



City of Racine, Wisconsin Agenda Briefing Memorandum

AGENDA DATE:

Intro to Council Date: N/A

Standing Committee Date: May 11, 2026

Final Action Council Date: May 19, 2026

PREPARED BY: Wastewater Utility Director Nate Tillis and City Attorney Scott R. Letteney

REVIEWED BY: N/A

SUBJECT: Communication sponsored by Alder Jorgenson, Ordinance 0002-26 – Sanitary Sewer Amendments
Recommendation of the Wastewater Commission on 4/15/26: To Recommend Approval of Ordinance 0002-26, and Refer the Recommendation to the Finance and Personnel Committee for Consideration

BACKGROUND & ANALYSIS:

Chapter 98-Wastewater Utility, of the Municipal Code of the City of Racine, deals with elements of Wastewater, one of which is how the City and the Wastewater Utility regulate commercial and industrial customers. These amendments reflect recent updates to Wisconsin Administrative Code Chapter NR 211 General Pretreatment Requirements that provide guidance and oversight to Utilities that enforce the code.

Wisconsin Department of Natural Resources (WDNR), the regulatory agency to whom the Utility reports on this matter, completed an audit of the Utility's Pretreatment Program in 2023 and recommended these changes to comply with NR 211. The Utility drafted the changes and received approval of the draft changes from WDNR.

Most of the changes fall into one or more of the following categories: updating definitions, making the ordinance more specific so it can be enforced, increasing the ability to measure and quantify data surrounding violations, or additions to the ordinance to bring clarity of authority and responsibility.

There are no direct fiscal impacts.

The entirety of Chapter 98 is too long reasonably to provide an entire redline version. However, in context, the specific changes are as follows. Added language is underlined and deleted language is stricken:

Part 1: Chapter 98, Article I, Section 98-1, Water and Wastewater utilities created; jurisdiction, is amended as follows:

ARTICLE I. - IN GENERAL

Sec. 98-1. - Water and wastewater utilities created; jurisdiction.

- (a) Created. Pursuant to the authority granted to the city under Wis. Stats. § 6.068, there are hereby created a water utility and a wastewater utility.
- (b) Water utility. The water utility shall comprise all main lines and other service lines, the waterworks plant, equipment and such other property, real and personal, held or to be acquired or used in connection with the furnishing and delivery of water. The water utility shall also assume any contractual obligations of the city for delivery of water to outlying municipalities, and is further authorized to provide for the sale of water to such other persons, upon such terms and conditions, as may be approved by the common council.
- (c) Wastewater utility. The wastewater utility shall comprise all of the interceptor sewers, lift stations, wastewater treatment facilities, equipment and such real and personal property owned by the city as have been used or may be acquired as part of the wastewater system of the city. The wastewater utility shall also assume contractual obligations of the city pursuant to written agreements with outlying municipalities for wastewater treatment services. Wastewater discharge falls under the jurisdiction of the wastewater utility and is considered public when it enters the public sewer. Wastewater in the public sewer may be used for any purposes deemed necessary by the wastewater utility. The wastewater utility shall not have jurisdiction, however, over stormwaters and surface waters.

Part 2: Chapter 98, Article I, Section 98-4, Definitions, is amended as follows:

Sec. 98-4. - Definitions.

The definitions of section 98-150(b) shall be used throughout this chapter unless otherwise specifically provided.

Agreement means the 2002 Racine Area Intergovernmental Sanitary Sewer Service, Revenue-Sharing, Cooperation and Settlement Agreement.

Building sewer or lateral or service pipe means that part of the drain system not within or under a building that conveys its discharge to a public sewer, private interceptor main sewer or other point of disposal.

Industrial building means a building used for the manufacture or production of goods.

Interceptor means a main trunk sewer.

Non-party means a local government entity that has not approved, executed and satisfied the conditions of the agreement.

Outlying parties or outlying communities means those sewer service recipient parties other than the city and the wastewater commission.

Party means a local government entity that has approved, executed and satisfied the conditions of the agreement, or its successors.

Private interceptor main sewer means a privately owned sewer serving two or more buildings and not directly controlled by a public authority.

Public sewer means a sewer owned and controlled by a public authority starting at the public right of way on the lateral.

