

<b>INTRODUCED BY:</b>	<u>Commissioner Paul Hertz</u>
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<b>PUBLIC HEARING TIME:</b>	<u>7:00 p.m.</u>
<b>ADOPTION DATE:</b>	<u>December 12, 2023</u>
<b>EFFECTIVE DATE:</b>	<u>December 12, 2023</u>

**ORDINANCE 23-26**

**An Ordinance amending Kent County Code, Vol. I, Chapter 180 by revising Article II Definitions, §180-05 Definitions to amend the definition of significant noncompliance; by adding Article III Regulations of Sewer Use, §180-10 Use of public sewers, E. Notification of the discharge of hazardous waste meet US EPA requirements; by revising Article III Regulations of Sewer Use, §180-12 Industrial Wastewater Discharge Permits, to modify industrial user’s reporting requirements as required by US EPA; and by revising 180 Attachment 3 to amend the definition of significant noncompliance and to place the Enforcement Response Guide in a table in order to create a clear response for each violation type.**

THE LEVY COURT OF KENT COUNTY HEREBY ORDAINS:

**Section 1** That the Kent County Code, Volume I, Chapter 180 Sanitary Standards, Article II Definitions, §180-5 Definitions is hereby amended by adding the underlined language as follows:

**§ 180-5 Definitions.**

**SIGNIFICANT NONCOMPLIANCE**

A violation or violations which meet one or more of the following criteria:

- A. Violations of wastewater discharge permit or Sanitary Code.
  - (1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all measurements taken for the same pollutant parameter taken during a six-(6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous permit limits.
  - (2) Technical review criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including instantaneous permit limits, multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils, and grease, and 1.2 for all other pollutants except pH.
  - (3) Any violation(s) of an effluent limit, Pretreatment Standard or Requirement (average or daily maximum, long-term average, instantaneous limits, or narrative standard) that has caused, alone or in combination with other discharges, interference or pass-through, or has endangered the health of the public or sewage treatment personnel.
  - (4) Any discharge from permitted or unpermitted industrial users of a pollutant that has caused imminent endangerment to human health and/or welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such discharges.
  - (5) Any discharge from permitted or unpermitted industrial users that passed through or interfered with the operation of the treatment process.
- B. Violations of compliance schedule milestones contained in a local control mechanism or enforcement order for starting or completing construction and attaining final compliance by 90 days or more after compliance schedule dates.

- (1) Failure to provide reports for compliance schedules, self-monitoring data or categorical standards (baseline monitoring reports, ninety-day compliance reports, compliance and periodic reports) within 45 days from the due date.
- (2) Failure to accurately report noncompliance.
- (3) Any violation or group of violations, that may include a violation of best management practices (BMP), which could adversely affect the operation or implementation of the pretreatment program or affect the treatment plant.

**Section 2** That the Kent County Code, Volume I, Chapter 180 Sanitary Standards, Article III Regulations of Sewer Use, §180-10 Use of public sewers, E. Notification of the discharge of hazardous waste is hereby added with the underlined language as follows:

§ 180-10 Use of public sewers.

**E. Notification of the discharge of hazardous waste.**

- (1) Any User who commences the discharge of hazardous waste shall notify the County, the EPA Regional Waste Management Division Director, the State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the User discharges more than one hundred (100) kilograms of such waste per calendar month to the County, the notification also shall contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted as required by this ordinance. The notification requirement in this Section does not apply to pollutants already reported by Users subject to categorical Pretreatment Standards under the self-monitoring requirements of this ordinance.**
- (2) Dischargers are exempt from the requirement of paragraph (1), above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30 (d) and 261.33 (e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or any quantity of acute hazardous wastes as specified in 40 CFR 261.30 (d) and 40 CFR 261.33 (e), requires a one-time notification. Subsequent months during which the User discharges more than such quantities of any hazardous waste do not require additional notification.**
- (3) In the case of any new regulations under section 3001 of the RCRA identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the User must notify the County, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance with ninety (90) days of the effective date of such regulations.**

- (4) In the case of any notification made under this Section, the User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.**
- (5) This provision does not create a right to discharge any substance not otherwise permitted to be discharge by this ordinance, a permit issued thereunder, or any applicable Federal or State law.**

**Section 3** That the Kent County Code, Volume I, Chapter 180 Sanitary Standards, Article III Regulations of Sewer Use, §180-12 Industrial wastewater discharge permits, B. Permits, E. Permit Conditions, Monitoring and reporting requirements for permittees, including all self-monitoring, J. Confidential information, and Q. Pretreatment Environmental Excellence Program (PEEP) are hereby amended by deleting bracketed language with strike-through marks and by adding the underlined language as follows:

