

## **CHAPTER IX – SEWER USE ORDINANCE**

(Proposed May 7, 2007)

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## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 1            GENERAL PROVISIONS**

#### **1.1 Purpose and Policy**

This Ordinance sets forth uniform requirements for users of the Londonderry Municipal Sewer System which transports wastewater to the Publicly Owned Treatment Works (POTW) in Manchester and Derry and enables the Town to comply with all applicable State and federal laws, including the Clean Water Act (33 United States Code § 1251 *et seq.*) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). The Town is also subject to the provisions of the Intermunicipal Agreement with the City of Manchester, dated May 24, 1979, (as amended) and the Intermunicipal Agreement with the Town of Derry, dated July 10, 1981 (as amended). Recognizing that significant opportunities exist to reduce or prevent pollution at its source through cost effective practices, and that such practices can offer savings through reduced purchases of materials and resources, a decreased need for pollution control technologies, and lower liability costs, as well as assisting to protect the environment, the Town establishes the following objectives of this Ordinance:

- A. To promote, consistent with the policy of the federal government:
  - 1. The prevention or reduction of pollutants at the source whenever feasible;
  - 2. Recycling in an environmentally-safe manner when pollution cannot be prevented;
  - 3. Treatment in an environmentally-safe manner of pollution that cannot be prevented or recycled; and
  - 4. Disposal or other release into the environment in an environmentally-safe manner only as a last resort.
- B. To encourage the development of these efforts, the Town may:  
Set Town-wide pollution prevention goals;
  - 1. Organize an assessment program task force;
  - 2. Review data and inspect sites;
  - 3. Develop pollution prevention options;
  - 4. Conduct a feasibility analysis of selected options; and
  - 5. Promote implementation of pollution prevention techniques.
- C. To prevent the introduction of pollutants into the POTWs that will interfere with its operation;
- D. To prevent the introduction of pollutants into the POTWs that will pass through the POTWs, inadequately treated, into receiving waters, or otherwise be incompatible with the POTWs;
- E. To protect both POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
- F. To promote reuse of sludge from the POTWs;
- G. To enable the Town to comply with its Intermunicipal Agreements with the City of Manchester and the Town of Derry for the treatment of the Town's wastewater.

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### SECTION 1 GENERAL PROVISIONS (Cont'd.)

#### 1.1 Purpose and Policy (Cont'd.)

This Ordinance shall apply to all users of the POTW of the Town of Londonderry. The Ordinance authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein; consistent with the Town's Facilities Plan and its *Industrial Pretreatment Program*, and updates to these documents, and represents an ongoing administrative element of the Town's activities.

#### 1.2 Administration

Except as otherwise provided herein, the Department of Public Works shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the Department of Public Works may be delegated by the Department of Public Works to other Town personnel.

#### 1.3 Abbreviations

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

·	BOD	-	Biochemical Oxygen Demand
·	CFR	-	Code of Federal Regulations
·	COD	-	Chemical Oxygen Demand
·	EPA	-	United States Environmental Protection Agency
·	gpd	-	Gallons per day
·	IDP	-	Industrial Wastewater Discharge Permit
·	mg/L	-	Milligrams per liter
·	DES	-	New Hampshire Department of Environmental Services
·	NPDES	-	National Pollutant Discharge Elimination System
·	POTW	-	Publicly Owned Treatment Works
·	RCRA	-	Resource Conservation and Recovery Act
·	RSA	-	New Hampshire Revised Statute Annotated
·	SIC	-	Standard Industrial Classification
·	TDS	-	Total Dissolved Solids
·	TSS	-	Total Suspended Solids
·	USC	-	United States Code

## CHAPTER IX – SEWER USE ORDINANCE

### SECTION 1 GENERAL PROVISIONS (Cont'd.)

#### 1.4 Definitions

- A. Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Ordinance, shall have the meanings hereinafter designated.
1. 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.*
  2. Approval Authority. The Regional Administrator of the EPA or his duly appointed agent.
  3. Authorized Representative of the User.
    - a. If the user is a corporation:
      - i. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
      - ii. The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedure
    - b. If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.
    - c. If the user is a federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 1            GENERAL PROVISIONS (Cont'd.)**

#### **1.4 Definitions, (Cont'd.)**

- d.        The individuals described in paragraphs (a) through (c), above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Town.
  
- 4.        Best Management Practices or BMPs. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the pollutant control prohibitions of this Ordinance and the Town's Regulations. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.
  
- 5.        Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g., mg/L)
  
- 6.        Building Drain. That part of the lowest horizontal piping of a drainage system that receives the discharge from soil, waste, 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.
  
- 7.        Building Sewer. The extension from the building drain to the public sewer main or other place of disposal, also called house connection.
  
- 8.        Bypass. The intentional diversion of waste streams from any portion of a wastewater treatment facility.
  
- 9.        Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limitations promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) that apply to a specific category of users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.
  
- 10.       Combined Sewer. A sewer intended to receive both wastewater and storm or surface water.
  
- 11.       Commercial Use. Premises used for financial gain, such as business or industrial use, but excluding residential uses and related accessory uses.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 1            GENERAL PROVISIONS (Cont'd.)**

#### **1.4 Definitions, (Cont'd.)**

12.    Commissioner. The Commissioner of the New Hampshire Department of Environmental Services, or the commissioner's duly appointed agent.
13.    Compatible Pollutant. Biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria.
14.    Control Authority. The term Control Authority as used in this Ordinance, refers to the City of Manchester's Publicly Owned Treatment Works for users whose wastewater flows to Manchester for treatment, or the Town of Derry's Publicly Owned Treatment Works for users whose wastewater flows to Derry for treatment.
15.    Conservative Pollutant. A pollutant that is presumed not be destroyed, biodegraded, chemically transformed, or volatilized within the POTW. Conservative pollutants introduced to a POTW ultimately exit the POTW solely through the POTW's effluent and biosolids. Most metals are considered conservative pollutants.
16.    Department of Public Works. The Department of Public Works of the Town of Londonderry, New Hampshire, or an authorized agent or representative. The Department of Public Works is designated by the Town to supervise the operation of the POTW located in Londonderry, and is charged with certain duties and responsibilities in the Ordinance.
17.    Dilution. Any increase in the use of water as a partial or complete substitute for adequate treatment to achieve compliance with a limitation on the discharge of pollutants.
18.    Domestic Wastewater or Sewage. Normal water-carried household and toilet wastes or waste from sanitary conveniences of residences, commercial buildings, and industrial plants, excluding ground, surface, or storm water. (See also: Industrial Wastes.)
19.    Easement. An acquired legal right for the specific use of land owned by others.
20.    Environmental Protection Agency or EPA. The United States Environmental Protection Agency or, where appropriate, the EPA Regional Water Management Division Director, or other duly authorized official of said agency.
21.    Existing Source. Any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

