (3) A person is considered to be in violation of this ordinance if the person connects a line conveying any pollutant to the MS4, or allows such a connection to continue.
- (g) *Suspension of MS4 access.*
- (1) *Suspension due to illicit discharges in emergency situations.* HWU may, without prior notice, suspend MS4 discharge access to a person or premises when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the State. If the violator fails to comply with a suspension order issued in an emergency, HWU may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the State, or to minimize danger to persons.
- (2) *Suspension due to the Detection of Illicit Discharge.* Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. HWU will notify a violator of the proposed termination of its MS4 access. The violator may petition the Henderson Water Utility for a reconsideration and hearing.
- (3) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of HWU.

(Ord. No. 06-11, 3-22-11; Ord. No. 20-14, 6-24-14)

Sec. 23-27.1 Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Henderson Water Utility prior to the allowing of discharges to the MS4.

(Ord. No. 06-11, 3-22-11)

Sec. 23-27.2 Monitoring of discharges.

- (a) *Applicability.* This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.
- (b) *Access to facilities.*
- (1) HWU shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of HWU.
 - (2) Facility operators shall allow HWU ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
 - (3) HWU shall have the right to set up on any permitted facility such devices as are necessary in the opinion of HWU to conduct monitoring and/or sampling of the facility's storm water discharge.
 - (4) HWU has the right to require the discharger 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 discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
 - (5) 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 operator at the written or oral request of HWU and shall not be replaced. The costs of clearing such access shall be borne by the operator.
 - (6) Unreasonable delays in allowing HWU access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies HWU reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
 - (7) If HWU has been refused access to any part of the premises from which stormwater is discharged, and HWU is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then HWU may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 23-27.3 Requirement to prevent, control, and reduce storm water pollutants by the use of Best Management Practices, including New Development and Redevelopment Projects.

(a) *Best Management Practices Required:* The Henderson Water Utility will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or Waters of the State, including requirements during construction of new or redevelopment projects.

(b) *Stormwater Management Measures Post-Construction:* Owners or operators of any new development or redevelopment project shall design, construct and perpetually maintain stormwater management facilities or measures that will treat, filter, infiltrate, screen, harvest or reuse stormwater runoff from all impervious areas to manage stormwater quality. Facilities constructed or measures used to meet this requirement shall capture or treat all such runoff up to and including that from an 80th percentile storm event. HWU will publish the 80th percentile storm intensity and technical details of treatment requirements in the HWU Technical Stormwater Manual.

(c) *Accidental Discharges:* The owner or operator of any development or redevelopment project, or any commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for any property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.

Other Permits: Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a **stormwater** pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

(Ord. No. 06-11, 3-22-11; Ord. No. 33-12, 12-11-2012)

Sec. 23-27.4 Depositing material on streets, rights of way, drainage systems; Post construction stormwater management in new development, redevelopment, and existing systems.

(a) *Depositing of material in public and/or private systems.* It shall be a violation of this chapter for any person to do, or permit, authorize or direct another person to do, any of the following:

1. Erect, construct, deposit, or plant, any building, outbuilding, shed, fence, playground equipment, concrete, landscape berm, trees, bushes, shrubs, flowers, rocks, dirt, or any other substance or structure that covers, alters,

- obstructs, impairs or encroaches on the MS4 or any private stormwater system, unless such activity is authorized by the General Manager.
2. Deposit any concrete, pollutants, building materials, or yard waste on the surface of any street or alley located within public right-of-way that drains into the combined sewer system, the MS4 or any private stormwater system.
 3. Cover, alter, excavate, fill, divert, obstruct, impair, or encroach on any portion of the MS4 or any private stormwater system.
 4. Deposit or place any solid waste, debris, yard waste, pollutants, wastewater, concrete, building materials, tires, appliances, animal carcasses, or any other substance, material or obstruction of any kind in an open ditch, sewer, stormwater inlet or catch basin, manhole, curb and gutter, or over, under, or across any portion of the MS4 or any private stormwater system.
- (b) *Construction of private storm water drainage systems.* All private storm water drainage and treatment systems shall be in place, functioning, and certified by a Kentucky licensed professional engineer prior to the occupation of any property improvements by the owner. It shall be unlawful for any person to refuse to construct any part of a private storm water drainage or treatment system or component that has been required by the City of Henderson or the Henderson City – County Planning Commission on any development plan or site plan.
- (c) *Maintenance of private storm water drainage systems.* The owner of the property on which the private storm water drainage system is located, which includes but is not limited to the conveyance system, treatment system or detention/retention basin, shall, at the written request of HWU, employ a Kentucky licensed professional engineer to certify that the private storm sewer system is being maintained at the level of service for which it was originally designed. If a determination is made by HWU that the property owner is not maintaining the private system at or above the level of service indicated in the original design, a notice of deficiency shall be issued and enforcement initiated. It shall be unlawful for any person to refuse to maintain any part of a private storm sewer system that has been approved by the City of Henderson or the Henderson City – County Planning Commission as part of any development or site plan. The system shall be maintained at all times to the level of service for which it was designed.

(Ord. No. 06-11, 3-22-11; Ord. No. 33-12, 12-11-2012; Ord. No. 4-16, 2-23-2016)

Sec. 23-27.5 Maintenance of Stormwater Drainage Systems and Control Devices.

- (a) Where a public drainage easement for a public stormwater drainage system exists, the private property owner is responsible for non-structural maintenance of any ditch, channel, detention/retention basin, or any other stormwater conveyance, treatment or control device located on the owner's property, including but not limited to mowing the area (including any embankment or slope), removing small debris that accumulates in the system

including litter and yard waste, sodding or seeding bare areas, (including any embankment or slope), and maintenance of landscape items, such as trees and shrubs.

- (b) Where a public drainage easement for a public stormwater drainage system exists, and public stormwater system components have been accepted for maintenance by the City, the City is responsible for: all structural repairs; maintaining the integrity of any embankment and the structural items in the easement, including concrete, pipe, gabions, stone, spillways, headwalls; repairing eroded areas in the easement that threaten the stability of an embankment; repairing paved ditches and inlet structures in the easement; removing excess silt that affects the functionality of the stormwater drainage system; and removing trees, brush, or large debris that obstructs any outlet pipes, spillways or drainageways or any portion of the stormwater drainage system.
- (c) Where no public easement exists, the property owner is responsible for maintenance of any ditch, channel, detention/retention basin, or any other stormwater conveyance, treatment or control device located on the owner's property, including but not limited to: mowing the area (including any embankment or slope); removing debris that accumulates in the system including litter and yard waste; sodding or seeding bare areas (including any embankment or slope); maintaining any landscaped areas such as trees and shrubs; all structural repairs; maintaining the integrity of any embankment and structural items including concrete, pipe, gabions, stone, spillways and headwalls; repairing eroded areas on the embankment that threaten the stability of the embankment; repairing paved ditches and inlet structures in the basin, removing excess silt that affects the functionality of the stormwater control device as directed by the City, and removing large debris that obstructs any drainageway.
- (d) No trees shall be planted on any dam, berm or levee associated with a public stormwater drainage system.
- (e) No structures or equipment including but not limited to, fences, gazebos, swimming pools or buildings shall be placed in a public drainage easement, except as allowed by permit issued by the City.
- (f) No fill dirt shall be placed in a public drainage easement without prior approval by the City.
- (g) The owner of any property shall ensure that no equipment, structure, material, or substances are located in the easement that may adversely affect the performance of a stormwater drainage system in controlling stormwater quantity or that adversely affect water quality.
- (h) Nothing herein shall preclude the City from assuming responsibility to maintain any stormwater drainage system pursuant to contract, easement, or other legal arrangement.
- (i) Maintenance and repair of detention/retention basins and other stormwater conveyance, treatment or control devices located on private property is the responsibility of the property owner who shall ensure the facilities are

operating as intended. Property owners shall address requirements for continuing maintenance and repair of stormwater treatment or control devices through a note or clause on the face of a final recorded plat, or the execution of a stormwater management system maintenance agreement, recorded in the office of the county court clerk at the expense of the property owner.

- (j) The owner of any property may be notified in writing by the City of any problems or maintenance or repairs that must be addressed or corrected in stormwater conveyance, treatment or control devices, or in stormwater basins, such as removing debris from a basin, repairing eroded areas on the embankment, replacing a crushed pipe, repairing or replacing a stormwater BMP, or improving embankment stability. Such notification shall include a time limit for correction of deficiencies, after which time enforcement shall be initiated. The scale of enforcement actions will be as detailed in the appropriate HWU Enforcement Response Plan.

(Ord. No. 06-11, 3-22-11; Ord. No. 33-12, 12-11-2012; Ord. No. 20-14, 6-24-14; Ord. No. 4-16, 2-23-2016)

Sec. 23-27.6 Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or Waters of the State, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile or e-mail no later than the next business day. Notifications in person or electronically shall be confirmed by written notice addressed and mailed to the Henderson Water Utility within three business days of the initial notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

(Ord. No. 06-11, 3-22-11)

Sec. 23-28. Private wastewater disposal.

- (a) *Public sewer not available.*

- (1) In addition to the allowance for an on-site sewage disposal system in subsection 23-27(a) (1), an on-site sewage disposal system may also be constructed to serve a current or proposed structure if there is no public sanitary sewer within one hundred feet (100) of the property line as measured along the most feasible route of connection to the public sewer.

(2) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.

(3) No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by applicable local or state regulations.

(4) Holders of NPDES/KPDES permits may be exempted from this section. Industries with current NPDES/KPDES permits may discharge at permitted discharge points provided they are in compliance of the issuing authority.

(b) *Requirements for installation.*

(1) The type, capacity, location and layout of a private sewage disposal system shall comply with all local or state regulations.

(2) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the local and state authorities.

