

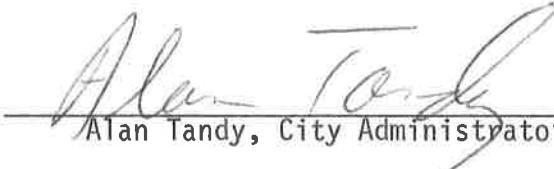
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ADMINISTRATIVE ORDER NO. 10

Pursuant to Administrative Order, authorized by Ordinance 85-4618, the attached RULES AND REGULATIONS: PRETREATMENT OF INDUSTRIAL WASTES, are hereby adopted as rules and regulations governing the operations of the municipal wastewater utility. These Rules and Regulations are to remain in force until further modified or rescinded.

Dated this 16<sup>th</sup> day of September, 1985.

  
\_\_\_\_\_  
Alan Tandy, City Administrator



## CITY OF BILLINGS CITY ATTORNEY'S OFFICE

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### ATTORNEY'S STATEMENT INDUSTRIAL PRETREATMENT LEGAL AUTHORITY

I am the Assistant City Attorney for the City of Billings, and the following attorney's statement is submitted pursuant to the requirements contained in the Code of Federal Regulations Section 403.9 (b)(1) regarding legal authority for the City of Billings to implement the Billings Pretreatment Program. The City of Billings adopted a detailed Pretreatment Ordinance on September 9, 1985, which goes into effect on October 9, 1985. My opinion is based on that new ordinance and accompanying administrative Rules and Regulations.

It is my opinion that as of October 9, 1985, the City of Billings has adequate authority to carry out the program described in 40 CFR Section 403.8, based on powers granted to it by the existing City Ordinances, the new Billings Pretreatment of Industrial Wastes Ordinance, all supplemental City rules and regulations, and the City of Billings Charter granting the City self-government powers.

The following references to the legal authority requirements of 40 CFR 403.8(f)(1) are correlated with appropriate sections of the City of Billings Ordinance and supplemental Rules and Regulations, which provide the required authority. Where the authority is not apparent from a reading of the ordinance provision, an explanation is provided.

General -- Section 4 of the proposed Billings Pretreatment Ordinance provides that all connections to the City Wastewater System or WWS Treatment Plant or discharge of industrial wastewater or polluted waters into any natural outlet within the City shall be made subject to rules and regulations that the City of Billings prescribes and subject to suitable treatment. Discharge of pollutants in violation of Federal or State criteria is prohibited.

403.8(f)(1)(i) -- No significant industrial user can discharge wastewater to the public sewer system without first obtaining an Industrial Discharge Permit (Section 7(1)), which may contain various conditions and prohibitions (Rule 7.1, Rules and Regulations). Existing industrial users (those connected to the system prior to the effective date of our Pretreatment Ordinance) shall be required by the City Administrator to obtain

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an Industrial Discharge Permit within 60 days after the effective date of the ordinance. (Rule 7.1(A), Rules and Regulations). If there has been an increase or change in an industrial user's contribution to the system, the discharger is required to notify the City Administrator of any change and the permit may be changed or modified accordingly by the Administrator (Rules 7.1(C)(xii) and 7.1(E), Rules and Regulations).

403.8(f)(1)(ii) -- In order to require compliance with applicable pretreatment standards, the City of Billings must be able to require compliance with EPA's listed general prohibitions (403.5(a)), specific prohibitions (403.5(b)), and local limits developed to implement the general and specific standards (403.6). Section 4(1) of our Ordinance prohibits any discharge into any natural outlet within the City except when suitable treatment has been provided. Sections 4(2), (3) and (4) prohibit discharges or conditions which would cause violations of any State law, rule, or regulation, or ordinance of any public agency. Sections 6(1) and (2) set forth specific pollutant limitations prohibited by the City including the National Categorical Pretreatment Standards. The sections referred to in this paragraph empower the City of Billings to enforce the general and specific prohibitions contained in 40 CFR 403.5(a) and (b). Local discharge limits and National Categorical Pretreatment Standards may be imposed as a permit condition pursuant to Rules 7.1(B) and (C).

403.8(f)(1)(iii) -- The City of Billings has control over significant industrial users via a permit system authorized by Ordinance Section 7(1) and the accompanying rules and regulations.

403.8(f)(1)(iv)(A) -- The City of Billings Administrator may, to remedy or avoid a violation of the Ordinance or Industrial Discharge permit, require a user to develop a compliance schedule for installation of control technology and may require a compliance schedule under Rules 7.1(C)(IX)(X) as a condition of obtaining and keeping a valid Industrial Discharge Permit.

