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TOWN OF WESTMINSTER

Town of Westminster

GENERAL BYLAWS APPROVED AT ANNUAL TOWN MEETING MAY 1, 2021

Changes approved by Attorney General on September 24, 2021


Ellen M. Sheehan, CMMC
Westminster Town Clerk



**TOWN OF WESTMINSTER
OFFICE OF THE TOWN CLERK**


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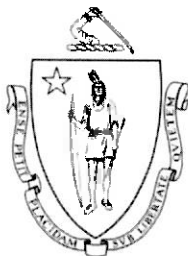
September 30, 2021

On the date written above, I have posted copies of the attached General Bylaw Amendments passed at the Annual Town Meeting on May 1, 2021 and approved by the Attorney General of Massachusetts on September 24, 2021, at the following public places in the Town of Westminister:

Community/Senior Center
Town Hall
US Post Office
Forbush Memorial Library
Public Safety Building

The above amendments were posted on the Town of Westminister website on the same day.


Ellen M. Sheehan, CMMC
Town Clerk



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
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September 24, 2021

Ellen M. Sheehan, Town Clerk
Town of Westminster
11 South Street
Westminster, MA 01473

**Re: Westminster Annual Town Meeting of May 1, 2021 -- Case # 10140
Warrant Article # 17 (Zoning)
Warrant Articles # 17, 19 and 22 (General)**

Dear Ms. Sheehan:

Article 22 - We approve Article 22 from the May 1, 2021 Westminster Annual Town Meeting, except for portions of Section 161-36, "Civil Penalties," authorizing fines of up to \$5,000 for violations of the sewer by-law (see Disapproval # 1 of 2 on pg. 4) and a portion of Section 161-37 providing that certain acts will be considered a misdemeanor (see Disapproval # 2 of 2 on pg. 5).¹

I. Summary of Article 22

Under Article 22 the Town voted to amend Chapter 161, "Sewers," in order "to mirror the City of Fitchburg's updated sewer ordinances in accordance with the Intermunicipal Agreement with the City."² The warrant explanation for Article 22 states that the amendments to Chapter 161 are required "for consistency with the City of Fitchburg ordinances in accordance with the Intermunicipal Agreement with the City" of Fitchburg."

II. Attorney General's Standard of Review

Our review of Article 22 is governed by G.L. c. 40, § 32. Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every

¹ In a decision issued August 24, 2021, we: (1) approved the portion of Article 17 amending the general by-laws and disapproved the portion of Article 17 amending the zoning by-laws; (2) approved Article 19; and (3) extended our deadline of review of Article 22, by agreement with Town Counsel, for an additional 30 days until September 24, 2021.

² Likely because the Town used Fitchburg's ordinance as a model, there are many references throughout the by-law to the city of Fitchburg or Fitchburg town officials (instead of the Town). The Town may wish to consider clarifying amendments at a future Town Meeting.

2. Section 161-15 – Guarding of Excavations

Section 161-15 requires, in relevant part, that: “[a]ll excavations for building sewer installation shall be adequately guarded by the applicant with barricades and lights so as to protect the public from hazard.” This section must be applied in a manner consistent with the requirements of G.L. c. 82A, “Excavation and Trench Safety,” and its implementing regulations codified in 520 C.M.R. §§ 14.00 *et. seq.* Pursuant to G.L. c. 82A and 520 C.M.R. §§ 14.00, beginning on January 1, 2009, all excavators must obtain a permit prior to the creation of a trench made for a construction-related purpose on public land, including municipal property, private land, and rights-of-way in accordance with G.L. c. 82A. In addition to the permit, the trench safety regulations require that all excavators take specific precautions to protect the general public and prevent unauthorized access to unattended trenches. The Town must apply Section 161-15 consistent with the specific precautions required for trenches under G.L. c. 82A and 520 C.M.R. §§ 14.00. The Town should consult with Town Counsel on this issue.

3. Section 161-33 – Use of Easements

Section 161-33 authorizes the Town to “enter the building on private property to prevent any illegal discharge to the sewers.” In applying this provision of Section 161-33, the Town should be mindful that municipal officials do not have the authority to conduct non-emergency warrantless searches of private property without permission of the owner. Commonwealth v. John G. Grant & Sons Co., Inc., 403 Mass. 151, 159-60 (1988). The U.S. Supreme Court has held that warrants are required for non-emergency administrative inspections. Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1966) (requiring warrant for health inspector non-emergency entry); See v. City of Seattle, 387 U.S. 541 (1966) (requiring warrant for nonemergency inspection by fire chief). “[A]dministrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure.” See, 387 U.S. at 545. Massachusetts courts have similarly recognized that “statutes can no longer convey blanket powers of warrantless entries.” Commonwealth v. Hurd, 51 Mass. App. Ct. 12, 17 (2001) (holding that G.L. c. 129, § 7 does not authorize warrantless searches for animal inspection). The Town should consult with Town Counsel to ensure that this Section is applied in a manner that is consistent with state law and applicable constitutional requirements.