(Ord. No. 06-11, 3-22-11)

Sec. 23-29. Building sewers and connections to sanitary sewers.

(a) *Permits.*

(1) There shall be two (2) classes of building sewer permits required: (a) for residential and commercial service, and (b) for service to industrial establishments. In either case, the owner(s) or his agent shall make application on a special form furnished by the City. Applicants for service to commercial and industrial establishments shall be required to furnish information about all waste producing activities, wastewater characteristics and constituents. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the General Manager. Details regarding commercial and industrial permits include, but are not limited to, those required by this division. Permit and inspection fees shall be paid to the City at the time the application is filed and shall be as set forth in the City's schedule of charges and fees.

(2) Users shall promptly notify the City in advance of any introduction of new wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the POTW. The General Manager may deny or condition the new introduction or change in discharge based on the information submitted in the notification or additional information as may be requested.

(3) No person(s) shall uncover, plug or make any connection with or opening into, use, alter, or disturb any public sanitary or combined sewer or appurtenance thereof without first obtaining permission from the General Manager. Any violation of the above provision shall be subject to

any and all civil and criminal penalties as outlined under section 23-34 and the penalty provisions outlined in section 23-35.

(b) *Prohibited connections.*

(1) No person shall make connection of roof downspouts, basement wall seepage or floor seepage, exterior foundation drains, areaway drains, or other surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer. Any such connections which already exist on the effective date of this division shall be completely and permanently disconnected within sixty (60) days of the effective date of this ordinance. The owner(s) of any building sewers having such connections, leaks or defects shall bear all costs incidental to removal of such sources. Pipes, sumps, and pumps for such sources of ground and surface water shall be separate from wastewater facilities. Removal of such sources of water without presence of separate facilities shall be evidence of drainage to public sanitary sewer.

(2) Any sanitary fixture which has an overflow rim less than two feet above the elevation of the next upstream manhole rim shall be protected by an approved backflow prevention device.

(3) Construction of new combined sewers and the introduction of inflow sources to the sanitary sewer system is strictly prohibited by this division. All new construction tributary to the combined sewer system must be designed such that inflow contribution to the combined sewer system is minimized and/or delayed as much as is possible. The domestic waste connection(s) of any new buildings constructed after the effective date of this division must be distinct from the building inflow connection in order to facilitate disconnection if a storm sewer becomes available.

(c) *Design and installations.*

(1) A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway. The sewer from the front building may be extended to the rear building and the whole considered as one building sewer, but the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.

(2) Old building sewers (more than 25 years old) may not be used in connection with new buildings.

(3) Extension of customer service lines from any point on the customer's side of the tap for delivery of waste from any location other than that of the customer in whose name the tap is registered shall not be permitted.

(4) The building sewer shall be PVC (polyvinyl-chloride) sewer pipe, ASTM D-3034, latest revision, or ductile iron pipe, AWWA specification C-

151 cement lined, and shall meet requirements of the state plumbing code. Joints shall be as set out hereinafter. Any part of the building sewer that is located within five (5) feet of a water service pipe shall be constructed with ductile iron pipe, unless the building sewer is at least one foot deeper in the ground than the water service line. Ductile iron pipe may be required by the City where the building sewer is exposed to damage or stoppage by tree roots. Ductile iron pipe shall be used in filled or unstable ground, in areas where the cover over the building sewer is less than three (3) feet, or in areas where the sewer is subject to vehicular or other external loads.

(5) The size, slope, alignment and materials used in the construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the local and state building and plumbing codes and other applicable rules and regulations of the City.

(6) All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner(s). The owner(s) shall indemnify the City for any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. Fees for connection shall be as established by the City.

(7) The owner shall ensure that all excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

(8) In all buildings in which any sanitary facility drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drain shall be lifted by an approved means and discharged to the same building sewer. Drain pipe and sump for collection of such sanitary drainage shall be above the basement floor or in a separately watertight or drained sump or channel.

(9) The building sewer shall be connected into the public sewer at the easement or property line. Where no properly located service branch is available, an authorized agent of the City shall cut a neat hole into the main line of the public sewer and a suitable wye or tee saddle installed to receive the building sewer. The invert of the building sewer at such point of connection with a saddle shall be in the upper quadrant to the main line of the public sewer. A neat workmanlike connection, not extending past the inner surface of the public sewer, shall be made and the saddle made secure and watertight by encasement in epoxy cement specially prepared for this purpose. A 90 degree, 6 inch tee shall be installed at the property line between the public sewer and the building sewer. This fitting shall serve the purpose of a cleanout and for applying the smoke test during inspection of the line. After testing, a PVC or ductile iron riser will be inserted in this fitting and brought flush with the ground surface. A

threaded brass plug shall seal this riser against the intrusion of ground or surface water.

(10) All building sanitary sewer lines will be installed so as to meet or exceed the most current revision of the State Plumbing Code.

(11) All persons working on sewers with a cleaning rod must use an approved type rod in cleaning sewer connections to City sewers.

(12) Sewer taps shall not be allowed for structures where the lowest floor to be connected to the sewer is below the elevation of the nearest existing downstream manhole rim.

(13) Property owners shall be responsible for maintaining sewer laterals, including sewer taps, from the building plumbing to the main sewer lines, unless a suitable cleanout is provided at the property or easement line. Where a cleanout is provided at or near the property or easement line, the City will assume responsibility for maintenance of the lateral from the cleanout to the main sewer.

(14) New connections to the sewer lines, including sewer taps, shall include a 6" dia. cleanout at the property line, right of way line, or easement line that is readily accessible for sewer maintenance.

(15) Repairs to existing sewer lines, whether performed by HWU or by the property owner, shall include the addition of a 6" dia. cleanout where none existed before or where a 4" dia. cleanout existed before.

(d) *Inspection.*

(1) The applicant for the building sewer permit shall notify HWU when the building sewer is ready for connection to the public sewer. The connection shall be made under the supervision of the General Manager or his designee. The connections shall be made gastight and watertight and verified by proper testing.

(2) All building sewers shall be tested according to State Plumbing Law, Regulations & Code, issued by the Department of Housing, Building, and Construction.

(Ord. No. 06-11, 3-22-11; Ord. No. 20-14, 6-24-14)

Sec. 23-30. Pollutant discharge limits.

(a) *General conditions.* The following described substances, materials, waters or wastes shall be limited in discharges to the Henderson sanitary sewer system to concentrations or quantities which: (i) will not harm either the sewers, wastewater treatment processes or equipment, (ii) will maintain and protect water quality in the receiving stream, and (iii) will not otherwise endanger lives, limb, public property, or constitute a nuisance. The General Manager or his designee may set additional limitations or limitations more stringent than those established in the provisions of this ordinance, if in his opinion more severe limitations are necessary to meet the above objectives. In forming his opinion as to the acceptability of a discharge, the General Manager or his designee shall give

consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment plant, and other pertinent factors.

(b) *Restricted discharges.*

(1) Wastewater containing more than fifty (50) milligrams per liter of petroleum oil, nonbiodegradable cutting oils, or products of mineral oil origin.

(2) Wastewater containing floatable oils, fat, or grease, whether emulsified or not, in excess of one hundred fifty (150) milligrams per liter (mg/l) or containing substances which may solidify or become viscous at temperatures between 32°--150°F (0°--65°C).

(3) Any garbage that has not been properly shredded. Garbage grinders may be connected to sanitary sewers from homes, motels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers. Ground paper products such as cups, dishes, napkins, and milk containers shall not be discharged to the sewer system.

(4) Any wastewater containing toxic pollutants in sufficient quantity or quantities, either singly or by interaction with other pollutants which injure or interfere with any wastewater treatment processes, constitute a hazard to humans or animals, causes the City to violate the terms of its KPDES permit, prevents the use of acceptable sludge disposal methods, or exceed a limitation set forth in a Categorical Pretreatment Standard.

(5) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the City in compliance with applicable State or Federal regulations.

(6) Any water or wastes which by interaction with other water or wastes in the public sewer system, release noxious gases, form suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.

(7) Any wastewater with objectionable color which cannot be removed to an acceptable level within the operation of the wastewater treatment process unless otherwise specifically noted in the Industrial User Permit (IUP).

(8) Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed to the extent required by the City's NPDES/KPDES permit.

(9) Any waste(s) or wastewater(s) classified as a hazardous waste by the Resource Conservation and Recovery Act (RCRA) without a sixty (60) day prior notification of such discharge to the General Manager. This notification must include the name of the hazardous waste, the EPA hazardous waste number, type of discharge, volume/mass of discharge

and time of occurrence(s). The General Manager may prohibit or condition the discharge(s) at any time.

(10) Any water or wastes which have characteristics based on a twenty-four-hour composite sample, grab or a shorter period composite sample, if more representative, that exceed the following normal maximum domestic wastewater parameter concentrations:

Table 1 Normal Maximum Domestic Wastewater Concentrations Henderson North & South POTW's City of Henderson, Kentucky	
Parameter	Maximum allowable concentration without surcharge fee assessment (mg/l)
BOD	400
COD	800
TSS	400
NH ₃ -N	50
Oil and grease (total)	150

Any person discharging wastewater exceeding the allowable concentrations as noted in Table 1, will be subject to a surcharge fee for each pound loading over and above the allowable concentration. Any other amenable constituents requiring the addition of specific chemicals for proper treatment will also be subject to surcharge as noted on the industrial user permit. Exceedance of the effluent limits specified in Table 1 shall not be deemed to constitute a violation of a permit condition or this ordinance if the appropriate surcharge fee is paid and the discharge does not cause interference or pass through to the POTW.