Sewer extension means the installation of a public sanitary sewer, or of a privately owned sanitary sewer serving two or more buildings, or the extension of either, for the purpose of providing additional capacity for new development within the existing or proposed tributary area of such sewer or extension. Alterations or modifications of previously existing sewerage systems designed to replace and in fact replacing inadequate existing structures, or installed because of inadequate hydraulic sewer capacity, which do not extend sanitary sewer service to previously unserved areas are not sewer extensions within the meaning of this chapter.

Part 3: Chapter 98, Article IV, Division 3, Section 98-124, Definitions, is amended as follows:

ARTICLE IV. - WASTEWATER SYSTEM

DIVISION 3. - USE REGULATIONS

Sec. 98-124. - Definitions.

The following definitions shall apply in the interpretation and enforcement of this division:

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Centigrade expressed in milligrams per liter.

Best management practices or *BMPs* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in subsections 98-151(a) and (b) [40 CFR 403.5(a)(1) and (b)]. *BMPs* include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. [Note: *BMPs* also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical pretreatment standards and effluent limits].

BETX means an aggregate concentration of total benzene, ethylbenzene, toluene, and xylenes.

City means the City of Racine, Wisconsin.

Class I—Domestic user means any user of the wastewater system that meets the following condition:

- (1) A user that generates wastewater with a strength equal to or less than normal strength wastewater independent of the quantity of flow discharged.

Class II—Industrial user means any user of the wastewater system that meets the following condition:

- (1) A user that generates wastewater with strength greater than normal domestic strength wastewater independent of the quantity of flow discharged.

Combined sewer means a sewer that receives stormwater, surface runoff, industrial cooling water and sewage.

Compatible pollutant means biochemical oxygen demand, suspended solids, pH, fecal coliform bacteria and phosphorus are pollutants identified in the city's WPDES permit and which the city wastewater treatment plant is designed to remove to a substantial degree. The term substantial degree is not subject to precise definition, but generally contemplates removals in the order of 80 percent or greater.

Control manhole means a manhole located on the private sanitary sewer line coming from any building that is served by the city wastewater treatment plant. The manhole will be used for sampling and flow determinations. The design and location of the control manhole requires prior approval of the general manager of the city wastewater utility.

Domestic sewage means sewage discharging from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, commercial establishments, institutions, and free from storm surface water, cooling water and industrial wastes.

Federal grant means Grant No. C550552-01 dated April 3, 1974, from the Environmental Protection Agency of the United States of America, of the city, or any other grants received by the city from the EPA for the purpose of expanding its complete wastewater system.

Garbage means solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce. All garbage must be properly shredded to a size no greater than one inch in any dimension.

General manager means the authorized department head of the wastewater (and water) utility of the city, having supervision of maintenance and operation of the sewerage system and wastewater treatment facilities of the city, or his authorized deputy, agent or representative.

Groundwater discharge means polluted water discharge from a construction or remediation site to the sanitary sewer system. This discharge requires a permit and testing prior to discharge as determined by the general manager.

Incompatible pollutant means any pollutant that is not defined as a compatible pollutant.

Industrial user means any source discharger of industrial wastewater.

- (1) Any above-mentioned user will be excluded from the industrial cost recovery charges as hereinafter provided the general manager determines that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

Industrial wastes means any liquid substance rejected or escaping from any industrial, manufacturing, trade or business process as distinct from domestic sewage.

Interceptor sewer means a sewer whose primary purpose is to transport wastewater from collection sewers to a treatment facility.

Lift station means a station including all pumps and necessary appurtenances in any public wastewater system to which wastewater is pumped to a higher level. The interceptor sewers, wastewater treatment facilities and lift stations owned by the utility shall in their entirety be known hereinafter as the "wastewater system."

Major contributing industry means an industry that:

- (1) Has a flow of 25,000 gallons or more per average work day; or
- (2) Has a flow greater than five percent of the flow carried by the municipal system receiving the waste; or
- (3) Has in its waste a toxic pollutant in toxic amounts as defined in standards issued under Section 307(a) of the Federal Water Pollution Control Act Amendments of 1972; or
- (4) Has a significant impact, either singly or in combination with other contributing industries, on a publicly owned treatment works or on the quality of effluent from that treatment works.

