



**CITY OF TYLER  
CITY COUNCIL COMMUNICATION**

**Agenda Number:** C-A-5

**Date:** April 23, 2008

**Subject:** Request that the City Council consider approving an ordinance amending the City of Tyler Code Chapter 19, "Utilities", Article IV, "Industrial Wastes", to comply with the Texas Commission on Environmental Quality requirements and federal general pretreatment regulations.

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**Item Reference:** Texas Water Code §7.251, 40 CFR 403.12, and 40 CFR 403.8

As a result of a Pretreatment Compliance inspection conducted by the Texas Commission on Environmental Quality (TCEQ), Tyler Water Utilities was required to update certain portions of the Industrial Waste Ordinance to conform to federal and state requirements. The recommended revisions to the Industrial Waste Ordinance include updating the statement of non-transferability of the discharge permit, the 30 day resample requirement following a violation, and the definition for "act of God" events.

**RECOMMENDATION:**

It is recommended that the City Council adopt an ordinance amending the Tyler City Code Chapter 19, "Utilities", Article IV, "Industrial Wastes", to comply with the Texas Commission on Environmental Quality requirements and federal general pretreatment regulations.

**Drafted/Recommended By:**  
**Department Leader**

**Gregory M. Morgan Director Utilities & Public Works**

**Edited/Submitted By:**  
**City Manager**

**ORDINANCE NO. 0-2008-64**

**AN ORDINANCE AMENDING THE CITY OF TYLER CODE CHAPTER 19, "UTILITIES", ARTICLE IV, "INDUSTRIAL WASTES", TO COMPLY WITH THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY REQUIREMENTS AND FEDERAL GENERAL PRETREATMENT REGULATIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENELTY AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is the intent of the City Council to protect the public health, safety and welfare; and

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and welfare of citizens; and

**WHEREAS**, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of local self-government; and

**WHEREAS**, Texas Local Government Code Section 51.072(b) states that the grant of powers to a home-rule municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to self-government; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City; and

**WHEREAS**, the Code of Federal Regulations Part 403, General Pretreatment Regulations has established specific requirements for maintaining individual and general control mechanisms, including duration and non-transferability requirements; and

**WHEREAS**, the Code of Federal Regulations Part 403, General Pretreatment Regulations has established specific requirements for monitoring, analysis and sampling to demonstrate continued compliance of Pretreatment programs; and

**WHEREAS**, the Texas Water Code Section 7.251 establishes a defense for violations of the statute, rule, order, or permit for events caused solely by an act of God, war, strike, riot, or other catastrophe, where by such an event is not deemed a violation of that statute, rule, order, or permit.

**WHEREAS**, the Texas Commission on Environmental Quality has established specific requirements for pretreatment compliance; and

**WHEREAS**, the Texas Commission on Environmental Quality has determined that certain portions of the Tyler City Code relating to Industrial Waste require updating to conform to TCEQ requirements and federal general pretreatment regulations; and

**WHEREAS**, it is important to amend the requirements in Tyler City Code: Section 19-75, to add specific regulations related to permit non-transferability, Section 19-77.h.2. to modify specific regulations related to sampling requirements following violation, and Section 19-85 to add specific regulations related the “act of God” defense.

**NOW THEREFORE, IT BE ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:**

**PART 1:** That the Tyler City Code Chapter 19, “Utilities”, Article IV, “Industrial Wastes”, is hereby amended to read as follows:

**Sec. 19-72 through Sec. 19-75. No change.**

**Sec. 19-76. Wastewater discharge permit issuance process.**

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

b. Non- Transferability. Wastewater discharge permits are non-transferable without, at a minimum, prior notification to the manager or his delegated representative and provision of a copy of the existing permit to the new owner or operator.

c. Permit contents.

1. Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Manager, including those to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

2. Wastewater discharge permits must contain the following conditions:

(a) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years.

(b) A statement that the wastewater discharge permit is nontransferable.

(c) Effluent limits applicable to the user based on applicable standards in federal, state, and local law.

(d) Self monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law.

(e) Statement of applicable civil, criminal, and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state, or local law.

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

(a) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.

(b) Limits on the instantaneous, daily, and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.

(c) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.

(d) Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges.

(e) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.

(f) The unit charge or schedule of industrial user charges and fees for the management of the wastewater discharged to the POTW.

(g) Requirements for installation and maintenance of inspection and sampling facilities and equipment.

(h) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit.

(i) A statement that the permittee shall indemnify the City against fines or other penalties imposed by regulatory authorities on the City for violations of the City's permit caused by fault of the permittee.

(j) Other conditions as deemed appropriate by the Manager to ensure compliance with this division, and State and Federal laws, rules, and regulations.

d. Permit modification.

1. The Manager may modify the wastewater discharge permit for cause including, but not limited to, the following:

(a) To incorporate any new or revised Federal, State, or Local pretreatment standards or requirements.

(b) To address significant alterations or additions to the industrial user's operations, processes, or wastewater volume or character since the time of wastewater discharge permit issuance.