(11) The discharge limitations as established in Tables 2 and 3 of this Ordinance are for characteristics of any wastewaters to be discharged into the municipal sewer system, to the North and South Wastewater Treatment Plants (POTW's), subject to any compliance schedule as must comply with these limitations where they are more stringent than applicable state and/or federal regulations. Based upon the sampling program at the Henderson wastewater treatment plants, the discharge limitations given in Tables 2 and 3 may be adjusted to reflect the POTW's needs. The City shall give public notice when any change results in a limitation less stringent than currently exists.

Table 2	
Effluent Discharge Limitations	
Henderson North Wastewater Treatment Plant City of Henderson, Kentucky	
Parameter	Daily Maximum Discharge Limit (milligrams per liter)
Arsenic (As)	0.34
Cadmium (Cd)	0.06
Chromium, total (Cr)	2.77
Hexavalent Chromium (Cr VI)	0.53
Copper (Cu)	1.43
Cyanide, Amenable (Cn, Amen)	0.26
Lead (Pb)	0.24
Mercury (Hg)	0.01
Nickel (Ni)	1.64
Selenium (Se)	0.14
Silver (Ag)	0.39
Zinc (Zn)	1.60

Table 3	
Effluent Discharge Limitations	
Henderson South Wastewater Treatment Plant City of Henderson, Kentucky	
Parameter	Daily Maximum Discharge Limit (milligrams per liter)
Arsenic (As)	0.17
Cadmium (Cd)	0.11
Chromium, total (Cr)	2.77
Hexavalent Chromium (Cr VI)	1.55
Copper (Cu)	2.03
Cyanide, Amenable (Cn, Amen)	0.65
Lead (Pb)	0.69
Mercury (Hg)	0.004
Nickel (Ni)	1.57
Selenium (Se)	0.38
Silver (Ag)	0.24
Zinc (Zn)	1.48

(12) The City has received authority through the U.S. EPA and state statutes to enforce the requirements of 40 CFR Subchapter N and 40 CFR Part 403. All users shall comply with the requirements of these federal regulations.

(c) *Dilution of wastewater discharge.* No user shall ever increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the federal categorical pretreatment standards, or in any pollutant specific limitation developed by the City or State.

(d) *Grease, oil, and sand interceptors.*

(1) Grease, oil, and sand interceptors shall be installed when, in the opinion of the General Manager or his designee, they are deemed necessary for the proper handling of liquid wastes containing any type of floatable grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of type and capacity approved by the General Manager or his designee and shall be located as to be readily and easily accessible for inspection by HWU staff.

(2) The design and capacity of the interceptor shall be the responsibility of the owner(s); however the General Manager or his

designee must approve the unit. The HWU collection system must be provided adequate protection from prohibited substances traveling through the sewer line(s).

(3) No user shall discharge to the POTW, any solid or viscous pollutants in amounts which could cause obstruction to the flow in the sewers, or cause interference with the operation of, or cause damage to the POTW, including grease or other materials which may coat or clog a sewer line or appurtenances.

(4) Users shall periodically examine their interceptors and update the interceptor if there is evidence of the unit being too small, worn, broken, or otherwise no longer functioning properly.

(5) The City may require the interceptor to be cleaned on a more frequent basis if there is evidence of problems occurring, such as due to grease build-up, occurring in the sewer line(s). The City may require reporting of such information for review on a regular basis.

(6) In the maintaining of an interceptor, the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates, and means of disposal for a period of not less than three (3) years. The City reserves the right to recover any costs associated with cleanup in the collection system from the owner(s) of the interceptor due to failure of the unit for any reason.

(7) Any removal and hauling of the collected materials not performed by owner(s) personnel must be performed by currently licensed disposal firms. Interceptors shall also comply with the applicable regulations of any other local, State or Federal agency having jurisdiction.

(e) *Floor Drains.* Floor drains are prohibited unless the following conditions exist:

(1) If the business is an existing user and floor drains are already present in the facility, every precaution and safeguard will be expected from the facility to protect the POTW from slugs, spills, negligence, etc. This includes all users, not just those participating in the HWU Pretreatment Program. The General Manager or his designee may inspect the floor drains at any time. The General Manager or his designee may request that the drains be sealed in cases where there is a potential harm to the POTW.

(2) Permission from the General Manager or his designee must be granted before floor drains may be installed on new construction or renovation projects.

(3) If floor drains are allowed by the General Manager or his designee, an interceptor must accompany them to provide protection to the POTW from petroleum-based products and flammable liquid wastes. The design and capacity of the interceptor shall be the responsibility of the owner.

Refer to Sec. 23-30 – Pollutant discharge limits, Paragraph B, Restricted discharges (all sub-paragraphs).

(4) Regular maintenance and cleaning shall be performed on interceptor units to the satisfaction of the General Manager or his designee. More frequent cleaning of the interceptor may be required by the General Manager or his designee if deemed necessary.

(5) The owner of property containing floor drains is responsible for cleaning and maintenance of those drains. Any costs that the HWU may incur due to failure part of the owner to keep up cleaning and maintenance shall be reimbursed by the owner.

(f) *Special industrial pretreatment requirements.*

(1) Pursuant to the requirements imposed on publicly owned wastewater treatment works by the Federal Water Pollution Control Act Amendments of 1972 and later amendments, all pretreatment standards promulgated by the U.S. Environmental Protection Agency for new and existing industrial dischargers to public sewer systems are hereby made a part of this ordinance. Any industrial waste discharge which violates these EPA Pretreatment Standards shall be in violation of this ordinance.

(2) Where pretreatment or flow equalizing facilities are provided or required for any waters or wastes, the industry shall be solely responsible for the continued maintenance in satisfactory and effective operation of such facilities and at their expense. The City is authorized to assume these responsibilities, in which event some or all of the provisions of subsection 23-30(b)(10) may be inapplicable, provided proper and appropriate arrangements for compensation are made to the City for providing pretreatment services to the industry.

(g) *Trucked and/or hauled wastes.*

(1) Any person who transports septic tank, seepage pit or cesspool contents, liquid industrial waste or other batch liquid waste and wishes to discharge such waste to the public sewer system shall first have a valid Domestic Hauler's Discharge Permit. All applicants for a Domestic Hauler's Discharge Permit shall complete the application form, pay the appropriate fee, and receive a copy of the City's regulations governing discharge to sewers of liquid wastes from trucks. All persons receiving such permits shall agree, in writing, to abide by all applicable provisions of this ordinance, and any other special provisions that may be established by the City as necessary for the proper operation and maintenance of the sewage system.

(2) Discharge of septic tank, seepage pit, interceptor or cesspool contents, or other wastes containing no industrial wastes may be made by trucks holding a valid permit at a location designated by the General Manager or his designee for that purpose. Discharge of truck-transported grease pit contents or industrial wastewater shall take place only after notification is made to the General Manager or his designee and then only

at the locations specified by the General Manager or his designee. HWU requires payment as hereinafter provided for treatment and disposal costs.

(3) HWU reserves the right to refuse permission to discharge any waste that may cause interference or upset at the POTW, or any waste that violates any provision of this ordinance.

(4) Any person holding a valid permit and wishing to discharge to the POTW must submit to the operator of the POTW a sample of each load prior to discharge. A fee and payment schedule shall be established in the permit to cover cost of the required analysis.

(5) It shall be illegal to discharge any batch liquid waste into any manhole or other part of the public sewer system, or any building sewer or other facility that discharges to the public sewer system, except at designated points of discharge specified by the General Manager, or his designee, for such purpose.

(6) Any liquid waste hauler illegally discharging to the public sewer system or discharging wastewater not authorized in the permit shall be subject to immediate revocation of discharge privileges and further subject to the penalties and enforcement actions prescribed in Sec. 23-35 of this ordinance, including fines and imprisonment. A suspended permittee shall immediately cease discharging any wastes to the sanitary sewer system of the City or to facilities that discharge directly or indirectly into its system. Should a suspended permittee fail to voluntarily comply with any suspension order, the General Manager or his designee shall take such actions as are deemed necessary or appropriate to prevent or minimize damage to the POTW and/or to protect the health and welfare of the general public.

(7) A suspended permit may be reinstated by the General Manager upon submission of assurances satisfactory to the General Manager that the suspended permittee will comply with this division and the rules and regulations promulgated pursuant to this section plus payments of such fines or other penalties as may be levied by the HWU. The General Manager or his designee shall require that within fifteen (15) days after the date of any such occurrence, the suspended permittee submit a written report to the HWU detailing the nature and extent of the violation(s), including any nonpermitted discharges, and the measures taken by the suspended permittee to prevent any future occurrence.

(8) Waste haulers who have been granted permission to discharge to the public sewer system shall pay fees for such discharge in accordance with a fee schedule established by the General Manager and approved by the City. The Henderson Water and Sewer Commission shall establish, and from time to time may alter, a schedule of fees, rates and charges for the Domestic Hauler's Discharge Permit to cover the costs of treatment and disposal of all wastes governing permit issuance, requirements, conditions, suspensions and all other matters necessary or appropriate to implement this section.

(9) Only wastes approved by the General Manager or his designee and originating from within the City of Henderson, Henderson County, or Webster County, shall be allowed under this permit. Dumping hours shall be fixed by HWU and shall be limited to 6:00 a.m. to 6:00 p.m., local time, Monday through Saturday, excluding HWU holidays. Dumping after hours or on holidays may be allowed by permission only from the operator on duty at the HWU wastewater treatment plant.

(10) The permittee shall complete a load report for each load of waste deposited into the City's sewer system. The information on the load report shall be recorded and signed by an employee of the permittee, or the permittee himself, and shall be in duplicate on forms furnished by the HWU. The original copy of all load reports, a summary monthly report and accompanying payment based upon the current rate per one thousand (1,000) gallons of approved liquid waste plus the current rate per one thousand (1,000) gallons for contents from grease traps which were discharged into the City's drybed system for the previous month, shall be submitted to the HWU's Administrative Office or its designee by the fifteenth day of the month following the discharge.