**§ 180-12 Industrial wastewater discharge permits.**

- B. Permits. It is within the discretion of the POTW to determine which industrial and commercial users shall be controlled through industrial wastewater discharge permits (IWDPs). There are three types of permits that may be used by the POTW: general, food service facility (FSF), and significant industrial user (SIU) permits. FSF permit requirements are included in § **180-13**. This section defines the circumstances for determining when a general or SIU permit is required and which type of permit shall be issued for a particular user.
- (1) General permits.
- (a) Groups of industrial and commercial users may be issued a general permit. Users who are subject to best management practices (BMPs) or concentration-based pretreatment standards may apply to the POTW for inclusion under a specific general permit. It is within the discretion of the POTW whether to issue a general permit for a specific category and whether a particular facility may be covered under a general permit. Users covered under a mass-based categorical standard shall not be covered under a general permit; however, those covered under mass-based local limits may be included in a general permit. In addition, a facility subject to the combined wastestream formula or net/gross calculations shall not be covered by a general permit.
- (b) All of the facilities to be covered by the general permit must:
- [1] Involve the same or substantially similar types of operations;
- [2] Discharge the same types of wastes;
- [3] Require the same effluent limitations; and
- [4] Require the same or similar monitoring; and
- [5] Be more appropriately controlled under a general control mechanism than an individual wastewater discharge permit.
- (c) An industrial/commercial user seeking to be covered by a general permit shall make the request for inclusion in writing. The written request shall include:
- [1] A description of the production processes to be included;
- [2] The type of wastes generated;

- [3] The monitoring location or locations where all wastewaters will be monitored;
- [4] A finding that the user falls within the category of facilities covered by the general permit;
- [5] An indication of whether the user is seeking a monitoring waiver for pollutants that are not present (Note: Such waiver is not effective in the general permit until notification from the department that such a waiver has been granted); and
- [6] Include the information required under the application section covered at § **180-12C**.
- (d) Enforcement of the provisions of the general permit shall be consistent with the Kent County Enforcement Response Plan detailed in Appendix A to this chapter of the Kent County Code.
- (e) The POTW will develop each general permit. It will provide a notice that it is available and post the general permits on the County Web site at [www.co.kent.de.us](http://www.co.kent.de.us). The general permit will specify the criteria or conditions that make a user eligible for coverage. The general permit shall include:
  - [1] Statement of duration;
  - [2] Statement of nontransferability without prior notification to the POTW;
  - [3] Effluent limits, including BMPs, based on applicable general pretreatment standards, categorical pretreatment standards, local limits and state and local laws;
  - [4] Self-monitoring, sampling, reporting and recordkeeping requirements, including appropriate sampling locations;
  - [5] A statement of applicable civil and criminal penalties for violations covered under the Enforcement Response Plan; and
  - [6] Requirements to control slug discharges as detailed under § **180-12E**.
- (f) The POTW will maintain the general permit file for a period of three years after expiration of the general permit and include within the file the individual requests for inclusion and the basis for determining inclusion of specific users within the general permit.
- (2) SIU permits.
  - (a) The following industrial users shall be issued SIU permits:
    - [1] All significant industrial users not covered by a general permit;
    - [2] All categorical industrial users;
    - [3] Food service facilities (see § **180-13**); and
    - [4] Others as determined by the POTW.
  - (b) A permit application must be provided before approval to discharge to the Kent County sewer system can be given. The application shall follow the requirements of § **180-12C**. The permit shall be consistent with the requirements of § **180-12B(2)(c)**.
  - (c) The permit shall be issued with permit conditions that are consistent with § **180-12E** and the monitoring requirements included in § **180-12H**.

- (d) Enforcement of the provisions of the IWD permit shall be consistent with the Kent County Enforcement Response Plan detailed in Appendix A to this chapter of the Kent County Code.
- (e) The POTW will develop each individual IDW permit. The permit shall include:
  - [1] Statement of duration;
  - [2] Statement of nontransferability without prior notification to the POTW;
  - [3] Effluent limits, including BMPs, based on applicable pretreatment standards, categorical pretreatment standards, local limits and state and local laws;
  - [4] Self-monitoring, sampling, reporting and recordkeeping requirements, including appropriate sampling locations;
  - [5] A statement of applicable civil and criminal penalties for violations covered under the Enforcement Response Plan; and
  - [6] Requirements to control slug discharges as detailed under § 180-12E.
- (f) The POTW will maintain the permit file for a period of three years after expiration of the permit and include within the file the individual applications, monitoring results, and any correspondence and other permit actions, as well as any required studies, including slug control plans.
- (g) Nonsignificant categorical industrial users (NSCIU). An NSCIU shall be any categorical user whose industrial discharge subject to a categorical standard is less than or equal to 100 gallons per day. To be listed as an NSCIU, a facility must have been in compliance with the applicable categorical standard prior to being listed, and must request inclusion in the program in writing. No IWDP shall be issued for an NSCIU. The NSCIU shall certify annually that its flow meets the definition of an NSCIU, and that it is in compliance with the appropriate categorical pretreatment standard. **The annual certification must be signed by an authorized representative and contain the following certification statement:**

**Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR \_\_\_\_\_, I certify that, to the best of my knowledge and belief that during the period from \_\_\_\_\_, to \_\_\_\_\_, [months, days, year]:**

- (a) **The facility described as \_\_\_\_\_ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in 1.4 GG (3);**
- (b) **The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.**

**This compliance certification is based on the following information.**

\_\_\_\_\_.

\_\_\_\_\_.

If the NSCIU no longer meets the definition, the facility becomes an SIU and is subject to the IWDP requirements. The NCSIU must still meet all of the categorical standards, but will not be actively monitored by the POTW. The POTW shall review the annual certifications and determine whether the NSCIU may continue in the program. The POTW will publish on its Web site, www.co.kent.de.us, a list



of all approved NSCIUs. Failure to properly certify the information will result in implementation of the ERP.

- (h) Middle-tier categorical industrial user (MTCIU). A MTCIU is an industrial facility which has a categorically regulated flow between 100 gallons per day and 5,000 gallons per day, or 0.01% of the design dry-weather hydraulic capacity of the POTW, whichever is smaller; 0.01% of the design dry-weather organic treatment capacity of the POTW; and 0.01% of the maximum headworks loading for any pollutant for which approved local limits were developed by the POTW. An IWDP shall be issued to the MTCIU. The MTCIU shall report sampling data once per year and shall be inspected once every two years. This does not preclude the POTW from more frequent sampling. The MTCIU shall request inclusion in the category in writing. The MTCIU shall demonstrate at least two years of prior compliance with the definition. The MTCIU shall monitor daily categorically regulated flow, and notify the POTW if the criteria for inclusion are exceeded. Failure to properly certify the information will result in implementation of the ERP.
- E. Permit conditions. Wastewater discharge permits (both IWD and general) shall be expressly subject to all provisions of this chapter, specific pretreatment standards and requirements, and all other applicable regulations, user charges and fees established by the Levy Court of Kent County. Permits shall contain the following, if applicable:
- (1) The unit charge or schedule of user charges and fees for the wastewater to be discharged to a community sewer.
  - (2) Limits on the average and maximum wastewater constituents and characteristics, either as mass-based or concentration-based limits.
  - (3) Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization.
  - (4) Requirements for installation and maintenance of the inspection and sampling facilities.
  - (5) Specification for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for tests and a reporting schedule as detailed in § **180-12H**.
  - (6) Compliance schedules.
  - (7) Requirements for submission of technical reports or discharge reports.
  - (8) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the Public Works Director, and affording the Public Works Director access thereto.
  - (9) Requirements for notification and prior approval of the Public Works Director of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system, including but not limited to changes from the initial notification required under this chapter.
  - (10) Requirements for notification and control of accidental or slug discharges, and the need for a slug control plan. A need for a slug control plan shall be made at the time of permit issuance or renewal by the POTW. This will occur when the permit application has been received. The SIU shall notify the POTW immediately of any changes at its facilities which may affect the potential for a slug discharge, whether or not a slug control plan has been prepared. A slug control plan will be required for any IU that has experienced a slug discharge.