## **CHAPTER IX – SEWER USE ORDINANCE**

## SECTION 1 GENERAL PROVISIONS (Cont'd.)

### 1.4 Definitions, (Cont'd.)

22. Floatable Oil. Oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.
23. Force Main. A line without access from individual properties, providing a connection from a pump station to a pump station, trunk, or sanitary sewer main.
24. Garbage. The animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.
25. Grab Sample. A sample that is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
26. Grease. The material removed from a grease interceptor (trap) or grease trap serving a restaurant or other facility requiring such a device. Also means volatile and non-volatile residual fats, fatty acids, soaps, waxes and other similar materials.
27. Hauler. Those persons, firms, or corporations, who pump, haul, transport, or dispose of septage and who are licensed by the New Hampshire Department of Environmental Services pursuant to RSA 485-A:4,XVI-a and rules adopted to implement said section.
28. Human Excrement and other Putrescible Material. The liquid or solid matter discharged from the intestinal canal of a human, or other liquid or solid waste materials that are likely to undergo bacterial decomposition; (provided, however, that these terms shall not include refuse as defined in RSA 145-M).
29. Incompatible Pollutant. Any pollutant that is not a compatible pollutant.
30. Industrial Wastewater Discharge Permit or IDP. The written permit between the Town and an industrial user that outlines the conditions under which discharge to the POTW will be accepted.
31. Industrial User (or User). A person who discharges industrial wastewater to the POTW of the Town.
32. Industrial Waste. Any liquid, gaseous or solid waste substance from any process or from development of any natural resource by industry, manufacturing, trade, or business.

## CHAPTER IX – SEWER USE ORDINANCE



**SECTION 1                      GENERAL PROVISIONS (Cont'd.)**

**1.4 Definitions, (Cont'd.)**

33.     Industrial Wastewater. Any wastewater from any non-domestic source that contains industrial waste, as distinct from sanitary sewage or unpolluted water.
34.     Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.
35.     Instantaneous Discharge Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.
36.     Interference. A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore is a cause of a violation of the POTW's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as RCRA; any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; the Marine Protection, Research, and Sanctuaries Act; 40 CFR Part 503 Standards for Sewage Sludge Use and Disposal and RSA 485-A:4, XVI-a.
37.     Local Limits. Numerical limitations on the discharge of pollutants established by the POTWs, as distinct from State or federal limitations for industrial wastewater discharged to the POTW.
38.     May. Means permissive (see "Shall").
39.     Medical/Infection Waste. Any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, and as defined in RSA 125-N:2, VII. Examples include isolation wastes, infectious agents, human blood and blood products, pathological wastes, chemotherapy wastes, sharps, body parts, contaminated bedding, surgical wastes and specimens, potentially contaminated laboratory wastes, trauma scene wastes, sharps waste and dialysis wastes.
40.     National Pollutant Discharge Elimination System Permit or NPDES Permit. A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

## CHAPTER IX – SEWER USE ORDINANCE

### SECTION 1 GENERAL PROVISIONS (Cont'd.)

#### 1.4 Definitions, (Cont'd.)

41. Natural Outlet. Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body or surface water or groundwater.
42. Normal Domestic Wastewater. Wastewater generated by residential users containing not more than 200 mg/L BOD and not more than 250 mg/L suspended solids.
43. New Source.
  - a. Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced subsequent to the publication of proposed pretreatment standards under Section 307(c) of the Act that will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
    - i. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
    - ii. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
    - iii. 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, will be considered.
  - b. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
    - i. Begun, or caused to begin, as part of a continuous on-site construction program
      - ia. any placement, assembly, or installation of facilities or equipment; or



## SECTION 1 GENERAL PROVISIONS (Cont'd.)

### 1.4 Definitions, (Cont'd.)

50. Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, garbage, wastewater treatment sludges, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).
51. Pollution Prevention. The use of materials, processes, or practices that reduce or eliminate the creation of pollutants or wastes at the source, or minimize their release to the environment prior to recycling, treatment or disposal. It includes practices that reduce the use of hazardous materials, energy, water or other resources. It also includes practices that protect natural resources and human health through conservation, more efficient use, or effective release minimization.
52. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.
53. Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.
54. Pretreatment Standards or Standards. Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.
55. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances as identified in Section 2.5 of this Ordinance.
56. Properly Shredded Garbage. Wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be transported freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch in any dimension.
57. Publicly Owned Treatment Works or POTW. A “treatment works,” as defined by Section 212 of the Act (33 U.S.C. §1292) that is owned by the Town or owned by the City of Manchester or the Town of Derry. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and

## CHAPTER IX – SEWER USE ORDINANCE

**SECTION 1                      GENERAL PROVISIONS (Cont'd.)**

**1.4 Definitions, (Cont'd.)**

other conveyances only if these structures convey wastewater to a POTW wastewater

treatment facility. The term also means the municipality that has jurisdiction over discharges to and from such a treatment plant, and any sewer that conveys wastewater

to the POTW from persons outside the Town who are, by contract or agreement with the Town, users of the Town's POTW.

- 58.    Public Sewer. A mainline pipe or conduit that carries wastewater, storm water, groundwater, subsurface water, or unpolluted water from any source, which is controlled by a governmental agency or public utility.
- 59.    Radiological Waste. Means radioactive waste as regulated by RSA 125-F.
- 60.    Recreational Vehicle or "RV". A mobile vehicle or trailer used for temporary living e.g. a camper or wholly self-contained transport and living unit.
- 61.    Regulations or Town's Regulations. The Town of Londonderry New Hampshire Sewer Use and Permitting Regulations, as amended.
- 62.    Sanitary Sewage. Wastewater consisting solely of normal water-carried household and toilet wastes or waste (such as human excrement and gray water [showers, dishwashing operations, etc.]) from sanitary conveniences of residences, commercial buildings, and industrial plants, as distinct from industrial wastewater and unpolluted water.
- 63.    Sanitary Sewer. A public sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial facilities, and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.
- 64.    Screening Level. A numerical value for a pollutant concentration above which actions are initiated to evaluate, prevent or reduce adverse environmental or health and safety impacts. A screening level may be adjusted upward or downward within an IDP to account for site-specific conditions at the point of discharge and administered as a local limit.
- 65.    Semi-Public Use. Premises of private, non-profit organizations such as schools, hospitals, and religious institutions.
- 66.    Septage or Septic Tank Waste. Any liquid, solid, or sludge pumped from chemical toilets, vaults, septic tanks, or cesspools or other holding tanks, that have received only sanitary sewage.