(11) Discharge of all liquid wastes allowed under this section shall take place only at the location(s) designated by the General Manager or his designee. The designated location to be used under the Domestic Hauler's Discharge Permits may be changed by the General Manager or his designee as deemed necessary.

(12) The discharge of trucked and/or hauled wastes from industrial plating processes or radiator businesses is prohibited.

(13) Nothing in this ordinance shall relieve waste haulers of the responsibility for compliance with Henderson County Health Department, State, or Federal regulations.

(h) *Protection from accidental and slug discharges.*

(1) Each significant industrial user shall provide protection from accidental and/or slug discharges of prohibited materials or other substances regulated by this division which adversely affects the POTW. Facilities to prevent accidental and/or slug discharges of prohibited materials shall be provided and maintained at the owner or user's own cost and expense. Periodically, the General Manager or his designee will determine whether each industrial user needs to develop or update a plan to control slug discharges. If the General Manager or his designee determines that a slug control plan or revision is necessary, the plan shall contain the following:

- a. Description of discharge practices;
- b. Description of stored chemicals;
- c. Procedures for notifying POTW;
- d. Prevention procedures for spills.

In the case of all possible or actual accidental and/or slug discharges, it is the responsibility of the user to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

(2) Written notice. Within five (5) days following an accidental discharge, the user shall submit to the General Manager a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent any future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property, nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this article, the enforcement response plan or other applicable law.

(3) Notice to employees. 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 dangerous discharge. Employers shall insure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedures. Proof of this notification and training may be demanded at any time by the General Manager or his designee.

(i) *State requirements.* State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this division.

(j) *City's right of revision.* The City reserves the right at the recommendation of the General Manager to establish by majority vote of its board of commissioners more stringent limitations and/or requirements on discharges to the POTW if deemed necessary to comply with the objectives presented in this division.

(k) *Federal categorical pretreatment standards.* Upon the promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this division for sources in that subcategory, shall immediately supersede the limitations imposed under this division.

(Ord. No. 06-11, 3-22-11; Ord. No. 20-14, 6-24-14)

Sec. 23-31. Pretreatment program administration.

(a) *Wastewater discharges.* It shall be unlawful to discharge to the POTW any wastewater except as authorized by the City in accordance with the provisions of this division.

Any agency, nondomestic user, and/or industry outside the jurisdiction of the City that desires to contribute wastewater to the POTW must execute (through an authorized representative) an interjurisdictional agreement, whereby the agency and/or industry agrees to be regulated by all provisions of this division and state and federal regulations. An industrial user permit may then be issued by the

General Manager or his designee in accordance with subsection (b) of this section.

(b) *Industrial user permits.*

(1) *General.* All significant industrial users proposing to connect to or to contribute to the POTW shall obtain an Industrial User Permit before connecting to or contributing to the POTW.

(2) *Permit application.* Users required to obtain an industrial user permit shall complete and file with the City, an application in the form prescribed by the City, and accompanied by a permit fee. New users shall apply at least ninety (90) days prior to connecting to or contributing to the POTW. Existing permit holders shall apply no later than sixty (60) days prior to expiration of the permit. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

- a. Name, address, and location if different from the address;
- b. NAICS number(s) according to the North American Industry Classification System Manual, United States Bureau of the Budget, as amended;
- c. Wastewater constituents and characteristics as determined by an analytical laboratory acceptable to the City; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to Section 304 (g) of the Act and contained in 40 CFR, Part 136, as amended;
- d. Time and duration of contribution;
- e. Average daily and thirty-minute peak wastewater flow rates, including daily, monthly and seasonal variation if any;
- f. Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, and appurtenances by the size, location and elevation;
- g. Description of activities, facilities, and plant processes on the premises including all materials which are or could be discharged;
- h. Where known, the nature and concentration of any pollutants in the discharge which are limited by the City, State or Federal Pretreatment Standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional pretreatment is required for the user to meet applicable Pretreatment Standards;
- i. If additional pretreatment will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard;

The following conditions shall apply to this schedule:

1. The schedule must be acceptable to the City.
 2. The schedule shall contain increments of progress 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 Standard.
 3. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the General Manager including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress and the reason for delay, and the steps being taken by the user to return the construction to the schedule established.
- j. Each product produced by type, amount, process or processes, and the rate of production;
 - k. Type and amount of raw materials processed (average and maximum per day);
 - l. Number of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
 - m. Any other information as may be deemed by the City to be necessary to evaluate the permit application.
 - n. A copy of the industry's written environmental control program, policy, or comparable document.
- (3) *Issuance.* The City shall evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished and determination that adequate capacity exists at the sewage facilities to convey, treat and dispose of the wastewaters, the General Manager or his designee may issue an industrial user permit subject to terms and conditions provided therein. The Industrial User Permit must be issued prior to commencement of discharge. The General Manager may withhold or discontinue water service until the discharge permit is issued. All new source categorical industries shall be capable of achieving compliance with this ordinance upon commencement of discharge.
- (4) *General discharge permits.* The Pretreatment Coordinator may issue a general discharge permit to any user who, in the opinion of the Pretreatment Coordinator, has a potential to cause harm to the POTW and/or endanger POTW personnel or the general public. Users required to obtain such a permit shall complete an application with the HWU in the form prescribed by the General Manager or his designee. At the discretion of the General Manager or his designee, the general discharge permit may contain discharge monitoring requirements and effluent discharge

limitations. Users regulated by a general discharge permit are subject to all provision of this Ordinance.

(c) *Permit modifications.* Within nine (9) months of the promulgation of a national categorical pretreatment standard, the Industrial User Permit of any user subject to such standard shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to national categorical pretreatment standards, has not previously submitted an application for an industrial user permit as required, the user shall apply for an industrial user permit within ninety (90) days after the promulgation of the applicable national categorical pretreatment standard. In addition, the user with an existing industrial user permit shall submit to the General Manager or his designee within ninety (90) days after the promulgation of an applicable federal categorical pretreatment standard, the information required by this division.

(d) *Permit conditions.* Industrial user permits shall be expressly subject to all provisions of this division and all other applicable regulations, user charges and fees established by the City. Permits shall contain the following:

- (1) A statement that indicates the permit issuance date, effective date, and date of expiration;
- (2) The unit surcharges or schedule of other charges and fees for the wastewater to be discharged to a sanitary sewer;
- (3) Limits on the average and/or maximum wastewater constituents and characteristics, including Best Management Practices based on applicable Pretreatment Standards, and such conditions as are deemed necessary by the Pretreatment Coordinator to prevent pass through and interference, protect water quality in the receiving stream, protect worker safety, facilitate sludge management and disposal, and protect against damage to the POTW;
- (4) Limits on average and/or maximum rate and time of discharge or requirements for flow regulation and equalization;
- (5) Requirements for installation and maintenance of inspection and sampling facilities;
- (6) Specifications for monitoring programs which may include sampling location; frequency of sampling; number, type and standards for tests; and reporting schedule;
- (7) Compliance schedules;
- (8) Requirements for submission of technical reports or discharge reports;
- (9) Requirements for maintaining and retaining, for a minimum of three (3) years, all plant records relating to pretreatment and/or wastewater discharge as specified by the City, and documentation associated with Best Management Practices under Item (14) below, and affording the City access thereto as required by 40 CFR 403:12(o)(2). 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 the analyses. 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 General Manager;

(10) Requirements for immediate notification to the City of any new introduction of wastewater constituents, or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system, or of any changes that occur at the facility or plant affecting the potential for a slug discharge.

(11) Requirements for notification of slug discharges.

(12) Requirements for the installation, maintenance and use of facilities and procedures that will control slug discharges under conditions set forth in the permit.

(13) The permit may require the user to reimburse the City for all expenses related to monitoring, sampling and testing performed at the direction of the Pretreatment Coordinator and deemed necessary by the City to verify that the user is in compliance with said permit.

(14) The permit may require the user to incorporate Best Management Practices (BMPs) that are required by a categorical standard, and to report on compliance with BMP-based categorical standards.

(15) Other conditions as deemed appropriate by the City to ensure compliance with this ordinance.

(e) *Alternative discharge limits.*

(1) Where an effluent from a categorical industrial process is mixed prior to treatment with wastewater other than that generated by the regulated process, fixed alternative discharge limits may be derived for the discharge permit by the General Manager. These alternative limits shall be applied to the mixed effluent and shall be calculated using the combined wastestream formula and/or flow-weighted average formula as defined in section 23-26.

(2) Where the effluent limits in a categorical pretreatment standard are expressed only in terms of mass of pollutants per unit of production (production-based standards), the General Manager or his designee may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or of effluent concentration for purposes of calculating effluent permit limitations applicable to the permittee. The permittee shall be subject to all permit limits calculated in this manner under 40 CFR 403.6(c) and must fully comply with these alternative limits.

(3) All categorical users subject to production-based standards must report production rates annually so that alternative permit limits can be calculated if necessary. The categorical industrial user must notify the General Manager or his designee thirty (30) days in advance of any major

change in production levels that may affect the limits for the discharge permit.

(f) *Permit duration.* Industrial user permits shall be issued for a specified time period, not to exceed five (5) years for a categorical user, and not to exceed three (3) years for a significant user. Temporary permits may be issued for any new categorical user to allow data gathering to determine strength and characteristics of the user's effluent quality. A permit may be issued for a period of less than one year or may be stated to expire on a specific date. The user shall apply for permit reissuance a minimum of sixty (60) days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modification by the City during the term of the permit as limitations or requirements as identified in section 23-30 are modified or other just cause exists. The industrial user shall be informed of any proposed changes in its permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(g) *Permit transfer.* Industrial user permits are issued to a specific user for a specific operation. An industrial user permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation without a thirty (30) day prior notification to the General Manager or his designee and provision of a copy of the existing permit to the new owner. The General Manager or his designee may deny the transfer of the permit if deemed necessary.