4. Section 161-36 – Civil Penalties

Section 161-36, “Civil Penalties” provides for fines of up to \$5000. Specifically, Section 161-36 provides in relevant part as follows, with emphasis added:

A. The Sewer Commission/Commission shall prescribe and establish civil administrative penalties for violations of this chapter, on the orders of the Sewer Commission/Commission or Superintendent/Commissioner, or his/her designee, the conditions of the permit, pretreatment standards and any federal and state requirement applicable to users discharging into the POTW system. **The penalties shall be not more than \$5,000 for each violation.** Each day of which the violation(s) exists shall be deemed a separate violation.

expenses, and the cost of any actual damages incurred by the Town/City.” Instead, the determination of whether the Town is entitled to reimbursement of expenses and legal fees incurred in prosecuting a violation of the by-law is a matter for a court of competent jurisdiction to decide upon the initiation of an appropriate court proceeding by the Town; but such determination cannot be *required* by by-law. In light of this, the Town should consult with Town Counsel regarding whether this text should be deleted from the by-law or further clarified at a future Town Meeting. In addition, the Town should consult with Town Counsel with any questions regarding the proper application of this portion of Section 161-36 (C).

5. Section 161-37 – Criminal Penalties

Section 161-37 (C) provides that certain conduct shall constitute a misdemeanor, as follows (with emphasis added):

A User who knowingly or with a wanton or reckless disregard causes or permits any substance to be introduced into the POTW which causes personal injury or property damage shall, upon conviction, **be guilty of a misdemeanor and** be subject to a fine as set forth in § 161-37.A. This penalty shall be in addition to any other civil fine or cause of action for personal injury or property damage available under State law.

We disapprove and delete the text above in bold and underline (“be guilty of a misdemeanor and”) because this text conflicts with G.L. c. 40, § 21 and the Home Rule Amendment, Article LXXXIX, Art. 2, Sec. 7. In accordance with G.L. c. 40, § 21, a by-law can “affix penalties for breaches thereof not exceeding three hundred dollars for each offense,” but the by-law cannot provide that a certain act shall constitute a misdemeanor or provide that the imposition of a criminal penalty shall automatically result in a finding that a person is “guilty of a misdemeanor.” In addition, the Home Rule Amendment, Art. 2, Sec. 7 (6) prohibits a Town from “defin[ing] and provid[ing] for the punishment of a felony or to impose imprisonment as a punishment for any violation of law.” In certain circumstances conviction of a misdemeanor could result in imprisonment. See G.L. c 274, § 1.⁴ See also G.L. 266, § 123A (setting forth penalties for the willful trespass upon a public source of water, water supply facilities or land that includes imprisonment.) For these reasons, we disapprove and delete the text above in bold and underline.

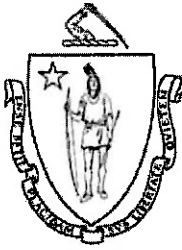
6. Section 161-41 – Effective Date

Section 161-41, “When effective” provides that:

This chapter shall be in full force and effect from and after its passage, approval, recording and publication as provided by law.

Pursuant to G.L. c. 40, § 32 a by-law approved by the Attorney General must be posted or published before it goes into effect:

⁴ The Massachusetts Sentencing Commission website provides that the maximum statutory penalty of incarceration for a misdemeanor is 2 ½ years. See <https://www.mass.gov/info-details/sentencing-guidelines-step-3-chapter-3>



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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August 24, 2021

Brian Riley, Esq.
KP Law
101 Arch Street
Boston, MA 02110

**Re: Extension of 90-day review period of Article 22
Westminster Annual Town Meeting of May 1, 2021
Case # 10140**

Dear Attorney Riley:

Pursuant to the requirements of G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, the Attorney General and Town Counsel are authorized to extend the 90-day period provided for the Attorney General's review of town by-laws for not more than an additional 90 days. This letter serves to satisfy the requirements of G.L. c. 40, § 32, as amended. In light of our need for time to further discuss the proposed by-law's consistency with state law, we hereby jointly agree to extend the Attorney General's review period of Article 22 for an additional 30 days. Our decision on Article 22 will now be due on **September 24, 2021**.


Please sign this letter to reflect your agreement and return the signed letter to us. We will then file the letter with the Town Clerk, with a copy to you. Thank you for your accommodation in this matter.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

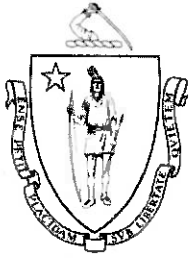
Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
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Town Counsel

8-24-21
Date



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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August 24, 2021

Ellen M. Sheehan, Town Clerk
Town of Westminster
11 South Street
Westminster, MA 01473

**Re: Westminster Annual Town Meeting of May 1, 2021 -- Case # 10140
Warrant Article # 17 (Zoning)
Warrant Articles # 17, 19 and 22 (General)**

Dear Ms. Sheehan:

Article 19 - We approve Articles 19 from the May 1, 2021 Westminster Annual Town Meeting.

Article 22 - The Attorney General's deadline for a decision on Article 22 is extended for an additional 30 days under the authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000. The agreement with Town Counsel for a 30-day extension is attached hereto. We will issue our decision on Article 22 on or before **September 24, 2021**.

Article 17 - We approve the amendments to the Town's general by-laws voted under Article 17, but we must disapprove and delete the amendments to the Town's zoning by-laws because the Town did not hold a planning board hearing for these zoning by-law amendments as required by G.L. c. 40A, § 5.

Under Article 17, the Town voted to amend both the general and zoning by-laws "by replacing the term Board of Selectmen with Select Board wherever the term occurs." We approve the portion of Article 17 that amends the general by-laws. However, as explained herein, we must disapprove the portion of Article 17 that amends the zoning by-laws.

General Law Chapter 40A, Section 5 establishes the specific procedure that the Town must follow when amending its zoning by-laws, as follows:

No zoning...by-law or amendment thereto shall be adopted until after the planning board in a...town has...held a public hearing thereon...at which interested persons shall be given an opportunity to be heard....Notice of the time and place of such hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general

circulation in the...town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the...town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town.