**CHAPTER IX – SEWER USE ORDINANCE**

**SECTION 1                    GENERAL PROVISIONS (Cont'd.)**

**1.4 Definitions, (Cont'd.)**

- 67.    Septage Tank Truck. Any watertight vehicle that is used for the collection and hauling of septage as described above and that complies with the rules of the New Hampshire Department of Environmental Services.
- 68.    Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).
- 69.    Sewer. A pipe or conduit that carries wastewater, storm water, groundwater, subsurface water, or unpolluted water from any source.
- 70.    Shall. Means mandatory (see "May").
- 71.    Significant Industrial User.
  - a.    A user subject to categorical pretreatment standards under 40 CFR 403.8 and 40 CFR Chapter I, Subchapter N; or a user that:
    - i.    discharges an average of ten thousand (10,000) gpd or more of process wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler blowdown wastewater);
    - ii.   contributes a process waste stream that comprises five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
    - iii.   discharges medical/infectious waste, pharmaceutical waste, or radiological waste; or
    - iv.   is designated as such by the POTWs on the basis that it has a reasonable potential for adversely affecting the POTWs' operation or for violating any pretreatment standard or requirement.
  - b.    The Town may determine that an Industrial User subject to categorical Pretreatment Standards under §403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

**CHAPTER IX – SEWER USE ORDINANCE**

**SECTION 1 GENERAL PROVISIONS (Cont'd.)**

**1.4 Definitions, (Cont'd.)**

- i. The Industrial User, prior to the Town's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
    - ii. The Industrial User annually submits the certification statement required in §403.12(q) together with any additional information necessary to support the certification statement; and
    - iii. The Industrial User never discharges any untreated concentrated wastewater.
  - c. Upon determining that a user meeting the criteria in Subsection b.i. or b.ii. has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Town may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.
72. Significant Noncompliance or SNC. An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:
- a. Chronic violations. A pattern of violating a numeric pretreatment standard or requirement, including instantaneous limits (any magnitude of exceedence ) sixty-six percent (66%) or more of the time in a 6-month period;
  - b. Technical Review Criteria (TRC violations). Thirty-three percent (33%) or more of the measurements exceed the same numeric or other pretreatment standard or requirement, including instantaneous limits, by more than the TRC factor in a six month period. The TRC factor is 1.4 for biochemical oxygen demand (BOD), total suspended solids (TSS), oil & grease and 1.2 for all other pollutants except pH;
  - c. For pH monitoring, excursions shall be considered SNC when:
    - i. The total time during which the pH values are outside the required range of pH values exceeds 7 hours and 26 minutes in any calendar month; or
    - ii. An individual excursion from the range of pH values exceeds 60 minutes; or

**CHAPTER IX – SEWER USE ORDINANCE**

**SECTION 1 GENERAL PROVISIONS (Cont'd.)**

**1.4 Definitions, (Cont'd.)**

- iii. An excursion occurs that the Town believes has caused, alone or in combination with other discharges, interference or pass-through; or has endangered the structural integrity of the POTW or the health of the sewage treatment personnel or the general public; or
    - iv. Any pH less than or equal to 2.0 or greater than or equal to 12.5.
  - d. Any other discharge violation that the Department of Public Works believes has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;
  - e. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the Department of Public Works exercise of its emergency authority to halt or prevent such a discharge;
  - f. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
  - g. Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, IDP applications, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
  - h. Failure to accurately report noncompliance; or
  - i. Any other violation(s) or group of violations, which may include a violation of Best Management Practices, that the Department of Public Works determines will adversely affect the operation or implementation of the local pretreatment program.
73. Slug Load or Slug. Means:
- a. Any discharge of water, wastewater, sanitary sewage, or industrial wastewater which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than fifteen (15) minutes, more than

**CHAPTER IX – SEWER USE ORDINANCE**



**SECTION 1                    GENERAL PROVISIONS (Cont'd.)**

**1.4 Definitions, (Cont'd.)**

five (5) times the average twenty-four (24) hour concentration or flow  
during normal operation;

- b. Any discharge at a flow rate or concentration that could cause a violation of the prohibited discharge standards in Section 2.5 of this Ordinance; or
- c. Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause Interference or Pass Through, or adversely affect the collection system and/or performance of the POTW.

74. Source Reduction. Any practice that:

- a. Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and
- b. Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications; process or procedure modifications; reformulation or redesign of products; substitution of raw materials; and improvements in housekeeping, maintenance, training, or inventory control. The term "source reduction" does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity that itself is not integral to and necessary for the production of a product or the providing of a service.

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

76. State. The State of New Hampshire.

77. Storm Drain or Storm Sewer. A drain or sewer for conveying storm water, groundwater, subsurface water, or unpolluted water from any source.

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

**CHAPTER IX – SEWER USE ORDINANCE**

**SECTION 1                      GENERAL PROVISIONS (Cont'd.)**

**1.4 Definitions, (Cont'd.)**

79.     Town. The Town of Londonderry, New Hampshire, acting by and through the Town Manager, and/or its authorized agents or representatives.
80.     Suspended Solids or TSS. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.
81.     Treatment Plant, Treatment Works, or Wastewater Treatment Facility. Any device or system used in the storage, treatment, equalization, recycling or reclamation of wastewater and/or wastewater sludges as defined herein.
82.     Unpolluted Water. Water of quality equal to or better than the State Water Quality Standards (Part Env-Ws 430 through Env-Ws 440) or water that would not cause a violation of receiving water quality standards and would not be benefited by discharge to the POTW.
83.     User or (Industrial User). A person who discharges industrial wastewater to the POTW of the Town.
84.     Wastewater. The spent water of a community, excluding unpolluted water. Any combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, governmental facilities, and institutions, whether treated or untreated that is contributed to the POTW.
85.     Watercourse. A natural or artificial channel for the passage of water either continuously or intermittently.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 2            GENERAL SEWER USE REQUIREMENTS**

#### **2.1 Use of Public Sewers**

- A. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the Town of Londonderry or in any area under the jurisdiction of said Town, any human or animal excrement, garbage, or objectionable waste.
- B. It shall be unlawful to discharge to any natural outlet within the Town, or in any area under the jurisdiction of said Town, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Ordinance and with State and federal laws and regulations.
- C. Sewers for Intended Uses Only. No person shall discharge into any public sewer of the Town, or into any fixture that thereafter discharges into any public sewer, any waste or substance other than for which the particular sewer is intended, designed or provided.
- D. Applicable Permits Required. No person shall discharge into any public sewer of the Town, or into any fixture that thereafter discharges into any public sewer, any waste or substance until all applicable federal, state and local approvals and permits have been obtained.
- E. Use of Sanitary Sewers. Except as specifically provided with reference to some particular sewer, sanitary sewers shall be used only for the conveyance and disposal of sanitary sewage, and for industrial wastes that are not objectionable as hereinafter provided. No sanitary sewer shall be used to receive and convey or dispose of any storm or surface water, subsoil drainage, or unpolluted water.
- F. Use of Storm Sewers. Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designed as storm sewers, or a natural outlet approved by the Department of Public Works. An NPDES permit is required prior to discharging industrial cooling water, process waters, or storm water runoff generated in areas of industrial activity (as defined in 40 CFR Part 122) to a storm sewer or natural outlet.
- G. Use Designation. If the intended or designated use of any particular sewer or drain and allowable discharge thereto is unclear, the Department of Public Works will consider the pertinent facts and make a determination. Said determination will be final and binding.
- H. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater in any area where a public sewer is available, as described in paragraph (I) below.
- I. The owner(s)' of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the Town 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

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 2            GENERAL SEWER USE REQUIREMENTS (Cont'd.)**

#### **2.1 Use of Public Sewers (Cont'd.)**

sewer of the Town, is hereby required at the owner(s)' expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Ordinance and the Town's Regulations, within ninety (90) days subsequent to the date of official notice to do so, provided that said gravity public sewer is within two hundred (200) feet of the building. This requirement for connection may be waived when permitted by the Department of Public Works if the household is already connected to a properly functioning, State-approved septic system approved after 1985.