(h) *Compliance data reporting.* Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new user, following commencement of the introduction of wastewater into the POTW, any user subject to federal categorical pretreatment standards and requirements shall submit to the General Manager or his designee a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by categorical pretreatment standards and requirements and the average and maximum daily flows for the process units in the user's facility which are limited by such categorical pretreatment standards or requirements. The report shall state whether the applicable categorical pretreatment standards or requirements are being met on a consistent basis and, if not, what additional pretreatment and time schedule is necessary to bring the user into compliance with the applicable categorical pretreatment standards or requirements. This statement shall be signed by an authorized representative of the user.

(i) *Periodic compliance reports.*

(1) All significant industrial users shall submit to the General Manager or his designee at least once every six months or on dates specified in the Industrial User Permit, a report indicating, at a minimum, the nature and concentration of pollutants in the effluent which are limited by pretreatment standards or the discharge permit. In addition, this report shall include a record of all daily flows which during the reporting period exceeded the average daily flow. At the discretion of the General Manager and in

consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Pretreatment Coordinator may agree to alter the months during which the above reports are to be submitted.

(2) All analyses shall be performed by a laboratory acceptable to the City. Analytical procedures shall be in accordance with procedures established by the U.S. EPA administrator pursuant to Section 304 (g) of the Act and contained in 40 CFR 136 and amendments thereto and 40 CFR 261 or with any other test procedures approved by the U.S. EPA administrator. Sampling shall be performed in accordance with the techniques approved by the U.S. EPA administrator, and shall follow the sampling requirements of 40 CFR 403.12(e) and (h). Non-categorical and categorical SIUs shall report all monitoring results.

(3) Where 40 CFR 136 does not include a sampling or analytical technique for the pollutant(s) in question, sampling and analysis shall be performed in accordance with the procedures set forth in the EPA publication, "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants," April 1977, and amendments thereto, or with any other sampling and analytical procedures approved by the U.S. EPA administrator.

(4) A Wastewater Application (WA) must be submitted to the Pretreatment Coordinator by all categorical industrial users at least ninety (90) days prior to initiation of discharge to the sanitary sewer. The WA must contain, at a minimum, the following:

- a. *Production data:* A process description, NAICS code number, raw materials used, chemicals used, final product, pretreatment industrial category (if applicable), and a schematic which indicates points of discharge to the sewer system.
- b. Identifying information to include name, address of facility, owner(s), contact person and any other permits held by the facility.
- c. *Wastewater characteristics:* total plant flow, types of discharges, average and maximum flows from each process.
- d. *Nature/concentration of pollutants:* Analytical results for all pollutants regulated by this division and/or any applicable federal pretreatment standard and sample type and location. All analyses must conform to 40 CFR 136 and amendments thereto.
- e. Information concerning any pretreatment equipment used to treat the facility's discharge.

(5) New sources shall give estimates of the information requested in sections c. and d. above, but at no time shall a new source commence discharge(s) to the public sewer of substances that do not meet all provisions of this ordinance. All new sources must be in compliance with all provisions of this ordinance and State and Federal Pretreatment Regulations prior to commencement of discharge to the public sewer.

(j) *Permit violations.*

(1) All significant industrial users must notify the Pretreatment Coordinator within twenty-four (24) hours of first becoming aware of a permit violation. This notification shall include the date of violation, the parameter violated and the amount in exceedance.

(2) The user shall immediately repeat the sampling and analysis of the parameter(s) in question and submit the results of this resampling to the Pretreatment Coordinator within thirty (30) days after becoming aware of the violation. Exception to this regulation is only if the City performs the sampling within the same time-period for the same parameter(s) in question.

(3) Compliance with the terms of an industrial user permit shall be deemed compliance with the terms of this division.

(k) *Monitoring.*

(1) The City may require significant industrial users to provide and operate, at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage system. The monitoring facility should normally be situated on the user's premises, but the City may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in a public right-of-way. The General Manager shall review and approve the location, plans, and specifications for such monitoring facilities and may require them to be constructed to provide for the separate monitoring and sampling of industrial waste and sanitary sewage flows.

(2) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility shall be designed and maintained in a manner such that the safety of City and user personnel shall be foremost. The monitoring facility, sampling and measuring equipment shall be maintained at all times in a proper operating condition at the expense of the significant industrial user.

(3) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the City's requirements and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following approval of the location, plans and specifications.

(4) All sampling analyses done in accordance with approved federal EPA procedures by the industrial user during a reporting period shall be submitted to the Pretreatment Coordinator, regardless of whether or not the analyses were required by the significant industrial user's discharge permit. All users shall provide representative samples in their periodic monitoring reports. 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.

(5) A significant industrial user must receive the approval of the Pretreatment Coordinator before changing the sampling point and/or monitoring facilities to be used in all required sampling. Industrial users shall sample only at the sampling point. HWU may sample at other locations in order to establish compliance by the user.

(6) Samples collected to satisfy reporting requirements must be obtained through appropriate sampling and analysis, based on data that is representative of conditions occurring during the applicable reporting period.

a. Except as indicated in b. and c. below, the user shall collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite or grab sampling is authorized by the Pretreatment Coordinator. Where time-proportional or grab sampling is authorized, the samples must be representative of the discharge. Using protocols (including appropriate preservation) in 40 CFR Part 136 and appropriate US EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides, the samples may be composited in the field or in the laboratory; for volatile organics, and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

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

c. For samples required in support of baseline monitoring and 90-day compliance reports, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and organic compounds. For facilities where historical sampling is available, the Pretreatment Coordinator may authorize a lower minimum. For the reports required by Section 23-31 (i), the user is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.

(l) *Inspection and sampling.*

(1) The City shall inspect the facilities of any user to ascertain whether the purposes of this division are being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the General Manager or his designee

ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, copying records, records examination or in the performance of any of their duties.

(2) HWU, approval authority, and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspections, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the City, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

(m) *Pretreatment.* All significant industrial users shall provide necessary wastewater treatment as required to comply with this division and achieve compliance with any applicable federal categorical pretreatment standards within the time limitations as specified by the federal pretreatment regulations. The General Manager may require the development of a compliance schedule for installation of pretreatment technology and/or equipment by any industrial user that cannot meet the discharge limits required by this division. Any facilities required to pretreat wastewater to a level required by this division shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the General Manager and Pretreatment Coordinator for review, and shall be acceptable to the General Manager before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent that complies with the provisions of this division. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the General Manager or his designee prior to the user's initiation of the changes.

(n) *Annual publication.*

(1) The City shall annually publish in a newspaper of local circulation a list of significant industrial users which were in significant noncompliance with any pretreatment requirements or standards during the previous twelve (12) months. The notification shall also summarize any enforcement actions taken against the user(s) during the same twelve (12) months. The costs to the City resulting from such publication shall be borne on a proportional basis by the significant industrial users published.

(2) All records relating to the City's pretreatment program shall be made available to officials of the EPA or approval authority upon request. All records shall be maintained for a minimum of three (3) years in accordance with 40 CFR 403.12 (O) (2).

(o) *Significant noncompliance.* A user is defined as being in significant noncompliance when it commits one or more of the following actions:

- (1) Causes imminent endangerment to human health or the environment or results in the exercise of emergency authority;
 - (2) Failure to report noncompliance accurately;
 - (3) Results in a chronic violation defined herein as when sixty-six (66) percent or more of all measurements for a pollutant parameter taken during a six (6) month period exceed (by any magnitude) the daily maximum limit or the monthly average limit for the same pollutant parameter;
 - (4) Results in a technical review criteria (TRC) violation defined herein as when thirty-three (33) percent or more of all measurements for a pollutant parameter taken during a six (6) month period equal or exceed the product of the daily maximum limit or the monthly average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, and oil and grease, and equals 1.2 for all other pollutants except pH);
 - (5) Any violation of a pretreatment effluent limit that the HWU determines has caused, alone or in combination with other discharges, interference or pass through or has endangered the health of the POTW personnel or the general public;
 - (6) Any discharge causing imminent endangerment to human health/welfare or to the environment or resulting in the POTW's use of its emergency authority to halt or prevent such a discharge;
 - (7) Violations of compliance schedule milestones, failure to comply with schedule milestones for starting or completing construction or attaining final compliance by ninety (90) days or more after the schedule date;
 - (8) Failure to provide required reports within thirty (30) days of the due date; and
 - (9) Any violation or group of violations, which may include violation of Best Management Practices, which the General Manager determines will adversely affect the operation or implementation of the local pretreatment program and/or the operation of the POTW.
- (p) *Confidential Information.*
- (1) Information and data on a user obtained from reports, questionnaires, permit applications, permits, monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests in writing and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets of the user.
 - (2) When requested by the person furnishing a report, 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 to all governmental agencies for uses related to this division, the NPDES/KPDES permit, sludge disposal system permit and/or the

pretreatment program upon request. Such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics shall not be recognized as confidential information and shall be available to the public without restriction.

(q) *Signatory requirements.* All applications, reports or information submitted to the City shall be *signed* and certified.

(1) All permit applications shall be signed:

a. For a corporation: By a principal executive officer of at least the level of vice-president;

b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively.

(2) All other correspondence, compliance reports and self-monitoring reports may be signed by the person described above or by a duly authorized representative. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above; and,

b. The authorization specifies either an individual or a position having facility or activity, such as the position of plant manager, general manager or position of equivalent responsibility.

(3) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that I am familiar with the information contained in this report and its attachments and that to the best of my knowledge and belief such information is true, complete and accurate."

(Ord. No. 06-11, 3-22-11; Ord. No. 41-11, Exh. A, 11-8-1; Ord. No. 20-14, 6-24-141)

Sec. 23-32. Fees.