- (11) Applicable civil and criminal penalties as detailed in § **180-14** of this Sanitary Code and the Enforcement Response Plan (ERP) included as Appendix A to this code. Compliance schedules resulting from violations shall not extend the time for compliance beyond that time required by applicable federal and state laws and this code.
- (12) Best management practices (BMPs) may be used in lieu of numeric limits. If a categorical standard requires a BMP it shall be incorporated into the IWD. BMPs may also serve as a local limit. Compliance with BMPs included in the permit shall be covered under § **180-12H**, and noncompliance shall be covered by the ERP. BMPs shall be detailed in the general or IWD permits. BMP compliance records shall be covered as required under § **180-12H**. A BMP shall include the following elements in order to be enforceable:
- (a) A specific notice to the IU of the BMP requirements and enforceability of the BMP to be included within the IWD or general permit;
  - (b) Provide criteria and specifications for the installation of treatment systems required under the BMP;
  - (c) Requirements for or prohibitions on certain practices, activities or discharges;
  - (d) Requirements for operations and maintenance of treatment units;
  - (e) Timeframes associated with key BMP activities;
  - (f) Compliance certification, reporting requirements and record retention requirements;
  - (g) A provision for reopening or revoking the BMP conditions; and
  - (h) Other requirements as determined by the POTW.
- (13) Numeric permit limits. All numeric permit limits shall be established mass-based. The mass limit shall be based upon the actual average daily flow for the covered discharges. For CIUs who have concentration-based limits under the pretreatment standards, equivalent mass-based limits shall be established. Where the flow is too variable, concentration-based limits may be used. The applicable industries shall include the OCPSF, petroleum refining, and pesticide chemicals categories, and others as determined by the POTW. If a CIU seeks a concentration-based limit, it shall request it in writing with proper justification, including maximum and average daily flow data covering at least one year prior to the request. Dilution shall not be used as a substitute for treatment. Monitoring requirements shall be as detailed in § **180-12H**.
- (14) Pollutants not present: provide a waiver for those pollutants covered under a categorical pretreatment standard which have been shown to not be present nor expected to be present above levels in the CIU's intake water. This waiver does not apply to any baseline monitoring report or ninety-day compliance report. The IU must continue to monitor for the waived pollutants until incorporated into the general or IDW permit. The POTW will maintain a record of its decision to grant the waiver for a minimum of three years after expiration of the waiver. The waiver is valid only for the duration of the permit, and must be reapplied for prior to permit renewal. If the IU discovers the waived pollutant(s) to be present or suspected to be present, it must immediately notify the POTW. The permit will include a listing of all applicable categorical standards, including those that are waived. The waiver does not replace any certification required by the categorical standards. **Users that have an approved monitoring waiver must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the User:**

**Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR \_\_\_\_\_ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of \_\_\_\_\_ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report.**

- (15) Net/Gross calculations. If requested in writing before issuance of an IWDP, categorical pretreatment standards could be adjusted on a "net" basis if either the pretreatment standard allows such an adjustment or the CIU demonstrates its control system meets the applicable pretreatment standards. The request shall include representative intake water samples that show the influent levels of the parameter to be covered by the net calculation.
- (16) Other conditions as deemed appropriate by the Public Works Director to ensure compliance with this chapter.
- H. Monitoring and reporting requirements for permittees, including all self-monitoring.
- (1) Compliance date report. A compliance date report shall be considered a baseline monitoring report (BMR) when it is submitted by an industry regulated by categorical pretreatment standards and shall conform to the requirements of 40 CFR 403.12(b)(1) through (7) or 40 CFR 403.12(b)(1) through (5) in the case of new sources. Within 90 days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to pretreatment standards and requirements shall submit to the Public Works Director a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and regulations and the average and maximum daily flow for these process units in the user facility which are limited by such pretreatment standards or requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional O&M and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user. This report shall contain a certification by an authorized representative of the industrial user or by an independent engineer containing the statement included in § 180-12C(2).
- (2) Periodic compliance (monitoring) reports.
- (a) Any permit issued under this code shall require periodic compliance reports. These reports shall be detailed in the permit and are to be submitted to the Public Works Director, ~~[via the appropriate page of the Kent County Public Works Web site]~~ **in hardcopy with the original wet-ink signature**. ~~[Each time a report is submitted via the Web site, the page requires that the user agree to the certification included on the page as a part of the submittal.]~~ By January 31 of each year, a signed written certification by an authorized representative of the industrial user shall be submitted **in hardcopy with the original wet-ink signature** to the Public Works Director containing the statement included in § 180-12(C)(2). In addition, this annual certification statement should provide the name of the representative of the permittee who is authorized to submit the ~~[data via the Web site]~~ **report**. This authorized representative must be allowed to certify to the accuracy of the information~~[, as required by the Web page]~~. If the authorized ~~Web site~~ representative is changed, the new name must be provided in writing by the permittee immediately upon making the change. ~~[If the Web site is inaccessible, the report shall be in writing and include the appropriate certification.]~~



**(b) All Significant Industrial Users must, at a frequency detailed in the Industrial Wastewater Discharge Permit (not to be less than twice per year, except as specified in §180-12B(2)) submit reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution preventative alternative, the User must submit documentation required by the Public Works Director or the Pretreatment Standard necessary to determine the compliance status of the User.**

[(b)] **(c)** Any user subject to a pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Public Works Director [~~via the appropriate page on the Kent County Public Works Web site~~] a quarterly report indicating the nature and concentration of pollutants in the effluent for which self-monitoring requirements have been incorporated in the user's industrial wastewater discharge permit. Sampling shall be performed during the period covered by the report at the frequency specified in the user's industrial wastewater discharge permit. Chain of custody forms are required for all analyses not performed in the user's laboratory and are to be kept on file by the industrial user and made available to representatives of the Public Works Director upon request.

[1] If a user subject to self-monitoring requirements through its industrial wastewater discharge permit monitors any pollutant more frequently than required, the results shall be reported [~~via the Kent County Public Works Web site~~] **to the Public Works Director.**

[2] If sampling performed by a user indicates a violation, the user shall notify Kent County within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Kent County Department of Public Works, Engineering Division, within 45 days after becoming aware of the violation. The repeat sampling would not be required in the event that the user samples at a frequency of monthly or more frequently for the parameter in violation.

[3] In addition, a record of all daily flows shall be reported [~~via the Kent County Public Works Web site~~] **to the Public Works Director.** At the discretion of the Public Works Director and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Public Works Director may agree to alter the months during which the above reports are to be submitted. [~~If the Web site is inaccessible, t~~]The report shall be in writing and include the appropriate certification.

[(e)] **(d)** BMP compliance reports, self-monitoring reports and certifications detailed within either the general or IWD permits shall be submitted within 45 days of the due date. Failure to provide the required information will be handled through the ERP.

[(d)] **(e)** The Public Works Director may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements or in other cases where the imposition of mass limitations is appropriate. In such cases, the report shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user and be reported [~~via the Kent County Public Works Web site~~] **to the Public Works Director.** These reports shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration or production and mass where requested by the Public Works Director, of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the applicable pretreatment standard.

- [1] All analysis shall be performed in accordance with procedures established by the Administrator pursuant to Section 304(g) of the Act and contained in 40 CFR 136 and amendments thereto or with any other test procedures approved by the administrator. Sampling shall be performed in accordance with the techniques approved by the Administrator. ~~[If the Web site is inaccessible, the report shall be in writing and include the appropriate certification.]~~
- [2] (Comment: Where 40 CFR 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with the procedures set forth in the EPA publication, Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants, April 1977, and amendments thereto, or with any other sampling and analytical procedures approved by the Administrator.)
- ~~[(e)]~~ **(f)** All records of information obtained pursuant to monitoring activities required by this code, and any additional records of information obtained pursuant to monitoring activities undertaken by the permittee independent of such requirements, **and documentation associated with Best Management Practices** shall be retained for a minimum of three years and made available for inspection and copying. Records shall include the date, exact place, method, and time of sampling, and the name(s) of the person(s) taking the samples; the date analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. This period shall be automatically extended for the duration of any litigation concerning the user of Kent County, or where the permittee has been specifically notified of a longer retention period by the Director of Public Works.
- ~~[(f)]~~ **(g)** Sampling and monitoring requirements.
- [1] The general or IWD permit shall detail specific monitoring requirements for all parameters for which limits have been established. The limits shall require either composite or grab samples as deemed appropriate by the POTW. The permit will specify the test method, sampling protocol and testing frequency for each parameter.
- [2] Grab samples are required for certain parameters, specifically pH, temperature, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds, unless the discharge is of limited duration during any one day. Samples shall be taken using four individual grabs over a twenty-four-hour period. Samples for cyanide, total phenols, sulfides, oil and grease and volatile organic compounds may be composited prior to analysis in the laboratory. Samples for pH, temperature and total residual chlorine may not be composited. All monitoring samples that are analyzed shall be reported to the POTW. For those facilities that do not discharge on a twenty-four-hour day, the samples must be collected at equally spaced intervals during the period that process wastewater is being discharged. All samples shall be representative of the process wastewaters being discharged.
- [3] Except for parameters specified in §180-12 H(2)(g)[2], the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the County. The samples must be representative of the discharge.**
- J. Confidential information. Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs, ~~and from inspections,~~ **and sampling activities** shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the County that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. **Any such request should be made at the time of submission of the information or data and the words "confidential business information" should be stamped on each page containing such information.** When requested **and demonstrated** by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for

inspection by the public but shall be made available upon request to governmental agencies for uses related to this chapter, the National Pollutant Discharge Elimination System (NPDES) permit, state disposal system permit, ~~and/or~~ the pretreatment program, **and in enforcement proceedings involving the person furnishing the report.** Wastewater constituents and characteristics will not be recognized as confidential information. Information accepted by the Public Works Director as confidential shall not be transmitted to the general public by the Public Works Director until and unless a ten-day notification is given to the user.

~~{Q. Pretreatment Environmental Excellence Program (PEEP):~~

- ~~(1) For all significant industrial users who adopt and implement an Environmental Management System (EMS) equivalent to the format covered under ISO 14001 for their pretreatment facilities, they may be offered:
  - ~~(a) A fifty percent reduction in all application fees required under this subsection of Chapter 180.~~
  - ~~(b) A fifty percent reduction in all surcharge fees that may apply to the facility under § 180-120.~~
  - ~~(c) Up to a fifty percent reduction in fines associated with administrative orders issued pursuant to the Enforcement Response Plan (ERP) in Appendix A to Chapter 180, provided violations were discovered through the EMS and no danger to human health or the environment resulted from the covered violation(s).~~
  - ~~(d) Eligibility for an Environmental Excellence Award to be given once every two years to SIUs performing exceptionally under this chapter of the Kent County Code.~~
  - ~~(e) Reduced sampling frequencies for all parameters, except those used to calculate the TOD surcharge (COD, TKN).~~~~
- ~~(2) All self-verified EMSs shall be submitted to Kent County Public Works for verification that they meet the criteria set forth under the ISO standard.~~
- ~~(3) Verification by a third party shall be sufficient to result in an approved EMS.~~
- ~~(4) SIUs participating in this program shall maintain the EMS for as long as they seek eligibility under this program. An annual report shall be submitted to the Kent County Department of Public Works that provides key EMS information.~~
- ~~(5) Non-SIUs may seek to participate in this program and will be subject to the provisions of the program.~~
- ~~(6) A letter of commitment must be provided by each SIU who wishes to participate in the program agreeing to implement an EMS and signed by a responsible party for the SIU. This letter shall be drafted by the Kent County Department of Public Works (DPW).~~
- ~~(7) The provisions covered in this section are not available to any SIU where the requirement for an EMS has been imposed by the Kent County Department of Public Works through any legal instrument, including an administrative order or a consent decree. However, the provisions may be applied to a covered SIU after the required EMS has been operating for at least one year and if provided for in writing by the Kent County DPW.]~~

**Section 4** That the Kent County Code, Volume I, Chapter 180 Sanitary Standards, 180 Attachment 3, (Appendix A) is hereby amended by deleting bracketed language with strike-through marks and by

adding the underlined language as follows as well as table titled "Enforcement Response Guide" being replaced in its entirety by the following:

### **Appendix A: Kent County Industrial Pretreatment Program Enforcement Response Plan**

V. Significant noncompliance. Significant noncompliance (SNC) shall be defined as a violation or violations which meet one or more of the following criteria:

- (1) Violations of wastewater discharge permit or Sanitary Code.
  - (a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standards or Requirement, including instantaneous permit limits.
  - (b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including instantaneous permit limits, multiples by the applicable criteria (1.4 for BOD, TSS, fats, oils, and grease, and 1.2 for all other pollutants except pH).
  - (c) Any violation(s) of [~~an effluent limit (average or daily maximum)] a Pretreatment Standard or Requirement (daily maximum, long-term average, instantaneous maximum, or narrative standard) that has caused, alone or in combination with other discharges, interference or pass-through, or has endangered the health of the public or sewage treatment personnel.~~
  - (d) Any discharge from permitted or unpermitted industrial users of a pollutant that has caused imminent endangerment to human health and/or welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such discharges.
  - (e) Any discharge from permitted or unpermitted industrial users that passed through or interfered with the operation of the treatment process.
- (2) Violations of compliance schedule milestones contained in a local control mechanism or enforcement order for starting or completing construction and attaining final compliance by 90 days or more after compliance schedule dates.
- (3) Failure to provide reports for compliance schedules, self-monitoring data or categorical standards (baseline monitoring reports, ninety-day compliance reports, compliance and periodic reports) within 45 days from the due date.
- (4) Failure to accurately report noncompliance.
- (5) Any violation or group of violations that include a best management practice (BMP) which could adversely affect the operation or implementation of the pretreatment program or affect the treatment plant.

The County shall annually publish in the Delaware State News newspaper a list of industrial users which have demonstrated significant noncompliance (SNC) with applicable pretreatment standards or other pretreatment requirements during the 12 previous months as required by 40 CFR 403.8(f)(2)(viii). The notice shall also summarize any enforcement actions taken against the user(s) during the same 12



months.

### Enforcement Response Guide

#### Enforcement Category: Unauthorized Discharge – No permit

<u>Violation</u>	<u>Incident</u>	<u>Response</u>	<u>Responder</u>
<u>Unpermitted Discharge</u>	<u>IU unaware of requirement. No harm to POTW or environment.</u>	<u>TN, NOV, AF</u>	<u>EPM</u>
	<u>IU unaware of requirement. Discharge is harmful to POTW or environment.</u>	<u>AO, CCA</u>	<u>PWD</u>
	<u>Continuation after failure to apply for permit. Notice of violation ignored.</u>	<u>CCA</u> <u>CI</u> <u>TS</u>	<u>PWD</u> <u>PWD, CA</u> <u>PWD, CA</u>
	<u>Failure to renew permit. Application not submitted within 45 days after due date.</u>	<u>TN, NOV</u>	<u>EPM</u>
	<u>Application significantly late (greater than 45 days.)</u>	<u>AO, AF</u>	<u>PWD</u>

#### Enforcement Category: Discharge Limit Violations

<u>Violation</u>	<u>Incident</u>	<u>Response</u>	<u>Responder</u>
<u>Wastewater exceeds local or Federal standard limits</u>	<u>Infrequent or isolated.</u>	<u>NOV</u>	<u>EPM</u>
	<u>Does not exceed TRC. Infrequent or isolated.</u>	<u>AO, AF</u>	<u>PWD</u>
	<u>Significant, exceeds TRC. Infrequent or isolated.</u>	<u>SC, CCA</u>	<u>PWD</u>
	<u>Discharge is harmful to POTW or environment.</u>	<u>TS</u>	<u>PWD, CA</u>
	<u>Reoccurring, significant.</u>	<u>AO, CCA</u>	<u>PWD</u>
	<u>Exceeds TRC or causes harm to POTW.</u>	<u>TS</u>	<u>PWD, CA</u>

#### Enforcement Category: Monitoring and Reporting of Violations

<u>Violation</u>	<u>Incident</u>	<u>Response</u>	<u>Responder</u>
<u>Noncompliance with monitoring report requirements</u>	<u>Improperly signed or certified.</u>	<u>TN, NOV</u>	<u>EPM</u>
	<u>Improperly signed or certified after NOV.</u>	<u>AO, AF, SC</u>	<u>PWD</u>
	<u>Information missing from analytical report, chain of custody or other. Infrequent or isolated.</u>	<u>NOV</u>	<u>EPM</u>
	<u>Information missing, reoccurring.</u>	<u>AO, AF</u>	<u>PWD</u>
	<u>Report late (30 days or less late).</u>	<u>TN, NOV</u>	<u>EPM</u>
	<u>Isolated and not significant. Report late (greater than 30 days).</u>	<u>NOV</u>	<u>EPM</u>
	<u>Significant.</u>	<u>AO, AF/day</u>	<u>PWD</u>
	<u>Reports late. Reoccurring or no reports at all.</u>	<u>AO, AF, SC,</u> <u>CCA</u>	<u>PWD</u>

<u>Spills, reporting of</u>	<u>Failure to report spill or changed discharge.</u> <u>No harm.</u>	<u>NOV</u>	<u>EPM</u>
	<u>Failure to report spill or changed discharge.</u> <u>Results in harm to POTW or environment.</u>	<u>AO, AF, CCA</u>	<u>PWD</u>
	<u>Failure to report spills.</u>	<u>SC</u>	<u>PWD</u>
	<u>Reoccurring.</u>	<u>TS</u>	<u>PWD, CA</u>
<u>Falsification</u>	<u>Unauthorized modification of documents or information.</u>	<u>CI, TS</u>	<u>PWD, CA</u>
<u>Failure to monitor</u>	<u>Failure to monitor all pollutants required by permit or Sanitary Code.</u>	<u>NOV</u>	<u>EPM</u>
	<u>Failure to monitor all pollutants required by permit or Sanitary Code. Reoccurring.</u>	<u>AO, AF</u> <u>CI</u>	<u>PWD</u> <u>PWD, CA</u>
<u>Improper Sampling</u>	<u>First Violation.</u>	<u>NOV</u>	<u>EPM</u>
	<u>Reoccurring.</u>	<u>AO, AF</u>	<u>PWD</u>
	<u>Intentional improper sampling.</u>	<u>CI</u>	<u>PWD, CA</u>
<u>Failure to install monitoring equipment</u>	<u>Delay, less than 30 days.</u>	<u>NOV</u>	<u>EPM</u>
	<u>Delay, greater than 30 days.</u>	<u>AO, AF/day</u>	<u>PWD</u>
	<u>Reoccurring. Violation of Administrative Order.</u>	<u>CCA</u> <u>CI, TS</u>	<u>PWD</u> <u>PWD, CA</u>
<u>Failure to achieve compliance schedule(s)</u>	<u>Missed milestone, less than 30 days. Will not affect final milestone.</u>	<u>NOV</u>	<u>EPM</u>
	<u>Missed milestone, more than 30 days, or will affect final milestone.</u>	<u>AO, AF, SC,</u> <u>CCA</u> <u>TS</u>	<u>PWD</u> <u>CA</u>
	<u>Reoccurring violations of AO schedule.</u>	<u>CCA</u> <u>CI, TS</u>	<u>PWD</u> <u>PWD, CA</u>

**Enforcement Category: Other Permit Violations**

<u>Violation</u>	<u>Incident</u>	<u>Response</u>	<u>Responder</u>
<u>Waste Stream Dilution</u>	<u>First Violation.</u>	<u>AO, AF</u>	<u>PWD</u>
	<u>Reoccurring.</u>	<u>SC</u> <u>TS</u>	<u>PWD</u> <u>PWD, CA</u>
<u>Failure to mitigate non-compliance or halt production</u>	<u>No harm to POTW or environment.</u>	<u>NOV</u>	<u>EPM</u>
	<u>Harm to POTW or environment.</u>	<u>AO, AF</u> <u>CCA</u>	<u>PWD</u> <u>PWD</u>
<u>Failure to properly operate and maintain pre-treatment facility</u>	<u>No harm to POTW or environment.</u>	<u>NOV</u>	<u>EPM</u>
	<u>Harm to POTW or environment.</u>	<u>AO, AF, CCA</u>	<u>PWD</u>
<u>Failure to comply with Administrative Order</u>	<u>No harm to POTW or environment.</u>	<u>SC, CCA</u>	<u>PWD</u>
	<u>Harm to POTW or environment.</u>	<u>CCA</u> <u>CI, TS</u>	<u>PWD</u> <u>PWD, CA</u>

**Enforcement Category: Other Violations**

<u>Violation</u>	<u>Incident</u>	<u>Response</u>	<u>Responder</u>
<u>Pass-through or interference with treatment plant operations</u>		<u>AO, AF, CCA</u> <u>SC, CI, TS</u>	<u>PWD</u> <u>PWD, CA</u>
<u>Imminent endangerment that adversely affects pretreatment program</u>		<u>AO, AF, CCA</u> <u>SC, CI, TS</u>	<u>PWD</u> <u>PWD</u>
<u>BMP Violation</u>	<u>No harm to POTW or environment.</u>	<u>TN, NOV</u>	<u>EPM</u>
	<u>Harm to POTW or environment.</u>	<u>AO, AF, CCA</u>	<u>PWD</u>
<u>Entry Denial</u>	<u>Site entry denied or consent withdrawn. Copies of records denied.</u>	<u>NOV</u> <u>SW</u>	<u>EPM</u> <u>PWD, CA</u>


**Enforcement Category: Violations Detected During Site Visits**


<u>Violation</u>	<u>Incident</u>	<u>Response</u>	<u>Responder</u>
<u>Illegal Discharge</u>	<u>No harm to POTW or environment.</u>	<u>AO, AF</u>	<u>PWD</u>
	<u>Harm to POTW or environment.</u>	<u>CCA</u> <u>CI</u>	<u>PWD</u> <u>PWD</u>
	<u>Reoccurring or violation of administrative order.</u>	<u>TS</u>	<u>PWD, CA</u>
<u>Inadequate Record Keeping</u>	<u>Files incomplete or missing.</u>	<u>NOV</u>	<u>EPM</u>
	<u>Reoccurring.</u>	<u>AO, AF</u> <u>CI</u>	<u>PWD</u> <u>PWD, CA</u>
<u>Failure to report additional monitoring</u>	<u>Additional analytical information on file.</u>	<u>NOV</u>	<u>EPM</u>
	<u>Reoccurring.</u>	<u>AO, AF</u>	<u>PWD</u>

**Section 5 Severability.** The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph shall be held unconstitutional or violate the Laws of the State of Delaware by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

**Section 6 Effective Date.** This ordinance shall become effective upon its adoption.

**ADOPTED BY THE LEVY COURT OF KENT COUNTY, DELAWARE**

  
\_\_\_\_\_  
PRESIDENT, KENT COUNTY LEVY COURT  
This 12<sup>th</sup> Day of December, 2023

  
\_\_\_\_\_  
ATTEST: CLERK OF THE PEACE