- J.     Where a public sanitary sewer is not available under the provisions of paragraph (I) above, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of RSA 485-A:29-44 and rules promulgated thereto. The owner(s) shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the Town. At no time shall any quantity of industrial waste be discharged to a private, sanitary sewage disposal facility.
- K.     At such time as a public sewer becomes available to a property serviced by a private wastewater disposal system, the owner shall connect to the public sewer, as provided in paragraph (I) above. Any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with clean mineral soils, and their use shall be discontinued.
- L.     No statement contained in the preceding paragraphs of this Section shall be construed to interfere with any additional requirements that may be imposed by the Department of Public Works.
- M.     No person(s) shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment that is part of the POTW.

#### **2.2 Building Sewers and Connections**

- A.     No person(s) shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining written permission from the Department of Public Works.
- B.     There shall be two (2) classes of building sewer permits: (a) for residential and commercial service producing only sanitary sewage, and (b) for service to establishments producing industrial wastes. For residential and commercial services, the owner(s) or his agent shall make application on a special form furnished by the Town at least thirty (30) days prior to said service connection. For an establishment discharging industrial wastes, the application shall be made at least sixty (60) days prior to said service connection. The permit application shall be supplemented by any plans, specifications, or other information (including pollution

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 2           GENERAL SEWER USE REQUIREMENTS (Cont'd.)**

#### **2.2 Building Sewers and Connections (Cont'd.)**

prevention studies) considered pertinent in the judgment of the Department of Public Works. A permit, connection and access fee in accordance with the provisions of the User Charge Ordinance shall be paid to the Town at the time the application is filed.

- C. 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 Town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. After the initial construction of the building sewer, the owner(s) shall thereafter be obligated to pay all costs of expenses of operation, repair and maintenance and of reconstruction (if needed) of the entire building sewer beginning at the public sewer and ending at the building.
- D. If the owner of any building located within the Town and benefited, improved, served or accommodated by any public sewer, or to which any public sewer is available, after 90 days notice from the Town, in accordance with paragraph 2.1 (I), shall fail to connect such building as required, the owner shall be in violation of this Ordinance and the Town may make such connection and may collect from such owner the costs and expenses thereof by such legal proceeding as may be permitted by law. The Town shall have full authority to enter on owner's property to do whatever is necessary to properly drain the improved property into the public sewer.
- E. 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, court, yard, or driveway. In such cases, the front building sewer may be extended to the rear building and the whole considered as one building sewer, but the Town does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection.
- F. Existing building sewers may be used in connection with new buildings only when they are found, on examination and test by the Department of Public Works (at the Owner's expense) to meet all requirements of this Ordinance.
- G. The size, slope, alignment, materials of 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 building and plumbing code or other applicable rules and regulations of the Town and DES rules Env-Wq 700. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society for Testing and Materials (ASTM) and Water Environment Federation (WEF) Manual of Practice No. FD-5 shall apply.

## **CHAPTER IX – SEWER USE ORDINANCE**

**SECTION 2                    GENERAL SEWER USE REQUIREMENTS (Cont'd.)**

**2.2 Building Sewers and Connections (Cont'd.)**

- H.      During construction of a new sanitary sewer, the Town may construct the service connections for existing buildings to the curb or the property line or the edge of a right-of-way. Construction of the building sewer, including connection to the structures served, shall be the responsibility of the owner of the improved property to be connected; and such owner shall indemnify and save harmless the Town, its officers, and agents from all loss or damage that may result, directly or indirectly, due to the construction of a building sewer on his premises or its connection to the service connection. The owner shall thereafter be obligated to pay all costs and expenses of operation, repair and maintenance, and of reconstruction, if needed of the building sewer and service connection.
- I.      Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, wastewater conveyed by such building drain shall be lifted by an approved means and discharged to the building sewer at the owner's expense.
- J.      No person(s) shall make connection of roof downspouts, interior or exterior foundation drains, area-way drains, or other sources of surface run-off or groundwater to a building sewer or building drain that in turn is connected directly or indirectly to a public sanitary sewer.
- K.      No person shall obstruct the free flow of air through any drain or soil pipe.
- L.      The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the Town, or the procedures set forth in appropriate specifications of the ASTM and the WEF Manual of Practice No. FD-5. All such connections shall be made gas-tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Department of Public Works before installation.
- M.      When any street lateral is to serve a school, hospital, or similar institutional or public housing, or is to serve a complex of industrial or commercial buildings, or which in the opinion of the Department of Public Works, will receive sanitary sewage or industrial wastes of such volume or character that frequent maintenance of said building sewer and street lateral is anticipated, then such street lateral shall be connected to the public sewer through a manhole. The Department of Public Works shall determine if and where this type of connection to the public sewer is required. Connections to existing manholes shall be made as directed by the Department of Public Works. If required, a new manhole shall be installed in the public sewer at the expense of the owner.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 2           GENERAL SEWER USE REQUIREMENTS (Cont'd.)**

#### **2.2 Building Sewers and Connections (Cont'd.)**

- N.     The applicant for the building sewer permit shall notify the Department of Public Works when the building sewer is ready for inspection and connection to the public sewer. Such notice shall be provided not less than 48 hours in advance of the time any connection is to be made to any public sewer. The connection and testing shall be made under the supervision of the Department of Public Works or its representative. This requirement shall also apply to repairs or alterations to building connections, drains or pipes thereto.
- O.     Suitable provisions shall be made at the point of connection for testing, which responsibility shall rest with the holder of the sewer connection permit.
- P.     The owner shall be responsible for satisfying all other notification requirements, including DIGSAFE. The connection and testing shall be made under the supervision of the Department of Public Works or its representative. No building sewer or repair thereto shall be covered until it has been inspected and approved by the Department of Public Works. If any part of a building sewer is covered before so being inspected and approved, it shall be uncovered for inspection at the cost and expense of the owner of the building to be connected to a sewer. This requirement shall also apply to repairs or alterations to building connections, drains or pipes thereto. Filling of trenches before an inspection is not permitted and will result in non-acceptance by the Town.
- Q.     The Department of Public Works shall maintain a record of all connections made to public sewers and drains under this Ordinance and all repairs and alterations made to building connections or drains connected to or discharging into public sewers and drains of the Town or intended to so discharge. All persons concerned shall assist the Department of Public Works in securing the data needed for such records.
- R.     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 Town at the expense of the owner.
- S.     Proposed new discharges from residential or commercial sources involving loadings exceeding 50 population equivalents (5,000 gpd), any new industrial waste, or any significant alteration in either flow or waste characteristics of industrial wastes that are being discharged into the POTW must be approved by DES. Such approvals shall be obtained in accordance with Section 6.5 of the Regulations.

## CHAPTER IX – SEWER USE ORDINANCE

### SECTION 2 GENERAL SEWER USE REQUIREMENTS (Cont'd.)

#### 2.2 Building Sewers and Connections (Cont'd.)

- T. If any Person shall fail or refuse, upon receipt of a notice of the Town, in writing, to remedy any unsatisfactory condition with respect to a Building Sewer, within forty-five (45) days of receipt of such notice, the Town of Londonderry may remedy any unsatisfactory condition with respect to a Building Sewer and may collect from the Owner the costs and expenses thereof by such legal proceedings as may be provided by law. The Town shall have full authority to enter on the Owner's property to do whatever is necessary to remedy the unsatisfactory condition.