Natural outlet means any outlet into watercourse, pond, ditch, lake or other body of surface or groundwater.

Normal domestic strength wastewater, as defined for the purpose of this section, (normal strength) means wastewater having an average daily total suspended solids concentration of not more than 250 mg/l and an average daily BOD of not more than 200 mg/l and an average daily phosphorous concentration of not more than six mg/l.

Owner means the owner of any real property from which wastewater is discharged.

P means total phosphorus.

Person means any individual, firm, company, association, society, corporation, or group.

pH means the logarithm of the reciprocal of the hydrogen ion concentration.

Properly shredded garbage means garbage that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than one-half inch in any dimension.

Public sewer means a sewer in which all owners of abutting properties have equal rights and is controlled by the city or other governmental entity in which the sewer is located.

Receiving waters means any public water into which the effluent from any wastewater treatment plant or any public or private sewer is discharged.

Recovery period means the period of 30 years during which each industrial user shall pay its share of

the federal grant.

Sanitary sewer means a sewer that carries domestic sewage and industrial wastes, and to which storm, surface, ground and unpolluted cooling or process waters are not intentionally admitted.

Sewage and wastewater means any combination of water-carried wastes from residences, buildings, industrial establishments, institutions, manufacturing plants, processing plants, commercial establishments, or other places in which such wastes are produced, together with such ground, surface, storm or other water as may be present.

Sewer means a pipe or conduit for carrying sewage.

Sewer agreement means the Racine Area Intergovernmental Sanitary Sewer Service, Revenue-Sharing, Cooperation and Settlement Agreement, as established on April 25, 2002, and any adopted amendments or revisions thereafter.

Sewer service provider party (SSP) means a party that provides sewer service pursuant to and in accordance with the sewer agreement; signifies the Racine Wastewater Utility.

Sewer service recipient party (SSR) means a party that receives (or whose constituents receive) sewer service from the SSP or Racine Wastewater Utility pursuant to and in accordance with the sewer agreement, and which is obligated to pay such service in accordance with the sewer agreement.

Shall is mandatory; *may* is permissive.

Significant industrial ~~contributor~~ user means any source to the sanitary or combined sewer system which meets one or more of the following conditions:

(1) An industrial user that is subject to categorical pretreatment standards;

a. The utility may determine that an industrial user subject to categorical pretreatment standards 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 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:

1. The industrial user, prior the utility's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;

2. Upon a finding that an industrial user meeting the criteria here: subsections (2), (3) and/or (4), has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the utility may at any time, on its own initiative or in response to a petition received from an industrial 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.

(2) An industrial user that discharges an average of 25,000 gallons per day or more of process wastewater; or

(3) An industrial user that discharges ~~incompatible pollutants at a flow rate greater than five percent of the flow carried by the municipal system~~ a process waste stream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant;
or

(4) An industrial user that has a discharge with reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

Slug means ~~any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation~~ any nonroutine, episodic discharge, such as a discharge resulting from a spill or a noncustomary batch discharge.

Storm sewer or storm drain means a sewer that carries stormwater, surface water, drainage and unpolluted industrial water discharges, such as cooling and air conditioning water, but excludes sewage.

Total suspended solids (TSS) means the dry weight of solids that are physically suspended or floating in a flow of sewage, industrial waste, or water that are measurable by laboratory filtering.

Total toxic organics (TTO) means an aggregate concentration of any volatile compound, acid extractable compound, or base/neutral compound identified pursuant to Clean Water Act Section 307(a) and state code NR 215.03(1), (2), and (3). Pesticides, PCBs, dioxin, heavy metals, and other compounds in the identified list are excluded.

Unpolluted means any water that is deemed by the Wisconsin DNR as being approved for discharge to storm sewer or surface water.

Utility means the Racine Wastewater Utility.

Waste component means any constituent of wastewater other than water, including, but not limited to, BOD, TSS and phosphorus.

Wastewater means the combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions (including polluted cooling water and unintentionally admitted infiltration/inflow).

