

## **CHAPTER 19**

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## **Article I. In General**

### **Sec. 19-101 Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

**“Act” or “The Act”** The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et. seq.

**“Approval Authority”** The Environmental Protection Agency (EPA) or, if the pretreatment program has been formally delegated to the Kansas Department of Health and Environment (KDHE), the Director of the Division of Environment of KDHE.

**“As-built plan”** A drawing showing the actual state of permanent storm water facilities as installed.

**“Authorized Enforcement Agency”** Employees or designees of the City of Hutchinson.

**“Authorized Representative”** An authorized representative of a User may be:

a. A responsible corporate officer, if the Industrial User is a corporation. For the purposes of this paragraph, a responsible corporate officer means (1) a president, secretary, treasurer or vice-president of the corporation, in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (2) the manager of one or more manufacturing, production or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. A general partner or proprietor if the Industrial User is a partnership or sole proprietorship, respectively;

c. A duly authorized representative of an individual designated in paragraph "a" or "b" of this section, if:

1. The authorization is made in writing;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, field superintendent or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

3. The written authorization is submitted to the Control Authority.

**“Best Management Practices”** Methods used to control pollutants in stormwater including, but not limited to, 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, erosion and sediment runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. The selection, application and maintenance of BMPs must be sufficient to prevent or reduce the likelihood of pollutants entering the storm drainage system. Specific BMPs may be imposed by the City.

**“BOD”** The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at twenty degrees Centigrade, expressed in milligrams per liter.

**“Building drain”** That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (one and five tenths meters) outside the inner face of the building wall.

**“Building sewer”** The extension from the building drain to the public sewer or other place of disposal.

**“City”** The City of Hutchinson, Kansas.

**“Clearing”** Any activity that removes vegetative surface cover.

**“Combined sewer”** A sewer receiving both surface runoff and sewage.

**“Commercial”** Pertaining to any business, trade, industry, or other activity engaged in for profit.

**“Composite sample:** Combination of individual samples of water or sewage taken at selected intervals (generally hourly or some similar specified period), to minimize the effect of the variability of the individual sample. Individual samples may have equal volume or may be roughly proportional to the flow at time of sampling.

**“Contaminated”** Containing pollutants.

**“Construction Activity”** Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavation, and demolition.

**“Construction Site”** Any location where construction activity occurs.

**“Contractor”** Any person or firm performing or managing construction work at a construction site, including any construction manager, general contractor or subcontractor. Also includes, but is not limited to earthwork, paving, building, plumbing, mechanical, electrical or landscaping contractors and material suppliers delivering materials to the site.

**“Control authority”** The term "control authority" shall refer to the City and/or the Superintendent/Director.

**“Cooling water”** The water discharged from any use such as air conditioning, cooling or refrigeration or to which the only pollutant added is heat.

**“Development” or “new development”** The undisturbed property where improvements are planned or intended that will result in land disturbance activities or impervious areas either during or after construction.

**“Direct discharge”** The discharge of treated or untreated sewage directly to the waters of the State of Kansas.

**“Director”** The Director of Utilities or his authorized deputy, agent, or representative.

**“Discharge”** Any addition or release of any substance whatsoever whether stormwater or pollutant into the storm drainage system.

**“Discharger”** Any person who causes, allows, permits, or is otherwise responsible for a discharge, including without limitation, any owner of a construction site or industrial facility.

**“Domestic Sewage”** Sewage originating primarily from kitchen, bathroom and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers, and sinks.

**“Earthwork”** The disturbance of soils on a site associated with clearing, grading, or excavation activities.

**“Environmental Protection Agency or EPA”** The U.S. Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the Administrator or other duly authorized official of said agency, and any successor agency.

**“Erosion and Sediment Control Plan”** A set of plans prepared by or under the direction of a licensed professional engineer indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

**“Facility”** Any building, structure, installation process, or activity from which there is or may be a discharge of a pollutant.

**“Fertilizer”** A substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop. Also, a mixture of two or more fertilizers.

**“Final Stabilization”** The status when all soil disturbing activities at a site have been completed. This would establish a uniform perennial vegetative cover with a density of seventy percent coverage for unpaved areas and those not covered by permanent structures or equivalent permanent stabilization measures (e.g. application of riprap, gabions, geotextiles, etc.).

**“Fire Protection Water”** Any water, and any substances or materials contained therein, used by any person to control or extinguish a fire, or to inspect or test fire equipment.

**“Garbage”** Putrescible animal and vegetable waste from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce and other food products, including waste materials from markets and storage facilities.

**“Grab sample”** A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

**“Grading”** Excavation or fill of material, including the resulting conditions thereof.

**“Groundwater”** Any water residing below the surface of the ground or percolating into or out of the ground.

**“Harmful Quantity”** The amount of any substance that the authorized enforcement agency determines has the potential to cause an adverse impact to storm drainage systems or will contribute to the failure of the City to meet the requirements of the NPDES permit for discharges from the MS4.

**“Hazardous Material”** 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.

**“Hazardous Substance”** Any substance listed in Table 302.4 of 40 CFR Part 302.

**“Hazardous Waste”** Any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

**“Health officer”** A person having public health responsibility by the State of Kansas and/or by Reno County.

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

**“Household Hazardous Waste”** Any material generated in a household (including single and multiple residences) that would be classified as hazardous pursuant to K.A.R. 28-29-23b.

**“Illegal Discharge”** See Illicit Discharge below.

**“Illicit Discharge”** Any discharge to the storm drainage system that is prohibited under this Article.

**“Illicit Connection”** An illicit connection is defined as either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to

enter the storm drainage system including but not limited to any conveyances which allow any non-stormwater discharge including but not limited to sewage, process wastewater, and wash water to enter the storm drain system 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

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

**“Impervious area” or “impervious cover”** The number of square feet of hard surface areas which either prevent or retard the entry of water into soil mantle, as it entered under natural conditions as undisturbed property, and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undisturbed property, including, but not limited to, roofs, roof extensions, patios, porches, driveways, sidewalks, pavement, athletic courts, and compacted dirt or graveled areas.

**“Indirect discharge”** The discharge or the introduction of non-domestic pollutants from any source regulated under Section 307(b) or (c) of the Act (33 U.S.C. 1317), into the sewage works (including holding tank waste discharged into the system).

**“Individual building sites”** Includes sites of building construction or earthwork activities that are not a part of a new subdivision development and any individual lot within a newly developing subdivision.