Here, the Planning Board did not hold a hearing on the proposed amendments to the zoning by-law or follow any of the notice requirements set forth in G.L. c. 40A, § 5. The failure to hold the Planning Board hearing required under G.L. c. 40A, § 5 is a fatal defect that renders the adoption of zoning by-law amendments inconsistent with state law.¹ For this reason, we must disapprove and delete the portion of Article 17 that proposes to amend the Town's zoning by-laws. The Town should consult with Town Counsel with any questions on this matter.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext. 4418

cc: Town Counsel Brian Riley

¹ Although G.L. c. 40, § 32 (as amended by Chapter 299 of the Acts of 2000), grants this Office the discretion to waive certain defects in the Planning Board notice in certain circumstances, the Attorney General does not exercise that discretion in a situation such as this where the Planning Board did not hold a hearing as required by G.L. c. 40A, § 5.



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VOTE TAKEN AT THE ANNUAL TOWN MEETING, MAY 1, 2021

An affirmative vote was taken at this time to accept the provisions of MGL Chapter 39, Section 15, which allows the Moderator to dispense with a count in matters requiring a two-thirds vote by statute, where the vote is unanimous or clearly overwhelming at this Annual Town Meeting.

ARTICLE 17. Voted to amend the Westminster General Bylaws ~~and Zoning~~
~~Bylaws~~ by replacing the term Board of Selectmen with Select Board wherever the term occurs.

** Zoning Bylaws to be amended after
Planning Board Public Hearing & another
Town Meeting Vote, per Attorney
General.*

A True Copy, Attest:

Ellen M. Sheehan, CMMC
Westminster Town Clerk



**TOWN OF WESTMINSTER
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VOTE TAKEN AT THE ANNUAL TOWN MEETING, MAY 1, 2021

An affirmative vote was taken at this time to accept the provisions of MGL Chapter 39, Section 15, which allows the Moderator to dispense with a count in matters requiring a two-thirds vote by statute, where the vote is unanimous or clearly overwhelming at this Annual Town Meeting.

ARTICLE 19. Voted to amend the Westminister General Bylaws (Chapter 4 of the Code of the Town of Westminister, Massachusetts) to reduce the number of members on the Advisory Board from seven (7) to five (5).

A True Copy, Attest:

Ellen M. Sheehan, CMMC
Westminister Town Clerk

VOTE TAKEN AT ANNUAL TOWN MEETING HELD MAY 1, 2021

An affirmative vote was taken at this time to accept the provisions of MGL Chapter 39, Section 15, which allows the Moderator to dispense with a count in matters requiring a two-thirds vote by statute, where the vote is unanimous or clearly overwhelming at this Special Town Meeting.

ARTICLE 22. Voted to amend the Westminster General Bylaws relative to changes and amendments to the Sewer Bylaw in order to mirror the City of Fitchburg's updated sewer ordinances in accordance with the Intermunicipal Agreement with the City as Chapter 161, Sewers, as listed below:

Chapter 161 Sewers

[HISTORY: Adopted by the Annual Town Meeting 4-25-1987 as Art. 41. Amendments noted where applicable.]

GENERAL REFERENCES

Sewage disposal — See Ch. 245.

Toxic and hazardous wastes — See Ch. 251.

Water supplies — See Ch. 254.

Article I

Definitions

§ 161-1 Terms defined.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

ACT OR THE ACT

The Federal Water Pollution Control Act, also known as the "Clean Water Act," herein the "Act," as amended, 33 U.S.C. § 1251 et seq.

APPLICANT

Any person requesting approval to discharge wastewaters into the municipal facilities or a new connection to the wastewater works.

APPROVAL AUTHORITY

The Region 1 Administrator of the U.S. Environmental Protection Agency or his authorized representative.

BUILDING DRAIN

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 10 feet outside the inner face of the building wall.

BUILDING SEWER

The pipe which connects to a building drain conveying waste from plumbing fixtures within a building to a Town sanitary or combined sewer, a private sanitary or combined sewer, or other place of disposal. The building sewer begins 10-feet outside the inner face of the building foundation wall and extends to and includes the connection to the Town or private wastewater systems. **CATEGORICAL INDUSTRIAL USER**

An Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard.

CATEGORICAL PRETREATMENT STANDARD or CATEGORICAL STANDARD

Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act which apply to a specific category of Users and which existed on the effective date of this chapter and codified at 40 CFR, Chapter 1, Subchapter N, Parts 405 - 471, as the same may from time to time be amended.

CHEMICAL OXYGEN DEMAND or COD

A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

CITY

The City of Fitchburg, Massachusetts.

COMBINED SEWER

A sewer designed to receive both wastewater and surface runoff.

COMMISSION

The Water/Wastewater Commission of Fitchburg, or its duly authorized representative.

COMMISSIONER

The Commissioner of the Public Works Department of Fitchburg, or his duly authorized representative.

COMMONWEALTH

The Commonwealth of Massachusetts.

COMPOSITE SAMPLE

A sample which represents many aliquots taken throughout an extended time period, typically 24 hours.

COOLING WATER or NONCONTACT COOLING WATER

Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product or finished product.

means of such structures and conduits, including treatment and disposal works, necessary intercepting, outfall and outlet sewers and pumping stations integral to such facilities with sewers, equipment, furnishings thereof and other appurtenances connected therewith.