(1) *Sanitary wastewater* means the combination of liquid and water-carried wastes discharged from toilet and other sanitary plumbing facilities; and

(2) *Industrial wastewater* means a combination of liquid and water-carried wastes, discharged from any industrial establishment and resulting from any trade or process carried on in that establishment. (This shall include the wastes from pretreatment facilities and polluted cooling water.)

Wastewater treatment plant means any devices and/or structures used for the treating of sewage.

Wastewater works means all facilities, infrastructure, equipment, and components used for collecting,

pumping, transporting, storing, measuring, monitoring, treating and drying of sewage.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

Wisconsin Pollutant Discharge Elimination System (WPDES) permit means a permit issued to the city for the discharge of wastewater to Lake Michigan. This permit, which is on file in the office of the wastewater utility, specifies effluent limitations for compatible pollutants and specifies certain conditions that have to be met by the city. This permit was issued in compliance with the environmental protection agency as part of the National Pollutant Discharge Elimination System (NPDES) permit program.

The meaning of any other term shall be that usual and customary meaning as used by those working in the field of wastewater treatment. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate.

Part 4: Chapter 98, Article IV, Division 3, Section 98-150, Pretreatment regulations—General provisions, is amended as follows:

Sec. 98-150. - Pretreatment regulations—General provisions.

(b) *Definitions.* Unless the text specifically indicates otherwise, the following terms and phrases, as used in this section, mean:

Significant industrial user means any source to the sanitary or combined sewer system which meets one or more of the following conditions:

- (1) An industrial user that is subject to categorical pretreatment standards, unless it meets the definition of a non-significant categorical industrial user in the subsection; or
- (2) An industrial user that discharges an average of 25,000 gpd or more of process wastewater; or
- (3) An industrial user that discharges ~~incompatible pollutants at a flow rate greater than five percent of the flow carried by the municipal system~~ a process waste stream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
- (4) An industrial user that has a discharge with reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(5) Upon a finding that an industrial user meeting the criteria here: subsections (2), (3) and/or (4), has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, ~~the general manager may, with the consent of the wastewater commission, at any time, on its own initiative or in response to a petition received from an industrial user determine that such user should not be considered a significant industrial user~~ the utility may at any time, on its own initiative or in response to a petition received from an industrial user, and in accordance with procedures in 40 CFR 403.8(f)(6).

(6) Any user meeting the definition of a non-significant categorical industrial user (NSCIU), and so designated by the general manager, will not be subject to wastewater discharge permit requirements, but must certify annually to the utility that the user still meets the definition of a NSCIU and meets compliance requirements with applicable pretreatment standards, after having met baseline monitoring report requirements. If the general manager determines that an existing NSCIU no longer meets the definition of a NSCIU or requirements to be in consistent compliance with pretreatment standards, then the user shall be classified as a SIU.

Part 5: Chapter 98, Article IV, Division 3, Section 98-151, General sewer use requirements, is amended as follows:

Sec. 98-151. - General sewer use requirements.

(b) Specific discharge prohibitions. A user may not contribute the following pollutants or substances to the POTW:

(21) Any form and quantity of glycol discharge.

(m) Accidental discharge/slug (spill) control plans. The general manager shall evaluate whether each significant industrial user needs an accidental discharge/slug control plan or other action to control slug discharges. For industrial users identified as significant prior to March 3, 2014, this evaluation shall have been conducted by February 1, 2015. Additional significant industrial users shall be evaluated within one year of being designated as significant industrial users. The general manager may require any user to develop, submit for approval, and implement the slug discharge control plan approved by the city ~~on (date)~~. Alternatively, the general manager may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

(1) Description of discharge practices, including non-routine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the general manager, or designee of any accidental or slug discharge, as required by this division; and

(4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(5) The slug discharge control plan must use the following approved format:

Part 6: Chapter 98, Article IV, Division 3, Section 98-152, Pretreatment of wastewater, is amended as follows:

Sec. 98-152. - Pretreatment of wastewater.

(a) *Pretreatment facilities.* Users shall provide wastewater treatment as necessary to comply with this division and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in [section 98-151](#) of this division within the time limitations specified by EPA, the state, or the general manager, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the WDNR and general manager for review, and shall be ~~acceptable to~~ approved by the WDNR and general manager before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the utility under the provisions of this division. No person shall do such work that is within the purview of the city building, plumbing or electrical code without first obtaining required permits.