**“Industrial Activity”** Activities subject to NPDES Industrial Permits and defined in 40 CFR 122.26(b)(14).

**“Industrial User”** Any user contributing industrial wastes to the sewage works.

**“Industrial Waste” (or Commercial Waste)** The waste from industrial manufacturing or commercial processes or operation, trade, or business as distinct from sanitary sewage (domestic sewage.)

**“Interference”** A discharge which, alone or in conjunction with a discharge or discharges from other sewers, both:

a. inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

b. therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA)

including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA, the Clean Air Act, the Toxic Substances Control Act and the Protection, Research and Sanctuaries Act.

**“International Plumbing Code”** The latest revision of the "International Plumbing Code" published by the International Code Council and as modified and adopted by the City of Hutchinson.

**“Kansas General Permit for Storm water Discharges from Construction Sites (or construction general permit)”** The construction general permit issued by KDHE and any subsequent modifications or amendments thereto, including group permits.

**“Land disturbance”** The disturbance of soils on a site associated with clearing, grading, excavation, new development or redevelopment activities.

**“Mechanical Fluid”** Any fluid used in the operation and maintenance of machinery, vehicles, and any other equipment including lubricants, antifreeze, petroleum products, oil, and fuel.

**“Mobile Commercial Cosmetic Cleaning (or Mobile Washing)”** Power washing, steam cleaning, and any other method of mobile cosmetic cleaning, of vehicles and/or exterior surfaces, engaged in for commercial purposes or related to a commercial activity.

**“Municipal Separate Storm Sewer System (MS4)”** The system of conveyances, including roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, funnels, culverts, channels, detention basins and ponds owned and operated by the City and designed or used for collecting or conveying stormwater, and not used for collecting or conveying sanitary sewage or industrial waste.

**“National Categorical Pretreatment Standard or Pretreatment Standard”** Any (present or future) regulations containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. 1317) and with 40 CFR Chapter I, Subchapter N, Parts 401-471, which apply to a specific category of Users.

**“National Prohibitive Discharge Standard or Prohibitive Discharge Standard”** Any (present or future) regulation developed under the authority of 307(b) of the Act and 40 CFR, Section 403.5.

**“National Pollution Discharge Elimination System or NPDES Permit”** A discharge permit issued by the EPA and KDHE pursuant to Section 402 of the Act (33 U.S.C. 1342), authorizing the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group or general area-wide basis.

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

**“New source”** Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Act, which standards will be applicable to such source if thereafter promulgated in accordance with that section; provided, that:

- a. The building, structure, facility or installation is constructed at a site at which no other source is located; or
- b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- c. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

**“Nonpoint source”** The source of any discharge of a pollutant that is not a point source.

**“Non-Stormwater Discharge”** Any discharge to the stormwater conveyance system that is not composed entirely of stormwater.

**“Notice of intent (NOI)”** The notice of intent that is required by either the industrial general permit or the construction general permit.

**“Notice of termination (NOT)”** The notice of termination that is required by either the industrial general permit or the construction general permit.

**“Notice of Violation(NOV)”** A written notice detailing any violations of this Article, any action(s) expected of the violators, and the time frame within which said actions must be completed.

**“Oil”** Any kind of oil in any form, including, but not limited to: petroleum fuel oil, crude oil, synthetic oil, motor oil, cooking oil, grease, sludge, oil refuse, and oil mixed with other waste.

**“Outfall” or “storm water outfall”** The terminus of the storm water system for a development or redevelopment where the storm water runoff is released into a waters of the United States or other water body.

**“Owner”** The person who owns a facility, part of a facility, or land.

**“Perimeter Control”** A barrier that prevents sediment from leaving a site by filtering sediment laden runoff or diverting it to a sediment trap or basin.

**“Person”** Any individual, partnership, co-partnership, firm, company, association, society, corporation, joint stock company, trust, estate, government entity, or any other legal entity, or their legal representatives, agents or assigns, including all federal, state and local government entities.

**“Pesticide”** A substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest.

**“Pet Waste (or Animal Waste)”** Excrement and other waste from domestic animals.

**“Petroleum Product”** A product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle or aircraft, including but not limited to motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel.

**“Phasing”** Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

**“Pollution”** The man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water. The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animal life, plant life, property, or public health safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

**“Pollutant”** Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water, as well as anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, litter, or other discarded or abandoned objects, ordinances and accumulations, so that some may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

**“Potable Water”** Water that has been treated to drinking water standards and is safe for human consumption.

**“Premises”** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**“Pretreatment or treatment”** The reduction of the amount of pollutants, the removal of pollutants or the alteration of the nature of pollutant properties in sewage to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the sewage works. The reduction or alteration can be obtained by physical, chemical or biological processes or process changes by other means, except by dilution as prohibited by 40 CFR Section 403.6(d).

**“Pretreatment requirements”** Any substantive or procedural requirement (present or future) relating to pretreatment, other than a National Pretreatment Standard imposed on a User.

**“Pretreatment standard”** Any (present or future) Federal regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to specific Users.

**“Private Drainage System”** All privately or publicly owned ground, surfaces, structures or systems, excluding the MS4, that contribute to or convey stormwater, including but not limited to, roofs, gutters, downspouts, lawns, driveways, pavement, roads, streets, curbs, basins, ponds, draws, swales, streams and any ground surface.

**“Private sewage disposal system”** Any system of sewage disposal not publicly owned or operated.

**“Private water supply”** All water supplies not owned and operated by the City of Hutchinson.

**“Properly shredded garbage”** The wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle, greater than one-half inch (one and twenty-seven hundredths centimeters) in any dimension.

**“Public sewer”** A sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

**“Public water supply”** All water supplies owned and operated by the City of Hutchinson.

**“Publicly Owned Treatment Works”** A treatment works as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by the City, and including any sewers that convey wastewaters thereto from users located either within or outside of the City, but not including any pipes, sewers or other conveyances not connected to a facility providing treatment.

**“Qualified Person”** A person who possesses the required certification, license, or appropriate competence, skills, and ability as demonstrated by sufficient education,

training, and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements and generally accepted industry standards for such activity.

**“Redevelopment” or “redevelopment site”** A change to previously existing improved property, including but not limited to the demolition of building structures, filling, grading, paving, or excavating.

**“Release”** To dump, spill, leak, pump, pour, emit, empty, inject, leach, dispose or otherwise introduce into the storm drainage system.