FITCHBURG DEPARTMENT OF PUBLIC WORKS, PUBLIC WORKS, or FDPW

The City of Fitchburg, Massachusetts, Department of Public Works, Wastewater Division or other relevant division(s).

FLOATABLE OIL

Oil, fat or grease of animal or vegetable origin, or petroleum-derived oil or grease in a physical state such that it will separate by gravity from waste by treatment in an approved pretreatment facility.

FOG (FATS, WAX, OILS, and GREASE)

The discharge from a food-handling, food-production or food-packaging establishment of fats, wax, oils, and grease into the Town's or City's wastewater system, and which shall be authorized only pursuant to a validly issued Board of Health permit. Such food establishments shall include commercial/industrial establishments or other establishments deemed appropriate by the FDPW/WDPW that include as a part of their operations the handling, preparation and/or distribution of food.

GARBAGE

The animal and vegetable wastes resulting from the handling, preparation, cooking and serving of food. It is composed largely of putrescible organic matter and its natural moisture content.

GRAB SAMPLE

A sample which is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed 15 minutes.

HOLDING-TANK WASTE

Any waste from holding tanks, such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

INDIRECT DISCHARGE

The discharge or introduction of nondomestic pollutants from any source subject to or regulated under Section 307(b), (c) or (d) of the Act into the POTW (including holding-tank waste discharged into the system).

INDUSTRIAL USER

A source of indirect discharge which does not constitute a discharge of pollutants under regulations issued pursuant to Section 402 of the Act (33 U.S.C. § 1342).

INDUSTRIAL WASTEWATER

All water-carried wastes and wastewater, excluding domestic wastewater and unpolluted water; includes all wastewater from any producing, manufacturing, processing, testing, institutional, commercial, agricultural or other operation where the wastewater discharged includes nondomestic wastes.

body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

MONTHLY AVERAGE

The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

MONTHLY AVERAGE LIMIT

The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

NATIONAL CATEGORICAL PRETREATMENT STANDARD, CATEGORICAL PRETREATMENT STANDARD, or CATEGORICAL STANDARD

Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the ACT which apply to a specific category of users and which existed on the effective date of this chapter and codified as 40 CFR, Chapter 1, Subchapter N, Parts 404 through 471, as the same may from time to time be amended.

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM or NPDES PERMIT

A permit issued pursuant to Section 402 of the Act (33 U.S.C. § 1342).

NATURAL OUTLET

Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

NEW SOURCE

- (1) Any building, structure, facility or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
 - (a) The building, structure, facility or installation is constructed at a site at which no other source is located; or
 - (b) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (c) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining if these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.
- (2) Construction on a site at which an existing source is located results in a modification rather than a "new source" if the construction does not create a new building, structure, facility or installation meeting the criteria of Subsection A(1)(b) or (c) above but otherwise alters, replaces or adds to existing process or production equipment.

POLLUTANT

Any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical waste, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, agricultural and commercial wastes and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity or odor) or any other contaminant.

POLLUTION

The man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

PRETREATMENT or TREATMENT

The reduction of the amount of pollutants, the elimination of pollutants, the alteration of the nature of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the POTW. The reduction or alteration can be obtained by physical, chemical or biological processes or process changes other than means, except by diluting the concentration of the pollutants as prohibited by 40 CFR 403.6(d), unless allowed by an applicable Categorical Pretreatment Standard.

PRETREATMENT COORDINATOR

The person, designated by the City to carry out certain duties associated with the Industrial Pretreatment Program, that is charged with certain duties and responsibilities by this chapter, or his duly authorized representative.

PRETREATMENT REQUIREMENTS

Any substantive or procedural requirement related to pretreatment, other than a Categorical Pretreatment Standard, imposed on an Industrial User.

PRETREATMENT STANDARDS or STANDARDS

Prohibited discharge standards, Categorical Standards and Local Limits.

PROHIBITED DISCHARGE STANDARDS or PROHIBITED DISCHARGES

Absolute prohibitions against the discharge of certain substances as set forth in Article III of this chapter.

PROPERLY SHREDED GARBAGE

Garbage that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch [one and twenty-seven-hundredths (1.27) centimeters] in any dimension.

PUBLICLY OWNED TREATMENT WORKS or POTW

The Town or City-owned treatment works, as defined in Section 212 of the Act (33 U.S.C. § 1292). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of liquid wastes including sewers that convey wastewater to the POTW treatment plant. For the purposes of this Chapter, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the Town/City who are, by contract or agreement with the Town/City, Users of the Town's/City's POTW. The term also means the Town/City and/or its agents having jurisdiction over indirect discharges to and the discharges from such treatment works.

reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.

- (3) The Deputy Commissioner may determine that an Industrial User subject to Categorical Pretreatment Standards is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Categorical Pretreatment Standard) and the following conditions are met:
 - (a) The Industrial User, prior to City's finding, has consistently complied with all applicable Categorical Pretreatment Standards and Requirements;
 - (b) The Industrial User annually submits the certification statement required in 40 CR 403.12(q), together with any additional information necessary to support the certification statement; and
 - (c) The Industrial User never discharges any untreated concentrated wastewater.
- (4) Upon a finding that a User meeting the criteria in the above sections (a), (b) and (c) has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement, the Pretreatment Coordinator may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a Significant Industrial User.

SIGNIFICANT NONCOMPLIANCE:

- (1) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);
- (2) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under 40 CFR § 403.8 paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;
- (5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone

- (2) Replacement of two or more major building components.

