

Compilation of Codes, Rules and Regulations of the State of New York Currentness

Title 21. Miscellaneous

Chapter XXX. Niagara Falls Water Board

Part 1960. Wastewater Regulations

NYCRR T. 21, Ch. XXX, Pt. 1960, Refs & Annos

**Credits**

(Statutory authority: Public Authorities Law, § 1230-f)

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Compilation of Codes, Rules and Regulations of the State of New York Currentness  
Title 21. Miscellaneous  
Chapter XXX. Niagara Falls Water Board  
Part 1960. Wastewater Regulations (Refs & Annos)

21 NYCRR 1960.1

Section 1960.1. Definitions

(a) Unless the context specifically indicates otherwise, the following words and terms, without regard to capitalization, shall be construed or defined as follows:

(1) **Acceptable Limits** means those amounts or concentrations of Pollutants that will allow consistent compliance with all SPDES permit limits, residuals disposal regulations for non-hazardous wastes, and satisfactory Operation and Maintenance of the entire Water Board POTW as determined by the Director.

(2) **Act or Water Board Act** means the Niagara Falls Water Authority Act, codified as section 1230-a et seq. of title 10-B and 10-C of article 5 of the New York Public Authorities Law.

(3) **Clean Water Act** means the Federal Water Pollution Control Act, (P.L. 92-500), as amended by the Clean Water Act of 1977 (P.L. 95-217) *et seq.*, as amended.

(4) **Administrative Order** means an order issued by the Director to a Water Board POTW User and binding on the User to the extent that the Director is acting within his purview.

(5) **Approval Authority** means USEPA, or NYSDEC, as the case may be.

(6) **Authorized Representative of Industrial User** means:

(i) a principal executive officer of at least the level of vice president, if the Industrial User is a corporation;

(ii) a general partner or proprietor if the Industrial User is a partnership or proprietorship, respectively;

(iii) a duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the discharge originates (e.g., plant manager).

(7) **Best Management Practices (BMPs)** means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of Pollutants directly or indirectly to Stormwater, receiving

waters, or Stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

(8) **Board or Water Board** means the Niagara Falls Water Board, established pursuant to section 1231-b of the Water Board Act, and its Directors, employees, agents, together with any authorized contractor, or any other Person acting with written authority on behalf of the Board.

(9) **Board Schedule of Rates** means a schedule of rates, fees and other charges established at least annually and as modified from time to time by the Water Board.

(10) **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. The Building Drain begins three feet from the outside face of the building wall.

(11) **Categorical Pretreatment Standard or Categorical Standard** means any regulation containing Pollutant discharge limits promulgated by the USEPA in accordance with Section 307(b) and (c) of the Clean Water Act which applies to a specific category of Industrial User.

(12) **Chlorine Demand** means the difference between the amount of chlorine added to water or Wastewater and the amount of residual chlorine remaining at the end of a 20-minute contact period at room temperature.

(13) **City** shall mean the City of Niagara Falls, NY, its employees and agents, together with any authorized contractor or other Person acting with written authority on behalf of the City.

(14) **CIU or Categorical Industrial User** means any User which is regulated by USEPA in accordance with Sections 307(b) and (c) of the Clean Water Act which apply to a specific category of Users and which appear in 40 CFR chapter I, subchapter N, parts 405—471.

(15) **Clean Water Act** means the Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.), and any subsequent amendments thereto.

(16) **Combined Sewer** means a sewer intended to receive both Wastewater and Stormwater or surface water.

(17) **Compliance** means conformance with SIU or ICU discharge permit limits, and/or conformance with all the terms of this Part. Compliance shall be determined by periodic monitoring by the Water Board and/or self-monitoring, as applicable.

(18) **Connection** means and refers to the pipeline from the sewer main to the Building Drain, Control Manhole or Monitoring Station.

(19) **Construction Activity** means activities requiring authorization under the SPDES permit for Stormwater discharges from Construction Activity, GP-02-01, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating and demolition.

(20) **Contamination** or **Contaminated** means waters or Wastewaters which contain polluting substances, or toxic substances, as may be limited by section 1960.5 of this Part and/or applicable water quality standards.

(21) **Control Authority** means the Water Board.

(22) **Control Manhole** means a structure maintained by the Owner and approved by the Director that is continuously and immediately accessible and adequate for the insertion of a flow metering device and the collection of samples and suitable for inspection, observation, sampling, testing and measuring of plant discharges.

(23) **Cooling Water** means the water discharge from any system of condensation, air conditioning, cooling or refrigeration.

(24) **CSIRU (Commercial/Small Industrial/Residential User)** shall include any Person not within the definition of a SIU, Transporter or Generator who discharges Wastewater to the Water Board POTW.

(25) **De Minimus** means a quantity which in the opinion of the Director is too small to have a significant adverse effect upon the Water Board POTW and/or its State SPDES discharge permit.

(26) **Design Flow** means the daily flow for which the Water Board POTW treatment plant was designed (i.e., 48 million gallons per day).

(27) **Design Loading** means the daily loading of parameters (that is, Total Suspended Solids, Chemical Oxygen Demand and Phenols) utilized in the design of the Water Board POTW as follows:

Total Suspended Solids—100,000 pounds/day

Chemical Oxygen Demand—145,000 pounds/day

Phenols—275 pounds/day

(28) **Director** or **Department** mean, without other designation, the executive Director of the Water Board, or other Person or Persons designated by the Director to act in his or her stead, and the Department of Wastewater facilities of the Water Board, respectively.

(29) **Diversion Sewer** means exclusively a gravity conduit extending generally from a shaft of the Adams Tailrace Tunnel, easterly in Buffalo Avenue, Packard Road, A Street and 47th Street, into which the plants of the Buffalo Avenue industrial area discharge such waters as are allowed under individual plant NPDES/SPDES permits.

(30) **Easement** means an acquired legal right for the specific use of land owned by others.

(31) **Excessive Infiltration** means Infiltration in excess of 4,000 gallons/day/inch/mile for existing combined or Sanitary Sewers, and 200 gallons/day/inch/mile for new combined or Sanitary Sewers, or greater as otherwise designated by the Director.

(32) **Garbage** means the solid wastes from the domestic or commercial handling, storage, dispensing, preparation, cooking or serving of produce.

(33) **Generator** means any Person, by site, whose act or process produces Hauled Waste.

(34) **Groundwater** means water within the earth.

(35) **Hauled Waste** means all waste lawfully introduced to the Water Board POTW by means other than through the Water Board Sewer System.

(36) **Hazardous Materials** means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(37) **ICU (Industrial Commercial User)** means any Person within the definition of CSIRU who has the potential to discharge other than Sanitary Wastewater.

(38) **ICU Permit** means and shall be the Wastewater discharge permit that may be required for ICUs for discharge of Wastewater into the Water Board POTW and issued pursuant to these regulations and may contain discharge restrictions as deemed appropriate by the Director.

(39) **Immediately** means, as it pertains to any abnormal discharge or spill, as soon as the spillage has been controlled or within 30 minutes of discovery, whichever is sooner.

(40) **ILC (Industrial Liaison Committee)** means a committee of the Niagara Falls Area Chamber of Commerce established as an advisory group to the Water Board and the City for the purposes of observing and consulting on the operation, maintenance, costs, budgets, revenues and financial reports and for liaison work with all SIUs in order to assure adequate Water Board POTW service to Industrial Users.

(41) **Illicit Connection** means any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including but not limited to:

(i) any conveyances which allow any Non-Stormwater Discharge including treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

(ii) any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

(42) **Illicit Discharge** means any direct or indirect Non-Stormwater Discharge to the MS4, except:

(i) water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising ground water, uncontaminated ground water Infiltration into storm drains, uncontaminated pumped ground water, foundation or footing drains, crawl space or basement sump pumps, air conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire fighting activities, and any other water source not containing Pollutants, and unless the Department or the municipality has determined such discharges to be substantial contributors of Pollutants;

(ii) discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that, such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this local law; and

(iii) dye testing in compliance with applicable State and local laws is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test. 6.1.4

The prohibition shall not apply to any discharge permitted under an SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

(43) **Industrial User** means any non-residential source of indirect discharge regulated under section 307(b), (c) or (d) of the Clean Water Act.

(44) **Industrial Wastes** or **Industrial Wastewater** means the liquid wastes, other than sanitary wastewater, uncontaminated non-contact cooling water and boiler blowdown, resulting from manufacturing, industrial or other processes and discharged by an industrial user.

(45) **Infiltration** means the water entering a sewer system from the ground through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, inflow.

(46) **Infiltration/Inflow** means the total quantity of water from both Infiltration and Inflow without distinguishing the source.

(47) **Inflow** means the water discharged into a sewer system and service connections from such sources as, but not limited to, roof leaders, cellar, yard and area drains, foundation drains, Cooling Water discharges, drains from springs and swampy areas, manhole covers, cross-connections from Storm Sewers and Combined Sewers, catch basins, Stormwater, surface run-off, street wash water, or drainage. It does not include, and is distinguished from, Infiltration.

(48) **Interference** means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(i) inhibits or disrupts the Water Board POTW, its treatment process or operations, or its sludge processes, use or disposal of sludge, and,

(ii) therefore, is a cause of a violation of any requirement of the Water Board's State SPDES discharge permit (including an increase in the magnitude or duration of a violation) or of the prevention of a Wastewater sludge use or disposal in compliance with all applicable Federal and State laws and regulations.

(49) **Monitoring Station** means a permanent structure constructed, maintained and operated by and at the Owner's expense and approved by the Director as to design and construction for the express purpose of providing an accessible point out of the traveled way for metering and sampling waste discharges continuously into the Water Board POTW in a safe and accurate manner.

(50) **MS4** means Municipal Separate Storm Sewer System.