**“Rubbish”** Non-putrescible solid waste, excluding ashes, that consists of (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

**“Sanitary sewer”** The system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the City wastewater treatment facility (and to which stormwater, surface water, and groundwater are not intentionally admitted).

**“Sediment”** Soil (or mud) that has been disturbed or eroded and transported naturally by water, wind, or gravity, or mechanically by any person.

**“Sediment Control”** Measures taken that prevent sediment from leaving the site.

**“Septic tank”** See "Private Sewage Disposal System".

**“Septic tank waste”** Any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

**“Sewage”** A combination of the water-carried wastes from residences, business buildings, institutions, industrial establishments, together with such ground, surface, and storm waters as may be present.

**“Sewage treatment plant”** Any arrangement of devices and structures used for treating sewage.

**“Sewage works”** Sanitary sewers, pumping stations, sewage treatment plants, main sewers, interceptor sewers, outfall sewers and works for the collection, transportation, pumping and treating of wastewater, sewage or industrial waste thereto, and necessary for the maintenance or operation of the same.

**“Sewer”** A pipe or conduit for carrying sewage.

**“Shall”** is mandatory; **“May”** is permissive.

**“Significant Industrial User”**

a. All Industrial Users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and

b. Any other Industrial User which discharges an average of 25,000 gallons or more per day of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW; or is designated as such by the Control Authority, as defined in 40 CFR 403.12(a) because such Industrial User has a reasonable potential for adversely affecting the POTW's operation, or for violating any pretreatment standard or requirement, in accordance with 40 CFR 403.8(f)(6).

**“Site”** A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation or where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

**“Site Development Permit”** A permit issued by the municipality for the construction or alteration of ground improvements and structures for the control of erosion, runoff, and grading.

**“Slug Discharge”** Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge.

**“Solid Waste”** Any garbage, rubbish, refuse and/or other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, municipal, commercial, construction, mining or agricultural operations, and residential, community and institutional activities.

**“Stabilization”** The use of practices that prevent exposed soil from eroding.

**“Start of Construction”** The first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

**“State”** State of Kansas.

**“Standard Industrial Classification (SIC)”** A classification pursuant to the most recent edition of the "Standard Industrial Classification Manual" issued by the Executive Office of the President, Office of Management and Budget.

**“Storm Drainage System”** Publicly owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

**“Stormwater”** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting therefrom.

**“Stormwater management facility” or “storm water control”** Any structure or installation used to manage storm water quality, flow rate, or volume.

**“Stormwater Pollution Prevention Plan (SWP3)”** A document that describes the Best Management Practices to be implemented at a site, to prevent or reduce the discharge of pollutants.

**“Subdivision Development”** The activity associated with the platting of any parcel of land into two or more lots and includes all construction activity taking place thereon.

**“Superintendent”** The Superintendent of the sewers and sewage disposal division of the city, or his authorized deputy, agent, or representative.

**“Superintendent/Director”** The Superintendent and/or the Director as defined herein.

**“Surface Water”** Water bodies and any water temporarily residing on the surface of the ground, including oceans, lakes, reservoirs, rivers, ponds, streams, puddles, channelized flow, and runoff.

**“Suspended solids”** Solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

**“Total Toxic Organics”** The summation of all quantifiable values greater than 0.1 mg/l for the organic compounds listed in the applicable categorical standard.

**“Toxic pollutant”** Any pollutant or combination of pollutants listed as toxic in (present or future) regulations promulgated by the Administrator of the Environmental Protection Agency under the provision of CWA 307(a)(1) of the Act.

**“Uncontaminated”** Not containing pollutants.

**"Undisturbed property"** Real property which has not been altered from its natural condition so that the entrance of water into the soil mantle is prevented or retarded through changes to the topography or soils.

**"Used Oil (or Used Motor Oil)"** Any oil that as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties.

**"User"** Any person who contributes, causes or permits the contribution of sewage into the City's sewage works.

**"Utility"** Private utility companies, City departments or contractors working for private utility companies or City departments engaged in the construction or maintenance of utility distribution lines and services, including water, sanitary sewer, storm sewer, electric, gas, telephone, television and communication services.

**"Wastewater" (see Sewage)** Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

**"Watercourse"** A channel in which a flow of water occurs, either continuously or intermittently. Any body of water, including, but not limited to, lakes, ponds, rivers, streams, and bodies of water delineated by the City of Hutchinson.

**"Waters of the State"** All streams, rivers, lakes, creeks, canals, bays, ponds, marshes, watercourses, waterways, any ground water percolating or otherwise, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the State or any portion thereof inside the jurisdiction of the State.

**"Water Quality Standard"** The designation of a body or segment of surface water in the State for desirable uses and the narrative and numerical criteria deemed by State or Federal regulatory standards to be necessary to protect those uses.

**"Waters of the United States"** All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and the flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "waters of the United States" at 40 CFR Section 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act.

**"Watershed"** The cumulative land area that drains to a common point.

**“Waterway”** A channel that directs surface runoff to a watercourse or to the public storm drain.

**“Wetland”** Any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

**“Yard Waste”** Leaves, grass clippings, tree limbs, brush, soil, rocks or debris that result from landscaping, gardening, yard maintenance or land clearing operations.

Unless the context of usage indicates otherwise, the meaning of terms in this Article that are not defined in ARTICLE I - IN GENERAL above, shall be as defined in the latest edition of Glossary: Water and Wastewater Control Engineering prepared by Joint Editorial Board of the American Public Health Association, American Society of Civil Engineers, American Water Works Association and Water Pollution Control Federation.

The following abbreviations shall have the designated meanings:

- a. **ASTM** - The American Society for Testing and Materials or publications thereof.
- b. **BMP** – Best Management Practices.
- c. **BOD** - Biochemical Oxygen Demand (five day, unless otherwise noted as "Ultimate BOD") .
- d. **CFR** - Code of Federal Regulations.
- e. **COD** - Chemical Oxygen Demand.
- f. **EPA** - Environmental Protection Agency.
- g. **HHW** – Household Hazardous Waste.
- h. **l** - Liter.
- i. **KDHE** – Kansas Department of Health and Environment.
- j. **mg** - Milligrams.
- k. **mg/l** - Milligrams per Liter.
- l. **MS4** – Municipal Separate Storm Sewer System.