SUPERINTENDENT

The Director of Public Works of the Town of Westminster or his authorized deputy, agent or representative.

SUSPENDED SOLIDS

Solids that either float on the surface of or are in suspension in water, wastewater or other liquids and which are removable by laboratory filtering and are referred to as "nonfilterable residue" in the laboratory test prescribed in Standard Methods for the Examination of Water and Wastewater.

TOXIC SUBSTANCES

Any substance or mixture, whether gaseous, liquid or solid, which, when discharged into the sewer system, may tend to interfere with any wastewater treatment process, constitute a hazard to human beings or animals, inhibit aquatic life or create a hazard to recreation in the receiving waters of the effluent from the POTW Treatment Plant.

TOWN

The Town of Westminster, Massachusetts.

TURBIDITY

A condition in water or wastewater caused by the presence of suspended matter, resulting in the scattering and absorption of light rays; measure of fine suspended matter in liquids; analytical quantity usually reported in arbitrary turbidity units determined by measurements of light diffraction.

UNPOLLUTED WATER

Water whose discharge will not cause any violation of receiving water standards of the Commonwealth of Massachusetts.

UPSET

An incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards or the provisions of this chapter because of factors beyond the control of the User. An "upset" does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

USER

Any person who contributes, causes or permits the contribution of wastewater into the Town's or City's POTW.

WASTES

Substances in liquid, solid or gaseous form that can be carried in water.

WASTEWATER

The spent water of a community and may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any

the regulations of the EPA promulgated thereunder. It is the intent of the Town/City to vest the Sewer Commission/Commission with all the powers necessary and reasonably useful to fulfill the Town's/City's and the POTW's obligations under the Act and regulations promulgated thereunder and any stricter or additional obligations imposed by the Commonwealth or its agencies.

- (3) C. Whenever reference is made to any Federal or State statute or regulation, it shall mean the statute or regulation existing on the effective date of this chapter and as the context permits or requires. It shall also mean and include the statute or regulation as the same may from time to time be amended.

Article II
Building Sewers and Connections

§ 161-3 Permit required for connection.

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent.

§ 161-4 Notification of new or changed discharge required.

Any person proposing a new discharge into the system or a substantial change in the volume of character of pollutants that are being discharged into the system shall notify the Sewer Commission at least forty-five (45) days prior to the proposed change or connection.

§ 161-5 Classes of permits.

There shall be three (3) classes of building sewer permits:

- A. Single-Family Residential.
- B. Multifamily and Commercial.
- C. Industrial.

§ 161-6 Application for permit; fees; required approvals.

- A. In all classes, the owner or his agent shall make application on a special form furnished by the town. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Superintendent.
- B. A permit and inspection fee of seventy-five dollars (\$75.) shall be paid to the town at the time the application is filed. Any amount not used is to be reimbursed, and any amount in excess of seventy-five dollars (\$75.) is to be paid within thirty (30) days.
- C. Approval of commercial and industrial permits must be obtained from the Superintendent/Commissioner after review and recommendation by the Sewer Commission/Commission before a permit can be issued.

§ 161-14 Inspection required.

The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The sewer connection shall be made under the supervision of the Superintendent or his representative.

§ 161-15 Guarding of excavations; restoration of streets.

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

Article III
Use of Public Sewers

§ 161-16 Discharge of unpolluted drainage.

- A. No person shall discharge or cause to be discharged any storm-, surface or ground water, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer.
- B. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers or to a natural outlet approved by the Superintendent. Industrial cooling water or unpolluted process waters may be discharged, on approval of the Superintendent, to a storm sewer, combined sewer or natural outlet.

§ 161-17 Hazardous discharges.

No person shall discharge or cause or allow to be discharged into any sewer under the control of the Superintendent the hereinafter described substance, materials, waters or wastes if it appears likely, in the opinion of the Sewer Commission/Commission, that such wastes in quantity or quality exceeding limitations established by the Sewer Commission/Commission can harm either the sewers, wastewater treatment process or equipment, have an adverse effect on the receiving waters or can otherwise endanger life, limb, public property or constitute a nuisance.

§ 161-18 Permission required to discharge industrial wastewaters.

Persons, including industries, who desire to discharge industrial wastewaters into town/city facilities or facilities appurtenant thereto shall make their requests in writing to the Sewer Commission/Commission. In forming its opinion as to the limitations on the acceptability of any wastes, the Sewer Commission/Commission will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the wastewater treatment process, capacity of the wastewater treatment plant and other pertinent factors. The Sewer Commission/Commission may require the applicant to furnish such analyses of the proposed wastewater discharge as may be needed to determine its acceptability into the sewer system and as required by state and federal regulations.

§ 161-19 Costs for additional treatment or damages.