(51) **Municipal Separate Storm Sewer System** means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(i) owned or operated by the Niagara Falls Water Board;

(ii) designed or used for collecting or conveying Stormwater;

(iii) which is not a combined sewer; and

(iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined herein.

(52) **Natural Outlet** means any outlet into a watercourse, pond, ditch, lake or other body of Surface water or Groundwater.

(53) **New Source** means a facility from which there is, or may be, a discharge of Pollutants, construction of which began after the publication of the proposed pretreatment standards pursuant to section 307 of the Clean Water Act, which will apply to the facility if the standards are promulgated, provided certain location and construction criteria are applicable.

(54) **Non-Compliance** means non-conformance with established limits as defined under Compliance.

(55) **Non-Stormwater Discharge** means any discharge to the MS4 that is not composed entirely of Stormwater.

(56) **NYSDEC** means New York State Department of Environmental Conservation.

(57) **Occupied Building** means and refers to any structure erected and intended for habitation, occupancy or use by human beings or animals and from which structure Wastewater is or may be discharged.

(58) **Operation and Maintenance** means the process and act of keeping all facilities for collecting, pumping, treating and disposing of Wastewater, in a state of good repair and functioning properly including the replacement of said facilities when necessary.

(59) **Other Wastes** means solid wastes such as garbage, refuse, wood, egg shells, coffee grounds, sawdust, shavings, bark, sand, lime, cinder, ashes and all other discarded matter not normally present in Wastewaters.

(60) **Owner** means the Person or Persons who legally own, lease, or occupy private property with Wastewater facilities, which discharge, or will discharge, to the Water Board's POTW.

(61) **Pass Through** means a discharge containing Pollutant(s) which exits the Water Board POTW into the waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the Water Board's SPDES Discharge Permit (including an increase in the magnitude or duration of a violation).

(62) **Person** means any natural person, firm, trustee, executor, personal representative, partnership, association, limited partnership, limited liability company, limited liability partnership, joint venture or corporation, or other legal entity whatsoever. The masculine gender shall include the feminine, and the singular shall include the plural where indicated by the context.

(63) **pH** means the negative logarithm of the concentration of hydrogen ions in moles per liter of solution.



(64) **Pollutant** means dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, and agricultural waste or ballast discharged into water; which may cause or might reasonably be expected to cause pollution of the waters of the State in contravention of the standards.

(65) **Publicly Owned Treatment Works** or (**POTW**) means treatment works as defined by section 212 of the Clean Water Act (*33 U.S.C. section 1292*) which are owned or operated by the water board. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of sewage or industrial wastes of a liquid nature and any sewers, pipes, conveyances and appurtenances that transport wastewater to or from the water board's treatment plant. For the purposes of these regulations, POTW shall also include any sewers that transport wastewater to the POTW from persons outside the water board's service area who are, by contract or agreement with the water board, users of the water board's POTW.

(66) **Premises** means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(67) **Premises Accessible to the Sewer System** means and refers to real estate which adjoins, abuts, is adjacent to or has access (within 100 feet) to the Water Board POTW.

(68) **Pretreatment** means the reduction of the amount of, or alteration of, Pollutant properties in Wastewater prior to, or in lieu of, discharging or otherwise introducing such Pollutants into the Water Board POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, production process changes or by other means, except as prohibited by 40 CFR 403.6 General Pretreatment Regulations for Existing and New Sources of Pollution.

(69) **Pretreatment Requirements** means any substantive or procedural requirement related to pretreatment imposed on a User, other than a pretreatment standard.

(70) **Pretreatment Standards, National Pretreatment Standard** or **Standards** means prohibited discharge standards, categorical pretreatment standards, local limits, or any regulation containing Pollutant discharge limits promulgated by USEPA under section 307(b) and (c) of the Clean Water Act applicable to industrial users, including general and specific prohibitions found in 40 CFR 403.5.

(71) **Priority Pollutant** means a toxic pollutant as defined under 307(a)(1) of the Clean Water Act requiring the USEPA to publish a list of toxic pollutants after weighing the importance of each of the following factors:

(i) toxicity;

(ii) persistence;

(iii) degradability; and

(iv) effect on organisms.

(72) **Right-of-Way** means a strip of land designated for travel by the public (pedestrian and vehicular) and includes pavement, curbs, margin areas, sidewalks, driveway approaches, etc.

(73) **Sanitary Sewer** means a sewer that carries liquid water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm, or surface waters that are not admitted intentionally.

(74) **Sanitary Wastewater** means sewage discharging from sanitary conveniences including but not limited to toilets, washrooms, urinals, sinks, showers, drinking fountains, laundries, kitchens, cafeterias, essentially free of Industrial Wastes or toxic material.

(75) **Sewer Lateral** means the extension from the Building Drain to the Water Board POTW.

(76) **Shredded** means at least 30 percent on a dry basis passes a No. 40 U.S. Standard Sieve.

(77) **SIU (Significant Industrial User)** means any Person who:

(i) discharges wastewater subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter 1, subchapter N; or

(ii) discharges an average of 25,000 gallons per day or more of process wastewater to the Water Board POTW (excluding sanitary, non-contact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the water board POTW treatment plant; or is designated as such by the Control Authority as defined in 40 CFR 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the water board's POTW operation or for violating any pretreatment standard or requirement.

(78) **SIU Permit** means the wastewater discharge permit that shall be required for SIUs for discharge of wastewater into the water board POTW and issued pursuant to these regulations and may contain discharge restrictions as deemed appropriate by the Director.

(79) **Slug or Slug Load** means any wastewater discharge at a flow rate, concentration or load which could result in any prohibited discharge listed in section 1960.5 of this Part.

(80) **SNC (Significant Non Compliance)** means an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

(i) chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(ii) Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of all of the measurements for each Pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease; and 1.2 for all other Pollutants except pH.);

(iii) any other violation of a Pretreatment effluent limit (daily limit or longer term average) that the Water Board 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);

(iv) 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 paragraph (f)(1)(vi)(B) of section 40 CFR 403.8 to halt or prevent such a discharge;

(v) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(vi) failure to provide, within 30 days after the due date, required report such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(vii) failure to accurately report noncompliance; and

(viii) any other violation or group of violations which the water board determines will adversely affect the operation or implementation of the local pretreatment program.

(81) **SOC (Soluble Organic Carbon)** shall mean the measure of organic material as TOC in that portion of a water or waste that has passed through a standard glass fiber filter. The glass fiber filter shall be equivalent to that described in the procedure for residue determination and the measurement of TOC shall be as set forth in the latest USEPA-approved edition of Standard Methods for the Examination of Water and Wastewater.

(82) **SOC Amenable to Carbon Treatment** means that portion of the SOC that is removed by granular activated carbon treatment.

(83) **Special Conditions** means:

(i) **Discharge Compliance with Water Quality Standards.** The condition that applies where a municipality has been notified that the discharge of Stormwater authorized under their MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition the municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.

(ii) **303(d) Listed Waters.** The condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition the stormwater management program must ensure no increase of the listed Pollutant of concern to the 303(d) listed water.

(iii) **Total Maximum Daily Load (TMDL) Strategy.** The condition in the municipality's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a waterbody or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the municipality was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

(iv) The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by EPA for any waterbody or watershed into which an MS4 discharges. Under this condition the municipality must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the municipality must, within six months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the Pollutant of concern specified in the TMDL is achieved.

(84) **Spill** means to allow or to cause, either inadvertently or intentionally, a substance to escape from its normal container or containment system and enter the water board POTW.

(85) **State** means the State of New York.

(86) **State Pollutant Discharge Elimination System (SPDES) Stormwater Discharge Permit** means a permit issued by the Department that authorizes the discharge of pollutants to waters of the State.

(87) **Storm Sewer** means a sewer which is intended to carry solely storm and surface waters and drainage directly to waters of the State, but excludes wastewaters other than cooling waters and/or other unpolluted waters.

(88) **Stormwater** means water that is deposited on the earth from such phenomena as rain, snow, hail or sleet. **Stormwater** means rainwater, surface runoff, snowmelt and drainage.

(89) **Stormwater Management Officer (SMO)** means an employee, the municipal engineer or other public official(s) designated by the Director to enforce this local law.

(90) **TMDL** means Total Maximum Daily Load.

(91) **TOC (Total Organic Carbon)** shall mean a measure of the amount of organic material in a water or waste expressed in milligrams of carbon per liter of solution. Measurement shall be as set forth in the latest USEPA-approved edition of Standard Methods for the Examination of Water and Wastewater.

(92) **Total Maximum Daily Load** means the maximum amount of a pollutant to be allowed to be released into a waterbody so as not to impair uses of the water, allocated among the sources of that pollutant.

(93) **Transporter** means any person who delivers hauled waste via tank truck or rail car.

(94) **TSS (Total Suspended Solids)** means solids that are in suspension in water or wastewater, and which are removable by filtration. Measurement shall be as set forth in the latest USEPA-approved edition of Standard Methods for the Examination of Water and Wastewater.

(95) **Toxic Pollutants** means those substances as defined and referred to in the act or as designated by the commissioner of the NYSDEC.

(96) **Uncontaminated** means waters (or Wastewaters) which are not contaminated.

(97) **USEPA** means the United States Environmental Protection Agency.

(98) **User** means and refers to any person whose premises are connected to the water board POTW or MS4, or effluent source that directly or indirectly contributes, causes or permits the contribution of waste into or through the POTW or stormwater through the MS4.

(99) **Wastewater** means water that is not stormwater, is contaminated with pollutants and is or will be discarded.

(100) **Water Board Sewer System** means all sewer pipes and other appurtenances which are used or useful in whole or in part in connection with the collection, treatment or disposal of wastewater, industrial waste or other properly Shredded wastes and which are owned, operated and maintained by the water board, including wastewater pumping stations and wastewater treatment and disposal facilities, but excluding separate storm sewers and the diversion sewer. Preferred current terminology water board POTW shall be used throughout the text of this Part.