#### Section 2.3 New Sewers or Sewer Extensions

- A. New sanitary sewers and all extensions to sanitary sewers owned and maintained by the Town shall be properly designed in accordance with the DES Administrative Rules Env-Wq 700 *Standards of Design for Sewerage and Wastewater Treatment Facilities* and in strict conformance with all requirements of the DES. Plans and specifications shall be submitted to, and approval obtained from, the Department of Public Works and the Town and the DES before construction may proceed. The design of sewers shall anticipate and allow for flows from all possible future extensions or developments within the immediate drainage area, being compatible with the Wastewater Facilities Plan adopted by the Town, and as duly amended.
- B. When a property owner, builder, or developer proposes to construct sanitary sewers or extensions to sanitary sewers in an area proposed for subdivision, the plans, specifications, and method of installation shall be subject to the approval of the Department of Public Works. Said property owner, builder or developer shall pay for the entire installation, including appropriate share of the cost of treatment plant, intercepting or trunk sewers, pumping stations, force mains and all other Town expenses incidental thereto based on volume and plant capacity, as determined by the Town. Each building sewer shall be installed and inspected pursuant to Section 2.2 and all application and inspection fees shall be paid by the applicant. Design and installation of sewers shall be as specified in and in conformance with paragraphs 3 through 6 of ASTM Specification C-12. Plugged service wye fittings shall be provided along sewer extensions in locations approved by the Department of Public Works to accommodate future connections from existing unimproved lots. The installation of the sewer shall be subject to periodic inspection by the Department of Public Works, and the expense for this inspection shall be paid for by the owner, builder, or developer as provided in this local law. The Department of Public Works' decisions shall be final in matters of quality and methods of construction. The sewer, as constructed, must pass an infiltration test approved by the Town before any building sewer is connected thereto. Plans, specifications, and other required information shall be submitted 45 days in advance of anticipated project start date. The Town shall be notified at least 30 days in advance of the start of construction operations so that such inspection procedures as may be necessary or required may be established. No sanitary sewers will be accepted by the Town until such



## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 2 GENERAL SEWER USE REQUIREMENTS (Cont'd.)**

#### **Section 2.3 New Sewers or Sewer Extensions (Cont'd.)**

inspection of construction has been made as will assure the Town of compliance with these regulations and any amendments or additions thereto.

- C. Plans, specifications and methods of installation shall conform to the requirements of this local law. Components and materials of POTW installations not covered in this Ordinance such as pumping stations, lift stations, or force mains shall be designed in accordance with paragraph 2.3(A) and shall be clearly shown and detailed on the plans and specifications submitted for approval. When requested, the owner, builder, or developer of the proposed installation shall submit to the Town all design calculations and other pertinent data to supplement a review of the plans and specifications. Costs associated with the engineer's review of the plans and specifications, and any DES design review fees shall be paid by the property owner, builder or developer.

#### **Section 2.4 Variances**

- A. The Department of Public Works, with the approval of the Town Manager, may allow reasonable variances from the provisions of Sections 2.1, 2.2, and 2.3 of this Ordinance, which will not result in a violation of State or federal law, provided:
1. The owner pays a variance fee of \$100.00;
  2. The variance allowed is the least variance reasonable;
  3. The variance will not cause undue harm or inconvenience to the Town, the POTW, or the owner's neighbors; and
  4. The variance is justified by substantial reason.
- B. The owner shall apply for the variance in writing to the Department of Public Works. The application shall identify the name and address of the owner, the property in question, the specific variance sought by the owner and a substantial reason justifying the variance. The variance fee shall be paid with the application or the variance shall be deemed to have been denied. The variance as issued shall identify any changes, limitations or restrictions on the variance as applied for.

#### **Section 2.5 Prohibited Discharge Standards**

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

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 2           GENERAL SEWER USE REQUIREMENTS (Cont'd.)**

#### **Section 2.5 Prohibited Discharge Standards (Cont'd.)**

- A.    General Prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater that causes pass-through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other federal, State, or local pretreatment standards or requirements.
- B.    Specific Prohibitions. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
1.     Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, gas, solid, or any substance that may generate or form any flammable, combustible or explosive substance, fluid, gas, vapor or liquid when combined with air, water or other substances present in sewers, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;
  2.     Wastewater having a pH less than 6.0 or greater than 11.5, as measured at the point of connection to the sanitary sewer or other available monitoring location, or otherwise causing corrosive structural damage or hazard to the POTW equipment, or personnel, or with alkalinity in such quantities that the pH of the influent to the POTW is caused to exceed 8.0 (NOTE: If the lower pH values of the untreated wastewater range between 5.0 and 6.0, the Town may permit a pH range of 5.0 to 11.5 without the requirement for pretreatment, provided the Town determines that the potential for adverse impact to the POTW is reasonably absent.);
  3.     Solid or viscous substances including water or wastes containing fats, wax, grease, or oils, whether emulsified or not, or containing substances that may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees F (0-65 degrees C), in amounts that will cause obstruction of the flow in the POTW resulting in interference;
  4.     Pollutants, including oxygen-demanding pollutants (BOD, COD, etc.), or chlorine demand requirements released in a discharge at a flow rate and/or pollutant concentration that, either singly or by interaction with other pollutants, will cause interference with the POTW;
  5.     Wastewater having a temperature greater than 150°F (65°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater that causes the temperature at the introduction into the POTW treatment plant to exceed 104°F (40°C);

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 2            GENERAL SEWER USE REQUIREMENTS (Cont'd.)**

#### **Section 2.5 Prohibited Discharge Standards (Cont'd.)**

6.     Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass-through;
  7.     Pollutants that result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
  8.     Trucked or hauled pollutants, except at discharge points designated by the Department of Public Works in accordance with Section 4.9 of the Regulations;
  9.     Any medical/infectious waste, pharmaceutical waste, or radiological wastes except as specifically authorized in a discharge permit;
  10.    Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent or sludge to fail a toxicity test;
  11.    Household hazardous wastes including but not limited to paints, stains, thinners, pesticides, herbicides, anti-freeze, transmission and brake fluids, motor oil and battery acid.; and
  12.    Any hazardous waste listed or designated by the DES under Env-Wm 400.
- C.     Additional Prohibitions. No user shall introduce or cause to be introduced into the POTW the following substances, pollutants or wastewater, unless specifically authorized by the Department of Public Works in a wastewater discharge permit:
1.     Wastewater that imparts color that may not be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently may impart color to the treatment facility's effluent, thereby violating the POTW's NPDES permit;
  2.     Noxious or malodorous liquids, gases, solids, or other wastewater that, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
  3.     Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or federal regulations;
  4.     Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, or otherwise unpolluted wastewater;

## **CHAPTER IX – SEWER USE ORDINANCE**

## **SECTION 2            GENERAL SEWER USE REQUIREMENTS (Cont'd.)**

### **Section 2.5 Prohibited Discharge Standards (Cont'd.)**

5.     Sludges, screenings, or other residues from the pretreatment of industrial wastes;
6.     Detergents, surface-active agents, or other substances that may cause excessive foaming in the POTW;
7.     Wastewater causing a reading on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than 10 percent (10%) of the Lower Explosive Limit of the meter;
8.     Garbage that has not been properly shredded to such a degree that all particles will be transported freely under the flow conditions normally prevailing in public sewers (garbage grinders may be connected to sanitary sewers from homes, hotels, 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);
9.     Any quantities of flow, concentrations, or both that constitute a "slug" as defined in Section 1.4 of this Ordinance;
10.    Waters or wastes that, by interaction with other water or wastes in the POTW, release dangerous or noxious gases, form suspended solids that affect the operation of the collection system, or create a condition deleterious to structures and treatment processes; or
11.    Any materials that exert or cause unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime, slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).