- m. **NOI** – Notice of Intent
- n. **NOT** – Notice of Termination
- o. **NOV** – Notice of Violation
- p. **NPDES** - National Pollutant Discharge Elimination System.
- q. **pH** - The negative logarithm of the reciprocal of the weight of hydrogen ion(s) in grams per liter of solution.
- r. **POTW** - Publicly Owned Treatment Works.
- s. **PPM** - Parts per million.
- t. **PST** – Petroleum Storage Tank.
- u. **SIC** - Standard Industrial Classification.
- v. **SIU** - Significant Industrial User.
- w. **SWDA** - Solid Waste Disposal Act, 42 U.S.C. 6901, et. seq.
- x. **SWP3** – Stormwater Pollution Prevention Plan.
- y. **USC** - United States Code.
- z. **TSS** - Total Suspended Solids.
- aa. **TTO** - Total Toxic Organics.
- bb. **WPCF** - The Water Pollution Control Federation.

*(Ord. 2010-36, Adop. 12/21/2010; Ord. 2010-26, Adop. 6/15/10; Ord. 2009-03, Adop. 1/20/09; Ord. 5560, Adop. 5/23/67)*

## **Article II. Public Sewers**

### **Sec. 19-201 Generally.**

It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the city or any area under the jurisdiction of the city, any human or animal excrement, garbage, or other objectionable waste. *(Ord. 5560, Adop. 5/23/67)*

### **Sec. 19-202 Discharge into natural outlet prohibited; exception.**

It shall be unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with the subsequent provisions of this chapter. This does not alleviate any obligation of the sewer user to comply with applicable state and federal regulations concerning discharge of wastewater to waters of the state. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-203 Privy vault, septic tank, etc., prohibited; exception.**

Except as herein provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage; provided, that this shall not prohibit the construction of temporary privy vaults during the erection of new buildings; provided further, that in all such cases the contractor shall cause the contents of such vaults to be covered with lime, fresh earth or ashes once each day. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-204 Toilet facilities required; connection to public sewer.**

The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the city and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the city is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within 90 days after the date of official notice to do so, provided that such public sewer is within 200 feet of the property line. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-205 Sewer connection approval required for areas outside city limits**

No sewer connection will be permitted for areas outside the city limits until the developer or owner obtains approval from the governing body. Any sewer lines needed to connect with existing city sewer mains and laterals must conform to city and state specifications for same.

**Article III. Private Sewage Disposal.**

**Sec. 19-301 When allowed.**

Where a public sanitary sewer is not available under the provisions of section 19-204, the building sewer shall be connected to an approved septic tank complying with the provisions of this article and of the Building Code of the City. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-302 Permit required; application; fees.**

Before commencement of construction of a septic tank the owner shall first obtain a written permit issued by the building official of the City and approved by the plumbing inspector of the City. The application for such permit shall be on a form furnished by the City, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the building official. A permit and inspection fee of \$10 shall be paid to the City at the time the application is made. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-303 Inspection by building official.**

A permit for a septic tank shall not become effective until the installation is completed to the satisfaction of the building official. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the building official when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 2 working days after notice, Saturdays, Sundays and holidays excepted. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-304 Standards of construction.**

a. The type, capacities, location, and layout of a septic tank shall comply with all recommendations of the Kansas Department of Health and Environment and shall comply with all provisions of the Building Code of the City. No septic tank shall be permitted to discharge to any natural outlet.

b. When a public water supply is used, no permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than 20,000 square feet. In the case of a private water supply, the minimum lot size will be 40,000 square feet.  
*(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-305 Connection to public sewer when available.**

At such time as a public sewer becomes available to a property served by a septic tank a direct connection shall be made to the public sewer in compliance with this chapter, and any septic tank shall be abandoned and filled with suitable material. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-306 Responsibility of owner.**

The owner shall operate and maintain the septic tank facility in a sanitary manner at all times and at no expense to the City. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-307 Additional requirements.**

No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by any public health officer or any provisions of the Building Code of the City. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-308 Requirements when public sewer becomes available.**

When a public sewer becomes available, the building sewer shall be connected to such sewer within 90 days and the septic tank system shall be cleaned of sludge and filled with clean bank-run gravel or dirt. *(Ord. 5560, Adop. 5/23/67)*

**Article IV. Building Sewers and Connections**

**Sec. 19-401 Unauthorized connection to public sewers or appurtenances; tampering prohibited.**

No person shall uncover, or make any connections with or opening into, use, or alter any public sewer or appurtenance thereof without first obtaining proper written permits. No person shall maliciously, willfully, or negligently break, remove, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the sewage works of the City of Hutchinson. Only plumbers, plumbing contractors licensed by the City of Hutchinson, or utility contractors who are under contract with the City shall be authorized to make connections to the public sewers or to excavate for such connections in public right-of-way. Additionally, utility contractors shall be authorized to make such connections only if under the direct inspection of the city engineer or his authorized representative. Any person violating this provision shall be deemed guilty of a misdemeanor, and additionally, shall pay all costs of disconnection from the public sanitary sewer system if they fail to comply with the terms and conditions of this Article. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-402 Trunk sewer connections; requirements.**

a. A trunk sewer shall mean any public sanitary sewer over 8 inches in diameter which may also, in other documents or proceedings, have been identified or known as a main or a sub-main sanitary sewer. A lateral sewer shall mean any 8 inch public sanitary sewer.

b. No building sewer connection shall be made to a trunk sewer if an 8 inch lateral sewer is also available adjacent to the property.

c. A building sewer connection to a trunk sewer shall be permitted only after approval by the city engineer. The city engineer may approve such connection when, in his judgment, it is impractical to serve the property in question by installation of a lateral sewer financed by an improvement district; or when the trunk sewer was constructed by an improvement district and designed for use both as a lateral and a trunk sewer.

d. Any decision of the city engineer in the enforcement of this Section may be appealed to the governing body of the City by any person aggrieved by such decision.