(101) **Water Board's SPDES Discharge Permit** means the current State or National Pollutant Discharge Elimination System Permit, as issued by the NYSDEC or the USEPA, to the water board.

### Credits

Historical Note: Sec. filed as emergency rule September 25, 2003, eff. September 25, 2003, exp. December 23, 2003. Sec. filed as emergency rule February 17, 2004, eff. February 17, 2004, exp. April 16, 2004. Sec. filed March 30, 2004, eff. April 14, 2004; amd. filed Feb. 4, 2008 eff. Feb. 20, 2008.

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21 NYCRR 1960.2

Section 1960.2. General provisions

(a) The purpose of this Part is to provide for the maximum possible beneficial public use of the Water Board's POTW and MS4 through regulation of sewer construction, sewer use, and Wastewater discharge; to provide criteria for equitable distribution of the costs of the Water Board's POTW; to prevent Illicit Connections and the introduction of Pollutants which would interfere with the operation of the Water Board POTW or MS4, Pass Through the treatment works to waters of the State or contaminate the Water Board's POTW sludge; to meet the requirements of the SPDES General Permit for Stormwater Discharges from the MS4; and to provide procedures for complying with the requirements contained herein.

(b) This Part shall apply to Persons within the City and to Persons outside the City who are, by contract or agreement with the Water Board, Users of the Water Board's POTW or MS4. The provisions of this Part shall apply to the discharge of all Wastewater to the Water Board's POTW and discharge of Stormwater to the MS4. This Part provides for use of the Water Board's MS4, use of the Water Board's POTW, regulation of sewer Connections, control of the quantity and quality of Wastewater discharged, Wastewater Pretreatment, criteria for distribution of costs, criteria for use of Water Board POTW capacity, issuance of SIU or ICU Permits, minimum sewer Connection standards and conditions, and penalties and other procedures in cases of violation of this part.

(c) The Water Board maintains its principal office at the Michael C. O'Laughlin Water Treatment Plant located at 5815 Buffalo Avenue, Niagara Falls, NY 14304. Unless otherwise provided or directed, all payments and communications to the Water Board shall be delivered to such office address.

(d) The headings and table of contents used herein are for convenience and reference only and shall not define, describe, limit or control the scope or meaning of the provisions of these regulations.

(e) The confidentiality of User information and data submitted as necessary for any application, record, report, plan, or other document required by these regulations shall be governed by the New York State Freedom of Information Law (sections 84 through 90 of the Public Officers Law of the State of New York) and by other applicable State or Federal statutes and regulations. Any requests by a User to keep specific data and information confidential must be made in writing at the time of submission.

**Credits**

Historical Note: Sec. filed as emergency rule September 25, 2003, eff. September 25, 2003, exp. December 23, 2003. Sec. filed as emergency rule February 17, 2004, eff. February 17, 2004, exp. April 16, 2004. Sec. filed March 30, 2004, eff. April 14, 2004; amd. filed Feb. 4, 2008 eff. Feb. 20, 2008.

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21 NYCRR 1960.3

Section 1960.3. POTW and MS4 connections

(a) Connection of accessible premises to the POTW or MS4.

(1) All Persons owning any Occupied Building now erected upon Premises accessible to the Water Board POTW and/or MS4 shall, at their own expense, connect to the Water Board POTW and/or MS4.

(2) All Persons owning any Premises accessible to the Water Board POTW or MS4 upon which a building is hereafter erected, shall, at the time of the erection of such building and at their own expense, connect to the Water Board POTW and/or MS4.

(3) All Persons owning any occupied Premises which hereafter becomes accessible to the Water Board POTW or MS4 shall, at their own expense, connect to the Water Board POTW or MS4 within three (3) months after written notice to do so from the Director.

(b) Plumbing code requirements.

(1) No Connection shall be made to the Water Board POTW or MS4 except by a plumber duly registered and licensed by the City and the Water Board, and in a manner and of such materials as are approved by the City and the Director.

(2) Where the buildings to be connected to the Water Board POTW are used, in whole or in part, for the preparation or serving of food or for any other processing where grease or oil may be produced, including but not limited to eating houses, restaurants, hotels, drug stores, bars and saloons, there shall be installed in each Connection a grease interceptor or trap of design and make as approved by the Director and the City.

(3) All industrial and commercial storage or repair garages, gasoline stations with grease racks, grease pits or wash racks; all motor vehicle cleaning facilities and all facilities which have oily and/or flammable wastes as a result of manufacturing, storage, maintenance, repair or testing processes, shall provide sand interceptors, catch basins and oil interceptors as are approved by the director and the city.

(4) Interceptors and separators shall be maintained in efficient operating condition by removal of accumulated grease, scum, oil or other floating substances and solids deposited in the interceptor or separator so as to preclude these substances from entering the water board's POTW, or at scheduled intervals as directed by the director.

(c) Separate connections required for connections to the POTW. Except for industrial users, and except where there is a separate dwelling house of the same owner upon the rear part of a lot, each separate building shall be provided with an independent connection to the water board POTW. A separate dwelling house of the same owner on the rear part of a lot may be connected to the POTW through the same building connection as that serving the main house. Two or more properties (or parcels of property) shall not be permitted to discharge in the same building connection to the Water Board POTW, except by specific authorization in writing from the director.

(d) Connection permit. Whenever any connection pipe, or other facility is to be connected to the Water Board POTW or MS4, the owner of such building or facility shall make written application to the Director and the City Director of Inspections in person or through a plumber duly licensed and registered by the City, acting as agent for such property owner, upon a form to be supplied by the city and the water board. The application shall set forth the nature and character of the connection to be made and the time within which the same is to be completed. Upon the approval of such application, a permit to make such connection shall be issued to the applicant. The fee for such permit shall be established by and payable, in advance, to the city director of inspections. In the case of an SIU defined herein, the applicant shall also be required to obtain the approval of the Director in order to validate the Connection permit approved and issued by the city director of inspections. Approval of the director shall also be required for those making application for connection to the diversion sewer.

Whenever said connection involves work in a publicly owned right-of-way, a city engineering department permit application for work within the city's right-of-way must be filed in the office of the city engineer, or if such right-of-way is owned by the Water Board, then an application for a water board permit must be filed with the director. Such application must be filed by a plumber duly licensed and registered by the city, 24 hours in advance of starting work. All provisions of said engineering permit or water board permit, as the case may be, shall be strictly adhered to.

(e) Water Board's right to do work. The water board reserves the right and may elect to do all or any part of the work incident to making connections and shall so endorse the permit. The costs of such part of the work shall be charged to and paid by the property owner and shall be due and payable immediately upon the completion of the work. If not so paid, costs may be collected by the water board in such manner as may be permitted by law.

(f) Permit invalid for Non-Compliance.

(1) Each permit issued to a property Owner pursuant to the provisions of subdivision (d) of this section, for the making of the connection with the water board POTW or MS4, shall be invalid unless work is commenced and completed in accordance with the terms thereof, and no work shall be done after any permit has expired unless and until a new permit shall have been obtained from the city Director of inspections, or the director, as the case may be.

(2) The Water Board reserves the right to revoke any permit so issued upon violation of any of the provisions of this Part. The property owner whose permit shall be so revoked shall thereupon be required to secure a new permit for the making of a connection to the water board POTW or MS4 upon such terms as the director may prescribe.

(g) Inspection requests.

(1) Upon request of any property owner or his agent, the Director shall make an inspection of sewer connections or building sewers to determine compliance or non-compliance with this Part and sections 501 and 502 of the State Plumbing Code. A property owner or his agent shall submit with any inspection request a fee of \$100 to cover the cost of such inspections; provided, however, that if the \$100 inspection fee has been paid and an inspection reveals any non-compliance with this Part or the State Plumbing Code, a request for reinspection, made within 120 days of the last inspection may be made and will be provided without payment of any additional fee.

(2) Upon completion of any inspection or reinspection, the director shall issue or cause to be issued a letter stating compliance or non-compliance with this Part and the State Plumbing Code.

**Credits**

Historical Note: Sec. filed as emergency rule September 25, 2003, eff. September 25, 2003, exp. December 23, 2003. Sec. filed as emergency rule February 17, 2004, eff. February 17, 2004, exp. April 16, 2004. Sec. filed March 30, 2004, eff. April 14, 2004; amd. filed Feb. 4, 2008 eff. Feb. 20, 2008.

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21 NYCRR 1960.3, 21 NY ADC 1960.3

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Title 21. Miscellaneous  
Chapter XXX. Niagara Falls Water Board  
Part 1960. Wastewater Regulations (Refs & Annos)

21 NYCRR 1960.4

Section 1960.4. Use of POTW and MS4

(a) Except as set forth in subdivision (c) of this section, disposal of wastewater is prohibited to other than POTW.

(1) The disposal of sanitary wastewater and industrial wastewater is prohibited to other than the POTW from premises required to connect thereto under section 1960.3 of this Part, except that certain industrial wastes may be discharged after suitable treatment to the diversion sewer, storm sewers, or to watercourses, under provisions of the Clean Water Act, as amended, provided that a valid SPDES discharge permit for such discharge is in effect.

(2) Any Person who erects, constructs or maintains a privy, cesspool or septic tank on any property accessible to the POTW shall be deemed and shall be declared to be erecting, constructing and maintaining a nuisance, which nuisance the Water Board is authorized to abate in the manner provided by law.

(3) The disposal of Hauled Wastes, including sanitary waste from septic tanks or portable toilets into the POTW shall be prohibited except as permitted in writing by the Director and for a fee as established in section 1960.8 of this Part.

(4) Notwithstanding any of the provisions above, nothing herein contained shall prohibit a User to dispose of wastes by any other legally prescribed methods.