### **2.6 Federal Categorical Pretreatment Standards**

The categorical pretreatment standards are found at 40 CFR Chapter I, Subchapter N, Parts 405-471 and are hereby incorporated into the Ordinance.

- A.     Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Department of Public Works may impose equivalent concentration or mass limitations in accordance with 40 CFR 403.6(c).
- B.     When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Department of Public Works shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e).

## **CHAPTER IX – SEWER USE ORDINANCE**

**SECTION 2                      GENERAL SEWER USE REQUIREMENTS (Cont'd.)**

**2.6 Federal Categorical Pretreatment Standards (Cont'd.)**

- C.      A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
- D.      A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

The Town provides timely notification to appropriate industrial users of applicable categorical pretreatment standards. Upon promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this Ordinance for sources in that subcategory, shall, on the compliance date of the categorical pretreatment standards, immediately supersede the limitations imposed under this Ordinance.

Compliance with categorical pretreatment standards shall be achieved within three (3) years of the date such standards are effective, unless a shorter compliance schedule is specified in the standards.

An industrial user subject to categorical pretreatment standards shall not discharge wastewater directly or indirectly to the POTW subsequent to the compliance date of such standards unless an amendment to its IDP has been issued by the Town.

**2.7 Town's Right of Revision**

The discharge standards and requirements set forth in Sections 2.5, 2.6, and the Regulations are established for the purpose of preventing discharges to the POTWs that would harm the sewers, wastewater treatment process, or equipment; would have an adverse effect on the receiving stream; or would otherwise endanger lives, limb, public property, or constitute a nuisance.

To meet these objectives, the Department of Public Works may, from time to time, review and set more stringent standards or requirements than those established in Sections 2.5, 2.6, and the Regulations if, in the Department of Public Works opinion, such more stringent standards or requirements are necessary. At a minimum, this review will be performed at least once every five years. In forming this opinion, the Department of Public Works may give consideration to such factors as the quantity of 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 facility, degree of treatability at the wastewater treatment facility, pollution prevention activities, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer shall not be exceeded without the approval of the Department of Public Works.

**CHAPTER IX – SEWER USE ORDINANCE**

**SECTION 2                      GENERAL SEWER USE REQUIREMENTS (Cont'd.)**

## **2.7 Town's Right of Revision (Cont'd.)**

The Department of Public Works shall allow affected industrial users reasonable time to comply with any changes to the local limits. The conditions and schedule for compliance shall accompany the written notification of amended local limits.

## **2.8 Dilution**

No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Department of Public Works may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

## **2.9 Mass-Based Limitations**

Users implementing process changes may request that compliance be determined based on mass limitations in lieu of concentration limitations. Such mass-based limitations will be calculated from the permitted concentration-based limitations and flows, and shall be equivalent to or less than the mass discharge in effect at the time of the request. The intent of a mass-based limit is to encourage and allow pollution prevention and/or water conservation measures that might cause a facility to increase pollutant concentrations in its discharge even though the total mass of the pollutant discharged does not increase, and may in fact decrease. Decisions on granting requests for mass-based compliance limitations will be based on user-specific information and current operating conditions of the POTW, and will be at the discretion of the Department of Public Works. Implementation of mass-based limitations may not contravene any requirements of federal or State laws and/or regulations implemented thereunder. For categorical Pretreatment Standards that are expressed only in terms of pollutant concentrations, the Town may establish equivalent mass limits only if the User meets all the conditions in 40 CFR 403.6 (c) (5).

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 3            ADOPTION OF REGULATIONS**

In order to ensure compliance with federal and state law and regulations, and local rules and regulations adopted by the Town of Derry and City of Manchester for the operation of their POTW's, the Town of Londonderry Department of Public Works is hereby required and authorized to develop and implement regulations addressing the following subjects:

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## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 3            ADOPTION OF REGULATIONS (Cont'd.)**

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## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 4 POWERS AND AUTHORITIES OF INSPECTORS**

#### **4.1 Compliance Monitoring**

The Town shall investigate instances of noncompliance with the industrial pretreatment standards and requirements.

The Town shall, as necessary, sample and analyze the wastewater discharges of contributing users and conduct surveillance and inspection activities to identify, independently of information supplied by such users, occasional and continuing noncompliance with industrial pretreatment standards. Each industrial user will be billed directly for costs incurred for analysis of its wastewater.

#### **4.2 Right of Entry: Inspection and Sampling**

All industrial users discharging to the POTW shall allow unrestricted access by Town representatives for the POTW that treats the wastewater, and State and EPA personnel (“Inspector(s)”) for the purpose of determining whether the user is complying with all requirements of this Ordinance and Town Regulations, and any IDP or order issued hereunder. Users shall allow the Inspector(s) ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- A. If a user has security measures in force that require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Inspector(s) will be permitted to enter without delay for the purposes of performing specific responsibilities.
- B. The Inspector(s) shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.
- C. The Inspector(s) may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at least annually to ensure accuracy. Certification of equipment calibration shall be provided to the Town annually.
- D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Inspector(s) and shall not be replaced. The costs of clearing such access shall be borne by the user.
- E. Unreasonable delays in allowing the Inspector(s) access to the user's premises shall be a violation of this Ordinance.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 4 POWERS AND AUTHORITIES OF INSPECTORS (Cont'd.)**

#### **4.2 Right of Entry: Inspection and Sampling (Cont'd.)**

- F. The Inspector(s) is authorized to obtain information concerning industrial processes that have a bearing on the kind or source of discharge to the public sewer. The industrial user may request that the information in question not be disclosed to the public in accordance with Section 5 of this Ordinance. The information in question shall be made available upon written request to governmental agencies for uses related to this Ordinance, the NPDES permit, or the pretreatment program. The burden of proof that information should be held confidential rests with the user. However, information regarding wastewater discharge by the user (flow, constituents, concentrations, and characteristics) shall be available to the public without restriction.
- G. While performing the necessary work on private properties referred to in this Section, the Inspector(s) shall observe all safety rules applicable to the premises established by the user. The user shall be held harmless for injury or death to the Inspector(s), and the Town shall indemnify the user against loss or damage to its property by Town employees and against liability claims and demands for personal injury or property damage asserted against the user and growing out of the monitoring activities, except as such may be caused by negligence or failure of the user to maintain safe conditions.
- H. The Inspector(s) shall be permitted to enter all private properties through which the Town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the POTW 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.