Costs for unauthorized additional treatment in or for repairing damages to town facilities resulting due

entrails, grease, paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

- G. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths (3/4) horsepower [seventy-six-hundredths (0.76) horsepower metric] or greater shall be subject to the review and approval of the Superintendent. (See Article I, § 161-1, definition of "properly shredded garbage.")
- H. Waters or wastes containing dyes or other color which cannot be removed by biological processes and which require special chemical treatment in order for POTW treatment plant effluent to meet standards set by state law or rules, regulations or orders made pursuant to law.
- I. Waters or wastes which require excessive quantities of chlorine for stabilization in addition to biological treatment.
- J. Any waters or wastes containing phenols or other taste or odor producing substances in such concentrations exceeding limits which may be established by the Sewer Commission/Commission as necessary and after treatment of the composite wastewater to meet the requirements of the state, federal or other public agencies or jurisdiction for such discharge to the receiving waters.
- K. Any radioactive wastes or isotopes in excessive amounts or of such half-life or concentration as may exceed limits established in applicable state or federal regulations or by the Sewer Commission/Commission.
- L. Pollutants, including oxygen-demanding pollutants (BOD, for example), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW. In no case shall materials or flow be discharged in such amounts as to constitute a slug as defined in this chapter.
- M. Any substance which may cause the POTW's effluent or any other product of the POTW, such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the POTW cause the POTW to violate its NPDES and/or state disposal system permit or the receiving water quality standards.
- N. Any wastewater which causes a hazard to human life or creates a public nuisance, including any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- O. It shall be unlawful for any person to discharge into the sewer system or cause to be discharged into the sewer system the sludge resulting from pretreatment of waters or wastewaters.
- P. Any pollutants which create a fire or explosion hazard in the POTW, including but not limited to waste streams with a closed-cup flashpoint of less than 140° F. (60° C.) using the test methods set forth in 40 CFR 261.21.
- Q. Any petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass-through.

- B. Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between 32 °F and 150 °F (0 °C and 65 °C).
- C. pH: not less than 5.5 standard units (s.u.) nor more than 11.0 s.u.

§ 161-20B Precedence of Other Standards

The Categorical Pretreatment Standards set forth in 40 CFR, Chapter 1, Subchapter N, Parts 405 - 471, are hereby incorporated into this chapter and adopted by the City subject to the following:

- A. Where a Categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Commission may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- B. Upon the effective date of the Categorical Pretreatment Standards for a particular industrial subcategory, the Categorical Standard, if more stringent than the limitations imposed under this chapter for sources in that subcategory, shall immediately supersede the limitations imposed under this chapter.
- C. When wastewater subject to a Categorical Pretreatment Standard is mixed with wastewater not regulated by the same standard, the Commission shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
- D. A User may obtain a variance from a Categorical Pretreatment Standard if the User can prove, pursuant to the procedural and substantive requirement of 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the Categorical Pretreatment Standard.
- E. A User may obtain a net gross adjustment to a Categorical Pretreatment Standard in accordance with 40 CFR 403.15.
- F. If State or Local Limits are more stringent than the Categorical Pretreatment Standards, then the State or local standards shall apply. It is the intent of this section that the most stringent standards shall apply.
- G. The City reserves the right to establish by this chapter more stringent limitations or requirements on discharges to the wastewater disposal system if deemed necessary to comply with the objectives of 403 CFR Part 403.

§ 161-20C Accidental Discharge

- A. Regulations. Each User shall provide protection from accidental discharge of prohibited materials or other substances regulated by this chapter. Facilities required to prevent accidental discharge of prohibited materials shall be provided and maintained at the owners or User's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be

been approved by the Pretreatment Coordinator.

§ 161-21 Action by Sewer Commission.

- A. If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in § 161-20 of this Article and which, in the judgment of the Sewer Commission/Commission, may have a deleterious effect upon the sewage works, processes, equipment or receiving waters or which otherwise create a hazard to life or constitute a public nuisance, the Sewer Commission/Commission may:
- (1) Reject the wastewaters or the wastes.
 - (2) Require pretreatment of wastewaters or wastes to modify them to an acceptable condition for discharge to the public sewers; and/or
 - (3) Require control over the quantities and rates of discharge of the wastewaters or wastes; and/or
 - (4) Require payment to cover the added cost of handling and treating the wastewaters or wastes not covered by existing taxes or sewer charges under the provisions of § 161-2 of this Article.
- B. If the Sewer Commission/Commission permits the pretreatment or equalization of wastewater or waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Sewer Commission/Commission, and subject to the requirements of all applicable codes, bylaws and laws and the rules and regulations of the Sewer Commission/Commission. Any costs involved with such reviews shall be paid by the person requesting the permit.

§ 161-22 Grease, oil and sand interceptors.

Grease, oil and sand interceptors shall be provided when, in the opinion of the Sewer Commission, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall be of a type and capacity approved by the Sewer Commission and shall be located as to be readily and easily accessible for cleaning and inspection.

§ 161-23 Preliminary treatment or flow-equalizing facilities.

Where preliminary treatment or flow-equalizing facilities are provided for any wastewaters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner, at his expense.

§ 161-24 Installation of control structures.

When required by the Sewer Commission, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastewater or wastes. Such structure, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the Sewer Commission. The structure shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

industrial wastes.

- C. Place or cause to be placed in any manhole or sewer pipe or main any material which results or is likely to result in the stopping or obstructing of the normal flow of sewage or wastes. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

Article V

Powers and Authority of Inspectors

§ 161-31 Entrance permitted; inquiries limited.

The Sewer Commission, Commission, Superintendent, Commissioner and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this chapter. The Sewer Commission, Commission, Superintendent, Commissioner or other representatives shall have no authority to inquire into any process, 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 sewers or waterways of facilities for wastes treatment.

§ 161-32 Observance of safety rules; liability.

While performing the necessary work on private properties referred to in § 161-31 above, the Sewer Commission, Commission, Superintendent, Commissioner or duly authorized employees of the town shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the town employees, and the town/city shall indemnify the company against loss or damage for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except such as may be caused by negligence or failure of the company to maintain safe conditions as required in Article III, § 161-24.

§ 161-33 Use of easements.