(b) *Additional pretreatment measures.*

(1) Whenever deemed necessary, the general manager may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this division;

(2) The general manager may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization;

(3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the general manager, they are necessary for the proper handling of wastewater containing excessive amounts of grease, oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the general

manager and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, in accordance with the utility's fats, oils and grease management plan and best management practices, ([section 98-158](#)), by the user at its expense; and

(4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

Part 7: Chapter 98, Article IV, Division 3, Section 98-153, Administration, is amended as follows:

Sec. 98-153. - Administration.

(a) *Wastewater discharge permits.*

(2) Other permits. The general manager may require other users to obtain wastewater discharge permits as necessary to carry out the purpose of this division. Industries that do not discharge process waste, or discharge minimal amounts of wastewater, but are still considered by the general manager to have the potential to impact the POTW, may be issued a minimal or no-discharge permit. This permit is approved only after the general manager, or designee, has inspected the facility. A slug discharge plan must be on file with the utility. The facility will be inspected annually to confirm the no discharge status of the facility. Groundwater discharge permits may be required in accordance with subsection 98-151(o).

a. Excepting that upon finding that a user meeting the criteria of a significant user has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the general manager 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. Such user shall be classified as a non-significant industrial user.

(8) Duration. Permits shall be issued for a ~~four-year period~~ period not to exceed five years. A significant user shall apply for permit reissuance a minimum of 90 days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modifications by the utility during the term of the permit as limitations or requirements identified in section 98-151 are modified or as other just causes exist. A significant user shall be informed of any proposed changes in its permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user. Expired discharge permits remain in effect until the new permit is issued by the utility.

(10) Transfer. Wastewater discharge permits are issued to a specific significant user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new significant user without the written permission of the Utility.

(b) Reporting requirements.

(6) Reports of potential problems. In the case of any discharge, including, but not limited to, accidental discharges, discharges of non-routine, episodic nature, a non-customary batch discharge, or a slug load, that may cause potential problems for the POTW, such as any slug loading in violation of NR 211.10(2) and subsection 98-151(a) or (b) of this Code, or of any changes at the industrial users' facility affecting the potential for a slug discharge and the need for a slug control plan as required by NR 211.235(4)(a) and subsection 98-151(m) of this Code, the user shall immediately telephone and notify the general manager, or designee, of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

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

a. Slug or accidental discharges. Industrial users shall notify the utility immediately upon having a slug or accidental discharge of substances or wastewater in violation of this division in order to enable countermeasures to be taken by the utility to minimize damage to the POTW and the receiving waters. The notification shall include damage to the POTW and the receiving waters, location of discharge, type of waste, concentration and volume, and corrective actions. The utility may choose to immediately take action pursuant to section 98-155, enforcement.

Within five days following an accidental discharge, the industrial user shall submit to the general manager a detailed written report describing the cause of the discharge and the measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, civil penalties, or other liability that may be imposed by this division or other applicable law. After receipt and review of the written report, the utility may choose to take no further action or to take action in accordance with section

98-155. All slug and accidental discharges shall be recorded and maintained on file at the industry in accordance with Section 98-151(l) regardless of whether the discharge entered the sanitary sewer system.

b. Operating upsets report. For the purposes of this section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. Any categorical industrial user which experiences a temporary state of noncompliance with this section or a wastewater discharge permit issued pursuant hereto shall inform the utility thereof within 24 hours of first awareness of the commencement of the upset. The utility may choose to immediately take action pursuant to section 98-155. Where such information is given orally, the user shall file a written follow-up report with the utility within five days. The report shall specify:

1. Description of the upset, the cause thereof, and the upset's impact on a user's compliance status.
2. Duration of noncompliance, including exact dates and times of noncompliance and if the noncompliance continues, the time by which compliance is reasonably expected to occur.
3. All steps taken or to be taken to reduce, eliminate, and prevent recurrence of such an upset or other conditions of noncompliance.