#### **4.3 Search Warrants**

If the Department of Public Works has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the Town designed to verify compliance with this Ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Department of Public Works may seek issuance of a search warrant from a court of proper jurisdiction.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 5            CONFIDENTIAL INFORMATION/PUBLIC PARTICIPATION**

#### **5.1 Confidential Information**

Information and data on a user obtained from reports, surveys, IDP Applications, IDPs, and monitoring programs, and from the Department of Public Works inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the Department of Public Works, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report that might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person providing the report. Wastewater constituents and characteristics and other “effluent data” as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

#### **5.2 Public Participation**

The Town shall comply with the public participation requirements of 40 CFR Part 25 in the enforcement of industrial pretreatment standards and requirements.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 6 ADMINISTRATIVE ENFORCEMENT REMEDIES**

#### **6.1 Notification of Violation**

When the Department of Public Works determines that a user has violated, or continues to violate, any provision of this Ordinance and the Town's Regulations, an IDP or order issued hereunder, or any other pretreatment standard or requirement, the Department of Public Works will serve a written Notice of Violation to the user. Within the time period specified in the violation notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Department of Public Works. Submittal of this plan in no way relieves the user of liability for any violations occurring before or subsequent to receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Department of Public Works to take any action, including emergency actions or any other enforcement action, without initially issuing a Notice of Violation.

#### **6.2 Compliance Schedule Development**

The Department of Public Works may require any user that has violated or continues to violate any provision of this Ordinance, an IDP, or order issued hereunder, or any other pretreatment standard or requirement, to develop a compliance schedule. A compliance schedule pursuant to this section shall meet the requirements set out in Section 6.2 of the Regulations.

#### **6.3 Pollution Prevention Plan Development**

The Department of Public Works may require any user that has violated or continues to violate any provision of this Ordinance, an IDP, or order issued hereunder, or any other pretreatment standard or requirement, to develop a pollution prevention plan in accordance with Section 3.4 of these Regulations. The pollution prevention plan must specifically address violation(s) for which this action was undertaken. The pollution prevention plan shall be developed using good engineering judgment and shall be submitted to the Department of Public Works no later than sixty (60) days after the user was notified of this requirement.

#### **6.4 Publication of Users in Significant Noncompliance**

The Department of Public Works will publish annually, in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of the users that, during the previous twelve (12) months, were in significant noncompliance, as defined in Section 1.4, with applicable pretreatment standards and requirements.

#### **6.5 Show Cause Orders**

The Department of Public Works may order a user that has violated, or continues to violate, any provision of this Ordinance and the Town's Regulations, an IDP or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Department of Public Works and

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 6 ADMINISTRATIVE ENFORCEMENT REMEDIES**

#### **6.5 Show Cause Orders (Cont'd.)**

show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, executing any other action against the user.

#### **6.6 Cease and Desist Orders**

When the Department of Public Works determines that a user has violated, or continues to violate, any provision of this Ordinance and the Town's Regulations, an IDP or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Department of Public Works may issue an order to the user directing it to cease and desist all such violations and directing the user to:

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

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

#### **6.7 Consent Orders**

The Department of Public Works is hereby empowered to enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such orders shall include specific action to be taken by the user to correct the noncompliance within a time period also specified by the order. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the installation of pretreatment systems, additional self-monitoring, and management practices. Such orders shall have the same force and effect as administrative orders issued pursuant to Sections 6.5 and 6.6 of this Ordinance and shall be judicially enforceable.

#### **6.8 Industrial Discharge Permit Termination**

Any industrial user who violates the following conditions of this Ordinance or a wastewater discharge permit or order, or any applicable State or federal law, is subject to permit termination:

## **CHAPTER IX – SEWER USE ORDINANCE**

## **SECTION 6 ADMINISTRATIVE ENFORCEMENT REMEDIES**

### **6.8 Industrial Discharge Permit Termination (Cont'd.)**

- A. Violation of permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater constituents and characteristics; or
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 6.5 of this Ordinance why the proposed action should not be taken. Exercise of this option by the Department of Public Works shall not be a bar to, or a prerequisite for, taking any other action against the user.

### **6.9 Termination of Discharge**

In addition to the provisions in Section 6.8 of this Ordinance, any user who violates the following conditions is subject to discharge termination:

- A. Violation of IDP conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
- E. Violation of the pretreatment standards in Section 3 of the Regulations.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 6.5 of this Ordinance why the proposed action should not be taken. Exercise of this option by the Department of Public Works shall not be a bar to, or a prerequisite for, taking any other action against the user.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 6 ADMINISTRATIVE ENFORCEMENT REMEDIES**

#### **6.10 Emergency Suspensions**

The Department of Public Works may immediately suspend a user's discharge, subsequent to informal notice to the user, whenever such suspension is necessary to terminate an actual or threatened discharge that reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of POTW personnel or the public. The Department of Public Works may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or that presents, or may present, an endangerment to the environment.

- A. Any user notified of a suspension of its discharge shall immediately terminate or eliminate its wastewater discharge. In the event of a user's failure to immediately comply with the suspension order, the Department of Public Works may implement such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Department of Public Works may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Department of Public Works that the period of endangerment has passed, unless the termination proceedings in Section 6.8 or 6.9 of this Ordinance are initiated against the user.
- B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures implemented to prevent any future occurrence, to the Department of Public Works prior to the date of any show cause or termination hearing under Sections 6.5, 6.8 or 6.9 of this Ordinance.

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

#### **6.11 Recovery of Expenses**

Any person or industrial user violating any of the provisions of this Ordinance shall be liable to the Town for any expense, loss, or damage occasioned the Town or the POTWs by reason of such violation. If the Department of Public Works or Town shall have caused the disconnection of a drain from a public sewer, the Town may collect the expenses associated with completing the disconnection from any person or user responsible for, or willfully concerned in, or who profited by such violation. The Town may thereafter refuse to permit the restoration of the former connection or of any new connection to the property concerned in the violation until the claim of the Town for the cost of completing such disconnection shall have been paid in full plus interest and the reasonable cost of any legal expenses incurred by the Town in connection therewith.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 6 ADMINISTRATIVE ENFORCEMENT REMEDIES**

#### **6.12 Harm To Town Property**

No person shall maliciously, willfully, or negligently damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment that is part of the public sewerage system. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct pursuant to the local Ordinances, and shall also be subject to penalties under State and federal statutes.



## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 7 JUDICIAL ENFORCEMENT REMEDIES**

#### **7.1 Injunctive Relief**

When the Town determines that a user has violated, or continues to violate, any provision of this Ordinance, an IDP, or order issued hereunder, or any other pretreatment standard or requirement, the Town may petition the Rockingham County Superior Court through the Town's Attorney for the issuance of a temporary or permanent injunction, as appropriate, that restrains or compels the specific performance of the IDP, order, or other requirement imposed by this Ordinance or by Town Regulations on activities of the user. The Town may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, implementing any other action against a user.