(a) *Purpose.* This article provides for the recovery of costs from industrial users of the POTW for the implementation of the pretreatment program established herein and for other costs associated with the monitoring and treating of wastewaters. The applicable charges and fees shall be as set forth in the City's schedule of charges and fees.

(b) *Charges and fees.* The City may adopt charges and fees which may include:

(1) Fees for reimbursement of costs of setting up and operating the City's pretreatment program;

(2) Fees for monitoring, inspections, and surveillance procedures;

(3) Fees for reviewing accidental discharge procedures and construction;

- (4) Fees for permit applications;
- (5) Fees for filing appeals;
- (6) Fees for consistent removal by the POTW of excessive strength conventional pollutants;
- (7) Fees for all costs directly related to investigation of a prohibited discharge;
- (8) Other fees as the City may deem necessary to carry out the requirements contained herein. A minimum fee will be charged to all customers based upon water consumption or metered flow.

These fees relate solely to the matters covered by this ordinance and are separate from all other fees chargeable by the City.

(c) *Fees applicable to trucked and/or hauled wastes.* The applicable fees pertaining to the discharge of trucked and/or hauled wastes into the City's sanitary sewer system shall be as follows:

- (1) An application fee shall accompany each permit application to cover the cost of the annual discharge permit. New permit applications received during the year shall be pro-rated based on the number of full months remaining in the year;
- (2) Fees for all costs incurred by the HWU in monitoring, inspections, and surveillance procedures may be assessed. These fees will be billed on a regular basis to the Industrial User applicable;
- (3) Fees for all costs directly related to investigation of a prohibited discharge shall be assessed to the source of such discharge;
- (4) Fees for all costs incurred as a result of the filing of appeals may be assessed to the appellant; and,
- (5) Other fees and expenses for all costs incurred by the HWU to carry out the requirements contained in this ordinance.

These fees relate solely to the matters covered by this ordinance and are separate from all other fees chargeable by the City.

(Ord. No. 06-11, 3-22-11)

Sec. 23-33. Powers and authority of inspectors.

- (a) *Right to enter premises.* The General Manager and other duly authorized employees and *representatives* of the City and authorized representatives of applicable federal and state regulatory agencies bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, records examination and copying, measurement, sampling, and testing pertinent to discharges to the public sewer system in accordance with the provisions of this ordinance.
- (b) *Right to obtain information regarding discharge.* Duly authorized representatives of the City and representatives of the state and EPA are

authorized to obtain information including but not limited to copying of records concerning character, strength and quantity of industrial wastes which have a direct bearing on the kind and source of discharge to the wastewater collection system.

(c) *Access to easements.* Duly authorized representatives of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purpose of, but not limited to, construction, inspection, observation, measurement, sampling, repair, and maintenance of any portions of the wastewater facilities lying within said easement. All entry and subsequent work, if any on said easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

(d) *Safety.* While performing the necessary work on private properties referred to in subsection (c) above, all duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company. The City shall secure the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required by this ordinance.

(Ord. No. 06-11, 3-22-11)

Sec. 23-34. Enforcement.

(a) *General.*

(1) The City, through the General Manager or his designee, to insure compliance with this ordinance, and as permitted through 40 CFR Subchapter N, and 401 KAR 5:055, may take the following enforcement steps against users in noncompliance with the ordinance. The remedies available to the POTW include injunctive relief, civil and criminal penalties, immediate discontinuance of discharges and/or water service and the publishing of a list of significant industrial users in significant noncompliance annually. The enforcement authority shall be vested in the General Manager or his/her designee.

(2) The General Manager may suspend wastewater treatment service, an industrial user permit, MS4 service, and/or a Domestic Hauler's Discharge Permit when such suspension is necessary, in the opinion of the General Manager, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the POTW or causes the City to violate any condition of its NPDES/KPDES permit.

(3) Any user notified of a suspension of wastewater treatment service, its industrial user permit, MS4 service, and/or its Domestic Hauler's Discharge Permit shall immediately stop or eliminate the contribution. In

the event of a failure of the person to comply voluntarily with the suspension order, the City shall take such steps as deemed necessary including immediate severance of the sewer connection to prevent or minimize damage to the POTW, the collection system, the MS4, and/or endangerment to any individuals. Severance of connection to the MS4 may require the MS4 user to obtain a separate stormwater permit. The City shall reinstate the industrial user permit, wastewater treatment service, MS4 service, and/or the Domestic Hauler's Discharge Permit upon receiving proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the City's Pretreatment Coordinator within fifteen (15) days of the date of occurrence.

(4) In the event of termination of service, the , the sewer user, MS4 user or significant industrial user shall pay the HWU for all costs incurred to perform the disconnection and reconnection of service plus fifteen (15) percent administrative costs prior to the service being restored. If actual costs cannot be determined, the costs shall be estimated by the General Manager.

(b) *Notice of violation.*

(1) Any user found to be violating any provisions of this division, an industrial user permit, or any order issued hereunder, shall be served by the City with written or verbal notice of violation (NOV) stating the nature of the violation(s) and requiring correction of the violation within a time limit as determined by the General Manager. Within the specific time limit set by said notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the General Manager. Submission of this plan in no way relieves the user of potential liability for any violation occurring before or after receipt of the notice of violation.

(2) If the violations persist or the explanation and/or plan are not adequate, the City's response shall be more formal and commitments (or schedules as appropriate) for compliance will be established in an administrative order. The enforcement response selected will be related to the seriousness of the violation. Enforcement responses will be escalated if compliance is not achieved expeditiously after the initial action. Enforcement actions may require without limitation:

- a. The performance of monitoring, analyses, and reporting;
- b. The elimination of illicit connections or discharges;
- c. That violating discharges, practices, or operations shall cease and desist;
- d. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;

- e. Payment of a fine to cover administrative and remediation costs, as well as punitive assessments; and
- f. The implementation of source control or treatment BMPs.

Identification of significant noncompliance as defined in subsection 23-31(o), will require a formal enforcement action.

(3) The full scale of enforcement actions will be as detailed in the HWU Enforcement Response Plan.

(c) *Appeal of notice of violation.* Any person receiving a Notice of Violation (NOV) may appeal the determination of the authorized enforcement officer. The notice of appeal must be received within five (5) days from the date of the Notice of Violation. Hearing on the appeal before the General Manager or his/her designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the General Manager or his designee shall be final.

(d) *Enforcement measures after appeal.* If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within fifteen (15) days of the decision of the General Manager upholding the decision of the authorized enforcement officer, then the authorized enforcement officer shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Henderson Water Utility or designated contractor to enter upon the premises for the purposes set forth above.

(e) *Cost of abatement of the violation.* After abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within fifteen (15) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

(f) *Administrative orders.*

(1) Any user who after receiving a notice of violation shall continue to discharge in violation of this division or other pretreatment standards or requirements or is determined to be in significant noncompliance shall be ordered to appear before the General Manager. At said appearance, a compliance schedule will be given to the noncompliant user and an administrative fine may be assessed. The fine shall be determined on a case-by-case basis which shall consider the type and severity of the violation(s), duration of violation(s), number of violation(s), severity of impact on the POTW, impact on human health, user's economic benefit from the violation(s), history of violation(s), and good faith of the user, and shall be a nonarbitrary but appropriate amount.

(2) Users desiring to dispute such fines shall file with the General Manager a request for the municipal water and sewer commission to reconsider the fine. This appeal must be filed within ten (10) days of the date of being notified of the fine. The Henderson Water and Sewer Commission shall convene a hearing on the matter within fifteen (15) days of receiving such a request from the user. The decision of the Henderson Water and Sewer Commission shall be final.

(3) The administrative order may take any of the following three forms.

a. *Consent orders.* The General Manager or his/her designee is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the industrial user responsible for the noncompliance. Such orders will include specific actions to be taken by the user to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as orders issued pursuant to Article IX, Section C.3. below.

b. *Compliance orders.* When the General Manager or his designee finds that a user has violated or continues to violate this division or a permit or order issued hereunder, he may issue an order to the user responsible for the discharge directing that, following a specified time period, sewer service, water service, or MS4 access shall be discontinued unless adequate treatment facilities, devices, or other related appurtenances and equipment have been installed and are properly operated. Compliance orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the installation of pretreatment technology, additional self-monitoring, and management practices.

c. *Cease and desist orders.* When the General Manager finds that a user has violated or continues to violate this division or any permit or order issued hereunder, the General Manager may issue an order to cease and desist all such violations and direct the user in noncompliance to:

1. Comply forthwith; or,
2. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

(g) *Show cause hearing.*

(1) The General Manager or his designee may issue to any user who causes or contributes to violations of this division, or permit or order issued hereunder, an order to appear and show cause why a proposed enforcement action should not be taken. A notice shall be served on the user specifying the time and place of a hearing to be held by the General

Manager regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause, before the General Manager, why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any authorized representative of the user. Whether or not a duly notified user or its authorized representative appears, immediate enforcement action may be pursued by the General Manager.

(2) The General Manager may, himself, conduct the hearing and take the evidence, or designate a representative to:

- a. Issue, in the name of the City, notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearing;
- b. Take the evidence; and,
- c. Transmit a report of the evidence and hearing, including transcripts, recordings and other evidence, together with recommendations to the General Manager for action thereon.

(3) At any hearing held pursuant to this division, testimony taken must be under oath and recorded electronically. This recording will be made available to any member of the public or any party to the hearing upon payment of the usual charges thereof.

(4) After the City has reviewed the evidence, it may issue an order to the user responsible for the discharge directing that, following a specified time period, the sewer service will be discontinued unless adequate treatment facilities, devices, or other related appurtenances are properly installed and operated. Further orders and directives as are necessary and appropriate may be issued.

