

SECTION 8 ENFORCEMENT OF WASTEWATER PRETREATMENT REQUIREMENTS

8.01 General

(A) Enforcing Authority-The Approving Authority shall enforce those provisions of this chapter that come within the jurisdiction of his/her office, and he/she shall make periodic inspections and inspections upon complaint to ensure that such provisions are not violated.

No action shall be taken under this chapter to abate a public nuisance unless the Approving Authority shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and shall have satisfied himself/herself that a nuisance does, in fact, exist.

(B) Appeals Procedure-Any user, permit applicant, municipality or permit holder affected by any decision, action or determination, including cease and desist orders, made by the Approving Authority, interpreting or implementing the provisions of this chapter or in any permit issued herein, may file with the Approving Authority a written request for reconsideration within ten (10) days of the date of such decision, action or determination, setting forth, in detail, the facts supporting the user's request for reconsideration. The Approving Authority shall render a decision on the request for reconsideration to the user, permit applicant or permit holder, in writing, within five (5) days of receipt of request. If the ruling on the request for reconsideration made by the Approving Authority is unsatisfactory, the person requesting reconsideration may, within five (5) days after notification of the action, file a written appeal with the District Commissioners. The District Commissioners shall hear the appeal within fifteen (15) days from the date of filing. The Commission shall make a final ruling on the appeal within ten (10) days from the date of filing.

(C) Violation Deemed Public Nuisance-Violation of any provision of this article is declared a public nuisance.

(D) Amendment-The District, through its duly authorized officers, reserves the right to amend this article in part or in whole, whenever it may deem necessary, but such right will be exercised only after due notice to all persons concerned and proper hearing on the proposed amendment.

8.02 Noncompliance And Abatement Of Nuisances

(A) Operating Upsets, Slugs or Accidental Discharges

(1) Industrial users shall notify the District immediately upon having an upset in operations, which places the discharger in a temporary state of noncompliance with this chapter, a slug or accidental discharge of substances or wastewater in violation of this article. Immediate notification will enable countermeasures to be taken by the District to minimize damage to the POTW and the receiving waters. The notification shall include location of discharge, type of waste, concentration and volume and corrective actions.

(2) Within five (5) days following an operating upset, slug or accidental discharge, the industrial user shall submit to the Superintendent of the POTW a detailed written report describing the cause of the discharge, the period of noncompliance, and the measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, and damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, civil penalties or other liability, which may be imposed by this article or other applicable law.

(B) Abatement After Notice

If the Approving Authority determines that a public nuisance exists on private premises, but that the nature of such nuisance is not such as to threaten great and

immediate danger to the public health, safety, peace, morals or decency, he shall serve notice on the person causing or maintaining the nuisance to remove the same within ten (10) days. If such nuisance is not removed within such ten (10) days, the proper officer shall cause the nuisances to be removed as provided in Section 6.02 (d).

(C) Permission to Enter Private Property for Purposes of Abatement; Court Order

Except when necessary under Section 6.02(d) the Approving Authority shall not use force to obtain access to private property to abate a public nuisance, but shall request permission to enter upon private property if such premises are occupied, and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

(D) Summary Abatement

If the Approving Authority determines that, within the framework of this chapter, a public nuisance exists within the District and that there is great immediate danger to the public health, safety, peace, morals or decency, the Approving Authority may cause the same to be abated and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.

(E) Liability for Cost of Abatement

In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the District shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, and such cost shall be assessed against the real estate as a special charge.

(F) Other Methods of Abatement Not Excluded

Nothing in this article shall be construed as prohibiting the abatement of public nuisance by the District or its officials in accordance with the laws of the state.

(G) Emergency Suspension of Service

(1) The District may suspend the wastewater treatment service and/or a wastewater discharge permit when such suspension is necessary, in the opinion of the District, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the POTW or causes the City of Sheboygan to violate any condition of its WPDES permit.

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

(H) Liability to District for Damage or Losses Incurred by Reason of Violations Notice of Violations

(1) Any person violating any provision of this article shall become liable to the District for any expense, loss or damage occasioned by reasons of such violation, which the District may suffer as a result thereof. If any violation affects the wastewater collection and City treatment facilities as well as the municipal wastewater collection facilities, the District may penalize the violator independently and concurrently with the municipality according to the District's ordinance.

(2) The Approving Authority must be notified immediately by any person becoming aware of any violations that occur within the District.

8.03 Records

(A) Records-Records Retention

(1) All industrial users subject to this article shall retain and preserve for no less than three (3) years any records, books, documents, memoranda, reports, correspondence, and any and all summaries thereof, relating to monitoring, sampling and chemical analyses made by or in behalf of an industrial user in connection with its discharge. All records which pertain to matters which are subject to any enforcement or litigation activities brought by the District pursuant hereto shall be retained and preserved by the industrial user until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

(2) The Superintendent is also required to maintain all records relating to sampling, monitoring and chemical analysis under the same conditions as specified in this section.