#### **7.2 Civil Penalties**

- A. A user who has violated, or continues to violate, any provision of this Ordinance, the Town's Regulations an IDP, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the Town for a maximum civil penalty of \$10,000 per violation, per day, plus actual damages incurred by the POTW. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
- B. The Town may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the Town. The Town shall petition the Court to impose, assess, and recover such sums.
- C. In determining the amount of civil liability, the Court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
- D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, implementing any other action against a user.

#### **7.3 Criminal Prosecution**

Any person or industrial user who willfully or negligently violates any provision of this Ordinance or any orders or permits issued hereunder shall, upon conviction, be guilty of a violation, punishable by a fine not to exceed \$10,000 for each violation. Every separate provision violated shall constitute a separate violation. Every day that a violation occurs shall be deemed a separate violation. Ref. RSA 47:17, I, RSA 149-I:6, RSA 31:39, III.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 7            JUDICIAL ENFORCEMENT REMEDIES (Cont'd.)**

#### **7.4 Nonexclusive Remedies**

The remedies provided for in this Ordinance are not exclusive. The Town may take any, all, or any combination of these actions against a non-compliant user. Enforcement of pretreatment violations will generally be in accordance with the Town's enforcement response plan. However, the Town may pursue other action against any user without limitation, including *ex parte* temporary judicial relief to prevent a violation of this Ordinance. Further, the Town is empowered to pursue more than one enforcement action against any non-compliant user.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 8 SUPPLEMENTAL ENFORCEMENT ACTION**

#### **8.1 Performance Bonds**

The Department of Public Works may decline to issue or reissue an IDP to any user who has failed to comply with any provision of this Ordinance, the Town's Regulations, a previous IDP, or order issued hereunder, or any other pretreatment standard or requirement, unless such user first files a satisfactory bond, payable to the Town, in a sum not to exceed a value determined by the Department of Public Works to be necessary to achieve consistent compliance.

#### **8.2 Liability Insurance**

The Department of Public Works may decline to issue or reissue an IDP to any user who has failed to comply with any provision of this Ordinance, the Town's Regulations, a previous IDP, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

#### **8.3 Water Supply Severance**

Section 8.3 has been deleted from this Ordinance.

#### **8.4 Public Nuisances**

A violation of any provision of this Ordinance, an IDP, or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the Department of Public Works. Any person(s) creating a public nuisance shall be subject to the provisions of the applicable Town Code governing such nuisances, including reimbursing the Town for any costs incurred in removing, abating, or remedying said nuisance.

#### **8.5 Contractor Listing**

Users that have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the Town. Existing contracts for the sale of goods or services to the Town held by a user found to be in significant noncompliance with pretreatment standards or requirements may be terminated at the discretion of the Department of Public Works.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 9           AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS**

#### **9.1 Upset**

- A. For the purposes of this section, “upset” means an exceptional incident in which there is unintentional and temporary noncompliance with pretreatment standards due to factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with pretreatment standards if the requirements of paragraph (C), below, are met.
- C. A user who intends to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - 1. An upset occurred and the user can identify the cause(s) of the upset;
  - 2. At the time being of the upset, the facility was operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - 3. The user has submitted the following information to the Department of Public Works within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
    - a. A description of the discharge and cause of noncompliance;
    - b. The period of noncompliance, including exact dates and times or, if not corrected, the amount of time the noncompliance is expected to continue; and
    - c. Action being implemented and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with pretreatment standards.
- F. Users shall control all discharges to the extent necessary to maintain compliance with pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 9            AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS (Cont'd.)**

#### **9.2 Prohibited Discharge Standards**

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2.5(A) of this Ordinance or the specific prohibitions in Sections 2.5(B) of this Ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- A.     A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- B.     No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the POTW was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

#### **9.3 Bypass**

- A.     For the purposes of this section,
  - 1.     “Bypass” means the intentional diversion of waste streams from any portion of a user's treatment facility.
  - 2.     “Severe property damage” means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B.     A user may allow any bypass to occur that does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.
- C.
  - 1.     If a user knows in advance of the need for a bypass, it shall submit prior notice to the Department of Public Works and to the POTW providing treatment, at least ten (10) days before the date of the bypass, if possible.
  - 2.     A user shall submit oral notice to the Department of Public Works of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 9 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS (Cont'd.)**

#### **9.3 Bypass (Cont'd.)**

cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the amount of time it is expected to continue; and steps implemented or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Department of Public Works may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

- D. 1. Bypass is prohibited, and the Department of Public Works may initiate enforcement action against a user for a bypass, unless:
  - a. Bypass was required to prevent loss of life, personal injury, or severe property damage;
  - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
  - c. The user submitted notices as required under paragraph (C) of this section.
- 2. The Department of Public Works may approve an anticipated bypass, subsequent to considering its adverse effects, if the Department of Public Works determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 10          SEPTAGE DISPOSAL**

No person shall discharge hauled septage to the Town's POTW. The Town has intermunicipal agreements with the City of Manchester and the Town of Derry to receive and treat septage from the Town of Londonderry.

Hauled septage to be discharged to the City of Manchester's POTW and/or Town of Derry's POTW, shall be discharged at locations designated by the respective POTW. The septage to be discharged shall meet all requirements of the City of Manchester's and the Town of Derry's Sewer Use Ordinance. The septage hauler shall meet all the requirement of, and pay all associated fees as defined in the City of Manchester's and the Town of Derry's Sewer Use Ordinance.

**CHAPTER IX – SEWER USE ORDINANCE**

**SECTION 11            VALIDITY**

- A.     All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.
- B.     The validity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance that can be given effect without such invalid part or parts.



## **CHAPTER IX – SEWER USE ORDINANCE**

### **SECTION 12            INTERPRETATION OF REQUIREMENTS**

#### **12.1 Interpretation**

The provisions of this Ordinance with respect to the meaning of technical terms and phrases, the classification of different types of sewers, the regulations with respect to making connections to sewers or drains, and other technical matters shall be interpreted and administered by the Department of Public Works acting in and for the Town of Londonderry, New Hampshire through the Town Council.

#### **12.2 Appeals**

Any party aggrieved by any decision, regulation or provision under this Ordinance, as amended, from time to time, shall have the right of appeal within thirty (30) calendar days of said decision to the Department of Public Works, who shall issue a decision within thirty (30) calendar days. If said appeal is denied by the Department of Public Works, then the aggrieved party shall have the right to appeal to the Rockingham County Superior Court for equitable relief, provided that said appeal is entered within thirty (30) calendar days from the issuance of the decision of the Department of Public Works.

**CHAPTER IX – SEWER USE ORDINANCE**

**SECTION 13            EFFECTIVE DATE**

This Ordinance shall be in full force and effect immediately following its passage, approval, and publication, as provided by law.

Duly enacted and ordained this \_\_\_\_\_ day of \_\_\_\_\_ 2007 by the \_\_\_\_\_ and Town Council of the Town of Londonderry in Rockingham County, State of New Hampshire, at a duly noticed and duly held session of the said Town Council and \_\_\_\_\_. This Ordinance is hereby authenticated as required by Section \_\_\_\_\_ of the Town Charter.

Londonderry, New Hampshire

By: