

## Chapter 42

### UTILITIES\*

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\* **State Law References:** Township water supply and sewage disposal services and facilities, MCL 41.331 et seq.

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**ARTICLE I.  
IN GENERAL**

**Secs. 42-1--42-18. Reserved.**

**ARTICLE II.  
SEWER SYSTEM**

**DIVISION 1.  
GENERALLY**

**Secs. 42-19--42-39. Reserved.**

**DIVISION 2.  
RATES AND MANDATORY CONNECTIONS**

**Subdivision I.  
In General**

**Sec. 42-40. Operation on public utility rate basis.**

It is hereby determined to be desirable and necessary, for the public health, safety and welfare of the township, that the county wastewater management system-number one (township extension) be operated by said township as lessee of the county and the county department of public works under Public Act No. 185 of 1957 (MCL 123.731 et seq.) on a public utility rate basis in accordance with the provisions of Public Act No. 94 of 1933 (MCL 141.101 et seq.).  
(Compiled Ords. 1990, § 25.001)

**Sec. 42-41. Definitions.**

Whenever the words "the system" are referred to in this division, they shall be understood to mean the complete county wastewater management system-number one (township extension), including all sewers, pumps, lift stations, and all other facilities used or useful in the collection and disposal of domestic, commercial or industrial wastes, including all appurtenances thereto and including all extensions and improvements thereto, which may hereafter be acquired. Whenever the words "revenues" and "net revenues" are used in this division, they shall be understood to have the meanings as defined in section 3 of Public Act No. 94 of 1933 (MCL 141.103).  
(Compiled Ords. 1990, § 25.002)

**Sec. 42-42. Supervision and control of system.**

The operation and maintenance of the system shall be under the supervision and control of the township, subject to the terms of the contract dated January 14, 1978, between the county and the township. Pursuant to the terms of such contract, the township has retained the exclusive right to establish, maintain and collect rates and charges for sewer collection and disposal service; and in such capacity, the township board may employ such person or persons in such capacity or capacities as it deems advisable and may make such rules, orders and regulations as it deems advisable and necessary to ensure the efficient establishment, maintenance and collection of such rates and charges.  
(Compiled Ords. 1990, § 25.003)

**Secs. 42-43--42-72. Reserved.**

## **Subdivision II.**

### **Rates and Charges**

#### **Sec. 42-73. Rates and charges.**

Rates to be charged for service furnished by the system shall be as follows:

- (1) *Sewer use charges.* All sewer use charges shall be made against each user and premises based upon rates to be determined by resolution.
- (2) *Connection charge.*
  - a. *Connection charge.* Connection charges that are determined under this section, shall henceforth be determined by resolution of the township board.
  - b. *Direct and indirect connections.* For each direct connection to the lines of the system there shall be charged a connection fee of the full amount set by resolution per single-family residence equivalent. For each indirect connection the charge shall be one-half of the resolution amount per single-family residence equivalent or user charge unit.
  - c. *Indirect connection.* An indirect connection shall be defined as one made to lines added to the system after its original construction, the cost of which is paid from special assessments or private funds, to include public funds expended without special assessing to the property.
  - d. *Equivalent user factor; user charge units.* Properties containing only a single-family residence equivalent shall pay connection charges as above defined multiplied by one unit for each single-family residential unit. All other uses shall pay the above connection charges multiplied by a factor representing the ratio of sewage use by such class of premises to normal single-family residential use as determined by the township board and adopted by resolution. The equivalent user factor or user charge units shall be calculated for any premises based on the use of the property at the time of the original application

for sewer service of connection for sewer service. Whenever the use of the property is changed, modified or enlarged therefrom, an additional connection charge based on the amount of units resulting from the change shall be further paid. The equivalent user factor or number of user charge units shall not be revised below that applicable to the original application for connection or in effect at the time of connection.

e. *Payment of connection charge.* Connection charges shall immediately constitute a lien on the premises served on the date of the publication of the notice of availability and shall be due and payable as follows:

1. *Connection of new structure to existing sewer.* Where a new structure is connected to an existing sewer, the amount due for the single-family residence equivalent shall be payable prior to and as a condition of the issuance of a building permit.
2. *Connection of structure existing when a sewer is made available.* In the case where a new sewer is first made available to an existing structure, where the structure is in place and able to be lawfully occupied on the date the notice of availability is published, if the connection charge is not then paid in full, the charge may be paid in installments with interest at the annual rate of six percent per annum on the unpaid balance over a period of ten years. If paid in installments, the first installment shall be payable upon application for the connection, and all subsequent installments plus interest shall be payable annually on July 1 of each year, to be billed effective said, and payable by September 14 of any said year. All payments shall carry the interest above to the date of payment. Any payment not paid by September 14 shall be delinquent and shall be placed on the tax roll. In addition, the township may collect same by personal action.
3. *Other cases.* In all other cases, the connection charge shall be paid in full and shall be due and constitute a lien on the date the notice of availability is published.

f. *Reserved.*

(3) *Special rates.* For miscellaneous or special services for which a special rate shall be established, such rates shall be fixed by the township board.

(4) *Billing.*

- a. Bills for sewer use charges shall be rendered quarterly on January 1, April 1, July 1, and October 1, payable without penalty within 30 days after the date thereon. Payments received after such period shall bear a penalty of six percent of the amount of the bill.
- b. Bills for connection charge installments and interest and penalties shall be rendered on July 1 of every year. Payments received after September 14 following said billing shall bear a penalty of six percent of the amount of the bill.

(Compiled Ords. 1990, § 25.004; Res. No. 08012005, 8-1-2005; Ord. of 9-15-2008)

**Sec. 42-74. No free service.**

No free service shall be furnished by said system to any person, firm or corporation, public or private, or to any public agency or instrumentality.  
(Compiled Ords. 1990, § 25.005)

**Sec. 42-75. Connection; time limit.**

It is hereby determined and declared that public sanitary sewers are essential to the health, safety and welfare of the people of the township; that all premises on which structures in which sanitary sewage originates are situated shall connect to the system at the earliest reasonable date as a matter for the protection of the public health, safety and welfare of the people of the township, and therefore, all premises on which structures in which sanitary sewage originates are situated or become situated and to which sewer services of the system shall be available shall connect to said system within 90 days after the mailing or posting of notice to such premises by the appropriate township official that such services are available. Said notification and enforcement of this section shall be in conformity with part 127 of the Public Health Code (MCL 333.12701 et seq.)  
(Compiled Ords. 1990, § 25.006)

**Sec. 42-76. Rate sufficiency.**

The rates hereby fixed are estimated to be sufficient to provide for the payment of the expenses of administration and operation, such expenses for maintenance of the said system as are necessary to preserve the same in good repair and working order; to provide for the payment of the contractual obligations of the township to the county pursuant to the aforesaid contract between said county and the township as the same become due, and to provide for such other expenditures and funds for said system as this subdivision may require. Such rates shall be fixed and revised from time to time as may be necessary to produce these amounts.  
(Compiled Ords. 1990, § 25.007)

**Sec. 42-77. Operating year.**

The system shall be operated on the basis of an operating year commencing on July 1 and ending on the last day of June next following.  
(Compiled Ords. 1990, § 25.008)

**Sec. 42-78. Funds.**

The revenues of the system shall be set aside, as collected, and deposited in a separate depository account in a bank duly qualified to do business in the state, in an account to be designated sewer system receiving fund (hereinafter; for brevity; referred to as the "receiving fund"), and said revenues so deposited shall be transferred from the receiving fund periodically in the manner and at the time hereafter specified.

- (1) *Operation and maintenance fund.* Out of the revenues in the receiving fund there shall be first set aside quarterly into a depository account, designated operation and maintenance fund, a sum sufficient to provide for the payment of the next quarter's current expenses of administration and operation of the system and such current expenses for the maintenance thereof as may be

necessary to preserve the same in good repair and working order.

- (2) *Contract payment fund.* There shall next be established and maintained a depository account, to be designated contract payment fund, which shall be used solely for the payment of the township's obligations to the county pursuant to the aforesaid contract. There shall be deposited in said fund quarterly, after requirements of the operation and maintenance fund have been met, such sums as shall be necessary to pay said contractual obligations when due. Should the revenues of the system prove insufficient for this purpose, such revenues may be supplemented by any other funds of the township legally available for such purpose.
- (3) *Replacement fund.* There shall next be established and maintained a depository account, designated replacement fund, which shall be used solely for the purpose of making major repairs and replacements to the system if needed. There shall be set aside into said fund, after provision has been made for the operation and maintenance fund and the contract payment fund, such revenues as the township board shall deem necessary for this purpose.
- (4) *Improvement fund.* There shall next be established and maintained an improvement fund for the purpose of making improvements, extensions and enlargements to the system. There shall be deposited into said fund, after providing for the foregoing fund, such revenues as the township board shall determine.
- (5) *Surplus moneys.* Moneys remaining in the receiving fund at the end of any operating year, after full satisfaction of the requirements of the foregoing funds, may, at the option of the township board, be transferred to the improvement fund or used in connection with any other project of the township reasonably related to purposes of the system.
- (6) *Bank accounts.* All moneys belonging to any of the foregoing funds or accounts may be kept in one bank account, in which event the moneys shall be allocated on the books and records of the township within this single bank account, in the manner above set forth.

(Compiled Ords. 1990, § 25.009)

#### **Sec. 42-79. Transfer of moneys.**

In the event the moneys in the receiving fund are insufficient to provide for the current requirements of the operation and maintenance fund, any moneys and/or securities in other funds of the system, except sums in the contract payment fund derived from tax levies, shall be transferred to the operation and maintenance fund, to the extent of any deficit therein.

(Compiled Ords. 1990, § 25.010)

#### **Sec. 42-80. Investments.**

Moneys in any fund or account established by the provisions of this subdivision may be invested in obligations of the United States of America in the manner and subject to the limitations provided in Public Act No. 94 of 1933 (MCL 141.101 et seq.). In the event such investments are made, the securities representing the same shall be kept on deposit with the bank or trust company having on deposit the fund or funds from which such purchase was made. Income received from such investments shall be credited to the fund from which said

investments were made.  
(Compiled Ords. 1990, § 25.011)

**Sec. 42-81. User charge units**

User charge units and related matters shall be as established by resolution.  
(Compiled Ords. 1990, § 25.020)

**Secs. 42-82--42-105. Reserved.**

**Subdivision III.**

**Hardship Deferrals of Connection Charges**

**Sec. 42-106. Sewer appeal board.**

Notwithstanding any provision in any ordinance of the township to the contrary, it is recognized that paying the fees and charges required and paying the cost of tying into sewers may create undue financial hardship on property owners who are required to hook up to a sewer. In order to prevent such undue hardship, there is hereby established a sewer appeal board. Said board shall have three members, one of whom shall be the township supervisor, one of whom shall be a member of the township board, appointed by the board, and who shall serve at the pleasure of the board, and one of whom shall be a resident of the township, appointed by the board and who shall serve at the pleasure of the board. Any two members of the sewer appeal board shall constitute a quorum for the purpose of taking action on any application.  
(Compiled Ords. 1990, § 25.051)

**Sec. 42-107. Application for deferment.**

Any residential property owner who believes that the payment of sewer connection charges imposed by the township and the payment of the cost of connecting his structure to the sewer will subject him to undue financial hardship may apply to the sewer appeal board for relief from the payment of said charges imposed by ordinance. Such application shall be in writing, signed by the property owner under penalty of perjury, and shall contain such financial information about the applicant and the persons permanently residing at the premises as may be required by the appeal board in order for the board to determine whether the laws requiring hookup and service by sanitary sewer will, in fact, subject the property owner to undue financial hardship. An application for deferment shall be filed with the township within 45 days of notice of availability or notice of mandatory connection where there is no applicable notice of availability. The sewer appeal board shall meet within 20 days thereafter to consider such applications and shall render its decision within ten days after such meeting. Applications received after the 45-day period will be considered for installment payments due more than one year after the 45-day period described above. No deferment of said charges shall be granted except to residential property owners who reside on the premises for which deferment is sought.  
(Compiled Ords. 1990, § 25.052)

**Sec. 42-108. Standards for determining undue financial hardship.**

Undue financial hardship exists when:



- (1) The cost of installing the sewer from the property line to the structure to be served and connecting the structure to said sewer, plus the total of township sewer connection charges imposed by township ordinance will exceed 50 percent of the household income. Property owners must submit evidence that the cost of installing the sewer from the property line to the structure was bid by at least three contractors with the lowest bid being used for the purpose of computing the cost of installation. Bids shall not be required where the total of the sewer connection charges imposed by the township exceeds 50 percent of the household income.
- (2) Undue financial hardship shall be presumed present in all cases where applicant is an owner of a homestead, is 65 years of age or older, or is totally and permanently disabled, and in addition whose household income is at or below the poverty levels established for the county by the state department of social services at the time of the hardship determination, and in addition where the applicant lives on the premises which are required to be connected to the sewer.
- (3) The appeal board may consult any well-established standards, such as those adopted from time to time by the county department of social services or other source, in order to determine whether hardship exists in the household.
- (4) Notwithstanding the above, the appeal board shall consider the availability of other property interests as well as tangible or intangible personal property, or cash, in its decision regardless of household income or the foregoing standards.

(Compiled Ords. 1990, § 25.053; Ord. of 9-15-2008)

#### **Sec. 42-109. Definition of household income.**

Household income shall include pension, annuity, disability compensation, compensation for services rendered, net receipts from sales, social security, interest income, dividend income, and shall include, but not be limited to, income as defined under the state Income Tax Act, and shall include all such income received by all persons permanently residing on the premises.

(Compiled Ords. 1990, § 25.054)

#### **Sec. 42-110. Relief.**

(a) *Deferral of charges.* In all cases where the sewer appeal board finds the property owner will be subject to undue financial hardship if required to connect to an available sanitary sewer, said board may defer all or part of the charges and fees imposed by the township for the periods set forth in subsection (c) of this section, for a set term, or by installment payments. The owner shall be required to execute a promissory note and mortgage to the township in the amount of the charges and fees so deferred. Such note and mortgage shall bear interest on the unpaid balance at the rate of six percent per annum, and contain appropriate terms determined by the board. Each deferral granted shall be reviewed annually by the appeals board.

(b) *Supplemental relief.* An owner who qualifies for or has been granted a deferment of all of the connection and service charges may qualify for supplemental relief as provided in this subsection. Supplemental relief shall mean that the township shall, upon written request of the owner upon a form provided by the township, have the connection from the structure to the public sanitary sewer made and shall pay for such

connection, provided the requirements of section 42-108(1) are met. The owner shall be required, prior to the connection to execute a promissory note and mortgage to the township in the amount of the estimated cost of such connection. The amount of the note and mortgage shall be adjusted to the actual cost of such connection, if there is a variance between the estimated and actual cost. Such note and mortgage shall bear interest on the unpaid balance at a rate of six percent per annum.

(c) *Mortgage due date.* The entire balance of the note and mortgages provided in subsections (a) and (b) of this section, with interest as provided, shall be due on the dates and by their terms provided, or upon the sale of the property, whether for cash or extended terms, upon any conveyance or leasing of the property, or upon the death of the owner who qualified for the deferment, or in the case of more than one owner qualifying, upon the death of the survivor of those qualifying owners, or in the event that all of the qualifying owners move their residence from the premises, or in the case of a false statement of an applicant who would not otherwise have been qualified. Notwithstanding any other provision, all mortgages provided in subsection (a) and (b) of this section shall be due 14 years from the date of the execution of said mortgage. If, at the expiration of said 14-year period, the owner is still qualified for deferment, he may apply for such deferment as provided in this subdivision.

(Compiled Ords. 1990, § 25.055; Ord. of 9-15-2008)

#### **Sec. 42-111. Termination of relief.**

The sewer appeal board has continuing authority over all deferments granted by it. The board may require a property owner receiving a deferment to periodically supply the board with data from which the board can determine whether a deferment should be continued. If it should appear to the board that a deferment theretofore granted should be terminated because of a change in the circumstances of the household, the board shall notify the owner in writing that it proposes to terminate the owner's deferment and, after granting the owner an opportunity to be heard, the board may either continue the deferment or terminate same in whole or in part. All mortgages signed under this subdivision shall contain the condition that the due date may be accelerated by the board's action under this section.

(Compiled Ords. 1990, § 25.056)

#### **Sec. 42-112. Additional duties of sewer appeal board.**

In addition to determining hardship deferrals, the sewer appeal board shall advise the supervisor in his determinations regarding deferrals of sewer connection fees for persons 65 years or older or permanently and totally disabled, who seek to qualify under Act 225 of the Public Acts of 1976, as amended. All applications for said deferrals shall be processed by the sewer appeal board and recommendations by the board shall be submitted to the supervisor. Nothing in this subdivision shall be construed to allow deferral of connection charges in addition to the relief afforded by Public Act No. 225 of 197 (MCL 211.761 et seq.), if such relief is obtained, and if connection charges are completely discharged by the said relief.

(Compiled Ords. 1990, § 25.057)

#### **Secs. 42-113--42-137. Reserved.**

### **DIVISION 3.**

## **SEWER USE REQUIREMENTS**

## Subdivision I.

### In General

#### Sec. 42-138. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*BOD* means biochemical oxygen demand, or the quantity of oxygen utilized in the biochemical oxidation of organic matter.

*Building drain* means that part of the lowest horizontal piping of a drainage system that receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

*Building sewer* or *lateral* means the extension from the building drain to the public sewer or other place of disposal.

*Cesspool*, *septic tank*, and *privy* mean for the purpose of this subdivision, an individual system for the disposal of sanitary sewage other than to a public sewer.

*Class of users* means the division of sanitary sewer customers into classes by similar process or discharge flow characteristics as follows:

- (1) *Commercial user* means any retail or wholesale business engaged in selling merchandise or a service that discharges only segregated domestic wastes or wastes from sanitary conveniences.
- (2) *Governmental user* means any federal, state or local government office or government facility that discharges only segregated domestic wastes or wastes from sanitary conveniences.
- (3) *Industrial user* means:
  - a. Any nongovernmental user of a publicly owned treatment works which discharges more than 25,000 gallons per day of sanitary waste, or a volume of process waste, or combined process and sanitary waste, equivalent to 25,000 gallons per day of sanitary waste;
  - b. Any nongovernmental user of a publicly owned treatment works which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids or gases in sufficient quantity either singly or by interaction with other wastes, to contaminate the sludge of the treatment works, or which constitutes a hazard to humans or animals, creates a public nuisance, or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.
- (4) *Institutional user* means any educational, religious or social organization such as a school,

church, nursing home, hospital or other institutional user that discharges only segregated domestic wastes or wastes from sanitary conveniences.

- (5) *Residential user* means an individual home or dwelling unit, including mobile homes, apartments, condominiums or multifamily dwellings, that discharges only segregated domestic wastes or wastes from sanitary conveniences.

*COD* means chemical oxygen demand, or the total demand or quantity of oxygen required by the sanitary sewage as specified in the current edition of "Standard Methods for the Examination of Water and Wastewater" expressed in milligrams per liter.

*Combined sewer* means a sewer receiving both surface runoff and sewage.

*Commercial wastes* means the liquid or water-carried wastes from commercial establishments or those concerns engaged in buying, selling or exchanging goods or services.

*Compatible pollutant* means biochemical oxygen demand, suspended solids, pH and fecal coliform bacteria, plus any additional pollutants identified in the NPDES permit if the treatment works was designed to treat such pollutants and can, in fact, remove such pollutants to a substantial degree. The term "substantial degree" generally means removals in the order of 80 percent or greater.

*Contractee* means any township, agency, or corporation, which has a contract with the county wastewater management system for wastewater treatment.

*County* means the county of Muskegon, Michigan.

*County director* means the director of the wastewater management system of the county or his authorized deputy, agent or representative, as appointed by the county board of public works.

*Director/superintendent* means the person designated by the township or its authorized agency, to exercise control over its treatment works.

*Garbage* means solid wastes from domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

*Incompatible pollutant* means any pollutant that is not a compatible pollutant, as defined in this section.

*Individual sewage disposal system* means and includes every means of disposing of industrial, commercial, household, domestic or other water-carried waste or sewage other than a public sanitary sewer.

*Industrial cost recovery* means the recovery from each industrial user as defined in this section, that portion of the U.S. Environmental Protection Agency grant which is allocable to the treatment of industrial wastes from said industries.

*Industrial wastes* means the liquid wastes from industrial manufacturing processes, trade or business as distinct from segregated domestic strength wastes, or wastes from sanitary conveniences.

*Infiltration* means any waters entering the system from the ground through such means as, but not limited to, defective pipes, pipe joints, connection or manhole walls.

*Infiltration/inflow (I/I)* means the total quantity of water from both infiltration and inflow.

*Inflow* means any water entering the system through such sources as, but not limited to, building downspouts, footing or yard drains, cooling waters discharges, seepage lines from springs and swampy areas, and storm drain cross connections.

*Inspector* shall mean any licensed plumbing inspector authorized by the township to inspect and approve the installation of building sewers and their connection to the public sewer systems.

*mg/l* means milligrams per liter.

*Muskegon County Wastewater Management System (MCWWMS)* means the county wastewater management system number one.

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

*Normal strength sewage* means a sanitary wastewater flow containing an average daily BOD. of not more than 250 mg/l or an average daily SS concentration of not more than 250 mg/l.

*NPDES permit* means the permit issued pursuant to the national pollution discharge elimination system for the discharge of wastewater into the waters of the state.

*Operation and maintenance cost* means all costs, direct and indirect (other than debt service), necessary to insure adequate wastewater collection and treatment on a continuing basis, to conform with all related federal, state, MCWWMS, and local requirements, and to assure optional longterm facility management (O and M costs include depreciation and replacement costs).

*pH* means the logarithm of the reciprocal of the concentration of hydrogen ions in grams per liter of solution.

*Pretreatment* means the treatment of extra strength wastewater flows in privately owned pretreatment facilities prior to discharge into a publicly owned treatment works.

*Properly shredded garbage* means the wastes from the preparation, cooking and dispensing of food that have 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 dimension.

*Public sewer* means a sewer in which all owners of abutting properties have equal rights, and which is controlled by the township.

*Replacement* means expenditures for obtaining and installing equipment, accessories or appurtenances

that are necessary to maintain the capacity and performance during the service life of the treatment works for which such works were designed and constructed.

*Sanitary sewage* means the liquid or water-carried waste discharged from the sanitary conveniences of dwellings, including apartment houses and hotels, office buildings, commercial establishments, industries and institutions.

*Sanitary sewer* and *sewer* mean a sewer intended to carry only sanitary or sanitary and industrial wastewaters from residents, commercial buildings, industrial plants and institutions.

*Sewage treatment facility* means any arrangement of devices and/or structures used for treating sewage.

*Sludge* means any discharge of sewage or industrial waste that, in concentration of any given constituent, exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration during normal operation.

*Storm drain* or *storm sewer* means a sewer intended to carry only stormwaters, surface runoff, street washwaters, and drainage.

*Suspended solids (SS)* means solids that either float on the surface of, or in suspension in, water, sewage, or other liquids and which can be removed by laboratory filtering.

*System, collection system, and sewage collection system* mean all of the common sanitary sewers within the publicly owned treatment system that are primarily installed to receive wastewater directly from individual structures, and shall also be known as the county wastewater system number one (township extension) and any further extension.

*Treatment works* means all facilities for collecting, pumping, treating sewage and disposing of treated sewage and disposing of resulting sludge from the treatment process.

*User charge, and user O and M charge* mean the charge levied on all users of the system for the cost of operation and maintenance (O and M), including replacement/depreciation of such treatment works.

*User debt retirement charge* means the charge levied on all users of that system for the cost of any bond debt of which debt repayment is to be met from the revenues of such works.

*Wastewater* means the same as sewage or sanitary sewage.

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

*Wye "Y" branch* means a local service connection to the sewer that is made at an angle similar to a "wye" so that a sewer cleaning rod will not come down the lateral and enter the sewer at a right angle and penetrate the far side, but will travel down the course of the sewer. The "wye" is considered part of the lateral and not part of the treatment works or system,  
(Compiled Ords. 1990, §§ 25.110--25.159; Ord. of 9-15-2008)

**Sec. 42-139. Use of public sewers required.**

All use of the public sewers shall conform to standards and regulations as established by this division.  
(Compiled Ords. 1990, § 25.170)

**Sec. 42-140. Purpose of division; violations as nuisances; exemptions.**

The standards and regulations established in this division and other contained in this division, are deemed to be consistent with the preservation of the public health and safety and to fulfill the obligations of the township with respect to local, state and federal law and all rules and regulations adopted pursuant thereto. The discharge into any sewer in the township of any substance that exceeds the limitations set forth in this division and other contained in this division, is hereby declared to be a public nuisance and a violation of this division or code. It shall be unlawful for any person to place, deposit or permit to be deposited, in any manner, upon public or private property, within the township, or in any area; under the jurisdiction of the township, any human or animal excrement, garbage or other objectionable waste which ordinarily would be regarded as sewage or industrial waste.

(Compiled Ords. 1990, § 25.171)

**Sec. 42-141. Discharge to an open watercourse or natural outlet.**

It shall be unlawful to discharge to any open watercourse or natural outlet within the township, or in any area under the jurisdiction of the township, any sewage, industrial waste, or other polluted waters, except where suitable treatment has been provided in accordance with provisions of this division. Any waste discharge to an open watercourse or natural outlet by a commercial, industrial or other entity that is regulated by or under order of an agency of the state or federal government, will be exempt from the provisions of this section if such regulations or orders are being met.

(Compiled Ords. 1990, § 25.172)

**Sec. 42-142. Use of individual sewage disposal system.**

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for disposal of sewage.

(Compiled Ords. 1990, § 25.173)

**Sec. 42-143. Mandatory connection to sanitary sewer; denial of right to connect.**

The owner of any house, building or property used for human occupancy, employment, recreation or other purposes, situated within the township, and abutting on any street, alley or right-of-way, in which there is located, or may in the future be located, a public sewer or combined sewer of the township, within 200 feet at the nearest point from the property in which the sewage originates, is hereby required, at his expense, to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer, in accordance with the provisions of this division, all codes, including the plumbing code adopted by the township, and article II, division 2. The township shall have the right to refuse any person the right to connect to, and use the sewer or treatment works if, it is for the best interest of the municipality of MCWWMS, in accordance with subsequent provisions of the ordinance to do so. The property owner shall be responsible for all costs and attorney fees associated with the Township's enforcement of this section. If unpaid, such costs and attorney fees

may be assessed as a tax against the real property and collected as provided by law.  
(Compiled Ords. 1990, § 25.174) **Amended 4/06/2015**

**Sec. 42-144. Connection of inflow sources to sewers prohibited.**

No owner or person of any property abutting, adjacent to or along the line of a sanitary sewer shall connect directly or indirectly, inflow sources into the sanitary sewers. All such inflow sources shall be connected to a storm sewer if such a sewer is constructed abutting, adjacent to or along the line of such property.

(Compiled Ords. 1990, § 25.175)

**Sec. 42-145. Filing of statement, plans, samples, tests, affidavits, reports on raw materials; maintenance of records.**

(a) Any person discharging industrial wastes to the sanitary sewer, storm sewer or receiving stream shall file the material listed in subsection (b) of this section with the director.

(b) The township may require each person who applies for sewer service, receives sewer service, or through the nature of the enterprise creates a potential environmental problem, to file the material listed below:

- (1) File a written statement setting forth the nature of the enterprise, the source and amount of water used, and the amount of water to be discharged, with the present or expected bacterial, physical, chemical, radioactive or other pertinent characteristics of the wastes.
- (2) Provide a plan map of the building, works or complex, with each outfall to the surface waters, sanitary sewer, storm sewer, natural outlet, or groundwaters noted, described and the waste stream or discharge identified.
- (3) Sample, test and file reports with the director and the appropriate county and state agencies, on appropriate characteristics of wastes, on a schedule, at locations, and according to methods outlined in this chapter.
- (4) An affidavit placing waste treatment facilities, process facilities, waste streams, or other potential waste problems under the specific supervision and control of persons who have been certified by an appropriate state agency as properly qualified to supervise such facilities.
- (5) Provide a report on raw materials entering the process or support system, intermediate materials, final product, and waste by-products, as those factors may affect waste control.
- (6) Maintain records and file reports on the final disposal of specific liquid, solids, sludge, oil, radioactive material, solvent or other waste.
- (7) If any industrial process is to be altered so as to include or negate a process waste or potential waste, written notification shall be given to the township subject to approval.

(Compiled Ords. 1990, § 25.176)



**Sec. 42-146. Penalties.**

(a) *Notice of violation; time limit to cease.* Any person found to be violating any provision of this division except division 3, subdivision IV, pertaining to service conditions, shall be served with written notice stating the nature of the violation and providing a reasonable time for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(b) *Payment of penalties against township.* Any person violating any of the provisions of this division that results in fines or penalties being levied against the township shall become liable for said fines or penalty, plus any expenses, losses or damages occasioned by such violation. Payment of fines or penalties, expenses, losses or damages in reimbursement to the township or any private party shall not be confused with the fines and penalties required by this article, and shall be considered separate from and in addition thereto. (Compiled Ords. 1990, §§ 25.290, 25.291, 25.293)

**Secs. 42-147--42-179. Reserved.**

**Subdivision II.**

**Private Sewage Disposal**

**Sec. 42-180. Conformance to standards and regulations.**

The allowable use of an individual sewage disposal system shall conform to standards and regulations as established by this division.

(Compiled Ords. 1990, § 25.190)

**Sec. 42-181. Disposal of sewage where no sanitary sewer is available.**

Where a public sanitary sewer or combined sewer is not available under the provision of section 42-143, the building sewer shall be connected to a private sewage disposal system complying with all requirements of the county health department.

(Compiled Ords. 1990, § 25.191)

**Sec. 42-182. Mandatory future connection.**

At such time as a public sewer becomes available to a property served by an individual sewage disposal system, as provided in section 42-143, a direct connection shall be made to the public sewer in compliance with this division; and any septic tanks, cesspools, and similar individual sewage disposal system shall be abandoned, removed or filled with suitable material as approved by the county health department.

(Compiled Ords. 1990, § 25.192)

**Sec. 42-183. Operation and maintenance.**

The owner shall operate and maintain the individual sewage disposal system in a sanitary manner at all times, at no expense to the township.

(Compiled Ords. 1990, § 25.193)

**Sec. 42-184. Requirements of the county health department and state department of public health.**

No statement contained in this article shall be constructed to interfere with any additional requirements that may be imposed by the county health department or state department of public health.  
(Compiled Ords. 1990, § 25.194)

**Secs. 42-185--42-205. Reserved.**

**Subdivision III.**

**Building Sewers and Connections**

**Sec. 42-206. Installation of building sewers and connections.**

All building sewers or laterals shall be installed in strict accordance with this subdivision.  
(Compiled Ords. 1990, § 25.210)

**Sec. 42-207. Persons responsible for installation.**

No person shall uncover, make any connection with, or opening into, use, alter or disturb any public sewer or appurtenances thereof, or install or lay any building, sewer or lateral, except the owner of the premises upon which the installation is made, or a member of his household living permanently in the home or a permanent occupant of the premises, a licensed master plumber, or a person or company which has filed the bond and insurance hereinafter required. No such installation or work above described shall be begun without obtaining a written permit from the township. Said permit shall be applied for on forms provided for by the township and shall be issued in accordance with the state plumbing code or such other code as is applicable and adopted by the township, and in accordance with the requirements of this subdivision.  
(Compiled Ords. 1990, § 25.211)

**Sec. 42-208. Bond and insurance requirement.**

(a) Every person applying for a permit who is not a licensed master plumber or the owner or permanent member of the household or permanent occupant of the premises shall, as a condition of receiving a permit, deposit with the treasurer a bond with corporate surety in favor of the township in the sum of \$5,000.00 conditioned that the person applying shall faithfully perform all work with due care and skill and in accordance with the laws, rules and regulations established by the township pertaining to sewers and plumbing. The bond shall state that the person will indemnify and save harmless the township and the owner of the premises against all damages, costs, expenses, outlays and claims of every nature and kind arising out of mistake or negligence on the part of the applicant in connection with the plumbing, sewer line connection or excavating for plumbing or sewer connection as prescribed in this subdivision. Such bond shall remain in force and must be executed for a period of one year; except that upon such expiration, it shall remain in force as to all penalties, claims and demands that may have accrued thereunder prior to such expiration. The applicant shall further provide public liability insurance for the protection of the township, the property owner and all persons to indemnify them for all damages caused by accidents attributable to the work with limits of \$50,000.00 for one person and \$100,000.00 for bodily injury for accident, and \$50,000.00 for property damages.

(b) In lieu of the filing of a bond by said third persons as above described, the township may accept in lieu of bond, cash or certified check, deposited with the township to be held, drawn in a reasonable amount to cover all likely claims for damages and costs attributable to the negligence of the applicant.  
(Compiled Ords. 1990, § 25.212)

**Sec. 42-209. Application of bond or deposit to more than one project.**

A third party filing a bond or deposit may request and the township may grant the applicant the right to apply a bond or cash or check deposited to more than one permit in project, up to a limit of ten permits.  
(Compiled Ords. 1990, § 25.213)

**Sec. 42-210. Fees for permits.**

The fee required in connection with the application and the issuance of a permit shall be set by resolution by the township board.  
(Compiled Ords. 1990, § 25.214; Ord. of 9-15-2008)

**Sec. 42-211. Cost of constructing and maintaining building sewer.**

All costs and expenses incidental to the installation, connection and maintaining the building sewer shall be borne by the owner. The owner or the person installing the building sewer for said owner shall indemnify the township from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.  
(Compiled Ords. 1990, § 25.215)

**Sec. 42-212. Individual building sewer.**

A separate and independent building sewer shall be provided for every building. Exceptions will be allowed only by special permission granted by the township.  
(Compiled Ords. 1990, § 25.216)

**Sec. 42-213. Use of existing building sewer.**

Old building sewers or portions thereof may be used in connection with new buildings only when they are found, on examination and testing by the inspector, to meet all requirements of this subdivision.  
(Compiled Ords. 1990, § 25.217)

**Sec. 42-214. Material approved for use as building sewers.**

(a) The building sewer shall be constructed of one of the following types of pipe meeting the current ASTM specifications:

- (1) Plastic (ABS) ASTM D 1527 SDR 35.
- (2) Plastic (PVC) ASTM D 1785 SDR 35.

- (3) Vitriified clay (VC) ASTM C-700 extra strength.
- (4) Asbestos-cement (AC) ASTM C-428 CL-2400.
- (5) Cast iron extra heavy ASTM A-74.
- (6) Nonreinforced concrete ASTM C-14 extra strength.

(b) If installed in filled or unstable ground, the building sewer shall be of cast iron extra heavy pipe, except that other types of pipe may be used if laid on a suitable improved bed or cradle as approved by the inspector.  
(Compiled Ords. 1990, § 25.218)

**Sec. 42-215. Building sewer pipe joints; infiltration.**

All building sewer joints and connections shall be made gastight and watertight and shall allow no infiltration, and shall conform to the requirements of the current building and plumbing codes. Vitriified clay sewer pipe shall be fitted with factory-made resilient compression joints. Asbestos cement or concrete sewer pipe joints shall be of rubber ring, flexible compression type. Cast iron pipe shall have a joint suitable to retain household water pressure. The joints and connections shall conform to the manufacturer's recommendation.  
(Compiled Ords. 1990, § 25.219)

**Sec. 42-216. Slope and size of building sewers.**

The size and slope of the building sewers shall be subject to the approval of the inspector, but in no event shall the diameter be less than four inches. Minimum grade shall be as follows:

- (1) Six-inch pipe: one-eighth inch per foot or one inch per eight feet.
- (2) Four-inch pipe: one-quarter inch per foot or two inches per eight feet.

(Compiled Ords. 1990, § 25.220)

**Sec. 42-217. Building sewer depth; location; construction method.**

Whenever possible, the building sewer shall be brought to the buildings at an elevation below the basement floor. The depth shall be sufficient to afford protection from frost. All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the inspector. Pipe laying and backfill shall be performed in accordance with current ASTM and/or county specifications, except that no backfill shall be placed until the work has been inspected by the inspector.  
(Compiled Ords. 1990, § 25.221)

**Sec. 42-218. Lift pumps.**

In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drains shall be lifted by approved means and discharged to the building sewer.

(Compiled Ords. 1990, § 25.222)

**Sec. 42-219. Location of building sewer connection to public sewer.**

The connection of the building sewer into the public sewer shall be made at the "Y" branch designated for the property if such branch is available at a suitable location. Any connection not made at the designated "Y" branch in the sewer shall be made only as directed by the inspector.

(Compiled Ords. 1990, § 25.223)

**Sec. 42-220. Notification for inspection.**

The applicant for the building sewer shall notify the inspector when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the inspector.

(Compiled Ords. 1990, § 25.224)

**Sec. 42-221. Protection of public from excavation; restoration of public property.**

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the township.

(Compiled Ords. 1990, § 25.225)

**Sec. 42-222. Availability of capacity in system.**

No connection will be allowed unless there is capacity available in downstream sewers, pump stations, interceptors, force mains and treatment plant including capacity for BOD and suspended solids in the treatment plant.

(Compiled Ords. 1990, § 25.226)

**Secs. 42-223--42-252. Reserved.**

**Subdivision IV.**

**Service Conditions**

**Sec. 42-253. Obligation of persons connecting to or accepting service from public sewer.**

Any person making connections to the public sewer or accepting service from the public sewer hereby agrees to and accepts the provisions of this subdivision.

(Compiled Ords. 1990, § 25.270)

**Sec. 42-254. Construction and cost of building sewer in public right-of-way.**

At the time of original construction of a public sewer, the township may install that portion of the building sewer from the public sewer to the lot or easement line of all properties. The cost of this portion of the

building sewer shall be paid for by the owner of the property.  
(Compiled Ords. 1990, § 25.271)

**Sec. 42-255. Construction and cost of building sewer on private property.**

The owner, at his expense, shall install that portion of the building sewer from the public sewer to the lot or easement line if it was not installed during the time of original construction. The owner shall install that portion of the building sewer from the lot or easement line to their premises, in accordance with this subdivision.

(Compiled Ords. 1990, § 25.272)

**Sec. 42-256. Maintenance of building sewer.**

The owner, at his expense, shall maintain the building sewer from the public sewer to his premises. This maintenance shall include the "wye."

(Compiled Ords. 1990, § 25.273)

**Sec. 42-257. Township maintenance responsibility; assessment for repair or replacement.**

The township shall provide minor maintenance of collection system at the sewer utility's expense. Major maintenance and repairs and/or replacement of the public sewer may be assessed as a special assessment, or charged as an additional service charge against the benefited properties.

(Compiled Ords. 1990, § 25.274)

**Sec. 42-258. Township responsibility for broken sewers; building sewers.**

The township shall, in no event, be held responsible for claims made against it by reason of the breaking of any public sewer or building sewer, or by reason of any other interruption of the service caused by the breaking of machinery or stoppage for necessary repairs; and no person shall be entitled to damages nor have any portion of a payment refunded for any interruption.

(Compiled Ords. 1990, § 25.275)

**Sec. 42-259. Right of inspection.**

The premises receiving sanitary sewer service shall, at all reasonable hours, be subject to inspection by duly authorized personnel of the township.

(Compiled Ords. 1990, § 25.276)

**Secs. 42-260--42-281. Reserved.**

**DIVISION 4.**

**DISCHARGE RESTRICTIONS**

**Sec. 42-282. Purpose.**

It is the declared purpose of this division to establish standards to:

- (1) Prevent the pollution of the public waters.
- (2) Preserve and maintain the sewage collection and treatment facilities of the county wastewater management system number one (the "system"), municipalities and users.
- (3) Preserve the public health, safety and welfare.
- (4) Comply with all applicable state and federal laws, regulations and standards pertaining to water quality.
- (5) Provide for the prohibition of the discharge of incompatible pollutants to the system.
- (6) Provide for the control of pollutants discharged to the system.
- (7) Provide for the enforcement of standards relating to the acceptability of wastewaters to be discharged to the system.

(Compiled Ords. 1990, § 25.360)

#### **Sec. 42-283. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Act* means the Federal Water Pollution Control Act, as amended (Pub. L. 92-500, 86 Stat. 816 et seq., 33 USC 1251 et seq.). Specific reference to sections within the Act will be according to Pub. L. 92-500 notation.

*Administrator* means the administrator of the Environmental Protection Agency or any employee of the agency to whom the administrator may by order delegate the authority to carry out his functions, or any person who shall by operation of law be authorized to carry out such functions.

*Analytical methodology* means the "Guidelines Establishing Test Procedures for the Analysis of Pollutants," 40 CFR 136, as amended, or procedure described in 42-284(d).

*BOD* or *biochemical oxygen demand* shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five days at 20 degrees Celsius, expressed in milligrams per liter.

*Building drain* means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

*Cesspool, septic tank* and *privy* mean, for the purpose of this division, an individual system for the disposal of sanitary sewage other than to a public sewer.

*Class of users* means the division of sanitary sewer dischargers into classes by similar process or discharge flow characteristics as follows:

- (1) *Domestic user.* A user that discharges only segregated domestic wastes or wastes from sanitary conveniences.
- (2) *Major user.* Any nondomestic user that discharges more than 25,000 gallons per average workday to the public sewer or the POTW.
- (3) *Nondomestic user.* Any user other than domestic.

*COD* means the total demand or quantity of oxygen required by the sewage as specified in the current edition of "Standard Methods for the Examination of Water and Wastewater" expressed in milligrams per liter.

*Collection system* means all of the common sanitary sewers of a township that are primarily installed to receive wastewater directly from point sources, for transmission to the POTW.

*Compatible pollutant* means any pollutant that is not an incompatible pollutant.

*Construction* means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

*Contractee* means a party to a service agreement with the DPW board.

*County* means the county of Muskegon, Michigan.

*County board* means the board of commissioners of the county.

*County director* means the director of the wastewater management system of the county or the authorized deputy, agent or representative, as appointed by the county board of public works.

*Daily average* means the sum of the concentrations of a constituent for the measurement period divided by the number of days in such period.

*Director/superintendent* means the person designated by the township or its authorized agency to exercise control over its municipal sewers and the collection and transmission system.

*DPW board* means the board of public works of the county.

*Effluent limitation* means any restriction promulgated by federal, state or local government on quantities, rates and concentrations of chemical, physical, biological or other constituents that are discharged from point sources into navigable waters.

*Effluent standard* means any restriction established pursuant to this division on quantities, rates and concentrations of chemical, physical, biological or other constituents that are discharged to the public sewer or



the POTW.

*Existing source* means any source that is not a new source as defined in this section.

*FCPS* means federal categorical pretreatment standard.

*Garbage* means solid wastes from domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

*Incompatible pollutant* means any pollutant in amounts that cause interference.

*Industrial wastes* means the liquid or gaseous wastes resulting from industrial or manufacturing processes, trade or business or from the development, recovery or processing of resources or containers as distinct from segregated domestic strength wastes and wastes from sanitary conveniences.

*Infiltration* means any waters entering the system from the ground through such means as, but not limited to, defective pipes, pipe joints, connection or manhole walls, but shall not include, and is distinguished from "inflow."

*Infiltration/inflow (I/I)* means the total quantity of water from both infiltration and inflow.

*Inflow* means any water entering the system through such sources as, but not limited to, building downspouts, footing or yard drains, cooling water discharges, seepage lines from springs and swampy areas, and storm drain cross connections.

*Inspector* means any person or persons authorized by the township to inspect and approve the installation of building sewers and their connection to the public sewer system.

*Interference* means inhibition or disruption of the public sewer or the POTW sewer system or the POTW's treatment processes or operation which causes or significantly contributes to a violation of any requirement of the POTW's NPDES permits. The term also includes prevention of sewage sludge use or disposal by the POTW in accordance with published promulgated regulations under section 405 of the Act or any regulations promulgated pursuant to the Solid Waste Disposal Act (42 USC 3251 et seq.), the Clean Air Act (42 USC 7401 et seq.), the Toxic Substances Control Act (15 USC 2601 et seq.), or more stringent state promulgated rules (including those contained in any state sludge management plan prepared pursuant to title IV of said Solid Waste Disposal Act) applicable to the method of disposal or use employed by the POTW. Pollutants in the effluent of a user shall not be considered to cause interference where the user is in compliance with specific prohibitions, standards, effluent standards or effluent limitations developed by the federal government, the state, local government or the POTW. Where the user is in compliance with such specific prohibitions, standards or limitations, and pollutants in the sewage from the user nevertheless caused or significantly contributed to a violation of any requirement of the POTW's NPDES permits, and are likely to cause such a violation in the future, the POTW must take appropriate action under 40 CFR 403.5(c).

*M. DNR* means the department of natural resources of the State of Michigan or its successor.

*Manufacturer* means any establishment engaged in the mechanical, physical or chemical transformation

of materials or substances into new products including, but not limited to, the blending of materials such as pesticide products, resins, or liquors.

*mg/l* means milligrams per liter.

*Muskegon County Wastewater Management System (MCWWMS)* means the county wastewater management system number one, which includes the facilities commonly referred to as the "Whitehall-Montague" site.

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

*New source* means any source, the construction of which is commenced after the publication of proposed regulations prescribing a categorical pretreatment standard under section 307(c) of the Act which will be applicable to such source, if such standard is thereafter promulgated within 120 days of proposal in the federal register. Where the standard is promulgated later than 120 days after proposal, a new source means any source, the construction of which is commenced after the date of promulgation of the standard.

*Normal strength sewage* means a sanitary wastewater flow containing an average daily BOD of not more than 250 mg/l or an average daily concentration of not more than 250 mg/l, and phosphorus of not more than ten mg/l.

*NPDES permit* means a permit issued pursuant to the national pollution discharge elimination system for the discharge of wastewater into the waters of the state.

*Organic chemicals* means compounds composed of carbon and hydrogen or their derivatives which are manmade or byproducts of manmade or natural substances which include, but are not limited to, synthetic fibers, plastics, rubber, medicinals, solvents, surface-active agents, pesticides, and other agricultural chemicals and lubricating oil additives or other petroleum derivatives.

*Person* means any individual, firm, company, association, society, corporation, partnership or group, and including a contractee.

*pH* means the negative logarithm of the concentration of hydrogen ions in grams per liter of solution.

*POTW* means the treatment works, as defined by section 212 of the Act, which are owned by the county. The term also means the DPW board or its authorized representative.

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

*Process wastes* means liquid or water-carried wastes which are inherent to or resulting from any manufacturing operation, including that which comes into direct contact with or results from the production or

use of any raw material, intermediate product, finished product, by-product or waste product, or results from cleaning operations.

*Replacement* means expenditures for obtaining and installing equipment, accessories or appurtenances that are necessary to maintain the capacity and performance during the service life of the treatment works for which such works were designed and constructed.

*Sanitary sewage* means the liquid, gaseous or water-carried waste discharged from sanitary conveniences.

*Sewage* means a combination of water-carried liquid and gaseous wastes from any source, including domestic and nondomestic, as well as groundwater, surface water and stormwater as may be present.

*Sewer* means a pipe or conduit that carries wastewater or drainage water. See the following definitions modifying sewer:

- (1) *Building sewer.* The extension from the building drain to a lateral sewer, private sewer, public sewer or other place of disposal.
- (2) *Combined sewer.* A sewer intended to receive both wastewater and stormwater or surface water.
- (3) *Common sewer.* A sewer in which all owners of abutting properties have equal rights.
- (4) *County sewer.* A public sewer controlled by the county.
- (5) *Intercepting sewer.* A sewer that receives dry-weather flow from a number of transverse sewers or outlets and frequently additional predetermined quantities of stormwater (if from a combined system), and conducts such water to a point for treatment or disposal.
- (6) *Lateral sewer.* A sewer that is designed to receive a building sewer.
- (7) *Private sewer.* That section of a sewer owned by a nondomestic user which connects that user to the public sewer and which typically extends from such point of connection upstream to the user's lateral sewers or to a lift station or other outlet owned by the user.
- (8) *Public sewer.* A common sewer controlled by a governmental agency or public utility.
- (9) *Sanitary sewer.* A sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with minor quantities of groundwaters, stormwaters, and surface waters that are not admitted intentionally.
- (10) *Storm sewer.* A sewer that carries stormwater and surface water, street wash and other wash waters, or drainage, but excludes domestic wastewater and industrial wastewater. Also called storm drain.
- (11) *Trunk sewer.* A sewer that connects the lateral sewer to the intercepting sewer and to which

building sewers may be connected.

*Slug* or *shockload* means any discharge of sewage or industrial waste that, in concentration of any given constituent or in quantity of flow causes interference.

*Source* means any building, structure, facility, vehicle or installation from which there is or may be the discharge to the public sewer or the POTW.

*State director* means the executive secretary of the water resources commission of the state of Michigan.

*Storm drain* or *storm sewer* means a sewer intended to carry only stormwaters, surface runoff, street wash waters, and drainage.

*Suspended solids (SS)* means solids that either float on the surface of, or in suspension in, sewage and which can be removed by the procedures specified in the current edition of "Standard Methods for the Examination of Water and Wastewater."

*30-day average concentration* means, for other than fecal or total coliform bacteria, the sum of the concentrations of the individual samples divided by the number of samples taken during a calendar month. The 30-day average concentration for fecal or total coliform bacteria is the geometric mean of the samples collected in a calendar month.

*Township* means a city, village, township or other public body (excluding the county of Muskegon) created under state law, having jurisdiction over disposal of sewage, industrial waste or other waste.

*Toxic* or *toxic pollutant* means chemicals described in section 42-284(b)(6)p.

*USEPA* means the United States Environmental Protection Agency or its successor.

*User* means a source (including a section 307 source) and the township whose collection system discharges into the POTW.

*Waste component* means any constituent of sewage other than water, including, but not limited to BOD, SS, other soluble and insoluble matter and phosphate concentrates.

*Working day* means the hours during a calendar day in which a user discharges effluents subject to this division.

*WRC* means the water resources commission of the state or its successor.  
(Compiled Ords. 1990, § 25.370)

#### **Sec. 42-284. Discharge of wastewaters.**

(a) *Intent of regulations.* The regulations contained in this division are generally intended to:

(1) Prohibit the discharge to public sewer facilities of sewage which causes interference or could

have detrimental effects on the physical structures or operating personnel of the system, or on the general public; and

(2) Restrict the discharge to public sewers of technically unpolluted water.

(b) *Prohibited discharges.* No person shall discharge or cause to be discharged into any public sewer or to the POTW any of the following:

(1) Sewage in an amount that creates or may create a fire or explosion hazard in the POTW or the collection system.

(2) Sewage in an amount that causes or may cause corrosive structural damage to the collection system or the POTW.

(3) Solid or viscous sewage in amounts which could cause or do cause either obstruction to flow or interference in the collection system or the POTW.

(4) Any pollutant, including oxygen-demanding pollutants, released in a discharge at a flow rate and/or pollution concentration which a user knows or has reason to know will cause interference in the collection system and the POTW.

(5) Sewage that may cause or does cause:

a. Impairment of the strength or durability of structures in the collection system or the POTW.

b. Restriction of hydraulic capacity of structures in the collection system or the POTW.

c. Unsafe conditions to personnel in the inspection or maintenance of structures of the collection system or the POTW or unsafe conditions to the general public, with respect to the collection system.

(6) Discharges that exceed the following criteria by an amount that may cause or does cause interference:

a. Five-day biochemical oxygen demand (BOD) in excess of a daily average of 250 mg/l.

b. Chemical oxygen demand (COD) in excess of a daily average of 450 mg/l.

c. Chlorine demand of greater than 20 mg/l.

d. Total suspended matter in excess of a daily average of 250 mg/l.

e. Residue (total on evaporation) in excess of a daily average of 750 mg/l.

f. Solvent extractables (grease, fat, oil or other Freon soluble materials) in excess of a daily

average of 50 mg/l.

- g. Grease, oil or other substances that will become solid or viscous at temperatures between 32 degrees and 120 degrees Fahrenheit. in concentrations that will increase the viscosity of the sewage to greater than 1.1 specific viscosity.
- h. Sewage flow or batch discharge containing concentrations in excess of:

pH: 9.5 to 6

	Daily Average Concentration	30-day Average Concentration
Iron	10 mg/l as Fe	10 mg/l as Fe
Copper	4.5 mg/l as Cu	1.8 mg/l as Cu
Nickel	4.1 mg/l as Ni	1.8 mg/l as Ni
Chromium	7.0 mg/l as total Cr	2.5 mg/l as total Cr
Cyanide, T	0.8 mg/l as CN	0.23 mg/l as CN
Zinc	4.2 mg/l as Zn	1.8 mg/l as Zn
Cadmium	1.2 mg/l as Cd	0.5 mg/l as Cd
Lead	0.6 mg/l as Pb	0.3 mg/l as Pb
Aluminum	5.0 mg/l as Al	
Silver	1.2 mg/l as Ag	0.5 mg/l as Ag
Phenols	150 µg/l as C <sub>6</sub> H <sub>5</sub> OH by 4 AAP method or 200 µg/l total by approved GC methodology	
Total Chrome, Copper, Nickel and Zinc	10.5 mg/l	5.0 mg/l

Nuclear: As per state and national regulations

- i. Temperature below 32 degrees Fahrenheit (0 degrees Celsius) or above 150 degrees Fahrenheit (65.6 degrees Celsius).
- j. Material in sufficient amounts which may cause or do cause excessive coloration or light absorbency including (but not limited to) dye wastes and vegetable tanning solutions.
- k. An insoluble substance retained by a standard No. 8 sieve or having any dimension greater than one-half inch (1.27 cm).
- l. Insoluble substances having a specific gravity greater than 2.65.
- m. Improperly shredded garbage.
- n. Sludge that results from a treatment process; unless the county director has determined that it is amenable to treatment by the POTW without application of unusual means or expense (Septic tank sludge will be accepted from licensed operators when delivered to designated disposal sites).

- o. Any stormwater, surface water, groundwater, roof runoff, footing drainage or noncontact cooling waters.
- p. The following toxic pollutants:
  - 1. Those pollutants listed pursuant to section 307(a)(1) of the Act.
  - 2. Those pollutants listed on the current critical materials register of the state.
  - 3. Those pollutants specifically identified by the county as a toxic pollutant by amendment to this division.

(c) *Future conditions.* Future conditions imposed on the county by jurisdictional government agencies may require subsequent amendment of this division. Where federal or state promulgated pretreatment standards require limits on parameters not covered in this division or limits more stringent than those specified in this division, the state or federal limits shall have precedence and take effect with respect to the applicable user on the later of:

- (1) Their promulgation date; or
  - (2) The date specified for compliance with such standards (see section 42-290).
- (d) *Wastewater analyses.*
- (1) All the preceding specific conditions and quantities shall apply at the point where sewage is discharged or caused to be discharged into a public sewer or the POTW (whichever is reached first) and required pretreatment shall be effected before such point is reached.
  - (2) All measurements, tests, and analyses of the characteristics of sewage to which reference is made in this division shall be determined in accordance with the current edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, most current American Society for Testing Materials (ASTM) and EPA-approved procedures contained in 40 CFR 136, or any validated methods from recognized authority in cases where the above-referenced procedures are not available or do not apply to the characteristic involved.
  - (3) Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the collection system and the POTW and to determine potential interference. The county will determine the method of sampling to be used in accordance with applicable federal regulations.
- (e) *Restrictions.*
- (1) If any sewage (or water described in subsection (b)(6)o of this section) is discharged, or is proposed for discharge to the public sewer or the POTW which exceeds the limitations enumerated in subsection (b)(6) of this section, the DPW board may, by order, take the following

actions:

- a. Prohibit the discharge to the public sewer or the POTW;
  - b. Temporarily permit the discharge to the public sewer or the POTW subject to any reasonable conditions that the POTW board may recommend, based on its review of such factors as quantity of the discharge in relation to flows and velocities in the sewers, materials of construction of sewers, nature of the treatment process, capacity of the treatment works, degree of treatability of the discharge, and any other pertinent factors;
  - c. Require pretreatment, in accordance with section 42-290;
  - d. Require control over the quality, quantities and rates of the discharge to the public sewer or the POTW; or
  - e. In all cases, the DPW board may require payment to cover any additional costs it may incur in connection with inspecting, sampling, testing, and determining the treatability of the sewage, not covered by existing charges and the industrial surveillance fee.
- (2) When the pretreatment of sewage or flow equalization is required under section (e)(1)c, the design of the equipment shall be subject to the review by the county director and subject to the requirements of all applicable codes, ordinances, and laws. Where sewage pretreatment or flow equalization facilities are provided, they shall be continuously maintained for satisfactory and effective operation by the user at its expense, in order to meet applicable pretreatment requirements.

(Compiled Ords. 1990, §§ 25.380--25.385)

**Sec. 42-285. Authority of inspections; protection of user against claims; compliance by user of all lawful inspections.**

- (a) *Inspection procedure to be followed by authorized county representatives.*
- (1) Authorized representatives of the county exhibiting proper credentials and identification shall be permitted at all reasonable times to enter all user's properties and the property of municipalities for the purpose of inspection, observation, measurement, sampling, and testing in connection with the administration of and in accordance with the provisions of this division. The representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the public sewer or the POTW.
- (2) Authorized representatives of the county exhibiting proper credentials and identification shall be permitted to enter all private properties through which the county or local township holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the public sewer or POTW lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private



property involved.

(b) *Observation of safety rules by county inspectors.* While on the property of the user referred to in subsection (a) of this section, the authorized representatives of the county shall observe all reasonable safety rules applicable to the premises established by the user and the user shall be held harmless for injury or death to the county employees and the county shall further indemnify the user against loss or damage to its property by county employees and against liability claims and demands for personal injury or property damage asserted against the user and growing out of such activity except to the extent caused by negligent failure of the user to maintain safe conditions.

(c) *Compliance of user regarding all inspections by county, state and federal representatives.* Inspection by state or federal representatives, pursuant to law shall not relieve a user from inspection by county representatives and inspection by the county representatives shall not relieve any user from compliance with lawful inspection by state and federal representatives.  
(Compiled Ords. 1990, §§ 25.390--25.393)

#### **Sec. 42-286. Monitoring and sampling.**

(a) *Sampling devices.* The county director may require user to install a suitable control structure and necessary measuring and sampling devices to facilitate the observation, sampling and measurement of the quantity, composition and concentrations of discharges to the public sewer or the POTW. Such structure and devices shall be constructed and installed at the user's expense in accordance with plans submitted to the county director, and shall be maintained by the user so as to be safe and accessible during all reasonable times.

(b) *Removal of samples and data.* The county director or his authorized representative shall have the right to take and remove samples of sewage discharged into the public sewer or POTW and make copies of other data and materials concerning the same inspected during an entry upon the user's property. At the written request of such user, split samples will be provided.

(c) *Authority to require submission of samples.* The county director may require any user to submit one or more representative samples of the sewage discharged or which it proposes to discharge into the public sewer or POTW.

(d) *Failure to permit access or removal of samples and other data.* In the event the user shall refuse to permit access to an authorized county representative or permit such representative to obtain, take and remove samples and make copies of other data pursuant to subsection (b) of this section, the county shall have the right to:

- (1) Order the termination of the discharge of sewage to the public sewer or the POTW.
- (2) Order the user to permit access within a time certain.
- (3) Issue a citation for a violation of this division.
- (e) *New installation of pretreatment facilities.*

- (1) *Notices.* The user or its authorized agent shall notify the county director in writing after the completion of a new installation of pretreatment facilities of the time it intends to commence operation thereof. Where applicable, the user shall notify the county director of the agreed upon time and the person who will conduct the tests required to be performed. Where applicable, the pretreatment facilities shall not be placed in regular operation until such tests have been conducted.
- (2) *Tests by users.* A representative of the county shall be permitted to witness the tests upon prior written request. The cost of tests shall be paid by the user of the installation.

(Compiled Ords. 1990, §§ 25.400--25.405)

### **Sec. 42-287. Reporting.**

(a) *Industrial surveillance report required.* The county director, by written order, may require any nondomestic user of the public sewer and POTW to submit periodic reports on forms provided by the county which shall include known information on the quality and quantity of sewage introduced into the public sewer and POTW, together with an inventory of known intermediate end-product and by-product chemicals present or likely to be present in sewage discharged or to be discharged to the public sewers and POTW. Said report shall include the volume, loadings and concentration of constituents, and shall be related to effluent standards as shall be required by the county director. The county director may also require additional information from such users as to materials or substances that may cause interference.

- (1) *Mandatory report.* The county director shall notify forthwith each major user known to discharge organic chemicals and metals into the county system for which it is required to file industrial surveillance reports.
- (2) *Initial report.* Each nondomestic user that has been notified of its obligation to file industrial surveillance reports shall file an initial report within 60 days from the date such notice is served upon said user.
- (3) *Monthly reports.* Each nondomestic user so notified by the county director, may be required to file monthly reports within 15 days from the last day of the preceding month.
- (4) *Quarterly reports.* Each user required to submit quarterly reports shall submit the same on January 31, April 30, July 31, and October 31, of each year for the quarter ending on the last day of the preceding month, following the adoption of the ordinance from which this section is derived.
- (5) *Annual reports.* Annual reports shall be submitted on or before April 1 of each year, for the preceding calendar year, commencing in 1981.
- (6) *Signature on reports.* The reports referred to in this section shall be signed by an authorized representative designated by the nondomestic user. An authorized representative may be:
  - a. If a corporation, a principal executive officer of at least the level of vice-president; or

- b. If a partnership or proprietor, a general partner or the sole proprietor; or
- c. In any case, a person responsible for the overall operation of the facility from which the discharge originates.

(b) *Waivers.* After filing the initial report required pursuant to this section, the county director may waive other periodic reports, provided, however, that if the character, nature or general composition of the discharge from the nondomestic user is substantially altered or changed from that contained in the original report, such user shall notify the county director of such change prior to such discharge or as soon as reasonably possible after becoming aware that such alteration or change has occurred or is likely to occur and file a revised report containing all of the information set forth in subsection (a) of this section.

(c) *Emergency or accidental discharges.* All nondomestic users shall report to the county director as soon as reasonably possible, any discharges of sewage that are known to exceed the limits established by this division.

(1) *Notice of accidental discharge.* Such notice shall be given in advance whenever reasonably possible and contain available information regarding the intended or accidental discharge, volume, duration, constituents, loading and concentrations and such other information as may be necessary to determine whether such discharge is compatible, incompatible, is prohibited, or may cause interference.

(2) *Emergency contact points.* The following are the emergency contact points that may be used to convey such information:

Pollution Emergency Alerting	
System (PEAS)	1-800/292-1702
County Director	853-2291
County "C" Station	722-6575
MDNR (PEAS)	1-517/373-7660

(d) *Reports by the county director regarding users affected by FCPS.* The county director shall notify all nondomestic users that might be subject to FCPS of such fact and of any applicable requirements under 204(b) and 405 of the Act and sections 3001, 3004 and 4004 of the Solid Waste Disposal Act.

(e) *Reports by users regarding FCPS.* Within 180 days after the promulgation of an FCPS, existing nondomestic users subject to such FCPS which currently discharge or are scheduled to discharge into the public sewer or the POTW shall submit the reports required by 40 CFR 403.12(b), as amended. Within 90 days following the date for final compliance with applicable FCPS or, in the case of a new source, following commencement of the introduction of sewage into the POTW, any nondomestic user subject to an FCPS shall submit the reports required by 40 CFR 403.12(d), as amended. In addition, any nondomestic user subject to an FCPS, after the compliance date of such FCPS, or, in the case of a new source, after commencement of the discharge into the public sewer or POTW, shall submit the periodic reports required by 40 CFR 403.12(e), as amended.

(f) *Reports by DPW board regarding FCPS.* The DPW Board shall submit the reports required by

40 CFR 403.12(h), (i) and (j). as amended.

(g) *Maintenance of records regarding FCPS.* Any nondomestic user and the DPW board subject to the reporting requirements in subsections (e) and (f) of this section shall maintain records of all information in accordance with and resulting from any monitoring required by 40 CFR 403.12, as amended. Such records shall be retained by such user or the DPW board, as the case may be, for at least three years.  
(Compiled Ords. 1990, §§ 25.410--25.417)

#### **Sec. 42-288. Administrative organization.**

(a) *Enforcement agency.* The county is charged with the duty of investigating, preventing and abating violations of this division and enforcing the provisions hereof. The responsibility for enforcement of this division shall be upon the county director. Provided, that the right of enforcing this division is reserved to the township with respect to its collection system and the protection of its inhabitants and employees. In the event the township determines its intent to enforce this division, it shall notify the county of the intended enforcement action in specific cases. In such event, if the county determines that it does not intend to initiate enforcement action on behalf of the POTW within a period of ten days from the service of the notice of intent or immediately in the event of an emergency, the township may initiate enforcement action. In such event the county shall provide, without charge, the township with all available technical assistance it would have provided had the county undertaken such enforcement action. If the county determines after the above notice period that it intends to initiate enforcement action, it shall notify the township of its intended action and such enforcement action shall include intended relief for the township as to its concerns as well as for the protection of the POTW. In the latter case, the damages, surcharges and civil penalties shall be allocated between the county and the township as their interests shall appear. Further, in such case, the county shall assume and pay the attorney fees and costs incurred by the county as a result of such enforcement action, but such expenses shall be includable in the allocation of costs.

(b) *Powers of the county director.* The county director is hereby empowered to:

- (1) Supervise the implementation of this division.
- (2) Institute actions against all users violating this division and institute necessary legal proceedings to prosecute violations of this division and compel the prevention and abatement of violations of this division or nuisances arising therefrom.
- (3) Review the plans for pretreatment equipment, submitted by users.
- (4) Make inspections and tests of existing and newly installed, constructed, reconstructed, or altered pretreatment equipment, to determine compliance with the provisions of this division.
- (5) Investigate complaints of violations of this division and make inspections and observations of discharges. Record such investigations, complaints, inspections and observations.
- (6) Issue orders requiring compliance with this division.
- (7) Propose the imposition of civil penalties for violations of this division.

- (8) Determine surcharges to be levied pursuant to this division.
- (9) Make recommendations for amendments to this division.
- (10) Encourage voluntary cooperation by persons or affected groups in water pollution control.
- (11) Collect and disseminate information on water pollution control.
- (12) Work with planning and zoning agencies for the purpose of coordinating activities under provisions of this division and foster the best possible management of the water resources of the county.
- (13) Cooperate with federal, interstate, state, county, district, municipal, and other agencies concerned with water pollution with regard to studies, abatement programs, public complaints, and other matters to the end that the natural resources of the county shall be best conserved and improved.
- (14) Subject to applicable law and with the approval of the county board of commissioners, accept, receive and give receipt for monies, for and in behalf of the county, granted or made available by federal or state law for water pollution activities, surveys, investigations, research or programs.
- (15) Recommend the institution of proceedings in a court of competent jurisdiction to compel compliance with the provisions of this division or any determination or order that may be promulgated or issued pursuant thereto.

(Compiled Ords. 1990, §§ 25.420, 25.422)

#### **Sec. 42-289. Orders.**

- (a) *Generally.* Whenever the county director has determined that any user has violated this section or the regulations herein contained, such director may issue an order to take action deemed appropriate under the circumstances.
- (b) *Types of orders.* The following orders may be issued by the county director:
  - (1) *Immediate cease and desist.* An order to cease and desist from discharging any sewage or an illegal discharge with immediate effect in the case of actual or threatened discharge of pollutants to the public sewer or POTW which presents or may present imminent or substantial endangerment to the health or welfare of person, to the environment, or causes interference with the operation of the public sewers or POTW. Such order shall be in effect until a hearing is conducted pursuant to section 42-295. Such order shall contain a date and time for such hearing, as soon as reasonably possible, but not to exceed ten days from the date of said order.
  - (2) *Order to cease discharge within a time certain.* The county director may issue an order to show cause why an order to cease discharge of an incompatible pollutant by a certain time and date, in cases other than those defined in subsection (b)(1), should not be issued. The proposed time for remedial action shall be specified in the order to show cause. Such order may also contain such

conditions deemed appropriate by the director.

- (3) *Order to effect pretreatment.* The county director may issue an order to show cause why a user should not be required to pretreat in accordance with section 42-290. A user shall not, however, be ordered to pretreat where a compatible pollutant is discharged which the POTW has the capability to treat adequately. (See Comment to 40 CFR 403.5(c) in 44 Fed. Register 62266.)
- (4) *Order to perform affirmative actions.* The county director may also issue an order to users subject to this division to require such user to perform any action required of it under this division, including, but not limited to, the following:
  - a. Submit samples.
  - b. Install sampling or monitoring equipment.
  - c. Submit reports.
  - d. Permit access for inspection, sampling, tests, monitoring and investigations.

(c) *Content of orders.* Any order issued by the county director shall contain the facts and reasons and grounds for its issuance, and the remedial action ordered as well as the time within which such action shall be taken. No such order shall be deemed insufficient, however, for inconsequential errors and omissions in the facts and reasons and grounds for the order. If any user deems the content of the order to contain insufficient information, it may request the county director for additional information.

(d) *Factors beyond reasonable control.* In the event any noncompliance with any order is due to factors beyond the reasonable control of the user, then such noncompliance shall not be a violation of such order and such order shall be modified to take account of such factors. To the extent section 42-299(a) conflicts with this section, section 42-299(a) shall control.  
(Compiled Ords. 1990, §§ 25.430--25.434)

#### **Sec. 42-290. Pretreatment.**

(a) *General standards.* In the event a user discharges or proposes to discharge sewage to the public sewers or the POTW which is prohibited by this division, the county director may take any or all of the following steps:

- (1) Issue an order pursuant to section 42-289.
- (2) Impose surcharges as specified in section 42-292.

The obligations of a user under subsections (b) and (c) of this section, and any order concerning same, shall be subject to the terms of subsection (d) of this section.

(b) *Plan.* Any user subject to a final order to pretreat shall prepare a plan to effect and achieve the pretreatment of its sewage so that the same shall comply with its final order. The plan shall be prepared in

accordance with good engineering practice and shall state whether construction is necessary as well as identify the measures that may be implemented without necessitating construction. The plan shall contain a schedule of compliance for the completion of each of the various phases necessary to implement full pretreatment, which schedule shall be approved by an order of the county director.

(c) *Compliance.*

- (1) *Schedule of compliance.* The schedule of compliance shall consist of one or more remedial measures, including enforceable timetables for a sequence of actions or operations leading to compliance with an effluent standard, or other limitation prohibition or standard.
- (2) *Steps or phases.* The following steps or phases shall be included in the schedule of compliance, where applicable and appropriate:
  - a. Retention of a qualified engineer and/or consultant.
  - b. Obtain any engineering or scientific investigations or surveys deemed necessary.
  - c. Preparation and submission of a preliminary plan to achieve pretreatment.
  - d. Preparation of plans and specifications, working drawings or other engineering or architectural documents that may be necessary to effect pretreatment.
  - e. A time shall be established to let any contract necessary for any construction.
  - f. Completion times shall be established for any construction necessary.
  - g. A time limit shall be established to complete full pretreatment pursuant to the final order.
  - h. In the event a phase or unit of construction or implementation may be effected independently of another phase or unit, separate timetables shall be established for such phase or unit.
- (3) *Amendment.* The order shall be subject to amendment, change or revocation, provided notice of such action shall be served upon the user in the same manner as in the original order and subject to the same procedure for review and appeal.
- (4) *Modification.* In the event a nondomestic user subject to an order anticipates that it will be unable to comply with the schedule of compliance, or any portion thereof, for the completion of a specific step or phase, such nondomestic user shall notify the county director as soon as it determines it is unable to comply. Such nondomestic user shall state the reasons therefor and submit a request for an extension of time or modification or amendment of such order together with supporting documents or data. If the user's inability to comply is due to factors beyond the reasonable control of the user, then the failure to comply shall not be a violation of the order and the schedule of compliance shall be adjusted forward in time to account for such factors.

- (d) *Federal categorical pretreatment standards ("FCPS")*.
- (1) *Inclusion in standard.* If an FCPS is promulgated for a subcategory under which a user believes itself to be included, the user or the county director may request, within 30 days after the promulgation date, of the appropriate state or federal official, a written certification to the effect that the user does or does not fall within that particular sub-category. Such request shall be made and reviewed in accordance with the procedures set forth in 40 CFR 403.6(a), as amended.
- (2) *Compliance date.* A user to which a promulgated FCPS applies shall achieve compliance with such standard within the time period provided for in 40 CFR 403.6(b), as amended and 40 CFR 403.7, whichever is later.
- (3) *Revision of FCPS for consistent removal.*
- a. *Revision.* The DPW board may, on its own, and will, if requested by a user, revise discharge limits for specific pollutants covered in an FCPS consistent with 40 CFR 403.7, as amended. The preceding sentence shall not apply if the requirements of 40 CFR 403.7 for such revision cannot be met or the discharge pursuant to such revision would cause interference.
- b. *Conditional revision.* Whether or not the DPW board has a pretreatment program approved in accordance with 40 CFR 403.8, 403.9 and 403.11, as amended, the DPW board may, on its own, and will, if requested by a user, conditionally revise the discharge limits for specific pollutants consistent with 40 CFR 403.7, as amended. The preceding sentence shall not apply if the requirements of 40 CFR 403.7 for such revision cannot be met or the discharge pursuant to such revision would cause interference.
- c. *Provisional revision.* With respect to pollutants which are not currently being discharged and whether or not the DPW board has a pretreatment program approved in accordance with 40 CFR 403.8, 403.9 and 403.11, as amended, the DPW board may, on its own, and will, if requested by a user, provisionally revise the applicable FCPS prior to initial discharge of the pollutant consistent with 40 CFR 403.7, as amended. The preceding sentence shall not apply if the requirements of 40 CFR 403.7 for such revision cannot be met or the discharge pursuant to such revision would cause interference,
- d. *Information and costs.* In connection with any revision described in this subsection (d)(3)c of this section, the DPW board, in accordance with subsection (c) of this section, shall prepare and submit such data, reports, certifications, pretreatment programs and other information and shall establish such compliance schedules with users as are required by 40 CFR 403, as amended, to support the above described revisions. Any user with respect to whom such revisions are made shall accept compliance schedules established in accordance with subsection (c) by the DPW board and shall submit to the DPW board such data, reports and other information required to be submitted by the user to the DPW board or accepted by the user by 40 CFR 403, as amended, to support such revisions. If the request for such revision was initiated by the user or a category of users, then such user or users shall reimburse the DPW board for the reasonable costs incurred



and expenditures made by the DPW board in connection with the first sentence of this subsection (d)(3)d (exclusive of the pretreatment program). Such costs and expenditures shall not include amounts expended by the DPW board in connection with such data, reports, certifications and other information which are required by sections 42-285--42-287, the county's NPDES permits, or under any applicable law or regulation whether or not such revision is made. The county director may request a deposit from such user or users to cover the estimated costs. Nothing shall prevent a user from voluntarily providing additional information, reimbursements and support to the DPW board in connection with any revision.

- e. *Variance.* Any user, interested person or the USEPA (requestor) may request a variance (based upon fundamentally different factors) from the limits specified in an FCPS by submitting a written request to the state director. Such requests are to be submitted within the time and shall include the information required by 40 CFR 403.13, as amended. If a variance is granted, then the terms of same shall apply to the affected user.
- f. *Notice to township.* In the event a revision is made or applied for or a variance request is made, the DPW board, in the case of a revision, and the requestor, in the case of a variance, shall notify the township (in which users are located who are, or whose discharge is, the subject of the revision or variance) that the revision has been made or applied for or that a variance request has been made and of the proposed effective date thereof, where applicable.

(Compiled Ords. 1990, §§ 25.440--25.444)

#### **Sec. 42-291. Accident prevention.**

(a) *User to provide containment area.* Each nondomestic user that uses or stores liquid material on its facilities shall provide a storage or use area on its facilities which is capable of containing the liquid material so that, in the event of an accident, liquid material cannot escape therefrom by gravity through private sewers or otherwise into any public sewer or the POTW in an amount which would result in a prohibited discharge.

(b) *Issuance of order to comply; submission of plan; approval.*

(1) *User compliance with requirements; user to submit plan.* The county director may issue an order to such a user to comply with subsection (a) of this section and to first submit plans for compliance to the county director.

(2) *Plan to be submitted within time specified.* Each nondomestic user so ordered shall submit its plan for compliance within the time specified in such order.

(3) *Approval of timetable by county director.* The timetable for implementation shall be subject to the approval of the county director.

(c) *Containment measures becoming operational.* The containment measures shall be operational within such reasonable period of time as the county director shall order.

(d) *Interim measures for emergency containment.* The county director may order the nondomestic user to take reasonable and feasible interim measures for emergency containment if circumstances so require.

(e) *WRC rules.* In no event shall a nondomestic user be required by county order issued under subsection (a) of this section to provide facilities which are more extensive or inconsistent with facilities such user has provided or will provide in compliance with the W.R.C. rules where applicable.  
(Compiled Ords. 1990, §§ 25.450--25.456)

#### **Sec. 42-292. Surcharges.**

(a) *Imposed.* The following users shall be subject to the imposition of one or more surcharges as provided by this section:

- (1) Users exceeding the limitations established by section 42-284(b)(1)--(5); or
- (2) Users exceeding the specific criteria limitations identified in section 42-284(b)(6), or the limits contained in an applicable pretreatment order issued pursuant to this division, to an extent that would require additional cost of treatment by the POTW in order to prevent:
  - a. Interference (present or future);
  - b. A substantial detrimental effect upon the public health or welfare, a substantial detrimental effect upon the environment, or a substantial detrimental effect upon the physical structure of the POTW.

(b) *Applicability.* Any such user shall be liable for the imposition of a surcharge to reimburse the county for any incremental costs or expenses (direct or indirect) it may incur in handling or treating such wastes (or which may be imposed upon the county) as a result of exceeding such limits.

(c) *Determination.* The county director shall calculate the amount of the surcharge to be assessed against such user.

(d) *Criteria.* The amount of the surcharge may be based upon and include the following:

- (1) The volume of the discharge;
- (2) The length of time such discharge occurred;
- (3) The composition of such discharge;
- (4) The nature, extent and degree of success the county may achieve in minimizing or mitigating the effect of such discharge;
- (5) The toxicity, degradability, treatability and dispersal characteristics of such discharges;
- (6) Schedule A set forth in subsection (e) of this section; and

(7) Such other factors as the director deems appropriate under the circumstances.

(e) *Schedule A.*

(1) *BOD surcharge.* Surcharge provisions for five-day biochemical oxygen demand are hereby established. A contractee or party served by a contractee may discharge wastewaters containing BOD concentrations in excess of 250 mg/l but not to exceed 400 mg/l into the system under the following provisions:

a. The number of pounds of BOD in excess of 250 mg/l will be calculated by the following equation:

$$\text{BOD} = Q \times 8.345 (Y-250)$$

In the above equation, Q is the total million gallons of wastewater discharged during the billing period by the contractee or such party and Y is the average BOD concentration of the wastewater of the contractee or such party during the billing period.

b. The surcharge to the contractee or such party will be at the rate of \$0.012 per pound of BOD.

(2) *Suspended solids surcharge.* Surcharge provisions for suspended solids (SS) are hereby established. A contractee or party served by a contractee may discharge wastewaters containing suspended solids concentrations in excess of 250 mg/l but not to exceed 750 mg/l into the system under the following provisions:

a. The number of pounds of suspended solids in excess of 250 mg/l will be calculated by the following equation:

$$\text{SS} = Q \times 8.345 (M-250)$$

In the above equation, Q is the total million gallons of wastewater discharged during the billing period by the contractee or such party and M is the average SS concentration of the wastewater of the contractee or such party during the billing period.

b. The surcharge to the contractee or such party will be at the rate of \$0.0032 per pound of SS.

(Compiled Ords. 1990, §§ 25.460--25.464)

### **Sec. 42-293. Existing discharges; adoption of new provisions; exemptions for current users.**

(a) *Authorized current discharges.* Nondomestic users with respect to whom there exists authorization to discharge sewage within parameters specified for that particular user (whether by service agreement, permit, letter, authorization or otherwise) which authorization existed prior to the effective date of the ordinance from which this division is derived shall continue to have such authority until the earlier of the

following:

- (1) Such authority is renewed or confirmed by the county director; or
- (2) Such authority is modified or revoked by order of the county director pursuant to and consistent with this division.

(b) *Provisions of divisions that are more restrictive.* With respect to a user which has a discharge which discharge existed prior to the effective date of the ordinance from which this division is derived, this division to the extent it is different or more restrictive than the exhibit D to the access rights agreement shall take effect with respect to such user's discharge 60 days after the effective date of the ordinance from which this division is derived. Such time may be extended by the DPW board for a reasonable period in the event such user applies for a variance or exemption. This subsection shall not prevent the county director from issuing orders pursuant to section 42-288(b)(6) prior to the expiration of such 60-day period.

(c) *Exemptions.*

(1) To the extent there is no conflict with an applicable state or federal statute or promulgated rule, the DPW board may issue an exemption order to a user with respect to:

- a. Effluent standards, effluent limitation, effluent criteria contained in this division.
- b. Any other requirement of this division applicable to the user.

(2) In granting an exemption order the DPW board:

- a. May establish a new or modified standard, limitation, criteria or requirement in the exemption order.
- b. May not authorize a discharge that will result in interference.
- c. May, as the sole or partial function of the order, determine that a discharge that exceeds one or more of the numerical limitations and criteria in section 42-284(b)(6) does not cause interference.

(d) *Notice to township.* The township in which a user who is requesting an exemption order is located shall be notified in advance of the date, place and subject matter of the exemption order hearing. Such notice shall be given to the township as soon as practicable after the request is made. In the event the township states its opposition to the request at the hearing before the DPW board, and if the opposition reasonably involves the prohibitions contained in section 42-284(b)(1)--(5), inclusive, then such request shall not be granted without the concurrence of the governing body of the township.

(Compiled Ords. 1990, §§ 25.470--25.474)

#### **Sec. 42-294. Enforcement and procedure.**

(a) *Citation.* The county director shall issue a citation with or without an order against any user

deemed to be in violation of this division and determine the penalty, if any, to be imposed.

(b) *Service.* The citation shall be served upon each user either by personal delivery or by certified mail addressed to such user.

(c) *Content of citation.* The citation shall specify the following:

- (1) Date and time of issuance.
- (2) Date, time and place of violation, the nature of the violation, the substances discharged, where ascertainable, and the volume of such discharge, where applicable.
- (3) Reference to the pertinent section of the ordinance under which the violation is charged.
- (4) Reference to the pertinent section of the ordinance establishing penalties for the violation.
- (5) The amount of the penalty, if any.
- (6) The right of the alleged violator to present to the county director, written explanations, information, or other materials in answer to the citation, including any defenses.
- (7) The right to request an informal and formal hearing on the violation within the time limits specified in section 42-295.

(d) *Notice to township.* Any citation issued pursuant to this section upon any user within the corporate limits of any municipal contractee, shall be served upon the contractee in the manner provided in subsection (b) of this section and such contractee shall be given notice, also in the manner provided in this section, of all meetings, hearings and proceedings subsequently conducted pursuant to such citation and such contractee is hereby granted the full and complete right to participate therein as an amicus curiae. The within right as an amicus curiae is also afforded the contractee throughout any appeal or judicial proceedings undertaken by either the county or the affected user.