(b) POTW and MS4 Limitations or Prohibitions and Limitations.

(1) No Person shall discharge or allow to be discharged any Sanitary or Contaminated Wastewater to the Water Board's MS4.

(2) No Person shall discharge or allow to be discharged Uncontaminated Storm Water runoff, Uncontaminated surface runoff or Uncontaminated Cooling Water to any Sanitary Sewer.

(3) No Person shall allow excessive amounts of Infiltration to any sanitary or Combined Sewer.

(4) No Person shall discharge or allow to be discharged Inflow to any Sanitary Sewer.

(5) Users for whom Water Board MS4 access is not presently provided or whose Premises are not located within 100 feet of the Diversion Sewer or water courses suitable to receive Uncontaminated Cooling Water, Storm Water runoff, or pretreated Industrial Wastewaters meeting the Water Board's SPDES Discharge Permit limits may, upon receiving written permission from the Director, discharge such waters to the Combined Sewers. When the MS4 is constructed and made available by the Water Board to receive such waters, the yard piping shall be modified, within such time period as prescribed by the Director, to separate these waters from industrial and/or Sanitary Wastewaters. Appropriate separate Connections shall be made to the Sanitary Sewer and MS4. However, Users located near watercourses or the Diversion Sewer into which such waters may be discharged shall modify as necessary their yard piping, within such time period as prescribed by the Director, to discharge only industrial process Wastewater and/or sanitary wastewater to the sanitary or combined sewer. Such users may discharge Uncontaminated Cooling Water and such pretreated Industrial Wastewater to the watercourses, the Diversion Sewer or to the MS4. Such cooling waters and pretreated Industrial Wastewaters shall require individual SPDES discharge permits.

(6) Industrial plants or others taking water from any source other than the POTW for use in cooling or as process water or for any other purpose shall report such quantities and their ultimate disposal, whether to sanitary sewers, storm sewers, or diversion sewer, to the Director in writing as requested.

(7) Any user, whether an SIU or not, discharging to the diversion sewer shall provide a continuously and immediately accessible control manhole suitable for inspection, observation, sampling, testing and measurement of discharge.

(c) The following discharges to the MS4 are acceptable unless NYSDEC or the Water Board has determined them to be substantial contributors of pollutants:

(1) water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising ground water, Uncontaminated ground water Infiltration to storm drains, Uncontaminated pumped ground water, foundation or footing drains, crawl space or basement sump pumps, air conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire fighting activities, and any other water source not containing Pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing Pollutants.

#### **Credits**

Historical Note: Sec. filed as emergency rule September 25, 2003, eff. September 25, 2003, exp. December 23, 2003. Sec. filed as emergency rule February 17, 2004, eff. February 17, 2004, exp. April 16, 2004. Sec. filed March 30, 2004, eff. April 14, 2004; amd. filed Feb. 4, 2008 eff. Feb. 20, 2008.

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21 NYCRR 1960.5

Section 1960.5. Conditions to the use of the water board's POTW and MS4

(a) Prohibited wastewater discharges and certain notifications to Water Board.

(1) No Person shall discharge, allow to be discharged, or otherwise allow to enter any of the following proscribed waters or wastes to the Water Board POTW or MS4, any Sanitary Sewer, Combined Sewer, or to the Diversion Sewer:

(i) Any pollutant which creates a fire or explosion hazard, including but not limited to, waste streams with a closed cup flashpoint of less than 140° F. (60° C.) as determined by using the test methods specified in 40 CFR part 262.21.

(ii) Any waters or wastes containing solids, liquids or gases in sufficient quantity, acting either singly or by interaction with other properly Shredded wastes, which may create damage, cause Pass Through or Interference, be a hazard to the Water Board Personnel, create a public nuisance, create a hazard to life, or after treatment cause a violation of the Water Board's SPDES Discharge Permit.

(iii) Any water or wastes which will cause corrosive structural damage, but in no case those discharged with the following properties:

(a) having a pH less than 5.0;

(b) having a pH greater than 12.0 for any period exceeding 30 minutes;

(c) having a pH greater than 10.0 for more than five hours daily or 70 hours monthly;

(d) having by itself or by interaction with a discharge or discharges from other sources, properties which would cause the pH of the effluent of the Water Board POTW or MS4 to be outside the range of 6.0-9.0 for greater than 60 minutes;

(e) having by itself or by interaction with a discharge or discharges from other sources, any other aggressive property in a quantity or quality capable of causing damage or hazard to any structure or equipment.

(iv) any solid or viscous substance, including but not limited to fats, waxes, greases, petroleum oil, non-biodegradable cutting oils, or products of mineral oil origin, of such quantity or size discharged, or by interaction with other substances, which cause obstruction of flow in the POTW, interference of the POTW, or pass through;

(v) any liquid or vapor having a temperature higher than 150° F (65°C) at the discharge to the Water Board POTW or MS4. In addition, any liquid or vapor which causes, either singly or in combination with other Wastewater discharges, the combined influent to the Water Board POTW to exceed 104°F (40°C) is also prohibited.

(vi) any materials containing radioactivity of such half-life, concentration or other property as may exceed limits established by applicable State or Federal laws, regulations, guidelines or limitations, or that may cause the Water Board POTW's or MS4's effluent or sludge to exceed such laws, regulations, guidelines or limitations, or to be classified as a hazardous substance under the Federal Comprehensive Environmental Response, Compensation and Liability Act;

(vii) slug or batch discharges which, in the opinion of the Director, could cause or substantially contribute to an upset of the POTW treatment process, or result in a violation of the Water Board's SPDES discharge permit;

(viii) any waters or wastes containing substances which, either singly or in combination with other properly shredded wastes, are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only at excessive cost or amenable to treatment only to such degree that the Water Board's POTW effluent cannot meet the requirements of the Water Board's SPDES discharge permit;

(ix) any waters or wastes from a motor vehicle, tank truck or any other mobile conveyance without prior written authorization by the Director, specifying the nature, volume, manner, time and place of discharge except for such mobile conveyance discharges from within an SIU facility to sewers carrying water through a monitoring station;

(x) any substance which may cause the Water Board's POTW or MS4 effluent or any other product of the Water Board's POTW or MS4 such as residues, sludge, furnace solids, or scum, to be unsuitable for discharge, disposal, reclamation or reuse. In no case shall a substance discharged to the Water Board's POTW or MS4 cause the Water Board POTW or MS4 to be in non-compliance with sludge use or disposal criteria, air emissions permit, guidelines or regulations affecting sludge use or disposal pursuant to the Solid Waste Disposal Act (including title II, more commonly referred to as the Resource Conservation and Recovery Act), the Clean Air Act, the Clean Water Act, the Toxic Substance Control Act, the Marine Protection, Research and Sanctuaries Act or State criteria applicable to the sludge management method being used;

(xi) any pollutant, including oxygen demanding Pollutants, released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the Water Board's POTW;

(xii) any discharge of pollutants which result in the presence of toxic gases, vapors or fumes within the Water Board POTW or MS4 in a quantity that may cause acute worker health and safety problems.

(2) The occurrence of discharge of wastewater under emergency conditions and the spillage of Wastewaters in quantity or quality not in accord with the provisions of this section shall be reported by telephone to the Water Board POTW treatment plant duty operator immediately. Such occurrence or spillage shall be confirmed by letter to the Director within five working days when requested by the Director at the time of the telephone report or later by written request (SIUs must report according to section 1960.6 of this Part). Persons responsible for the discharge shall take all available means to reduce the volume and rate of discharge and shall cooperate with Water Board personnel to reduce potential damaging effects.

(b) Prohibited activities.

(1) No person shall engage in any activities that cause or contribute to a violation of the Water Board's SPDES Stormwater Discharge Permit or the Water Board being subject to special conditions.

(2) Upon notification to a Person that he or she is engaged in activities that cause or contribute to violations of the Water Board's SPDES Stormwater Discharge permit authorization, that Person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the Water Board's SPDES Stormwater Discharge permit authorization.

(c) Local limits for the Water Board POTW.

(1) In accordance with the provisions in 40 CFR 403, specific local limits shall be developed, adopted and enforced. A user may not introduce into the POTW any pollutant(s) which can cause pass through or interference. These general prohibitions and the specific prohibitions listed in this section apply to each user introducing pollutants into the Water Board POTW whether or not the user is subject to other national pretreatment standards or any other national, State, or local pretreatment requirements.

(2) No user shall discharge, allow to be discharged, or otherwise allow to enter the Water Board POTW any substances, materials, waters, or wastes in quantities greater than those listed in Wastewater Facilities Administrative Procedure No. 6 "Determination and Use of Local Limits," unless the User has been granted permission via a valid discharge permit. In no circumstances, can less stringent limitations violate any applicable pretreatment standard or requirement. These limitations are deemed pretreatment standards for the purposes of section 307(d) of the Clean Water Act.

(3) The Water Board shall continue to develop these limits as necessary and effectively enforce these limits.

(d) Required notice of change in volume or character of wastes.

(1) All users must obtain prior approval from the Director to discharge new or significantly increased wasteloads.



(2) Any user discharging to the Water Board POTW who plans to change the volume or character of said discharge significantly, shall notify the Director no less than 15 working days prior to the commencement of any alteration or construction that will result in a significant change in the volume or character of its discharge.

(3) All users must notify the Director of his or her designee no less than 15 working days prior to initiating maintenance work, tank cleaning or demolition, internal sewer plumbing cleaning or repair or any other activity which will temporarily change the volume or character of the Wastewater discharge to the Water Board POTW.

(e) Measuring, recording and sampling devices.

(1) The Water Board is authorized, pursuant to 40 CFR Section 403.8(f)(1) of the pretreatment standards, to require any user to install monitoring equipment in a suitable location so that the Water Board POTW can monitor the user's discharge, and require the User to conduct self-monitoring and reporting.

(2) All meters and all other measuring and sampling devices installed or required to be used under the provisions of this part shall be readily accessible to the Director. The Owner of the property upon which any such measuring, recording or sampling device is installed shall pay for and shall remain responsible for its maintenance and accuracy. All repairs and calibrations thereto shall be made at the Owner's cost, whether such repairs are made necessary by ordinary wear and tear or by other causes. These repairs shall be made within such time period as prescribed by the Director. After proper notification, the Water Board can undertake such repairs, and the costs for said repairs shall be due and payable at that time, shall be collected in the same manner and shall be subject to the same penalties as are the costs for repairs of water meters. Energy for continuous operation, as required, shall be provided and paid for by the property owner. Flow record charts shall be changed by the user as required, shall be marked to show time and totalizer register reading at time of change, and shall be available to the Director upon request.

(3) All industrial users shall keep records on file for a minimum of three years of all records, flow charts, laboratory calculations or any other pertinent data on their discharge to the Water Board POTW. This retention period may be extended during litigation or notice from the Water Board.

(f) Information requirements.

(1) All Users of the POTW or MS4 shall file, with the Water Board, wastewater information deemed necessary by the Director for determination of Compliance with this Part, the Water Board's SPDES discharge permit conditions, and State and Federal law. Such information shall be provided by completion of a questionnaire supplied by the Director and by supplements thereto as may be necessary. Information requested in the questionnaire and designated by the discharger as confidential is subject to the conditions of confidentiality as set out in this subdivision.

(2) Where a person owns, operates or occupies properties at more than one location, separate information submittals shall be made for each location as required by the Director.

(3) Information and data obtained through the Water Board's pretreatment program from reports, questionnaires, permit applications, permits, monitoring programs and from inspections shall be available to the public without restriction unless the User specifically requests and is able to demonstrate to the satisfaction of the Water Board that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the User. The Water Board shall implement measures to insure the confidentiality of information provided by a User pursuant to this Part. In no event shall any claimed confidential information be disclosed to the public without prior notice in writing to the user, and without providing the user with the opportunity to seek judicial relief.

(4) In accordance with section 308 of the Clean Water Act, all information as described in this subdivision shall be immediately available to the USEPA Administrator or authorized representative(s) of the USEPA Administrator without limitation.

(5) In no case shall effluent data be considered proprietary or restricted data. Any and all such effluent data shall be made available to the public on request through Freedom of Information Law provisions.

(6) Any Industrial User now or in the future discharging to the Diversion Sewer, upon and after the effective date of this Part shall provide a copy of the applicable State SPDES application and any subsequent permit to the Director for such discharge or continuation of such discharge.

(g) Water Board's right of revision. The Water Board reserves the right to establish more or less stringent limitations or requirements on discharges to the Water Board POTW or MS4 to be consistent with the objectives presented in section 1960.2 of this Part. However, in no circumstance can less stringent limitations violate any applicable pretreatment standard or requirement.

(h) Right of entry, inspection and collateral activities.

(1) Personnel as designated by the Director shall be permitted at any time to enter upon all properties served by the Water Board POTW or MS4 for the purpose of, and to carry out, inspection of Premises, observation, measurement, sampling and testing, in accordance with the provisions of this Part to determine compliance or non-compliance with applicable pretreatment standards and requirements and stormwater permit requirements. Personnel shall also be permitted to inspect and copy any and all documentation pertaining to discharge monitoring and analysis.

(2) To the extent allowed under their respective laws and regulations, designated representatives of USEPA, NYSDEC and Niagara County Health Department shall be permitted at any time to enter upon all properties served by the Water Board POTW or MS4 for the purpose of, and to carry out, inspection of Premises, observation, measurement, sampling and testing, in accordance with the provisions of this Part to determine Compliance or Non-Compliance with applicable Pretreatment Standards and Requirements.

(i) Notification of Spills. Notwithstanding other requirements of law, as soon as any Person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or Pollutants discharging into the MS4, that Person shall take all necessary steps to ensure the discovery, containment and cleanup of such release. In the event of

such a release of Hazardous Materials, emergency response agencies of the occurrence via emergency dispatch services should be notified Immediately. In the event of a release of non-Hazardous Materials, the Board should be notified in Person or by telephone or facsimile no later than the next business day. Notifications in Person or by telephone shall be confirmed by written notice addressed and mailed to the municipality within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the Owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

**Credits**

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Title 21. Miscellaneous

Chapter XXX. Niagara Falls Water Board

Part 1960. Wastewater Regulations (Refs & Annos)

21 NYCRR 1960.6

Section 1960.6. Significant industrial users

(a) Required control manhole and/or monitoring station.

(1) Each SIU shall install either a suitable control manhole or monitoring station, in each industrial plant connection to the Water Board POTW or any other connections deemed necessary by the Director. Control manholes shall be suitable for inspection, observation, sampling, testing and measurement of plant discharges. Monitoring stations shall provide safe adequate space and equipment for continuous flow rate measurement and recording, and for the taking of 24-hour composite samples proportional to rate of flow, with refrigeration of samples. Such equipment shall include an event marker to indicate the time and frequency of sample collection.

(2) Each such control manhole and/or monitoring station shall be readily accessible and shall be located and constructed in accordance with plans approved by the Director. The control manhole and/or monitoring station with equipment 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 to designated Water Board personnel. If continuous and immediate access to the monitoring station is not available, a control manhole to which there is such access shall be provided by the SIU in addition to the monitoring station. There shall be no more than two monitoring stations for any industrial plant unless specifically authorized by the Director.

(3) Any SIU may be required to provide, install and maintain monitoring and other equipment as deemed necessary and appropriate upon determination by the Director.

(b) Determination of wastewater characteristics.

(1) Samples shall be collected on a continuous basis unless otherwise specified by the Director. Composite samples shall be collected by automatic sample collection equipment over a 24-hour period. In the event of an equipment malfunction, a manual composite sample, consisting of a minimum of eight discrete grab samples, shall be collected at equal time intervals over the 24-hour compositing period. The grab samples shall be composited proportional to the flow rate over the 24-hour compositing period. More than the minimum number of discrete samples may be required in instances where pollutant loading and/or flow rate is highly variable.

(2) Samples shall be collected and preserved in accordance with 40 CFR part 403.12 including, but not limited to, cooling samples to 4° C during the compositing period.

(3) Unless waived by the Director, all SIUs are required to collect samples seven days per week. The Director may waive weekend sampling if past performance and process characteristics indicate such action is warranted. When a weekend composite sample is required, it shall be a flow-proportioned composite of each discrete daily composite sample. The 72-hour composite sample shall include Friday a.m. through Monday a.m. Records of daily integrator numbers and the percent of flow each day's sample represents shall be recorded and made available upon request.

(4) Each SIU, unless waived by the Director, is required to retain a minimum of three samples on rotation at all times. The first sample shall be the current sample undergoing compositing. The second sample is the completed composite sample which represents the discharge from the preceding 24 hours. The third sample is a completed composite sample from the next preceding 24 hours. These samples shall not be split or otherwise altered without prior authorization from the Director.

(5) A log shall be maintained in each Monitoring Station and shall contain the date, time and flow integrator number at the time each daily sample is removed, the gallons conversion factor, and daily flow in million gallons per day. Comments detailing unusual events, equipment malfunctions, etc. shall also be recorded.

(6) Upon demonstration by a Person that the characteristics of the Wastewater discharged by that Person are consistent, the Director may reduce the frequency of monitoring except as may be required by authority other than this Part, except in no case shall the frequency of monitoring be less than semi-annually for the determination of Compliance with Pretreatment or local standards.

(7) All required periodic Compliance reports shall be signed by an authorized representative of the Industrial User.

(8) Laboratory and field measurements, tests, and analyses of the characteristics of Wastewater required by this part shall be performed in accordance with 40 CFR part 403.12. Any report submitted pursuant to this Part shall specify the standard practices used.

(9) The Department must be notified by telephone within 24 hours when the monitoring or sampling equipment is inoperative for more than one working day.

(c) Slug discharges.

(1) Each SIU shall provide protection from a Slug discharge of prohibited materials or substances regulated by this Part. Facilities to prevent Slug discharge(s) of prohibited materials shall be provided for and maintained at the Owner's or User's own expense, as determined by the Director.

(2) Each existing SIU shall be evaluated at least once every two years as to whether or not the SIU needs a plan to control Slug discharge(s). In addition, any new SIU shall be reviewed for the need of a plan at the time of application for an SIU Permit. The Director may require any user to develop, submit for approval, and implement such a plan. Alternatively, the Director may develop such a plan for any user. In the event a plan is required, the User shall submit this plan to the department for review and approval within 90 calendar days of notification.

(3) Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility as necessary to meet the requirements of this Part. In the case of a slug discharge, it is the responsibility of the user to immediately upon becoming aware of the violation, telephone and notify the Water Board POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

(4) In the event of a violation of any applicable Pretreatment limit, the User must resample and submit the analytical results of this resampling to the POTW within 30 days.

(5) Within five business days following a Slug discharge, the user shall submit to the Director a detailed written report describing the cause of the discharge and the corrective action to be taken by the user to prevent similar future occurrences. Such report shall not relieve the User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the Water Board POTW, fish kills, or any other damage to Person or property. Such report shall be considered in imposing any fines, civil penalties, or other liability which may be imposed by this Part.

(6) A notice shall be permanently posted on the User's bulletin board or other prominent place advising the user's employees whom to notify in the event of a Slug discharge. Users and/or employers shall ensure that all employees who may cause or suffer such a discharge to occur are advised of the emergency notification procedure.