The Sewer Commission, Commissioner, Superintendent, Commissioner and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter all private properties through which the town/city holds a duly negotiated easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater works 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. The Superintendent/Commissioner and other duly authorized employees of the town/city bearing proper credentials and identification shall be permitted to enter the building on private property to prevent any illegal discharge to the sewers.

Article VI

Industrial Pretreatment Program

§ 161-34 Authorized agent.

The Fitchburg Wastewater Treatment Facility, through its Commission or Commissioner, or his/her designee, shall constitute the town's authorized agent for its industrial pretreatment program, and for this purpose, the Sewer Commissioners may enter into a contract to provide for such service, which shall include sewer connection permit approval, discharge permitting and monitoring authority. Said

Article III are modified or other just cause exists. The user shall be informed of any proposed changes in his or her permit at least 30 days prior to the effective date of the change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance. Discharge agreement term shall be based on actual conditions contained in specific document.

- E. Transfer of discharge documents. Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises or a new or changed operation without the approval of the Commission. Any succeeding owner or user shall also comply with the terms and conditions of the existing permit. The transfer of discharge rights pursuant to agreement documents shall be based on conditions contained in the specific document.

§ 161-34A Reporting Requirements.

The reporting requirements for holders of wastewater discharge permits shall be the same as presented below:

- A. Pretreatment Baseline Monitoring Report. Any User subject to Pretreatment Standards shall submit a baseline monitoring report (form supplied by the City) to the Pretreatment Coordinator by whichever deadline is later:
 - (1) Existing Sources. Either 180 days after the final administrative decision is made upon a category determination submission under 40 CFR 403.6(a)(4); or 180 days after the effective date of a Categorical Pretreatment Standard for that particular industry.
 - (2) New Sources. At least 90 days prior to commencement of their discharge, New Sources and sources that become Categorical Users after the promulgation of an applicable Categorical Standard shall submit to the Pretreatment Coordinator a report which contains the information listed below. A New Source shall report the method of pretreatment it intends to use to meet the applicable Categorical Pretreatment Standards. A New Source shall also give estimates of its anticipated flow and quantity of pollutants to be discharged.
 - (a) Measurement of pollutants.
 - i. The User shall take a minimum of one representative sample to compile data necessary to comply with monitoring requirements.
 - ii. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR 403.6(e) to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the Pretreatment Coordinator;
 - iii. Sampling and analysis shall be performed in accordance with § 161-34B.C;

discharging to the POTW and subject to Categorical Pretreatment Standards shall submit a report within 90 days following the date for final compliance with said Standards. New Users shall submit this report following commencement of the introduction of wastewater into the POTW. The User shall supply the following information on a form supplied by the City:

- (1) The nature and concentration of all pollutants in the discharge from the regulated process which are limited by Pretreatment Standards. Sampling shall be conducted in accordance with 40 CFR part 136 and §161-34B.C.
- (2) The average and maximum daily flow for those process units of the Industrial User which are limited by such Pretreatment Standards or Requirements.
- (3) Whether applicable Pretreatment Standards and requirements are being met, and if not, what additional pretreatment and/or operation and maintenance procedures are needed to bring the User into compliance.
- (4) Additional information as required by 40 CFR 403.12(d) or as required by the Pretreatment Coordinator or the Commission.
- (5) This statement shall be signed by an Authorized Representative of the User, as specified in 40 CFR 403.12(d).

D. Periodic Compliance (Self-Monitoring) Reports. Any User subject to a Categorical Pretreatment Standard after the compliance date of such Pretreatment Standard, or in the case of a New Source, after commencement of the discharge into the POTW, shall submit **Quarterly Self-Monitoring Compliance Reports** to the Pretreatment Coordinator by or before **April 1st, July 1st, October 1st, and January 1st**, unless required more frequently in the Pretreatment Standard, or by the Pretreatment Coordinator or Deputy Commissioner, a report indicating the nature and concentration of pollutants in the effluent which are limited by such Categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in the baseline monitoring report, except that the Pretreatment Coordinator may require more detailed reporting of flows.

- (1) All wastewater samples must be representative of the User's discharge.
- (2) Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.
- (3) In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the Commission or the Pretreatment Standard necessary to determine the compliance status of the User.
- (4) At the discretion of the Pretreatment Coordinator and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Pretreatment Coordinator may agree to alter the months during which the above reports are to be submitted.

methods or the discharge of a slug as defined herein, the Pretreatment Coordinator must be notified by the User within one hour after discovery. Notification shall include location of discharge, type of waste, concentration and volume and corrective actions. A written report must be submitted within five days, stating what occurred and the corrective actions taken so that further accidental discharges will not occur. Such notification shall not relieve the User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the User of any fines, civil penalties, or other liability which may be imposed by this chapter or other applicable law.