(h) *Additional enforcement remedies.*

(1) *Performance bonds.* The General Manager may decline to reissue a permit to any user which has failed to comply with the provisions of this division or any order or previous permit issued hereunder unless such user first files with HWU a satisfactory bond, payable to HWU, in a sum not to exceed a value determined by the General Manager to be necessary to achieve consistent compliance.

(2) *Liability Insurance.* The General Manager may decline to reissue a permit to any user which has failed to comply with the provisions of this division or any order or previous permit issued hereunder, unless such user first submits proof that it has obtained financial assurances sufficient to restore or repair POTW damage caused by its discharge.

(Ord. No. 06-11, 3-22-11; Ord. No. 33-12, 12-11-2012)

Sec. 23-35. Penalties.

(a) *Written notice.*

(1) Any user found to be violating any provision of this division or a permit or order issued hereunder, shall be served by the General Manager or his/her designee with written notice stating the nature of the violation. The user shall permanently remedy all violations upon receipt of this notice.

(2) As contained in section 23-34, the notice may be of several forms. Also as contained in section 23-34, penalties of various forms may be levied against users for violations of this division. The penalties, if levied, shall range from publication of violators in the local newspaper to administrative fines of up to ten thousand dollars (\$10,000.00) per day per violation.

(b) *Revocation of permit.*

(1) Any user violating any of the provisions of this division or a permit or order issued hereunder, may be subject to termination of its authority to discharge sewage into the municipal sewer system. Such termination may be immediate if necessary for the protection of the POTW. Said user may also have water service terminated.

(2) Any user who violates the following conditions of this division, or applicable state and federal regulations, is subject to having his permit revoked in accordance with the procedures of this ordinance:

- a. Failure of a user to factually report the wastewater constituents and characteristics of his discharge;
- b. Failure of the user to report significant changes in operations, or wastewater constituents and characteristics;
- c. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; and/or
- d. Violation(s) of conditions of the industrial user permit.

(3) Any user whose permit has been revoked shall immediately stop all discharge(s) of any water-borne wastes covered by the permit to any public sewer that is tributary to the sanitary sewer system of the City. The General Manager may disconnect or permanently block from such sewer the connection sewer of any user whose permit has been revoked if such action is necessary, in the opinion of the General Manager, to insure compliance with the order of revocation.

(4) Before any further discharge of wastewater may be made by the user, a new permit must be applied for and all charges that would be required upon initial application together with all delinquent fees, charges and penalties and such other sums as the user may owe to the City must be paid in full. Costs incurred by the City in revoking the permit and disconnecting the connection sewer shall be paid for by the user before issuance of a new permit authorizing discharge.

(c) *Liability.* Any user violating any of the provisions of this division, a permit or other order issued *hereunder* shall become liable to the City and HWSC for any expense, loss or damage occasioned by the City by reason of such violation. This civil liability is as provided by state and federal regulations.

(d) *Destruction of POTW.* No person(s) shall maliciously, willfully, or negligently break, *damage*, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is part of the POTW. Any person(s) violating this provision shall be subject to immediate arrest under charge of disorderly conduct. It shall be noted that the Clean Water Act does not require proof of specific intent to obtain conviction.

(e) *Legal action.* If any person discharges sewage, industrial wastes or other wastes into the City's wastewater disposal system contrary to the provisions of this division, federal or state pretreatment requirements or any order of the City, the HWSC may commence an action for appropriate legal and/or equitable relief in the appropriate court of this jurisdiction.

(f) *Injunctive relief.* It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

(f1) *Compensatory action.* In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

(f2) *Violations deemed a public nuisance.* In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

(g) *Civil penalties.*

(1) Any user who is found to meet the definition of significant noncompliance or violates this ordinance or any order or permit issued hereunder, may be liable to the General Manager for a civil penalty of not more than ten thousand dollars (\$10,000.00) per day plus actual damages incurred by the POTW per violation per day for as long as the violation or significant noncompliance continues. Each day in which such violation shall continue shall be deemed a separate offense. In addition to the above described penalty and damages, the General Manager may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses associated with the enforcement activities, including sampling and monitoring expenses.

(2) The General Manager may petition the court to impose, assess and recover such sums. In determining amount of liability, the court shall take

into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, 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.

(h) *Criminal prosecution.*

(1) Violations: Any user who willfully or negligently violates any provision of this division or any orders or permits issued hereunder shall, upon conviction, be guilty of a Class A misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00) per violation per day or imprisonment for not more than one year or both.

(i) *Misrepresentation and/or falsifying of documents.* Any user who knowingly and/or negligently makes any false statements, representations or certification of any application, record, report, plan or other document filed or required pursuant to this division or industrial user permit or who falsifies, tampers with, or knowingly and/or negligently renders inaccurate any monitoring device or method required under this division, shall be guilty of a Class A misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00) per violation or imprisonment for not more than one year or both.

(j) *Remedies not exclusive.* The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

(Ord. No. 06-11, 3-22-11; Ord. No. 33-12, 12-11-2012)

Sec. 23-35.1. Adoption of Enforcement Response Plan.

(a) *Adoption of Enforcement Response Plans.*

(1) The City hereby adopts by reference the Enforcement Response Plans (herein referred to as "ERP") for the purpose of providing standardization to enforcement actions taken by the City for violations to the City's sewer use ordinance.

(2) Amendments to the ERPs may be adopted by the City from time to time by resolution incorporating the ERPs as amended into the sewer use ordinance by reference only.

(Ord. No. 06-11, 3-22-11; Ord. No. 33-12, 12-11-2012)

Sec. 23-35.2. Validity.

(a) *Severability.*

(1) If any provision, paragraph, word, section, or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

(2) Failure of the City or any of its agencies to enforce this division as to any violation shall not operate as a waiver by the City and/or its agents of the right to enforce this division in the event of any subsequent or other default by the user.

(b) *Conflict.* All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

(Ord. No. 06-11, 3-22-11)

Sec. 23-35.3. Reserved.

DIVISION 2A. STORM WATER UTILITY

Sec. 23-35.4. Reserved.

Sec. 23-35.5. Reserved.

Sec. 23-35.6. Reserved.

Sec. 23-35.7. Reserved.

Sec. 23-35.8. Reserved.

Sec. 23.35.9. Reserved.

DIVISION 3. WATER AND SEWER COMMISSION*

***Cross references:** Administration, Ch. 2.

State law references: Waterworks, KRS 96.320 et seq.

Sec. 23-36. Established.

The management, control and operation of the water and sewer systems of the city shall be carried on by a commission to be known as the "Water and Sewer Commission of the City of Henderson" created, appointed and functioning, as provided in this division.

(Ord. No. 06-11, 3-22-11)

Sec. 23-37. Composition.

The water and sewer commission shall consist of five (5) persons who shall be qualified voters of outstanding reputation for ability and integrity in the city who are not related within the fourth degree of consanguinity with the mayor or any other member of the board of commissioners of the city at the time of their appointment and who shall be appointed by the mayor with the consent and approval of the board of commissioners.

(Ord. No. 06-11, 3-22-11)

Sec. 23-38. Terms; vacancies.

(a) The water and sewer commission first appointed after January 1, 1954, shall meet and select by lot their terms of office, one of which shall be for three (3) years, two (2) of which shall be for two (2) years, and two (2) of which shall be for one (1) year, from January 1, 1954.

(b) In the event of a vacancy and also prior to or upon the expiration of the term of office of any appointed commissioner a successor shall be appointed by the mayor with the consent and approval of the board of commissioners. Any commissioner may resign and shall be deemed to have automatically resigned upon becoming a candidate for any public office. All vacancies shall be filled for the unexpired term and all other appointments shall be for a term of three (3) years, and all appointments shall continue until the successors shall have qualified.

(c) Any commissioner shall be eligible for reappointment upon the expiration of his term.

(Ord. No. 06-11, 3-22-11)

Sec. 23-39. Rules and regulations; quorum.

The water and sewer commission may adopt rules and bylaws for the time and place of its meetings and the conduct thereof and three (3) commissioners shall constitute a quorum at any meeting.

(Ord. No. 06-11, 3-22-11)

Sec. 23-40. Removal of members.

(a) Any water and sewer commissioner failing to attend four (4) successive meetings without cause acceptable and approved by the commission may be thereby automatically removed from office by declaration of the commission and the vacancy shall be filled as hereinbefore provided.

(b) Each commissioner shall be removable for cause by the recorded majority vote of the board of commissioners of the city after hearing.

(Ord. No. 06-11, 3-22-11)

Sec. 23-41. Officers; custodian of funds; depository.

The water and sewer commission shall annually designate one of its members chairman and another as secretary. Insofar as permissible by law it shall appoint a treasurer who shall be custodian of all funds collected or to be expended by or under order of the commission, and the commission shall designate a bank which is a member of the Federal Deposit Insurance Corporation as depository for all funds held by the commission, but if and to whatever extent any of the provisions for the appointment of a separate treasurer or for the designation of a depository shall be adjudicated by a court of competent jurisdiction to be unauthorized then the general laws of the state with respect to the custody and deposit of municipal funds shall be applicable.

(Ord. No. 06-11, 3-22-11)

Sec. 23-42. Authority; supervision; management; control.

(a) The water and sewer commission shall have full and complete authority, supervision, management, and control of the combined and consolidated municipal water works and sewer system, storm water management, control and abatement, including, but not limited to, all rate and service policies, design, plan review, construction, maintenance, monitoring as well as the collection, deposit and expenditure of all funds constituting, directly or indirectly, income or revenues of the combined and consolidated works and systems and also the maintenance, operation and extension of the works and systems.