(7) A Slug discharge control plan shall address, at a minimum, the following:

(i) description of discharge practices, including non-routine discharges;

(ii) description of stored chemicals;

(iii) procedures to Immediately notify the Water Board POTW of any slug discharge, as required by section 1960.5 of this Part; and

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

(d) Permit application, approval, fee.

(1) All proposed new industrial users shall complete and submit to the Director application for approval to discharge at least 30 calendar days prior to connecting to, or contributing to, the Water Board's POTW. Upon receipt of all required information, the application will be processed and the determination of user status shall be made. In the event the industrial user is classified as an SIU, a discharge permit will be issued. The fee for such permit and each subsequent renewal shall be \$250 which is payable in advance to the Water Board.

(2) A user wastewater discharge permit shall include at a minimum:

(i) a statement of duration;

(ii) a statement of non-transferability;

(iii) applicable Federal, State and local effluent limits;

(iv) self-monitoring, sampling, reporting, notification and recordkeeping requirements; and

(v) a statement of applicable civil penalties.

(3) In the event that the application noted in paragraph (1) of this subdivision results in the industrial user not being classified as an SIU, but does indicate pollutants, which in the opinion of the Director are in sufficient quantity or quality to warrant monitoring, the industrial user will be issued an ICU wastewater discharge permit. The maximum duration of such permit will not exceed five years. The fee for such permit, and each renewal thereafter, shall be \$100 which is payable to the Water Board.

(4) Any existing SIU must have a valid current SIU permit from the Water Board in order to lawfully discharge to the Water Board POTW.

(5) The Director shall not issue an SIU permit for any Connection to the Water Board's POTW unless there is sufficient capacity, not committed to other Users, in the wastewater sewers and treatment facilities to convey and adequately treat the quantity of wastewater which the requested connection will add to the system.

(e) Permit modifications.

(1) User permits shall be revised and issued as soon as possible (e.g., within 90 days) subsequent to a change of or promulgation of a categorical pretreatment standard to require compliance with such standard within the time frame prescribed by such standard. Where an SIU, subject to a categorical pretreatment standard, has not previously submitted an application for an SIU permit as required by subdivision (d) of this section, the user shall apply for an SIU permit within 180 calendar days after the promulgation of the applicable categorical pretreatment standard. In addition, the User with an existing SIU permit shall submit application for permit modification to the Director within 180 calendar days after the promulgation of an applicable categorical pretreatment standard.

(2) An SIU shall notify the Director in writing not less than 60 calendar days prior to initiating the discharge of industrial wastes from a new plant, or from a plant which has been out of operation or purchased from another User.

(3) SIUs must obtain prior approval from the Director to discharge new or significantly increased wasteloads. The approval may require modification to the SIU Permit.

(4) Any request for modification to a current SIU Wastewater discharge permit shall be made in writing to the Water Board. Such request shall contain a description of the change including but not limited to the changes in pollutant character, if any. The fee for such application for modification shall be \$250 payable at the time of request to the Water Board.

(f) Permit duration.

Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year, or may be stated to expire on a specific date. The user shall apply for permit reissuance a minimum of 90 calendar days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modification by the Water Board, during the term of the permit, as limitations or requirements are modified or other just cause exists. Any changes or new conditions in the permit shall include a reasonable time schedule for Compliance.

(g) Permit transfer.

Permits are issued to a specific user. A permit shall not be reassigned or transferred without the approval of the Director. Any succeeding owner or user to which a permit has been transferred shall also comply with all terms and conditions of the existing permit.

#### **Credits**

Historical Note: Sec. filed as emergency rule September 25, 2003, eff. September 25, 2003, exp. December 23, 2003. Sec. filed as emergency rule February 17, 2004, eff. February 17, 2004, exp. April 16, 2004. Sec. filed March 30, 2004, eff. April 14, 2004; amd. filed Feb. 4, 2008 eff. Feb. 20, 2008.

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21 NYCRR 1960.6, 21 NY ADC 1960.6



Compilation of Codes, Rules and Regulations of the State of New York Currentness

Title 21. Miscellaneous

Chapter XXX. Niagara Falls Water Board

Part 1960. Wastewater Regulations (Refs & Annos)

21 NYCRR 1960.7

Section 1960.7. Pretreatment

(a) Categorical pretreatment standards.

(1) No Person shall discharge or cause to be discharged to any wastewater facilities, wastewaters containing substances subject to an applicable categorical pretreatment standard promulgated by USEPA in excess of the quantity prescribed in such applicable pretreatment standards, except as otherwise provided in this section. Categorical pretreatment standards found in 40 CFR parts 405—471 are hereby incorporated by reference, as enforceable conditions of this Part.

(2) Pursuant to 40 CFR part 403.12 within 180 days after the effective date of a Categorical Pretreatment Standard or within 180 days after a final category determination submission under 40 CFR part 403.6(a)(4), whichever is later, existing Industrial Users subject to such Categorical Pretreatment Standards and currently discharging or scheduled to discharge to the Water Board POTW shall be required to submit to the Water Board a baseline monitoring report (BMR). The BMR shall contain at a minimum: identification of the facility, indicate the permits held, describe operations, and contain flow and pollutant measurements, compliance certification by a qualified professional, and the signature of an authorized representative of the industrial user.

(3) Pursuant to 40 CFR part 403.12(b) at least 90 days prior to commencement of a New Source, and sources that become Industrial Users subsequent to the promulgation of an applicable Categorical Pretreatment Standard, shall be required to submit a BMR which contains at a minimum: identification of the facility, indication of the permits held, description of operations and contain flow and pollutant measurements.

(4) As required by 40 CFR part 403.12(d), a CIU must submit a report within 90 days after the final compliance date, or for a new source, following the commencement of its discharge, which contains: flow and pollutant measurements, a certification by a qualified individual indicating whether Pretreatment Standards are being consistently met, and if not whether additional operation and maintenance and/or additional pretreatment is required.

(5) Upon application by an SIU, the Director may, subsequent to being granted such authority by the approval authority, revise any limitations on substances specified in the applicable pretreatment standards to reflect removal of the substances by the Water Board's POTW to the extent that such revision is allowable under applicable Federal and State regulations, and that such revision would not cause an unacceptable decline in the quality of the Water Board's POTW sludge.

(6) Upon application by an SIU, the Director may, subsequent to being granted such authority by the approval authority, revise any limitation on substances specified in the applicable pretreatment standards to consider

factors relating to that SIU which are fundamentally different from the factors considered by USEPA during the development of the pretreatment standard to the extent that such adjustment is allowable under applicable Federal and State regulations. Requests for and determinations of a fundamentally different adjustment shall be in accordance with all applicable Federal and State regulations.

(7) The Director shall notify any SIU affected by the provisions of this section and shall establish a reasonable and enforceable compliance schedule for each. However, industrial users are required to comply with the provisions of this section regardless of whether the Water Board has notified the industrial user of such categorical pretreatment standards.

(b) Reporting and compliance with pretreatment regulations.

(1) All SIUs, including significant non-categorical users, and CIUs shall submit to the Water Board, at least once every six months (February and August), a report describing the nature, concentration, mass (lbs/day), and flow of pollutants discharged from the user's property or facilities. These periodic Compliance reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the analysis procedures as noted in 40 CFR part 403.12(h).

(2) All reports, including BMRs, compliance reports regarding categorical standards, 90-day compliance reports, periodic compliance reports and any compliance schedule progress reports shall contain a certification statement which shall read:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

and shall be signed by an authorized representative of industrial user pursuant to 40 CFR Part 403.12(l).

(3) Compliance schedules issued to require industrial users to comply with pretreatment standards or categorical pretreatment standards shall contain milestone dates for implementing necessary pretreatment required to meet the applicable standard. No later than 14 days following each date in the schedule and the final date of compliance, the industrial user shall submit a progress report to the Water Board, including, at a minimum, whether it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress; the reason for the delay; and the steps being taken to return to the schedule. In no event shall more than nine months elapse between such progress reports to the Water Board.

(4) Pursuant to 40 CFR part 403.12(j), all industrial users shall notify the Water Board, the State and USEPA, in writing, of any discharge which would be considered hazardous waste, including the listed or characteristic hazardous wastes, which if otherwise disposed of, would be a hazardous waste under 40 CFR part 261.

(5) The Director may impose mass limitations on Industrial Users as, in his judgment, may be required to meet applicable pretreatment standards or requirements. In such cases, the report required by subdivision (a) of this section above shall indicate the mass of pollutants regulated by pretreatment standards in the effluent. These reports shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the Director, of pollutants contained therein which are limited by the applicable pretreatment standards. All analyses shall be performed in accordance with procedure established and contained in 40 CFR, part 403.12.

(6) When Pretreatment regulations are adopted by USEPA or NYSDEC for any industry, that industry shall conform to the USEPA or NYSDEC time-table for adherence to Federal or State Pretreatment Requirements and any other applicable requirements promulgated by USEPA or NYSDEC in accordance with section 307 of the Clean Water Act. Additionally, such industries shall comply with any more stringent standards necessitated by local conditions as determined by the Water Board.

(7) If Pretreatment or equalization of Wastewater flows is permitted or directed by the Director, the design of such Pretreatment process or equipment for Wastewater flow equalization shall be subject to the review and approval of the Director prior to installation. Such Pretreatment or Wastewater flow equalization facilities, where permitted or directed, shall be maintained continuously in satisfactory and effective operations by the Owner or User at his own expense.

(8) No User shall increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve Compliance with the limitations contained in the Pretreatment Standards, or in any other Pollutant specific limitation developed by the Water Board or State.

(c) Effect of Federal Law.

In the event that the Federal government promulgates a regulation for a given new or existing user in a specific industrial subcategory that establishes categorical pretreatment standards or establishes that such a User is exempt from categorical pretreatment standards, such Federal regulations shall immediately supersede this Section.