**Sec. 19-403 Sewer connection permits when property served not in City or not in Lateral Sanitary Sewer Improvement District; requirements; fees.**

a. No sewer connection permit for connection to the sanitary sewer system to serve property outside the City limits or outside a duly established lateral sanitary sewer improvement district within the City limits shall be issued until the applicant for such permit shall have paid to the city treasurer the sewer connection fee which shall be established by the City Engineer based on recent costs or assessments for sanitary sewer construction in the City. This cost may be compared to the assessments paid by those users of the sewer to which the connection is to be made, or to the estimated cost of a new lateral to serve the property involved.

b. In lieu of requiring advance payment of the sewer connection fee established by subsection "a" hereof, the City may by action of the Governing Body charge the amount of such fee, together with interest at the rate of 12% per annum, as a special assessment against the property served. The total of such fee and interest may be assessed in equal annual installments over a period not to exceed five years. No sewer connection fee shall be so assessed unless the owner of the property served has consented thereto in writing. Such written consent shall be recorded in the office of the register of deeds but failure to so record it shall not affect the validity of the assessment.

c. In the event the building site for which a sewer connection fee has been paid in full shall at a later date be included in a duly established lateral sanitary sewer improvement district within the City limits, the amount paid as a connection fee shall be credited upon any assessments that may be levied by reason of such improvement district.

d. Applications for sewer connection permits shall be made at the office of the building official on such form as shall be from time to time prescribed by the building official and which shall include an agreement by the applicant to be bound by the terms of this section and all reasonable rules and regulations as shall be promulgated by the city manager in implementation of this section of the Code.

e. Sewer connection fees collected under this Section by the city treasurer shall be credited to the City Bond and Interest Fund.

f. If the building site for which a sewer connection permit is requested is located outside the City limits, then final approval of the permit must be obtained from the governing body; otherwise they may be given final approval by the city manager.

**Sec. 19-404 Owner to incur all expenses; indemnification of City.**

All costs and expenses incident to the installation and connection of the building sewer to public sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. (*Ord. 5560, Adop. 5/23/67*)

**Sec. 19-405 Separate building sewers required; exceptions.**

A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, and the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. (*Ord. 5560, Adop. 5/23/67*)

**Sec. 19-406 Old sewers may be used in new buildings; requirements.**

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent/Director or building inspector, or plumbing inspector of the City, to meet all requirements of this chapter. (*Ord. 5560, Adop. 5/23/67*)

**Sec. 19-407 Construction regulations generally.**

The size, slope, alignment, material of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the Building and Plumbing Code or other applicable rules and regulations of the City. (*Ord. 5560, Adop. 5/23/67*)

**Sec. 19-408 Elevation of sewers.**

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. (*Ord. 5560, Adop. 5/23/67*)

**Sec. 19-409 Drain leaders, downspouts, etc., not to be connected to sanitary sewers.**

No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or leader from cooling systems or other source of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer. (*Ord. 5560, Adop. 5/23/67*)

**Sec. 19-410 Connection of building sewer into public sewer; requirements.**

a. The connection of a building sewer into a public sewer shall conform to the requirements of the Building and Plumbing Codes. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Superintendent/Director, the building official or the plumbing inspector of the City before installation.

b. All connection taps into public sewer lines consisting of vitrified clay pipe shall be made by employees of the public works department. Such taps will be made only upon request of a licensed plumber, who shall make the arrangements therefor.

c. The director of public works is authorized to make reasonable regulations governing sewer tap requirements.

d. Sewer tap charges shall be established annually by the governing body, after hearing recommendations from the director of public works and the city manager. (*Ord. 5560, Adop. 5/23/67*)

**Sec. 19-411 Inspection.**

The applicant for the building sewer permit shall notify the Superintendent/Director or the building inspector or the plumbing inspector of the City when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Superintendent/Director or the building inspector or the plumbing inspector, or their representatives. (*Ord. 5560, Adop. 5/23/67*)

**Sec. 19-412 Safeguarding excavations; restoration of public property.**

All excavations for building sewer installations shall be adequately guarded with barricades and lights so as to protect the public from hazards. Streets, sidewalks, parkways, and other public property disturbed in the course of work shall be restored in a manner satisfactory to the City. (*Ord. 5560, Adop. 5/23/67*)

## **Article V. Use of Public Sewers**

### **Sec. 19-501 Discharge of storm water, etc., into sanitary sewer prohibited.**

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer. (*Ord. 5560, Adop. 5/23/67*)

### **Sec. 19-502 Where storm water, etc., discharged.**

Stormwater, roof runoff and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers or to a natural outlet approved by the Superintendent/Director. Industrial cooling water or unpolluted process waters may be discharged, on approval of the Superintendent/Director to a storm sewer, or natural outlet. This does not alleviate any obligation of the sewer user to comply with applicable state and federal regulations concerning discharge of wastewaters to waters of the state. (*Ord. 5560, Adop. 5/23/67*)

### **Sec. 19-503 Discharge of certain waters or wastes prohibited--Generally.**

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

a. Any pollutants, whether liquids, solids or gases which by reason of their nature or quantity create or may create, either alone or by interaction with other substances, a fire or explosion hazard in the POTW or by injurious in any other way to the POTW or to the operation of the POTW, including but not limited to wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Celsius using the test methods specified in 40 CFR 261.21. At no time shall 2 successive readings on an explosion hazard meter, at the point of discharge into the system, be more than 5% nor any single reading over 10% of the LEL of the meter. Prohibited materials include but are not limited to gasoline, kerosene, naphtha, chlorates, perchlorates, bromates, carbides, hydrides and sulfides.

b. Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with the sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving wastes of the sewage treatment plant, or to exceed the limitation set forth in the Federal Categorical Pretreatment Standard. A toxic pollutant shall include, but not limited to, any pollutant identified pursuant to section 307(a) of the Act.

c. Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.

d. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure in excess of five per cent wet weight of that removed from animal paunches, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

e. Any substance which may cause the sewage works effluent or any other product of the sewage works such as residues, sludges or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the sewage works cause the sewage works to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or State criteria applicable to the sludge management method being used.

f. Petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin, in amounts which will cause interference or pass through.

g. Pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quality which may cause acute worker health or safety problems.

h. Any trucked or hauled pollutants, except at discharge points designated by the POTW.

i. Any wastes containing substances in concentrations exceeding the maximum limits specified in the discharge permit or which will cause the POTW to violate its NPDES permit or the receiving water quality standards.

j. Any mercury containing waste that will result in a measurable concentration of mercury in the influent stream of any public wastewater treatment plant of this City.  
(*Ord. 5560, Adop. 5/23/67*)