A documented and verified bona fide operating upset shall be an affirmative defense to any enforcement action brought by the utility against a user for any noncompliance with the section or any wastewater discharge permit issued pursuant hereto, which arises out of violations alleged to have occurred during the period of the upset. Such notification shall not relieve the user of any expense, loss, damage, or other liability that may be incurred as result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability that may be imposed by this division or other applicable law. After receipt and review of the written report, the utility may choose to take no further action or to take action in accordance with section 98-155.

(14) Batch discharge report. ~~The user shall notify~~ The General Manager may require a user to notify the utility five days prior to discharging the contents of any tank of batch discharge. Included in this report shall be the volume of all batch discharges recorded for each discharge event and batch tank volumes. The general manager may require that batch discharges or tank contents to be discharged must be analyzed by procedures outlined under the self-monitoring reports subsection 98-153(b)(10), and must be found to be in compliance with all discharge limits that are in effect before discharge may occur. Grab samples must be taken for batch discharges. The grab samples must be representative of the monitored discharge or total tank contents and

shall be taken prior to batch discharging. The contents of the tank are to be mixed uniformly or subsamples of the top, middle and bottom of the tank shall be taken and composited.

Part 8: Chapter 98, Article IV, Division 3, Section 98-155, Enforcement, is amended as follows:

Sec. 98-155. - Enforcement.

(a) Notice of noncompliance. Whenever the utility finds that any industrial user has violated or is violating this division, wastewater discharge permit, or any prohibition, limitation or requirements contained here, including required best management practices, the utility shall issue the permittee a "notice of noncompliance" for violations, except where serious noncompliance justifies immediate issuance of a notice of violation. The notice of noncompliance will explain the nature of the noncompliance and require that the permittee, within 45 days of the date of notice, file a plan for the correction of the noncompliance. The plan shall be reviewed by the utility and approved if the plan demonstrates that the proposed action will eliminate the violation. If the industrial user does not comply with an approved plan, the utility ~~may~~ has the discretion to take action in accordance with section 98-155.

(b) Notice of violation. Whenever the utility finds that any industrial user has violated, continues to violate, or is violating this division, wastewater discharge permit, or any prohibition, limitation or requirements contained herein, including required best management practices, the utility ~~may~~ has the discretion to serve upon such user a written notice of violation stating the nature of the violation. Within 45 days of the date of the notice, a plan for the satisfactory correction thereof shall be submitted to the utility by the industrial user. If the plan is satisfactory to the utility and the industrial user complies with the plan, the utility ~~may not~~ has the discretion to take further action against the industrial user. Submission of this plan in no way relieves the user of liability for any violations occurring before or after the receipt of the "notice of violation." Nothing in this section shall limit the authority of the general manager to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(c) Show cause hearing.

(1) Notice of hearing. The utility ~~may~~ has the discretion to order a user which has violated, or continues to violate, any provision of this division, an individual wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, or allows an unauthorized discharge to enter the POTW to show cause before the board of standards why the proposed enforcement action should not be taken. A notice shall be served on the industrial user specifying the time and place of a hearing to be held by the board of standards regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the industrial user to show cause before the board of standards why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten days before the hearing. The notice of the hearing may be served on any agent or officer of a corporation.

(2) Hearing officials. The ~~board of standards~~ hearing official may itself conduct the hearing and take evidence, or may designate any of its members or any officer or employee of the utility

to:

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

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

(d) Issuance of orders. After the board of standards has reviewed the evidence, it shall make a recommendation to the utility. Further orders and directives as are necessary and appropriate may be issued by the utility, including, but not limited to, a compliance order, a consent order, a cease and desist order, or other action as deemed necessary and appropriate. If the user violates an order or directive, the utility ~~may~~ has the discretion to take action in accordance with section 98-155.

The remedies provided for in this ordinance are not exclusive. The general manager ~~may~~ has the discretion to take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the utility's enforcement response plan. However, the general manager ~~may~~ has the discretion to take other action against any user when the circumstances warrant. Further, the general manager is empowered to take more than one enforcement action against any noncompliant user.

(1) Consent orders. The general manager ~~may~~ has the discretion to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders and shall be judicially enforceable.

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

for, taking any other action against the user.