**Credits**

Sec. filed as emergency rule September 25, 2003, eff. September 25, 2003, exp. December 23, 2003. Sec. filed as emergency rule February 17, 2004, eff. February 17, 2004, exp. April 16, 2004. Sec. filed March 30, 2004, eff. April 14, 2004; amd. filed Feb. 4, 2008 eff. Feb. 20, 2008.

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21 NYCRR 1960.7, 21 NY ADC 1960.7

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21 NYCRR 1960.8

Section 1960.8. Wastewater service charges

(a) Development of User charges for all users.

(1) All users shall pay and shall be liable to pay to the Water Board such fees, rates and other charges as the Water Board may establish from time to time in accordance with and pursuant to the authority of the Water Board Act. A schedule of such fees, rates and charges are set forth in section 1950.20 of this Title. These rates shall recover all of the costs associated with the Water Board's POTW for the fiscal year stated in such schedule. The user rates shall be developed using an equitable user charge structure which complies with all State and Federal regulations.

(2) As part of the user charge structure, process accounts shall be developed. Process accounts can be considered as cost centers into which all capital, operations, maintenance and other costs of the Water Board POTW can be allocated.

(3) Water Board POTW users shall be divided into three classes:

(i) SIU;

(ii) CSIRU;

(iii) hauled waste.

(4) The costs assigned to process accounts shall be divided between user classes using allocating parameters which reasonably reflect the actual usage of the particular process by each user class as determined by the Water Board.

(b) User charge for Commercial/Small Industrial/Residential Users (CSIRU)

(1) Any person owning premises accessible to the Water Board POTW who is classified as a CSIRU as defined hereinbefore, shall pay a user charge in accordance with a schedule to be adopted annually by the Water Board. This schedule will be developed to fully meet the need for income to pay the proportionate share of the costs, including without limitation, cost of operation, maintenance, insurance, renewals, and replacement of all Wastewater collection, treatment and disposal services provided by the Water Board for this class of users, and payment of the proportionate share of interest on and amortization of, or payments of indebtedness for the capital costs of

all facilities built to serve as part of the Water Board POTW. The amount of the billing shall be based upon the water consumption on each premises covered by this section determined by the Water Board, except as provided below. For the purposes of this section, it shall be deemed that a cubic foot of water consumed shall constitute a cubic foot of wastewater discharged. In the event that consumptive use precludes the use of water meter readings for determination of user charges, alternate metering may be substituted on a case-by-case basis pursuant to Water Board review and approval.

(2) For the purpose of billing, the owners of premises covered by this section for the User charges established in subdivision (a) of this section, the Water Board's service area shall be divided into sewer districts which shall have the same geographic boundaries as those established in section 1950.8(b) of this Title, and the billing dates for the three geographic districts shall be as established in such section, duly adopted by the Water Board, from time to time.

(3) The owners of the premises covered by this section shall be responsible for the payment of the User charge as determined in accordance with subdivision (a) of this Section and no reduction in bills rendered shall be allowed for leakage.

(4) All user charge bills shall be payable when due. They shall be mailed or delivered by the Water Board, as a matter of convenience to the property Owner or User, as the case may be. Failure of a property Owner or User, as the case may be, to receive a User charge bill shall not release the property Owner or User, as the case may be, from the payment of such bill together with any fee or penalty which may accrue or become existent by virtue of non-receipt of such bill.

(5) Whenever a property discharging Wastewater into the Water Board POTW is without a meter, the Water Board will arrange for installation of a water meter. The Water Board will then bill the property Owner or User, as the case may be, for an estimated reasonable amount of Wastewater discharged during the time that the property has been occupied without a meter.

(6) When it is impossible to obtain a regular quarterly reading of any meter for any reason, including a meter found to be registering inaccurately or found to be stopped, the amount of Wastewater discharged shall be estimated according to the amount of water consumed for the same or similar occupancies and a bill rendered for such estimated amount of Wastewater discharged. The fact that the amount of the bill has been estimated shall be indicated on the bill.

(7) Any User charge account of any nature remaining unpaid on September 30th of each year shall be placed upon the next general City tax roll made up after such date, should the Water Board be unable to make collection in any manner other than by civil action. If placed upon the tax roll, a User charge account shall become a part of said tax roll and shall become due with the same and shall be subject to the same penalties and interest as such City taxes. User charges shall be liens against real property within the City to the extent set forth in the Water Board Act and General Municipal Law of the State.

(8) Complaints of incorrect charges on User charge bills must be made prior to the due date of such bill and all User charge bills against which no claim has been made within the time set forth above shall be considered correct and must be paid in the amount rendered.

(9) When property becomes vacant, upon receipt of written notice from the Owner of same, the Water Board shall remove the water meter and seal the service in a manner that will prevent any possibility of usage without charge. When the Water Board is notified that the property is reoccupied, a meter will be reinstalled, the shutoff seal removed and the water supply restored. No charge shall be made for sewer use during the time that the property remains vacant provided that the foregoing provisions are fully complied with.

(10) The billing charge on any building permanently demolished shall be discontinued when conclusive proof of demolition is presented to the Water Board, when the water meter is removed by the Water Board, a licensed plumbing contractor certifies to the Water Board that the water and sewer service has been properly sealed, and upon payment of any existing bills up to the date such certification is provided to the Water Board.

(11) User charge bills shall not be rendered, otherwise than quarterly and in the full amount due for all of the wastewater discharged for the full quarter as provided in this section. Persons purchasing property shall make arrangements with the seller or transferor of the same regarding any settlement for the partial payment for the User charge during any portion of any quarter.

(12) For purposes of the initial billing pursuant to this section, in any case where the bill for User charge shall cover a period less than a full quarter, there shall be an estimated proration of the User charge and the bill shall be forwarded based upon such estimate and shall be described on the face of the bill as an estimated billing.

(13) The Director shall charge a Person discharging waters or water from a motor vehicle, tank truck or any other mobile conveyance an amount which adequately represents the cost of testing and treatment.

(c) User charge for SIUs.

(1) Any Person owning Premises accessible to the Water Board POTW and being an SIU defined hereinbefore, shall pay a User charge, in accordance with a schedule to be adopted annually by the Water Board. This schedule will be developed to fully meet the need for income to pay the proportionate share of costs including without limitation, cost of operation maintenance, insurance, renewals, and replacements of all Wastewater collection, treatment and disposal services provided by the Water Board for this class of Users, and payment of the proportionate share of interest on and amortization of, or payments of indebtedness for the capital costs of all facilities built to serve as part of the Water Board's POTW.

(2) Each SIU shall provide facilities for continuous metering of Wastewater flow quantities and for sampling and monitoring for determination by the Water Board of character and quality of discharge to the Water Board POTW in accordance with the SIU Permit, and as required in section 1960.6 of this Part hereinbefore except that, at the option of the SIU, flows and loadings of TSS and SOC of Wastewater from office buildings and washrooms of factory spaces may be estimated upon a per capita basis if connected separately to the Water Board POTW. Such flow and loading quantities shall be combined with the industrial waste flow and loading quantities in determining the average quarterly quantities upon which User charges are computed.

(3) The user charges for SIUs shall be at the rates as established by the Water Board, by resolution duly adopted from time to time, and shall be payable when due and in accordance with the provisions of such resolution(s). Failure

of an SIU to receive a user charge bill shall not release the SIU from the payment of such bill together with any fee or penalty which may accrue or become existent by virtue of non-receipt of bill.

(4) Any user charge account of any nature remaining unpaid on September 30th shall be placed upon the next general City tax roll made up after such date, should the Water Board be unable to make collection in any other manner than by civil action. If placed upon the tax roll, a User charge account shall become a part of said tax roll and shall become due with the same and shall be subject to the same penalties and interest as such taxes. User charges shall be liens against real property within the City to the extent set forth in the Water Board Act and the General Municipal Law of the State.

(5) For determination of quantity, character and quality of wastewaters, complaints of incorrect charges on User charge bills must be submitted in writing to the Director no later than 60 days from the date on which such bills are rendered and all user charge bills against which no claim has been made within the time set forth above shall be considered correct and must be paid in the amount rendered.

(d) User charge for hauled waste.

(1) Any Person, whether a Transporter or Generator, shall pay a charge in accordance with paragraph (4) of this subdivision to fully meet the need for income to pay the proportionate share of costs including without limitation, cost for operation, maintenance, insurance, renewals, replacements of all Wastewater receiving and conveyance facilities, treatment, and disposal services provided by the Water Board for this class of User, and payment of the proportionate share of interest on an amortization of, or payments of indebtedness for the capital cost of all facilities built to serve as part of the Water Board POTW. Each Person who desires to discharge Hauled Waste, including the Transporter and the Generator, to the Water Board POTW shall apply for a discharge permit to do so. Such application will supply information pertaining to the Pollutant characterization and volume of waste. No Hauled Waste shall be accepted without formal application and issuance of a permit.

(2) The User charges for Hauled Waste shall be billed and payable on a monthly basis.

(3) The amount of billing shall be based upon the Pollutant content and volume of the waste. In addition, administrative and analytical costs shall be billed to and payable by the User.

(4) Bills due the Water Board for sewer use, or any other service, if not paid within 25 days from the date of issue, shall be subject to a fee of 10 percent penalty and 1.5 percent of the current billing amount due in interest for each month overdue, such fee to be collected together with the amount of the bill.

(5) Any User charge account of any nature remaining unpaid on February 1st of the year following rendition, shall be collected through any and all available legal remedies.

(6) Complaints of incorrect User charge bills must be made within the month in which such bills are rendered and all User charge bills against which no claim has been made within the time set forth above shall be considered correct and must be paid in the amount rendered.