(b) All charges for the use and services rendered by the works and systems shall be collected and accounted for by the water and sewer commission in the manner and form required by law and the ordinances of the City and all disbursements for the account of the works and systems shall be ordered paid out only upon approval of the commission; provided, however, all such supervision, management and control of the works and systems, including the collection, depositing and accounting for the income and revenues therefrom and disbursements for the account of the works and systems shall be consistent and in accordance with the ordinance or ordinances pursuant to which the City may have authorized and issued any bonds from time to time outstanding which by their terms are payable from and secured by the income and revenues of the works and systems or any portion thereof.

(Ord. No. 06-11, 3-22-11)

Sec. 23-43. Employment of General Manager and management employees.

The water and sewer commission shall have power to employ, fix the compensation of, and discharge, the General Manager, the chief financial officer and the director of field operations. The General Manager shall direct, employ, fix the compensation of, and discharge all other employees of the works and systems. All employees of the works and systems, other than the positions of General Manager, chief financial officer and director of field operations, shall be subject to and under the protection of the civil service system of the City of Henderson.

(Ord. No. 06-11, 3-22-11; Ord. No. 19-16, 6-18-16; Ord. No. 56-17, 9-26-17)

Sec. 23-44. Protection of bond holders.

- (a) The board of commissioners enacts sections of this division for the assurance and protection of the holder or holders of bonds of the City payable from the income and revenues of the works and systems for an efficient operation and maintenance thereof.
- (b) No amendment or repeal of such sections shall be enacted unless at least thirty (30) days prior to the introduction thereof at a meeting of the board of commissioners the proposed ordinance, amendment or repeal shall have been mailed to all known holders of any outstanding bonds and shall have theretofore been published in a newspaper having general circulation in the City at least once each week for four (4) consecutive weeks.

(Ord. No. 06-11, 3-22-11)

Sec. 23-45. Position of General Manager established; appointment; compensation; responsibilities.

- (a) The position of General Manager of the Henderson Water Utility shall not be subject to or under the civil service systems of the City of Henderson.
- (b) The General Manager shall be appointed by and serve at the pleasure of the water and sewer commission.
- (c) The compensation of the General Manager of the water and sewer department shall be fixed by the water and sewer commission.
- (d) The General Manager shall, subject to full and complete supervision and control of the water and sewer commission, have the general responsibility for the overall operation of the Henderson Water Utility including, without limitation, the financial and personnel management of the department, the operation of the combined waterworks and sewage system of the City and such other duties and responsibilities as the water and sewer commission may from time to time authorize and direct.

(Ord. No. 06-11, 3-22-11)

Sec. 23-45.1. General powers of the water and sewer commission.

- (a) In addition to such other powers that may be delegated to it from time to time by the board of commissioners, the water and sewer commission shall have full and complete jurisdiction, control, possession, management, and supervision of all public water, wastewater, combined wastewater, and stormwater works and facilities within the City of Henderson service area, including, but not limited to, the maintenance, operation, reconstruction, improvement, additions, and extensions thereto; and, generally, in the name, and for and on behalf of the City, all of the authority, powers, privileges and jurisdiction necessary or proper to carry out such general powers.
- (b) The water and sewer commission shall, from time to time, recommend to the board of commissioners the establishment, levy and collection of such rates, fees, charges, and surcharges deemed by it to be necessary and appropriate to

meet the projected revenue requirements necessary to maintain and operate the complete water, wastewater, combined wastewater and stormwater collection, treatment and abatement systems in such manner as complies with federal and state laws and regulations.

(c) The water and sewer commission shall have full right and authority to cause its employees and agents to enter upon any lands, waters and/or premises for the purpose of making surveys, monitoring, inspections and examinations or for any other purpose deemed necessary or appropriate to carry out the general purposes of the water and sewer commission.

(d) Nothing in this section shall be construed to be a delegation of power by the board of commissioners of the City to the water and sewer commission beyond that which is permitted by law.

(Ord. No. 06-11, 3-22-11)

Sec. 23-45.2. Procurement powers of the water and sewer commission.

(a) Pursuant to KRS 45A.360, the provisions of KRS 45A.345 to 45A.460 shall govern all procurement activities of the Water and Sewer Commission and the Henderson Water Utility (HWU).

(b) The General Manager shall be responsible for administration of the procurement functions of HWU, and may delegate to department heads and employees such authority as may be appropriate and necessary to perform these functions. The General Manager, with the advice and consent of the Water and Sewer Commission, shall establish written policies and procedures as necessary to carry out purchasing, payment, bidding and contracting.

(c) Nothing in this article shall relieve HWU of the responsibility to comply with any procurement requirements imposed by an agency from which HWU may receive grant or loan funds, including but not limited to state and federal agencies.

(Ord. No. 56-17, 9-26-17)

Secs. 23-45.3--23-45.10. Reserved.

Sec. 23-45.11. Declaration of Water Supply Shortage; Rationing

(a) *Purpose.* The purpose of this section is to provide for the declaration of phases of water supply shortages and for the implementation of voluntary and mandatory water conservation measures affecting the water customers of the City of Henderson in the event a shortage is declared.

(b) *Definitions.* As used in this section, the following words and terms shall have the following meanings:

(1) *Customer.* Any person using water for any purpose from the City's water distribution system.

- (2) *HWU*. The Henderson Water Utility.
 - (3) *Outside Water Use*. Non-essential uses of water outside of buildings, including but not limited to: filling and operation of private swimming pools, water features, fountains and reflecting pools; non-commercial washing of motor vehicles, boats and trailers; and watering of lawns, gardens, playing fields and recreational areas, whether public or private.
 - (4) *Rationing*. Procedures established to provide for the fair distribution of critically limited water supplies, in order to balance demand and supply, and to assure that sufficient water is available to preserve public health and safety.
- (c) *Water Shortage Phases*. In order of increasing severity the following four (4) phases of water shortage are hereby established:
- (1) *Phase 1, Advisory*: When HWU finds that a potential shortage of potable water exists or will exist, HWU shall publicly declare a water shortage advisory, calling upon all customers of HWU to employ voluntary water conservation and to reduce the use of potable water.
 - (2) *Phase 2, Alert*: When HWU finds that a condition exists where it will not be able to meet the expected needs of its customers for water without a minimal level of water conservation, HWU shall publicly declare a water shortage alert, calling upon all customers to employ voluntary water conservation, and also to restrict outside water use to the following schedule:
 - i. Outside water use for addresses ending in an odd number shall be limited to Tuesdays, Thursdays and Saturdays; and
 - ii. Outside water use for addresses ending in an even number shall be limited to Wednesdays, Fridays and Sundays.
 - (3) *Phase 3, Emergency*: When HWU finds that it is unable to meet the expected needs of its customers, HWU shall publicly declare a water shortage emergency, calling upon customers to comply with mandatory water conservation to eliminate the waste of potable water. All outside water use shall be halted, and water shall be used only as necessary to sustain human life and the lives of domestic pets, to maintain minimum standards of hygiene and sanitation, to provide patient care and rehabilitation in health care facilities, for firefighting, and for essential health and public protection purposes.
 - (4) *Phase 4, Rationing*: When HWU finds that potable water is in critically short supply, and that the conditions specified in section (d) below are determined to exist, HWU shall publicly declare water rationing. In the rationing phase, it is imperative that water customers achieve an immediate further reduction in water use in order to extend existing water supplies and, at the same time, assure that sufficient water is available to preserve the public health and sanitation and to provide fire protection service. The mandatory water conservation measures of the emergency

phase shall apply, and in addition, HWU may institute temporary service interruptions to all or portions of the water supply system.

- (5) *Length of Continuance of Declaration:* The declaration of a water shortage phase shall continue until HWU finds and publicly declares that the conditions calling for the declaration no longer exist.
- (d) *Basis for Rationing:* Whenever HWU finds it necessary to allocate critically limited potable water supplies in order to balance water demand and supply, and to assure that sufficient water is available to preserve public health and safety, it shall be empowered to declare the adoption of mandatory rationing, when any of the following conditions are determined to exist:
- (1) Mandated reductions in system-wide usage have not been achieved; or
 - (2) Mandated reductions in system-wide water usage have been achieved, but have failed to sufficiently extend limited water supplies; or
 - (3) Temporary service interruptions are necessary in order to further extend limited water supplies.
- (e) *Notification:* When it is determined that rationing through temporary service interruptions is necessary, HWU shall notify its customers through the public media (newspapers, radio, and television), at least one day prior to the temporary service interruptions that a planned, temporary service interruption is to be imposed. Such notice shall:
- (1) State the day or days when the temporary service interruptions will occur, including the times when such temporary service interruptions will commence and cease;
 - (2) State whether the temporary service interruptions are to be imposed on the entire system or part thereof, and, if only parts of the system will experience temporary service interruptions, identify geographic boundaries within which such interruptions will occur; and,
 - (3) Advise all customers within the areas affected by temporary service interruptions how to treat any water received from the system for human consumption, during the period of such interruptions and for such additional time as may be necessary until full pressure and water quality is restored in the system.
- (f) *Rationing for Hospital Facilities:* If a temporary service interruption is imposed as authorized by this section, it must provide for the continued delivery of water to hospital facilities within the area affected by such interruption by means of any adequate, alternative delivery measures that may be necessary.
- (g) *Regulations:* During the effective period of any water supply shortage, the HWU General Manager is empowered to issue such regulations as may be necessary to carry out the provisions of this section. Such regulations shall be subject to the approval of the City of Henderson Water and Sewer Commission at its next meeting.
- (h) *Violations:* Any person who violates the provisions of paragraph (c) (2) of this section shall be subject to a fine not to exceed two hundred fifty dollars

(\$250.00). Any person who violates the provisions of paragraph (c) (3) of this section shall be subject to a fine not to exceed two hundred fifty dollars (\$250.00) and disconnection of water service. A fee of one hundred dollars (\$100.00) shall be paid for reconnection of any water service disconnected pursuant to this section.

(Ord. No. 20-11, 9-27-11)

DIVISION 4. Reserved.