(B) Annual Publication. A list of the user, which during the twelve (12) months was significantly violating applicable pretreatment requirements or standards, shall be annually published in a local newspaper. A significant violation is a violation, which remains uncorrected forty-five (45) days after notification of noncompliance, a violation, which includes a pattern of noncompliance over the twelve-month period, or a violation, which includes the failure of the user to accurately report noncompliance. The notification shall also summarize any enforcement actions taken against the user during the same twelve (12) months.

(C) Falsifying Information.No person shall knowingly make any false statement(s), representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article, or wastewater discharge permit, or falsify, tamper with, or knowingly render inaccurate any monitoring device or method required under this article.

8.04 Penalties And Permit Revocations

(A) Penalties.Any user who is found to have violated an order of the District or who failed to comply with any provisions of this article, order, rule, regulation, resolution or permit issued hereunder, shall subject the violator to a forfeiture of not less than Five hundred dollars (\$500.00) for each offense, together with the costs of prosecution, and in default of payment thereof, to imprisonment in the county jail until such costs and forfeiture are paid, but not to exceed ninety (90) days. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense.

(B) Other Penalties.In addition to any civil penalties or penalties prescribed by this chapter, any industrial user who violates any provision(s) of this article or applicable state and/or federal regulations or who violates any terms or conditions of the wastewater discharge permit shall subject such permit to suspension or revocation.

(C) Suspension and Revocation of Permit

(1) Any permit issued may be suspended or revoked by the District for a violation of any provision of this chapter. The permittee shall be given notice of the reasons for the suspension or revocation and opportunity to be present at an administrative hearing for the purpose of determining whether such suspension shall be imposed or whether the permit shall be revoked. Upon sworn, written complaint of the Approving Authority, filed with the District clerk alleging that a person holding a permit under this chapter has violated this chapter, the District shall issue a summons signed by the clerk and directed to any peace officer in the District. The summons shall command the permittee complained of to appear at such hearing on a day and place named in the summons, not less than five (5) days and not more than ten (10) days from the date of issuance, and show cause why his or her permit should not be revoked or suspended. The summons and a copy of the complaint

shall be served on the permittee at least three (3) days before the time at which the permittee is commanded to appear. Service shall be in the manner provided under chapter 901 for service in civil actions in county court.

(2) If the permittee does not appear as required by the summons, the allegations of the complaint shall be taken as true, and if the hearing examiner(s) find the allegations sufficient, the permit shall be revoked. The clerk shall give notice of the revocation to the person whose permit is revoked. If the permittee appears as required by the summons and denies the complaint, both the complainant and the permittee may produce witnesses, cross-examine witnesses and be represented by counsel. The permittee shall be provided a written transcript of the hearing at his or her expense. If, upon the hearing, the hearing examiner(s) find the complaint to be true, the permit shall either be suspended or revoked. The clerk shall give notice of the suspension or revocation to the person whose permit is suspended or revoked. If the hearing examiner(s) finds the complaint untrue, the proceeding shall be dismissed without cost to the permittee. Upon suspension or revocation, the permittee shall surrender his/her permit to the District clerk's office.

(D) Appointment of Hearing Examiners; Hearing Procedure

(1) Three (3) hearing examiners shall preside over the administrative hearing required by Section 6.04©. Each examiner shall be qualified as a sanitary engineer with a background in industrial sewerage pretreatment programs. The District and permittee shall each select one (1) such sanitary engineer within forty-eight (48) hours of the service of the summons and complaint and shall also inform the other party of their choice within such time frame. Within seventy-two (72) hours of their selection, the two (2) engineers shall mutually agree upon and appoint a third sanitary engineer who shall also preside at the hearing. Each examiner shall have equal status in deliberating and arriving at a decision.

(2) The failure of either the District or the permittee to timely select, identify and retain a sanitary engineer within such initial forty-eight (48) hours shall result in the adjudication being made by the engineer timely selected.

(3) Notwithstanding subsection (1) above, in the event both engineers fail to mutually agree upon the selection of a third engineer, the District shall select an independent environmental engineering firm and obtain a list of three (3) persons as candidates for the third hearing examiner; after such list of names is received, the two (2) engineers shall alternately eliminate names from such list until one (1) name remains, with the permittee's engineer making the initial elimination. The remaining sanitary engineer shall then become the third hearing examiner.

(4) The three (3) hearing examiners shall conduct the hearing and take evidence and shall:

(i) Issue, in the name of the District, notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;

(ii) Swear witnesses and take the evidence;

(iii) Transmit a report of the evidence and hearing including the transcripts and other evidence, together with recommendations to the District for action thereon;

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

(E) Non-exclusivity of Penalties-Adoption of any remedial action under this chapter shall not preclude the District from providing for the enforcement of any other law, regulation, order or ordinance relating to the same or other matters.