(e) User fees. The Water Board may adopt fees which may include:

- (1) Fees for reimbursement of costs of establishing, operating and maintaining the Water Board's Pretreatment program;
- (2) Fees for monitoring, inspections and surveillance procedures;
- (3) Fees for reviewing Slug discharge control procedures and corrective action plans;
- (4) Fees for permit applications;
- (5) Fees for consistent removal (by the Water Board) of Pollutants otherwise subject to Categorical Pretreatment Standards;
- (6) Other fees as the Water Board may deem necessary or appropriate to carry out the requirements contained herein.

These fees relate solely to the matters covered by this Part and are separate from all other fees chargeable by the City or the Water Board.

**Credits**

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21 NYCRR 1960.9

Section 1960.9. Administrative

(a) Powers of the Director.

(1) The Director shall be empowered to issue permits in accordance with this Part allowing discharge of wastes to the Water Board POTW or MS4, to validate connection permits, and to prevent illicit connections, activities, and discharges to the MS4.

(2) The Director or his authorized representative is empowered by this Part to initiate any of the following courses of action, through a notice of violation or otherwise, with respect to users whenever, in his sole discretion, any section of this Part is violated:

(i) Reject the waste;

(ii) Require Pretreatment;

(iii) Require a control over quantities and rate of discharge;

(iv) Require a payment of a surcharge to be determined by the Director based on reasonable assessment of the degree of violation and/or additional costs of treatment resulting from the violation;

(v) Require surveillance and/or monitoring of discharges and attendant reporting;

(vi) Require the development of compliance schedules and submission of attendant reports necessary to assure compliance;

(vii) Modify or revoke the wastewater discharge permit;

(viii) Terminate sewer service;

(ix) Require implementation of best management practices to control illicit discharges and activities;

- (x) Require the elimination of illicit connections or illicit discharges;
- (xi) Require cessation of violating discharges, practices or operations;
- (xii) Require abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (xiii) Require the performance of monitoring, analyses and reporting;
- (xiv) Require payment of a fine; and
- (xv) Seek injunctive relief.

(a) The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and non-structural BMPs.

(b) Any person responsible for a property or premise, which is, or may be, the source of an illicit discharge or an activity contaminating stormwater, may be required to implement, at said person's expense, additional structural and non-structural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.

(c) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

(3) If refused access to the subject private property, the Director, or his or her authorized representative, may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation of Water Board regulations has occurred. Upon determination that a violation has occurred, the Director or authorized representative may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

(4) Except in the event of an emergency, reasonable advance notice of the action to be taken shall be given by the Director but, unless negotiated upon initiation by the user, shall in no case exceed 60 calendar days. Once notice of action is given, the User shall have 10 business days to respond to the charges contained therein or submit a response contesting the action.

(5) If a response contesting the action is entered, prior to scheduling a formal hearing, the User may at the discretion of the Director be afforded the opportunity to meet with the Director to resolve the matter by mutual consent. If settlement cannot be reached, then, upon request of the User, the Director shall refer the matter to the Water Board for a formal hearing. The Water Board may appoint and refer the dispute or enforcement proceeding to a hearing officer who shall conduct the hearing of the alleged violation and contest thereof. The hearing officer shall

promptly conduct the hearing and provide a written report to the Water Board with a recommendation, based on the evidence presented, for a final determination by the Water Board. Reasonable notice shall be given to the user who shall be allowed to present relevant evidence and argument at the hearing. A written decision by the Water Board based upon evidence and argument presented shall be made within 30 days following the conclusion of the hearing or receipt of the hearing officer's report. The decision of the Water Board shall be only subject to review pursuant to article 78 of the Civil Practice Law and Rules of the State. Following such hearing, the Water Board may commence an action, in any court having jurisdiction, seeking appropriate legal and/or equitable relief, including injunctions against the violative activity, from users not in compliance with any of the provisions of this part, or any pretreatment standards and requirements.

(6) The Director reserves the right to terminate or prevent a discharge after informal notice to the discharger to immediately halt a discharge which reasonably appears to present imminent endangerment to the health or welfare of persons, property of the Water Board POTW, MS4 or to the environment. Informal notice shall be followed as soon as practicable by action as provided by this section.

(7) Actions to be taken by the Director shall be documented in the form of a letter, an Administrative Order, or other document as the Director may reasonably determine.

(8) The Director may promulgate administrative procedures, technical specifications or guidances to implement any and all sections of this Part. These procedures, specifications and guidances shall have the same force and effect as if they were fully set forth in this Part.

(9) Access and Monitoring of Discharges to the MS4

(i) The Director shall be permitted to enter and inspect facilities subject to regulation under this law as often as may be necessary to determine compliance with the Water Board regulations. If a discharger has security measures that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Director.

(ii) Facility operators shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required by these regulations.

(iii) The Water Board shall have the right to set up on any facility subject to this law such devices as are necessary in the opinion of the Director to conduct monitoring and/or sampling of the facility's Stormwater discharge.

(iv) The Water Board has the right to require the facilities subject to these regulations to install monitoring equipment as is reasonably necessary to determine Compliance with these regulations. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure Stormwater flow and quality shall be calibrated to ensure their accuracy.

(v) Unreasonable delays in allowing the Water Board access to a facility shall be a violation. A person who is the operator of a facility subject to this law commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by these regulations.

(vi) If the Director has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of the Water Board regulations, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this law or any order issued hereunder, then the Director may seek issuance of a search warrant from any court of competent jurisdiction.

(10) Illicit Discharges in Emergency Situations

(i) The Director may, without prior notice, suspend MS4 discharge access to a Person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. The Director shall notify the Person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the Director may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.

(ii) Suspension due to the detection of illicit discharge. Any person discharging to the municipality's MS4 in violation of this law may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Director will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the Director for a reconsideration and hearing. Access may be granted by the Director if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the Director determines in writing that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Director.

(b) Fines and Damages.

(1) If any Person discharges Wastewater into the Water Board POTW in violation of the provisions of this part or any applicable Pretreatment Standards, the Water Board may:

(i) Serve the User with written notice which may be in the form of an Administrative Order, stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, cease such violations. Any Person who shall continue any violation beyond the time limit provided shall be assessed a penalty in accordance with this subdivision.

(ii) Commence an action for appropriate legal and/or equitable relief including injunctions against the violative activity in any court having jurisdiction.

(2) Any Person determined to have violated any of the provisions of this Part shall be assessed a penalty in an amount not to exceed \$10,000 per individual violation per day.

(3) The person violating any of the provisions of this Part shall become liable to the Water Board for any expense, loss, or damage occasioned by the Water Board by reason of such violation. The expense, loss or damage shall be taken to be to the extent determined by the Director. Any contested claim for loss or damage shall be reviewable by the Water Board.

(4) Any person who knowingly makes any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Part, or SIU Permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Part shall be assessed a penalty in an amount not to exceed \$10,000 per violation per day.

(5) In determining the amount of any penalty for violation of this Part, the Water Board shall consider the seriousness of the violation or violations, any history of such violations, any good faith efforts to comply with applicable requirements, and such other matters as justice may require.

(6) The Water Board POTW shall publish annually in the largest local newspaper the names of Users which have been in SNC with applicable pretreatment standards as proscribed in this Part during the past 12 months.

(c) Special arrangements for wastewater collection and treatment.

(1) Except as subject to the provisions of the Clean Water Act and of the Water Board's SPDES discharge permit, and section 1960.5 of this Part, no statement contained in this Part shall be construed as preventing any special arrangement or agreement between the Water Board and any person requesting a waiver of any of the provisions of this Part. A request for any waiver of any of the provisions of this Part must be in writing and directed to the Director who may, subject to the provision above, allow or deny such request by written order as soon as practicable. Any special agreements between the Water Board and the User shall be expressly stated in the User's Wastewater discharge permit.

(2) An industrial facility lying outside the corporate limits of the City and which discharges Wastewater of such quantity or characteristics as would cause it to be classified as an SIU shall be so classified.

(3) In order that an SIU lying outside the corporate limits of the City, being served by the Water Board POTW, shall bear its share of the cost of such system, the charge made for such property shall be determined by the Water Board upon any basis authorized by Water Board, such charge to be collected and the collection enforced as herein provided for of per user charges.

(d) Federal statutes and regulations. The following Federal statutes and regulations have been referenced in this Part:

(1) 40 CFR means title 40 of the Code of Federal Regulations (Protection of the Environment), effective July 1, 2001.

(2) FR means Federal Register.

(3) Clean Air Act means the Air Pollution Prevention and Control Act, 42 U.S.C. section 7401 et seq., as amended.

(4) Clean Water Act means the Federal Water Pollution Control Act or Clean Water Act, 33 U.S.C. 1251 et seq., as amended.

(5) Marine Protection, Research and Sanctuaries Act is located at 33 U.S.C. section 1401 et seq., as amended.

(6) Solid Waste Disposal Act means the Solid Waste Disposal Act and Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., as amended.

(7) Toxic Substances Control Act is located at 15 U.S.C. section 2601 et seq., as amended.

(8) All United States publications referenced above are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(9) All material referenced in this part is available for copying and inspection at the Water Board's offices located at the Michael C. O'Laughlin Water Treatment Plant, 5815 Buffalo Avenue, Niagara Falls, NY 14304.

(e) Separability. If any clause, sentence, paragraph, section or article of this part shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

#### **Credits**

Sec. filed as emergency rule September 25, 2003, eff. September 25, 2003, exp. December 23, 2003. Sec. filed as emergency rule February 17, 2004, eff. February 17, 2004, exp. April 16, 2004. Sec. filed March 30, 2004, eff. April 14, 2004; Sec. filed Aug. 25, 2006, eff. Sept. 13, 2006; amd. filed Feb. 4, 2008 eff. Feb. 20, 2008.

Current with amendments included in the New York State Register, Volume XXL, Issue 24 dated June 13, 2018.

21 NYCRR 1960.9, 21 NY ADC 1960.9