(Compiled Ords. 1990, §§ 25.480--25.484)

#### **Sec. 42-295. Administrative appeals.**

(a) *Scope of regulations.* This section shall govern appeals from all administrative citations, orders, surcharges, penalties, exemptions and variances.

(b) *Informal hearings.*

- (1) *Right at request hearing.* An informal hearing may be requested by any user, including contractees, deeming itself aggrieved by any citation, order, surcharge, penalty or action on exemptions and variances before the county director by requesting an informal hearing within ten days after the citation, order, penalty or other action has been served upon such user or contractee.

- (2) *Time.* The informal hearing shall be promptly scheduled at the earliest practicable date, but which shall not exceed five days after receipt of the request unless extended by mutual written agreement.
- (3) *Recording, transcribing not required.* The hearing shall be conducted on an informal basis without recording or transcribing the same.
- (c) *Formal hearings.*
  - (1) *Right of aggrieved user.* Any user or contractee deeming itself aggrieved by any citation, order, surcharge, penalty or other action shall have the right to a formal hearing on the county director's action by filing a written demand for such hearing within a period of 20 days from the date service thereof is effected upon such user, unless extended by written mutual agreement.
  - (2) *Contents of written request for hearing.* Such written request signed by such user or contractee or on behalf of such user or contractee by a duly authorized officer, agent or attorney to the county director, shall contain the following:
    - a. State the name and address of the user or contractee requesting the hearing.
    - b. Attach a copy of the citation, order, surcharge, penalty or action.
    - c. State with particularity the defenses and issues to be raised by such person at the hearing, provided, however, additional defenses and issues may be raised at the hearing.
  - (3) *Schedule for hearing.* A hearing shall be promptly scheduled at the earliest practicable time and date, but not to exceed 15 days from the date of receipt of the request unless otherwise extended by written agreement.

(d) *Finality of action.* If an informal or formal hearing is not demanded within the periods specified in subsections (b) and (c) of this section, such action shall be deemed final. In the event either or both such hearings are demanded, the action shall be suspended until a final determination has been made, except for immediate cease and desist orders issued pursuant to section 42-289(b)(1).  
(Compiled Ords. 1990, §§ 25.490--25.493)

**Sec. 42-296. Hearings and actions of county director; hearing board; duties; notices, etc.**

- (a) *Provisions to be basis for conduct for hearings.* Hearing on any notice, order, citation, surcharge or any other action of the county director shall be conducted under the procedure set forth in this section.
- (b) *Hearing board.*
  - (1) *Designation.* The DPW board is hereby designated as the hearing board to schedule, hear and decide administrative appeals arising under this division.
  - (2) *Powers.* A majority of the board is hereby vested with the power, jurisdiction and authority:

- a. To schedule, hear and decide appeals from any administrative determination made by the county director.
  - b. To schedule, hear and decide applications for extensions of time for compliance or for exemptions or variances in the manner set forth in this division.
  - c. To decide all matters referred to it by the director or upon which it is required to decide under this division.
- (3) *Minutes; records.* The board shall keep minutes of its proceedings and comply with the open meetings act and shall electronically record or authorize stenographic recording of the proceedings.
  - (4) *Adoption of rules and regulations; persons appearing and testifying.* The board shall have the right to adopt reasonable rules and regulations governing the conduct of its hearings. Any person may appear and testify at a hearing and be represented by an authorized agent or attorney.
- (c) *Appointment of examiners; recording the proceedings; continuances, etc.*
    - (1) *Powers.* The board may appoint one or more hearing examiners or designate one or more of its members to serve as hearing examiners to conduct the hearings. The examiner hearing the case shall exercise all powers relating to the conduct of hearings until it is submitted by him to the board for decision.
    - (2) *Recording the proceedings.* A record of the entire proceedings shall be made by tape recording, or by any other means of permanent recording determined to be appropriate by the board.
    - (3) *Stenographic reportings.* The proceedings at the hearing shall also be reported by a stenographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment by the requesting party.
    - (4) *Continuances.* The board may grant continuances for good cause shown; however, when a hearing examiner has been assigned to such hearing, no continuances may be granted except by him for good cause shown so long as the matter remains before such examiner.
    - (5) *Oaths; certification.* In any proceedings under this section, the board, any board member, or the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.
    - (6) *Reasonable dispatch.* The board and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties of their representatives.
  - (d) *Form of notice of hearing to appellant.* The notice to appellant shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before (the board or name of hearing examiner) at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the hour \_\_\_\_\_, upon the hearing requested by you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the attendance of public witnesses and the production of books, documents or other things by filing a request therefor with (Board of name hearing examiner)."

- (e) *Manner of conducting hearing; evidence; rights of parties, etc.*
  - (1) *Rules.* Hearings need not be conducted according to the technical rules relating to evidence and witnesses.
  - (2) *Oral evidence.* Oral evidence shall be taken only on oath or affirmation.
  - (3) *Hearsay evidence.* Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.
  - (4) *Admissibility of evidence.* Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.
  - (5) *Exclusion of evidence.* Irrelevant and unduly repetitious evidence shall be excluded.
  - (6) *Rights of parties.* Each party shall have these rights, among others:
    - a. To call and examine witnesses on any matter relevant to the issues of the hearing;
    - b. To introduce documentary and physical evidence;
    - c. To cross examine opposing witnesses on any matter relevant to the issues of the hearing;
    - d. To impeach any witness regardless of which party first called him to testify;
    - e. To rebut the evidence against him;
    - f. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.
  - (7) *Facts judicially noticed by courts of the state.*
    - a. *Reaching decisions.* In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the



courts of this state.

- b. *Matters to be noticed in the record.* Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.
- c. *Opportunity to refute officially noticed matters.* Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the board or hearing examiner.
- d. *Inspection of premises involved in appeal.* The board or the hearing examiner may inspect any building or premises involved in the appeal during the course of the hearing, provided that:
  - 1. Notice of such inspection shall be given to the parties before the inspection is made;
  - 2. The parties are given an opportunity to be present during the inspection; and
  - 3. The board or the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the board or hearing examiner.
- (f) *Various methods of hearing contested cases; delivery of decision to appellant; effective date.*
  - (1) *Hearing before board itself.* Where a contested case is heard before the board itself, no member thereof who did not hear the evidence or has not read the entire record of the proceedings shall vote on or take part in the decision.
  - (2) *Hearing before examiner.* If a contested case is heard by a hearing examiner alone, he shall within a reasonable time (not to exceed 30 days from the date the hearing is closed) submit a written report to the board. Such report shall contain a brief summary of the evidence considered and state the examiner's findings, conclusions and recommendations subject to section 42-298 on confidentiality. The report also shall contain a proposed decision in such form that it may be adopted by the board as its decision in the case. All examiner's reports filed with the board shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party on the date they are filed with the board.
  - (3) *Consideration of report by board; notice.* The board shall fix a time, date, and place to consider the hearing examiner's report and proposed decision, within 15 days from the filing thereof. Notice thereof shall be mailed to each interested party not less than five days prior to the date fixed, unless it is otherwise stipulated by all of the parties.
  - (4) *Exceptions to report.* Not later than two days before the date set to consider the report, any party

may file written exceptions to any part or all of the examiner's report and may attach thereto a proposed decision together with written argument in support of such decision. By leave of the board, any party may present oral argument to the board.

- (5) *Disposition by the board.* The board may adopt or reject the proposed decision in its entirety, or may modify the proposed decision.
- (6) *Alternate method for decision when proposed decision not adopted.* If the proposed decision is not adopted as provided in subsection (f)(5) of this section, the board may decide the case upon the entire record before it, with or without taking additional evidence; or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, he shall prepare a report and proposed decision as provided in subsection (f)(2) of this section hereof after any additional evidence is submitted. Consideration of such proposed decision by the board shall comply with the provisions of this subsection (f).
- (7) *Appellant to receive written copy of decision.* The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered personally or sent by certified mail, postage prepaid, return receipt requested, to the appellant.
- (8) *Determining effective date of decision.* The effective date of the decision shall be as stated therein or pursuant to a stay order from a court of competent jurisdiction.

(g) *Appeals from determinations of board.* Appeals from the determinations of the board may be made to the circuit court for the county as provided by law. Such appeals shall be governed procedurally by the Administrative Procedures Act of 1969 (MCL 24.201 et seq.). All findings of fact, if supported by the evidence, made by the board shall be conclusive upon the court.  
(Compiled Ords. 1990, §§ 25.500--25.506)

#### **Sec. 42-297. Penalties and remedies.**

- (a) *Criminal penalties.* Any user, contractee or person (other than an employee of a user while acting as an employee) knowingly violating any provision of this division or a final order shall be guilty of a misdemeanor.
- (b) *Continuing offense.* Each and every day of any such violation shall constitute a separate and new offense and shall be punishable as such as herein provided.
- (c) *Surcharges.* In addition to prosecution and the imposition of civil penalties for violating this division, a user or contractee violating the regulations established by or pursuant to this division shall be subject to one or more surcharges in accordance with section 42-292.
- (d) *Civil penalties.* Any user or contractee violating this division may also be subject to a penalty to be initially determined and assessed by the county director not to exceed \$500.00 per day, subject to appeal to the board and circuit court. The board may also adopt and publish a schedule of monetary civil penalties for various types of violations of this division. No such penalty shall be imposed where the violation was not

caused by such user.

(e) *Violation constitutes a public nuisance.* Violations of this division are hereby declared to constitute a public nuisance.

(f) *Civil injunctive relief.* The county director is hereby empowered to institute legal proceedings for the abatement of any nuisance including injunctive actions or other remedies, including damages.

(g) *Prima facie presumption.* There shall be a prima facie presumption that the owner or occupant, if not owner-occupied, of the premises upon or from which a violation of this division is determined to exist, that such owner or occupant had knowledge of the unauthorized discharge or other violation. Such presumption shall be rebuttable by competent evidence showing the absence of such knowledge if actual or constructive knowledge is a necessary element of the proof of such violation.

(Compiled Ords. 1990, §§ 25.510--25.517)

#### **Sec. 42-298. Confidentiality.**

(a) *Confidential information; data not entitled to confidential treatment.* All information and data submitted to the county by the user or obtained by the county through inspections and monitoring shall be protected by and held by the county as confidential if it relates to trade secrets or is information which, if disclosed, would tend to injure the competitive position of the user. The following data is not entitled to confidential treatment:

- (1) Data that directly expresses effluent characteristics at or after a point of discharge to the public sewer or the POTW.
- (2) Data that has previously been disclosed to the public generally.

(b) *Request for confidentiality.* With respect to information and data submitted to the county by the user, the user must submit a cover sheet or indicate on individual sheets, that such information is to be held as confidential information, in order for the information and data to be entitled to confidential treatment.

(c) *Request for release of confidentiality.* If any person or governmental agency requests from the county information or data which is to be treated confidentially or is marked "confidential" pursuant to subsections (a) and (b) of this section, the county shall notify the user before any release of such information and data. The user may agree to or object to the release of all or part of the requested information and data. If the user objects and the requesting person or agency continues its request, then the information and data at issue shall not be released by the county without an order of a court of competent jurisdiction.

(Compiled Ords. 1990, §§ 25.520--25.523)

#### **Sec. 42-299. Upsets and net/gross.**

(a) *Upset liability.* In the event of an upset, the user shall not be liable for the fines, imprisonment or civil penalties provided for in this division. An upset shall mean a noncompliance with this division that is unintentional and temporary and is caused by factors beyond the reasonable control of the user.

(b) *Upsets and FCPS.* To the extent an upset involves an FCPS, the provisions of 40 CFR 403.16, as amended, shall be met in order for the fines, imprisonment and civil penalties of this division not to apply and in order for the upset to constitute an affirmative defense as provided in 40 CFR 403.16, as amended.

(c) *Net/gross and FCPS.* A user may apply to the USEPA for an adjustment in an FCPS to reflect the presence of pollutants in the user's intake water in accordance with 40 CFR 403.15, as amended. In the event such an adjustment is made the adjusted FCPS shall apply, provided the adjustment does not result in interference.

(Compiled Ords. 1990, §§ 25.530--25.533)