(3) Cease and desist orders. When the general manager finds that a user has violated, or continues to violate, any provision of this division, an individual wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the general manager ~~may~~ has the discretion to issue an order to the user directing it to cease and desist all such violations and directing the user to:

a. Immediately comply with all requirements; and

b. Take such appropriate remedial or preventative 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.

(e) Publication of user in significant noncompliance. The general manager shall publish annually, in a newspaper of general circulation that provides meaningful public notice in the area serviced by the utility, a list of users which, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance means:

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

(2) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the daily maximum limit or the average limit, including an instantaneous limit, multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH; or exceed a pH limit by 0.4 standard units.);

(3) Any other discharge violation that the general manager 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 because of a violation of a pretreatment standard or requirement;

(4) Any discharge of pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the general manager's exercise of its emergency authority to halt or prevent such a discharge;

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

(6) Failure to provide within 45 days after the due date, any required reports, including baseline

monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation(s) that the general manager determines will adversely affect the operation or implementation of the local pretreatment program, including violation of best management practices.

(f) Emergency suspensions. The general manager ~~may~~ has the discretion to immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The general manager ~~may~~ has the discretion to also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

(1) Any industrial user notified of a suspension of the wastewater treatment service and/or the wastewater discharge permit shall immediately stop or eliminate the contribution. In the event of a failure of the industrial user to comply voluntarily with the suspension order, the utility shall take such steps as deemed necessary, including immediate severance of the sewer connection to prevent or minimize damage to the POTW system or endangerment to any individuals. The utility ~~may~~ has the discretion to reinstate the wastewater discharge permit and/or the wastewater treatment service upon proof of the elimination of the noncomplying discharge.

(2) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the general manager prior to the date of any show cause or termination hearing.

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

(g) Termination of discharge. Any user which violates the following conditions is subject to termination of discharge privileges:

(1) Violation of individual wastewater discharge permit conditions;

(2) Failure to accurately report the wastewater constituents and characteristics of its discharge;

(3) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

(4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or

(5) Violation of the pretreatment standards.

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

(h) Legal action. If any industrial user discharges sewage, industrial wastes or other wastes into the utility's POTW contrary to the provisions of this division, federal or state pretreatment requirements, or any order of the utility, the utility ~~may~~ has the discretion to commence an action for appropriate legal and/or equitable relief in the appropriate court. The utility ~~may~~ has the discretion to take further action pursuant to section 98-155 and/or section 98-156.

(i) Criminal prosecution. The department of natural resources may seek civil and criminal penalties and injunctive relief from an industrial user or POTW, as necessary, if the WDNR deems that the POTW enforcement actions are insufficient per NR 211.32(2).

(j) Revocation of wastewater discharge permit. Any industrial user which violates the following conditions of this division, or applicable state and federal regulations, is subject to having its individual wastewater discharge permit revoked in accordance with the procedures of section 98-155. The general manager ~~may~~ has the discretion to revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- (1) Failure to notify the general manager of significant changes to the wastewater prior to the changed discharge;
- (2) Failure to provide prior notification to the general manager of changed conditions pursuant to subsection 98-153(b)(5) of this division;
- (3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- (4) Falsifying self-monitoring reports and certification statements;
- (5) Is found tampering or to have tampered with sampling or flow measurement equipment, samples, and/or analyses being conducted by or at the direction of the utility;
- (6) Refusing to allow the general manager timely access to the facility premises and records;
- (7) Failure to meet effluent limitations;
- (8) Failure to pay fines;
- (9) Failure to pay sewer charges;
- (10) Failure to meet compliance schedules;
- (11) Failure to complete a wastewater survey or the wastewater discharge permit application;
- (12) Failure to provide advance notice of the transfer of business ownership of a permitted facility;

(13) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this division;

(14) Failure of an industrial user to factually report the wastewater constituents and characteristics of its discharge;

(15) Failure of the industrial user to report significant changes in operations, or wastewater constituents and characteristics.

The utility ~~may~~ also has the discretion to revoke the wastewater treatment service and/or a wastewater discharge permit when such revocation is necessary, in the opinion of the utility, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the POTW or causes the utility to violate any condition of its WPDES permit.

STAFF RECOMMENDED ACTION: To Recommend Approval of Ordinance 0002-26.

FISCAL NOTE & BUDGETARY IMPACT: None