**Sec. 19-504 Same--Opinion of Superintendent/Director; substances enumerated.**

No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Superintendent/Director that such wastes can harm either the sewers, sewage treatment process, or equipment, and have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the Superintendent/Director will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes

in the sewage treatment plant, and other pertinent factors. The substances prohibited are:

a. Any sewage having a temperature which will inhibit biological activity in the sewage treatment plant resulting in interference, but in no case sewage with a temperature that results in sewage plant influent exceeding 40 degrees Celsius (104 degrees Fahrenheit) and in no case sewage that exceeds 54.4 degrees Celsius (130 degrees Fahrenheit) at the introduction into the sewage works.

b. Any water or waste containing fats, wax, grease, or biodegradable oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32 degrees Fahrenheit and 120 degrees Fahrenheit (0 degrees Celsius and 49 degrees Celsius).

c. Any garbage that has not been properly shredded. The installation and operation of any garbage shredder equipped with a motor of 3/4 horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Superintendent/Director.

d. Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions, whether neutralized or not.

e. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established for such materials.

f. Any waters or wastes containing phenols or other taste-or-odor-producing substances, in such concentrations exceeding limits which may be established as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal, or other public agencies of jurisdiction for such discharge to the receiving waters.

g. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established in compliance with applicable state or federal regulations.

h. Any waters, or wastes having pH in excess of 10.

i. Materials which exert or cause:

1. High concentrations of inert suspended solids (such as, but not limited to, fuller's earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulphate).

2. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

3. BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute an undue load on the sewage treatment works (POTW).

4. Volume of flow or concentration of wastes constituting "slugs" as defined herein.

5. Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW.

j. Waters or wastes containing substances which are not amenable to treatment or reduction by sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

k. Substances, materials, water or waters which are hazardous as defined by 40 CFR Part 261.21 (Ignitable), Part 261.22 (Corrosive), Part 261.23 (Reactive), Part 261.24 (Toxic), Part 262.31 (Hazardous waste from non-specific sources), and Part 261.32 (Hazardous waste from specific sources).  
(Ord. 5560, Adop. 5/23/67)

**Sec. 19-505 Requirements as to certain waters and wastes having deleterious effects.**

a. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in section 19-504 to this article, and which in the judgment of the Superintendent may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Superintendent/Director may:

1. Reject the wastes;

2. Require pretreatment to an acceptable condition for discharge to the public sewers;

3. Require control over the quantities and rates of discharge; or

4. Require payment under section 19-510 of this article to cover the added cost of handling and treating the wastes not covered by sewer charges.

If the Superintendent/Director permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and comment by the Superintendent/Director, and subject to the requirements of all applicable codes, ordinances and laws.

- b. Any waters or wastes having:
1. A five-day biochemical oxygen demand greater than 300 PPM by weight; or
  2. Containing more than 350 PPM by weight of suspended solids; or
  3. Having an average daily flow greater than 2% of the average sewage flow of the City;

shall be subject to the review of the Superintendent/Director.

Where necessary in the opinion of the Superintendent/Director, after review and approval by the governing body, the owner shall provide, at his expense, such preliminary treatment as may be necessary to:

1. Reduce the biochemical oxygen demand to 300 PPM by weight; or
2. Reduce the suspended solids to 350 PPM by weight; or
3. Control the quantities and rates of discharge of such waters or wastes.

Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for review and comment by the Superintendent and no construction of such facilities shall be commenced until said review has been obtained.

*(Ord. 6697, Adop. 12/05/78; Ord. 5560, Adop. 5/23/67)*

**Sec. 19-506 Grease, oil and sand interceptors; when required.**

Grease, oil and sand interceptors shall be provided when, in the opinion of the Superintendent/Director, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or any other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent and shall be located as to be readily and easily accessible for cleaning and inspection. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-507 Preliminary treatment or flow equalizing facilities to be maintained by owner.**

Where preliminary treatment or flow equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-508 Manholes and meters.**

When required by the Superintendent/Director the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole when required, shall be accessible, safely located and shall be constructed in accordance with plans approved by the Superintendent/Director. The manhole 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. *(Ord. 5560, Adop. 5/23/67)*

**Sec. 19-509 Standards for measurements, tests, etc., of waters and wastes.**

All measurements, tests, and analysis of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with procedures established pursuant to Section 304(h) of the Act and contained in 40 CFR Part 136 by a laboratory certified by KDHE to perform such measures, tests and analyses and shall be determined at the control manhole provided, or upon suitable samples taken at such control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out in accordance with approved techniques as set forth in section 19-923(c) of this article to reflect the effect of constituents upon the POTW and to determine the existence of hazards to life, limb, and property. BOD and suspended solids analyses will be based on 24 hour composite samples unless the Superintendent/Director determines that grab samples will adequately characterize the wastewater or that slug loads are suspected, in which case a minimum of 4 grab samples will be collected. Analyses for pH and oil and grease will be based on grab samples.

Any pretreatment standards, as established by State, Federal or other public agencies of jurisdiction for such discharge, will be used as the minimum requirements by the Superintendent/Director as applied to this Chapter.  
*(Ord. 5560, Adop. 5/23/67)*

### **Sec. 19-510 Special Agreements for industrial wastes.**

Nothing in this article shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefor, by the industrial concern. Industrial discharges containing BOD concentrations in excess of 300 mg/l and/or TSS concentrations in excess of 350 mg/l shall be subject to monitoring, sampling and analysis as determined by the Superintendent/Director. The Superintendent/Director shall determine if the sewage treatment plant has capacity to treat the excess concentrations. If the treatment capacity, excluding that capacity set aside for community growth, is not available, the Superintendent/Director may require the industrial concern to limit discharges to the stated concentrations. Nothing in this section shall be construed to modify in any way the requirements of the Federal Clean Water Act, 33 U.S.C. Section 1251 and following, pertaining to the Pretreatment Regulations, 40 CFR Part 403, and any applicable Categorical Pretreatment Standards, 40 CFR Chapter I, Subchapter N, nor shall this section be construed to affect in any way the liability of any Industrial User for any failure to comply with any such requirement. (*Ord. 5560, Adop. 5/23/67*)

## **Article VI. Powers and Authority of Inspectors**

### **Sec. 19-601 Right of entry generally.**

The Superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. Any report, record or information taken for purposes of administering this chapter shall be available to the public except that information properly submitted as a trade secret in accordance with Section 19-933 of this Code shall not be available for public inspection. Wastewater characteristics and constituents will not be recognized as confidential information. (*Ord. 5560, Adop. 5/23/67*)

### **Sec. 19-602 Observance of safety rules when on private property; liability for injuries.**

While performing the necessary work on private properties referred to in section 19-601 above, the Superintendent, his representative, or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in section 19-508 hereof. (*Ord. 5560, Adop. 5/23/67*)

## Article VII. Penalties

### Sec. 19-701 Unlawful to tamper with sewage system.

No unauthorized person shall maliciously, willfully, or negligently break, remove, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the sewage works. Any person violating this provision shall be deemed guilty of a misdemeanor.