403.8(f)(1)(iv)(B) -- The City of Billings Administrator may require a user to submit all compliance schedules and self-monitoring reports required by EPA regulations as a condition of the Industrial Discharge Permit as set forth in Rule 7.1(C)(X). In addition Rule 7.4 requires that all records relating to compliance with pretreatment standards or requirements shall be made available to the City Administrator, EPA or Montana Department of Health officials.

403.8(f)(1)(v) -- The City of Billings Administrator may

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carry out inspection, surveillance and monitoring procedures under authority granted in Ordinance Section 7(5).

403.8(f)(1)(vi)(A) -- The City of Billings may seek remedies for non-compliance with pretreatment standards and requirements. As a matter of general law the City of Billings may seek injunctive relief for non-compliance since any such non-compliance may result in irreparable harm to the treatment plant, to the health and safety of plant workers, and to the environment; and since damages at law would not be an adequate remedy. Ordinance Section 10(4) provides that intentional violation of the Ordinance is a misdemeanor which is punishable by a fine not to exceed \$500, imprisonment not to exceed 6 months, or both. Additionally, a civil liability is imposed by Ordinance Section 10(3) for violation of the City of Billings requirements relating to non-compliance with the pretreatment Ordinance or Rules and Regulations or for discharging sewage, industrial wastes, or other wastes into the wastewater system or into State waters contrary to the Pretreatment Ordinance, or Federal or State pretreatment requirements. The civil liability includes costs, losses or damage to the City or to the wastewater system. In addition, willful or intentional meter bypassing, meter tampering, or unauthorized metering creates a civil liability of three times the actual damage. (Ordinance Section 10(3)).

403.8(f)(1)(vi)(B) -- The City of Billings Administrator may, under Ordinance Section 10(1), cancel or suspend an Industrial Discharge Permit or impose temporary restrictions on discharges including rejection of wastewater where continued discharges would jeopardize the ability of the treatment system to meet water quality standards, threaten damage to the sewerage system, or cause a nuisance or an unsafe condition to occur. A user notified of a suspension or cancellation of wastewater treatment service or the permit must immediately stop or eliminate the contribution or discharge.

403.8(f)(1)(vii) -- Confidentiality requirements are provided for in Ordinance Section 9.

Accidental Discharges -- Section 5 of the Ordinance requires significant industrial users to provide adequate protection against accidental discharge of prohibited waters or wastes and requires immediate notification to the City of any accidental discharge. Section 5(2)(A) requires a detailed written report to be submitted to the City within 15 days of any accidental discharge.

Pretreatment Authority Outside of the City -- Section 11 of the Ordinance requires all governmental sewage connectors to

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adopt Ordinances and regulations similar to ours or to incorporate the provisions of our Ordinances to comply with the City pretreatment program.

As stated above, the City of Billings will implement the requirements of its pretreatment program and apply pretreatment standards to individual industrial users through use of an Industrial Discharge Permit system and by direct enforcement of its proposed Pretreatment Ordinance. A description of the exact procedures to be used in implementing the pretreatment program is provided in our Pretreatment Ordinance.

The City of Billings intends to insure compliance with pretreatment standards and requirements through an inspection and sampling program authorized under Sections 7(4) and 7(5) of the Ordinance, which would allow for the determination of non-compliance with discharge limitations and requirements both by the industrial user and independent of information supplied by the industrial user.

Those violating permit conditions may either be ordered in writing to cease and desist or may be criminally cited for any violations (Rule 9.1) and are subject to having service terminated (Section 10(1)) and their permit revoked (Section 10(2)). The City of Billings is prepared to take court action where necessary to enforce compliance with its ordinance, permits or orders.

Sincerely,



Bonnie J. Sutherland  
Assistant City Attorney

BJS/tmt  
cc: Jim Tillotson, City Attorney

## RULES AND REGULATIONS

### PRETREATMENT OF INDUSTRIAL WASTES

The following Rules and Regulations are promulgated by the City Administration pursuant to Section 18.04.010 Billings Montana City Code (BMCC) and are to supplement the applicable numbered provisions of Ordinance Number 85-4663, ORDINANCE NO. 85-4663 Article 1.

1.1 METHODOLOGY. All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made shall be determined in accordance with either the latest edition of the "Standard Methods for the Examination of Water and Wastewater" published by the American Public Health Association, or the ASTM Annual Book of Standards, or the "Methods for Chemical Analysis of Waters and Wastes" published by the EPA.