(c) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge.

(d) Information indicating that the permitted discharge poses a threat or hazard to the POTW, the health, safety, or welfare of any person, or the receiving waters.

(e) Violation of any terms or conditions of the wastewater discharge permit.

(f) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting.

(g) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13.

(h) To correct typographical or other errors in the wastewater discharge permit.

2. The filing of a request by the permittee for a wastewater discharge permit modification does not stay any wastewater discharge permit condition.

e. Permit revocation.

1. Wastewater discharge permits may be revoked for the following reasons:

(a) Failure to notify the Manager of significant changes to the wastewater prior to the changed discharge.

(b) Failure to provide prior notification to the Manager of changed condition(s) pursuant to Section 19-77e.

(c) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application.

(d) Falsifying self-monitoring reports.

(e) Tampering with monitoring equipment.

(f) Refusing to allow the Manager timely access to the facility premises and records.

- (g) Failure to meet effluent limitations.
- (h) Failure to pay fines.
- (i) Failure to pay sewer charges.
- (j) Failure to meet compliance schedules.
- (k) Failure to complete a wastewater survey or the wastewater discharge permit application.
- (l) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this division.

2. Prior to having a wastewater discharge permit revoked, an industrial user shall be notified of the proposed revocation and be offered an opportunity to show cause under Section 19-81c. of this division why the proposed action should not be taken.

3. Wastewater discharge permits shall be voidable upon non-use or cessation of operations. Issuance of a new industrial wastewater discharge permit supersedes and replaces any previously issued permit for the same discharge.

f. Permit reissuance. Any permitted industrial user shall apply for wastewater discharge permit reissuance by submitting a completed wastewater discharge permit application in accordance with Section 19-75d. a minimum of ninety (90) days prior to the expiration of the industrial user's existing wastewater discharge permit. (Ord. No. O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. O-2008-64, 4-23-2008)

**Sec. 19-77. Reporting requirements.**

a. through g. - No Change.

h. Notice of violation/repeat sampling and reporting. If sampling performed by an industrial user indicates a violation:

1. The industrial user must notify the Manager within twenty- four (24) hours of becoming aware of the violation.

2. The industrial user shall repeat the sampling and analysis and submit the results of the repeat analysis to the Manager within thirty (30) days after becoming aware of the violation.

3. The actions described in Subsections 1. and 2. above are not required for the conventional pollutants of BOD5, COD, TSS, or TDS when the surcharge limit is exceeded. If the daily maximum limit for any conventional pollutant is exceeded, the requirements of Subsections 1. and 2. above apply.

i. through m. - No Change.

n. Record keeping. Industrial users shall retain, and make available for inspection and copying, all records and information required to be gathered and maintained under this

division. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning compliance with this division, or where the industrial user has been specifically notified of a longer retention period by the Manager. (Ord. No. O-96-4, 1-24-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. O-2008-64, 4-23-2008)

**Sec. 19-78 through Sec. 19-84. No change.**

**Sec. 19-85. Affirmative defenses to discharge violations.**

a. Act of God. For the purposes of this Article, "act of God" means an event caused solely by an act of God, war, strike, riot, or other catastrophe. If a person can establish that an event that would otherwise be a violation of this Article or an order or a permit issued under this Article was caused solely by an act of God, the event is not a violation.

b. Upset.

1. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial 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.

2. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of Subsection 3. below are met.

3. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the industrial user can identify the cause(s) of the upset;

(b) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(c) The industrial user has submitted the following information to the POTW and treatment plant operator 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.

(1) A description of the indirect discharge and cause of noncompliance.

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

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

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

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

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

c. General/specific prohibitions. An industrial user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general and specific prohibitions in Section 19-73a. of this division if it can prove that it did not know or have reason to know that its discharge, along or in conjunction with discharges from other sources, would cause pass through or interference and that either:

1. A local limit exists for each pollutant discharged and the industrial user was in compliance with each limit directly prior to, and during, the pass through or interference; or

2. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

d. Bypass.

1. For the purpose of this section, the following terms are defined:

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

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

2. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of Subsections 3. and 4. below of this section.

3. The following notifications are required for anticipated and unanticipated bypasses:

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

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

4. Bypass is prohibited, and the POTW may take enforcement action against an industrial user for a bypass, unless:

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

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

(c) The industrial user submitted notices as required under subsection (3) above.

5. The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three (3) conditions listed in Subsection 4 above. (Ord. No. O-96-4, 1-24-96) (Ord. No. O-2008-64, 4-23-2008)

**Sec. 19-86 through Sec. 19-99. No change.**

**PART 2:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity or the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 3:** That any person, firm or corporation violating any provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall become effective upon its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be April 25, 2008.

PASSED AND APPROVED this 23<sup>rd</sup> day of April, A.D. 2008.

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JOSEPH O. SEEBER, MAYOR OF  
THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

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CASSANDRA BRAGER, CITY CLERK

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CITY ATTORNEY