### Sec. 19-702 Notice of violation; time limit in which to cease violation.

Any person found to be violating any provision of this chapter, except section 19-701, shall be served by the City with written notice stating the nature of the violation and providing a reasonable time for satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violation. (*Ord. 5560, Adop. 5/23/67*)

### Sec. 19-703 Unlawful to fail to cease violation within time specified.

Any person who shall continue any violation beyond the time limit provided in section 19-702 shall be guilty of a misdemeanor. Each day in which such violation shall continue shall be deemed a separate offense. (*Ord. 5560, Adop. 5/23/67*)

### Sec. 19-704 Liability to City for expense, loss or damage.

Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss, or damage occasioned by the City by reason of such violation. (*Ord. 5560, Adop. 5/23/67*)

## Article VIII. Rates and Charges

### Sec. 19-801 Policy.

It is determined and declared to be necessary and conducive to the protection of the public health, safety, welfare and convenience of the City to collect charges from all users who contribute wastewater to the City's treatment works. The proceeds of such charges so derived will be used for the purpose of operating, maintaining and retiring the debt for such public wastewater treatment works.

### Sec. 19-802 Definitions.

In this article, unless the context otherwise requires:

**“Residential user”** any contributor to the City's treatment works whose lot, parcel of real estate, or building is used for domestic dwelling purposes only.

**“Treatment works”** any devices and systems used in the conveying, storage, treatment, and discharging of municipal wastewater or industrial wastes of a liquid nature, including intercepting sewers, outfall sewers, wastewater collection systems, individual systems, pumping, power and other equipment and their appurtenances, extensions, improvement, remodeling, additions and alterations thereof; elements essential to provide reliable facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal or residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, including storm runoff, or industrial waste, including waste in sanitary sewer systems.

**“User”** any dwelling unit, business, firm, company, association, society, corporation or group which contributes wastewater either directly or indirectly to the treatment works.

**“User charge”** the total wastewater service charge which is levied in an adequate manner for the cost of operation, maintenance and debt retirement of the wastewater treatment works.

**“Wastewater”** a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters that may be present.

**“Water meter”** a water volume measuring and recording device, furnished and/or installed by the City of Hutchinson or furnished and/or installed by a user and approved by the City of Hutchinson.

#### **Sec. 19-803 Rates and Charges.**

The charges to be made and collected for access to and use of the services rendered by the City's wastewater treatment facility, including all equipment and improvements incident thereto, which charges shall include a franchise fee, shall be established from time to time by resolution of the City's governing body. (*Ord. 2002-38, Adop. 12/03/02; Ord. 7307, Adop. 7/31/90*)

#### **Sec. 19-804 Service not to be rendered free of charge.**

No wastewater service shall be furnished or rendered by the treatment works free of charge.

#### **Sec. 19-805 Preparation of monthly bills.**

The officers or employees of the City, who may be designated from time-to-time, shall cause all bills for wastewater service rendered by the treatment works of the City to be rendered monthly at the same time that bills for water and water services or refuse collection furnished by the City are rendered. The officers or employees of the City charged with the duty of preparing bills for the wastewater service shall calculate the

amount thereof and shall add the same to the amount of any bill presented to the customer for water or water services or refuse collection service furnished to such customer. Bills prepared for properties not connected to City water service shall be rendered to or assessed against the property, property owner or such other person, firm or corporation as accepts responsibility subject to approval of the utility billing office manager. The final responsibility for payment shall be the property owner's. Adjustment of billing due to over or under charge shall be retroactive for such period of time as applicable; however, such period shall not exceed 3 years.

**Sec. 19-806 Place of payment; delinquency in payment and penalty therefor; disconnection and reconnection and charges therefor.**

All bills for the facilities furnished by the City's treatment works shall be due and payable at such time as the Governing Body may from time-to-time specify. Each bill shall become due and payable upon rendering such bill and if not paid within 20 days after the date on which the bill is rendered, such bill shall be considered delinquent and an additional charge of 5% shall be made on the gross amount of the billing and notification by mail shall be given to the customer at the address of the wastewater connection. Such bill with such 5% delinquency charge shall be paid within 10 days or wastewater service to the property will be disconnected and a \$25 disconnection charge will be assessed. If such bill is not paid within such period of 10 days, wastewater service to the property shall be disconnected and such service or services to such delinquent customer shall remain disconnected until such customer shall pay the full amount of all sewer bills including the delinquency charge and the disconnection charge of \$25 plus a reconnection charge in the amount of \$25.

**Sec. 19-807 Promulgation of rules and regulations.**

The City Manager is hereby authorized to promulgate such rules and regulations as shall be reasonably necessary to carry out the provisions of this chapter according to its terms and intent.

**Article IX. Industrial Pretreatment**

**Sec. 19-901 Purpose.**

The purpose of this Article is:

- a. To prevent the introduction of pollutants into the sewage works which could interfere with the normal operation of the sewage treatment plant and/or contaminate the resulting sludge;
- b. To prevent the introduction of pollutants into the sewage works which could pass through the sewage works, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the sewage works; and

c. To improve the opportunity to recycle and reclaim wastewaters and sludges from the sewage works.

**Sec. 19-902 Policy.**

This article provides for the regulation of contributors to the sewage works through the issuance of permits to certain users, as determined by the Control Authority, and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customer's capacity will not be preempted and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

**Sec. 19-903 Application.**

This article shall apply to the City of Hutchinson and to the persons outside the City who are Industrial Users of the Hutchinson POTW. Except as otherwise provided herein, the Control Authority shall administer, implement and enforce the provisions of this Article.

**Sec. 19-904 General Discharge Prohibitions.**

No user shall introduce, or cause to be introduced, directly or indirectly, to the POTW any pollutant or pollutants which cause pass-through or interference. These general prohibitions and the specific prohibitions outlined in 40 CFR 403.5(b) and in section 19-503 of this Code shall apply to each User introducing pollutants into the POTW, whether or not such user is subject to National Pretreatment Standards or any federal, state or local pretreatment requirements.