### GENERAL DISCHARGE PROHIBITIONS

4.1 ACTIONS OF ADMINISTRATOR. Whenever the City determines that a significant industrial user is contributing to the WWS any of the substances referred to in Section 4, Article 1, BMCC in such amounts as to interfere with the operation of the WWS, or to constitute a harmful contribution to the WWS, the Administrator shall:

- (A) Notify or cite the significant industrial user in accordance with Rule 9.1 herein, and develop and apply specific effluent limitations and pretreatment requirements for the significant industrial user to correct the interference with or harm to the WWS.

(B) Take any actions as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the WWS or endangerment to any individuals.

4.2 PRE-EMPTION BY NATIONAL CATEGORICAL PRETREATMENT STANDARDS. Upon the promulgation of the National Categorical Pretreatment Standards for a particular industrial subcategory, the National Standard, if more stringent than limitations imposed under Article 1, BMCC for sources in that subcategory, shall immediately supersede the limitations imposed under Article 1, BMCC. The Administrator shall notify all affected significant industrial users of the applicable reporting requirements under 40 CFR Section 403.12. Failure to notify shall not relieve a significant industrial user from any requirements under the law.

4.3 MODIFICATION OF NATIONAL CATEGORICAL PRETREATMENT STANDARDS. When the WWTP has achieved consistent removal of pollutants limited by National Pretreatment Standards, the City may apply to the Approval Authority for modification of or exemption from specific limits in the National Pretreatment Standards.

4.4 STATE REQUIREMENTS. State requirements and limitations on discharges shall apply in any case where they are more stringent than Federal requirements and limitations or those in Article 1, BMCC.

4.5 CITY'S RIGHT OF REVISION. Notwithstanding the provisions of Rule 4.2 above, the City reserves the right to establish by ordinance, resolution, rules and regulations or permit more stringent specific pollutant limitations

ORDINANCE NO. 85-4663  
or pretreatment requirements pursuant to Section 6, Article   , BMCC, for  
discharges to the WWS, if deemed necessary to comply with the objectives and  
intent of Section 1, Article   , BMCC.

ORDINANCE NO. 85-4663

## 7.1 INDUSTRIAL DISCHARGE PERMITS

(A) PERMIT APPLICATION. Significant industrial users required to obtain an Industrial Discharge Permit as set forth in Section 5, Article   , BMCC, shall complete and file with the City an application in the form prescribed by the Administrator and accompanied by the permit application fee. The significant industrial user shall submit, in units and terms suitable for evaluation, all information required by the permit application, and any supplemental information requested. All significant industrial users connected to or discharging to the WWS shall apply for an Industrial Discharge Permit within sixty days after the effective date of Ordinance Number 85-4663. Other persons proposing to connect to the WWS who are determined to be subject to Industrial Discharge Permit requirements shall apply at least thirty days prior to commencing discharge. When a significant industrial user becomes subject to a National Categorical Pretreatment Standard and has not previously submitted an application for an Industrial Discharge Permit the significant industrial user shall apply for an Industrial Discharge Permit within sixty days after the promulgation of the applicable National Categorical Pretreatment Standard.

(B) ISSUANCE. After evaluation of the permit application, the

Administrator may issue an Industrial Discharge Permit subject to terms and conditions provided herein. In determining whether a permit shall be issued and/or what conditions shall be applied, the Administrator shall consider all applicable National Categorical and Local Pretreatment Standards as well as those factors listed in ORDINANCE NO. 85-4663 Article 1, BMCC.

(C) PERMIT CONDITIONS. Industrial Discharge Permits and significant industrial user permittees shall be subject to all the provisions of ORDINANCE NO. 85-4663 Article 1, BMCC and all other applicable City laws, user charges and fees. Permits shall contain, but shall not be limited to, the following requirements or terms and conditions:

- (i) Notice of the general and specific prohibitions required under ORDINANCE NO. 85-4663 Article 1, BMCC.
- (ii) Prohibitions on discharge of any specific materials.
- (iii) Notice of applicable National Categorical Pretreatment Standards.
- (vi) Limits equal to or more stringent than the Specific Pollutant ORDINANCE NO. 85-4663 Limitations as established pursuant to Section 6, Article 1, BMCC concerning average and maximum wastewater constituents, and on characteristics of either the individual industrial process wastes or combined industrial wastewater discharge.
- (v) Limits on average and maximum rate and time of discharge, or

requirements for flow regulations and equalization.