- i. Upset Reporting. The occurrence of an Upset, as defined in § 161-1, shall constitute an affirmative defense for an Industrial User to an action brought for noncompliance with Categorical Pretreatment Standards and local and state requirements. The burden of proof for such upset shall rest on the Industrial User. The Industrial User must notify the Pretreatment Coordinator immediately after becoming aware of the Upset. The Industrial User must have evidence to demonstrate the following conditions:
 - (1) An Upset occurred and the Industrial User can identify the specific cause(s) of the Upset.
 - (2) The treatment facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures.
 - (3) The Industrial User has submitted the following information to the Pretreatment Coordinator within 24 hours of becoming aware of the Upset (if this information is provided orally, a written submission must be provided within five days):
 - (a) A description of the discharge and cause of noncompliance.
 - (b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue.
 - (c) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.
 - (4) In any enforcement proceeding, the User, seeking to establish the occurrence of an Upset, shall have the burden of proof.
 - (5) The Industrial User shall control production and all discharges to the extent necessary to return to compliance with Categorical Pretreatment Standards upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.
 - (6) Recordkeeping. Users subject to the reporting requirements of this chapter shall retain and make available for inspection and copying all records and information obtained pursuant to any monitoring activities required by this chapter or by order of the Commission or Pretreatment Coordinator any additional records or information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices. Such records shall include:

N. Notification of the Discharge of Hazardous Waste.

- (1) Any User who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number and the type of discharge (continuous, batch or other). If the User discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents in the wastestream discharged during the calendar month and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place no later than 90 days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, reports of changed conditions must be submitted under § 161-34A.E of this chapter. The notification requirement in this section does not apply to pollutants already reported by Users subject to Categorical Pretreatment Standards under the self-monitoring requirements of this chapter.
- (2) Dischargers are exempt from the requirements of Subsection N(1) above, during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as set forth in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the User discharges more than such quantities of any hazardous waste do not require additional notification.
- (3) If new regulations under Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or any other Federal or State statute identify additional characteristics of hazardous waste or list any additional substance as a hazardous waste, the User must notify the Pretreatment Coordinator, the EPA Regional Waste Management Waste Division Director and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.
- (4) In the case of any notification made under this section, the User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this chapter, by a permit issued hereunder or by any applicable Federal or State law.

- O. Analytical requirements. All pollutant analysis, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and § 161-34B, unless otherwise specified in an applicable Categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical

- (b) For sampling required in support of baseline monitoring and 90-day compliance reports a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist. For facilities for which historical sampling data are available, the Pretreatment Coordinator may authorize a lower minimum. For periodic compliance reports and reports on compliance with Pretreatment Standards the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.
- (c) Except for those pollutants that are required to be measured by grab samples (referenced above), all other pollutants will be measured using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is representative of the discharge and is authorized by the Pretreatment Coordinator.
- (d) Samples should be taken immediately downstream from pretreatment facilities, if such exist, or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the User should measure the flows and concentrations necessary to allow use of the combined waste stream formula CFR 403.6(e) in order to evaluate compliance with Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 403.6(e), this adjusted limit along with supporting data shall be submitted to the POTW.

§ 161-34C Pretreatment of Industrial Wastewater.

- A. Users shall provide necessary wastewater treatment as required to comply with this chapter and shall achieve compliance with all Categorical Pretreatment Standards, Local Limits and prohibitions set out in Article V, within the limitations set by the EPA, the Commonwealth of Massachusetts or the Commission, whichever limitation is the most stringent. Any facilities required to pretreat wastewater to a level acceptable to the Commission shall be provided, operated and maintained at the User's expense.
- B. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the Pretreatment Coordinator for review and shall be acceptable to the Pretreatment Coordinator before construction of the facility. The review of such plans and operating procedures will in no way relieve the User from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the Commission under the provisions of this chapter. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to the Pretreatment Coordinator and be acceptable to the Pretreatment Coordinator prior to the User's initiation of the changes.

§ 161-34D Confidential Information.

- A. Information and data on a User obtained from reports, questionnaires, permit applications, permits, monitoring programs and inspections shall be available to the public or other governmental agency without restriction unless the User specifically requests and is able to demonstrate to the satisfaction of the Commission that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the User.

continues to violate any provision of this chapter, a wastewater discharge permit or order issued hereunder or any other pretreatment standard or requirement, the Superintendent/Commissioner, or his/her designee, may fine such user in an amount ~~not to exceed \$5,000 per violation for each day of violation.~~ Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

** Deleted per Attorney General - see attached letter.*

- (1) Fines shall be assessed at two hundred dollars (\$200.00) per violation per day for the first violation ~~and increase by two hundred dollars (\$200.00) per day for each subsequent violation to a maximum of five thousand dollars (\$5,000.00) per violation per day.~~ *Deleted per A.G. - see attached letter.*
- (2) If the industry/permittee remains in full compliance for one year from the date the fine was assessed, the assessment cycle shall begin anew and any subsequent fines will be assessed as described above beginning at two hundred dollars (\$200.00) per violation per day.

- C. The Sewer Commission/Commissioner may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the Town/City.
- D. In determining the amount of civil liability, the Town/City shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the User's violation, corrective actions by the User, the compliance history of the User, and any other factor as justice requires.
- E. Issuance of an administrative fine shall not be a bar against, or a prerequisite for taking any other enforcement and penalty action against the User.

§ 161-37 Criminal Penalties.

- A. Any user or person who violates any provision of this chapter, a wastewater discharge permit or order issued pursuant to this chapter or any pretreatment standard or requirement shall, upon conviction, be punished by a fine of not more than \$300 per violation per day.
- B. Any person who makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by this chapter or discharge permits or who falsifies, tampers with or knowingly renders inaccurate monitoring device or method required by this chapter shall, upon conviction, be punished by a fine of \$300 per violation.
- C. A User who knowingly or with a wanton or reckless disregard causes or permits any substance to be introduced into the POTW which causes personal injury or property damage shall, upon conviction, ~~be guilty of a misdemeanor and be subject to a fine as set forth in § 161-37.A.~~ This penalty shall be in addition to any other civil fine or cause of action for personal injury or property damage available under State law. *Deleted per A.G. - see letter.*