- (vi) Monitoring facilities as described in Section 7(3), Article ORDINANCE NO. 85-4663 1, BMCC.
- (vii) Monitoring programs, which may include sampling locations, frequency of sampling, number, types and standards for tests and reporting schedules.
- (viii) Installation, maintenance, and cleaning of any pretreatment technology necessary to achieve compliance with the requirements ORDINANCE NO. 85-4663 of Article 1, BMCC including filtration, chemical treatment, grease, oil, and sand traps and other necessary equipment.
- (ix) Compliance schedules and any periodic progress or compliance ORDINANCE NO. 85-4663 reports required by Article 1, BMCC or by federal pretreatment regulations, including 40 CFR 403.12.
- (x) Submission of technical reports or discharge reports, as ORDINANCE NO. 85-4663 provided for in Section 7,(2), Article 1, BMCC and Rule 7.2 of the Rules and Regulations.
- (xi) Maintenance and retention of plant records relating to wastewater discharge as specified by the Administrator.
- (xii) Notification of the Administrator of any discharge of new wastewater constituents or of any substantial change in the volume or character of the wastewater constituents being introduced into the WWS.

(xiii) Notification of any slug or accidental discharge as per Section 5, Article /, ORDINANCE NO. 85-4663, BMCC and Rule 5.1 of the Rules and Regulations.

(xiv) Agreement by the industrial user to allow reasonable access by the City to ensure compliance with permit conditions; to agree to perform and comply with all permit conditions; and to submit to the remedy of specific performance for breach of contract.

(xv) Other appropriate conditions, in the judgement of the Administrator, necessary to ensure compliance with Article ORDINANCE NO. 85-4663 /, BMCC.

(D) PERMIT DURATION. Industrial Discharge Permits are valid for a specified time period not to exceed three (3) years from the date of issuance or modification. Each significant industrial user shall apply for permit renewal at least ninety days prior to the expiration date of the existing permit.

(E) PERMIT MODIFICATIONS. The terms and conditions of any permit may be subject to modification by the Administrator during the term of the permit as limitations or requirements as identified in Sections 4 and 5, Article /, ORDINANCE NO. 85-4663, BMCC and the Rules and Regulations are modified, or as other just cause exists. The significant industrial user shall be notified of any proposed changes in his permit at least thirty days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(G) PERMIT TRANSFER. Industrial Discharge Permits are issued to a specific significant industrial user for a specific operation. An Industrial Discharge Permit is not transferrable and is voidable if reassigned, transferred, or sold to a new owner, new user, different premises, or a new or changed operation without written approval by the Administrator.

## 7.2 REPORTING REQUIREMENTS

ORDINANCE NO. 85-466

(A) The Compliance Report required by Section 7(2), Article 1, BMCC, shall indicate the average and maximum daily flow or predicted flow for the process units in the significant industrial user facility subject to the Federal, State or City standards and requirements, whether these standards are being met on a consistent basis and, if not, what additional operations, maintenance or pretreatment is or will be necessary to bring the significant industrial user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the significant industrial user and shall be certified by a qualified professional engineer or a person with adequate wastewater discharge experience as determined by the Administrator.

(B) MASS LIMITS. The Administrator may impose mass limitations in addition to concentration limitations on significant industrial users which are expressly authorized by an applicable categorical pretreatment standard to use dilution to meet applicable Pretreatment

Standards or requirements or upon other significant industrial users when deemed necessary. In such cases, the records and reports required by Rule 7.1(D)(xi) of the Rules and Regulations and Section ORDINANCE NO. 85-4663 7(2), Article 1, BMCC shall also indicate the mass of pollutants regulated by Pretreatment Standards in the effluent of the significant industrial user. These reports shall contain the results of sampling and analysis of the discharge including the flow, nature, concentration, production and mass of pollutants which are limited by the applicable Pretreatment Standards. The frequency of monitoring shall be prescribed in the Industrial Discharge Permit.

7.3 The Administrator shall annually publish, in a newspaper of general circulation within the City, a list of any significant violators of Article ORDINANCE NO. 85-4663 1, BMCC. The list shall designate significant violators as identified by the Administrator during the preceding annual period and significant violations determined to have occurred during the same period. The notification shall also summarize any enforcement action taken against the significant violators.

7.4 All records relating to compliance with pretreatment standards or requirements shall be made available to the City Administrator, officials of the EPA or the Montana Department of Health upon request to the Administrator.

9.1 NOTIFICATION OF VIOLATION. Whenever the City finds that any ORDINANCE NO. 85-4663 significant industrial user has violated or is violating Article 1, BMCC, an Industrial Discharge Permit, or any prohibition, limitation, condition or requirements contained therein, the Administrator, in his discretion, may either immediately cite the violator or may serve upon such person a written

notice stating the nature of the violation. Violation of any permit condition shall be considered to be a violation of the Article. Unless required earlier by another provision of the Article, within thirty days after the date of said notice the significant industrial user shall submit to the Administrator evidence of the satisfactory correction of the violation or a plan to correct the same.