**Sec. 19-905 Federal Categorical Pretreatment Standards.**

Upon the promulgation of the Federal Categorical Pretreatment Standards for a particular industrial subcategory, the Federal Pretreatment Standard, if more stringent than limitations imposed under this Article for sources in that subcategory, shall immediately supersede the limitations imposed under this Article. The Control Authority shall notify all affected users of the applicable reporting requirements under 40 CFR, Section 403.12.

**Sec. 19-906 Modification of Federal Categorical Pretreatment Standards.**

Where the City's sewage works achieves consistent removal of pollutants limited by Federal Pretreatment Standards, the City may apply to the Approval Authority for modification of specific limits in the Federal Pretreatment Standards. "Consistent Removal" shall mean reduction in the amount of a pollutant or alteration of the nature of the pollutant by the sewage works to a less toxic or harmless state in the effluent which is achieved by the system in 95% of the samples taken when measured according to the procedures set forth in Section 403.7(c) (2) and subsequent amendments of 40 CFR, Part 403 "General Pretreatment Regulations for Existing and New Sources of Pollution" promulgated pursuant to the Act. The City may then modify pollutant discharge limits in

the Federal Pretreatment Standards if the requirements contained in 40 CFR, Part 403, Section 403.7 and subsequent amendments are fulfilled and prior approval from the Approval Authority is obtained.

**Sec. 19-907 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 this Article.

**Sec. 19-908 City's Right of Revision.**

The City reserves the right to establish by Ordinance more stringent limitations or requirements on discharges to the sewage works if deemed necessary to comply with the objectives presented in Section 19-901 of Article IX and to establish technically based local limits in accordance with 40 CFR 403.5(d).

**Sec. 19-909 Excessive Discharge.**

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. Measures such as dilution will not be allowed when used to achieve compliance with the limitations contained in the Federal Categorical Pretreatment Standards, or in any other pollutant-specific limitation developed by the City or State.

**Sec. 19-910 Accidental and Slug Discharge.**

a. The Control Authority shall evaluate, at least once every 2 years, whether each SIU needs a plan to control slug discharges. If the Control Authority decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

1. A description of discharge practices, including non-routine batch discharges;
2. A description of stored chemicals;
3. Procedures for immediately notifying the POTW of slug discharges, including any discharge which would violate a prohibition under 40 CFR 403.5(b) and/or section 19-503 of this Code, with procedures for follow-up written notification within 5 days; and
4. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and measures and equipment for emergency response.

b. Facilities to prevent accidental discharge of prohibited materials, if required by the Control Authority, shall be provided and maintained at the expense of the Industrial User. Detailed plans, showing facilities and operating procedures to provide this protection, shall be submitted to the Control Authority for review and shall be subject to approval before construction of the facility. No Industrial User which commences contribution to the POTW after the effective date of this Article shall be permitted to introduce pollutants into the system until the need for a slug control plan has been evaluated by the Control Authority. Review and approval of such plans and operating procedures shall not relieve an Industrial User of its responsibility to modify its facility as necessary to meet the requirements of this Article. The storage of material in sewered areas or in areas draining into the municipal sewer system which, because of discharge or leakage from such storage, may create an explosion hazard to the POTW or in any other way have a deleterious effect upon the POTW or its treatment processes or otherwise constitute a hazard to human health, animals or the receiving stream shall be subject to review by the Control Authority, who may require reasonable safeguards to prevent discharge or leakage of such materials. All categorical and non-categorical Industrial Users shall notify the POTW immediately of any and all discharges which could have a deleterious effect on the POTW or its processes or pose a health hazard for human or animals, including any slug or accidental discharges. Such notification shall include location of the discharge, type of waste, concentration, volume and corrective action. In addition, the Industrial User shall be responsible for providing:

1. Written Notice. Within 5 days following an accidental discharge the Industrial User shall submit to the Control Authority a detailed written report describing the cause of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage or other liability which may be incurred as a result of damage to the sewage works, fish kills or other damage to person or property; nor shall such notification relieve the User of any fines, civil penalties or other liability which may be imposed by this Article or other applicable law.

2. Notice to employees. A notice shall be permanently posted on the Industrial User's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Industrial Users shall insure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

### **Sec. 19-911 Charges and Fees.**

The applicable charges or fees will be provided to recover the costs from Users of the City's sewage works for the implementation of the Pretreatment Program. The City may adopt charges and fees which may include:

a. Fees for reimbursement of costs of setting up and operating the City's Pretreatment Program;

- b. Fees for monitoring, inspections and surveillance procedures;
- c. Fees for reviewing accidental discharge procedures and construction;
- d. Fees for permit applications;
- e. Fees for filing appeals;
- f. Fees for consistent removal by the City of pollutants otherwise subject to Federal Pretreatment Standards;
- g. Other fees as the City may deem necessary to carry out the requirements contained herein.
- h. These fees relate solely to the matters covered by Article IX and are separate from all other fees chargeable by the City.

**Sec. 19-912 Wastewater Discharge.**

It shall be unlawful to discharge without a City permit to any area under the jurisdiction of said City and/or to the sewage works any sewage, except as authorized by the Control Authority in accordance with the provisions of this Article.

**Sec. 19-913 General Permits.**

All Industrial Users which have been determined to be SIU's pursuant to 40 CFR 403.3, proposing to connect or to contribute to the POTW shall obtain a Wastewater Discharge Permit before connecting to or contributing to the POTW. All existing SIU's connected to or contributing to the POTW shall obtain a Wastewater Discharge Permit within 180 days after the effective date of this Article.

**Sec. 19-914 Permit Application.**

a. Each Industrial User which has been designated as an SIU is required to obtain a Wastewater Discharge Permit and shall complete and file with the City, an application in the form prescribed by the City, and accompanied by the required fee. Existing SIU's shall apply for a Wastewater Discharge Permit within 30 days after the effective date of this Article or 180 days after the promulgation of the applicable Pretreatment Standard. Proposed new SIU's shall apply for Wastewater Discharge Permit at least 90 days prior to connecting to or contributing to the POTW. In support of the application, the User shall submit, in units and terms appropriate for evaluation, the following information:

1. Name, address and location (if different from the mailing address);

2. SIC number according to the "Standard Industrial Classification Manual", Bureau of the Budget, as amended from time-to-time;

3. Sewage constituents and characteristics including, but not limited to, those mentioned in Section 19-904 through Section 19-910 of this Article as determined by a certified analytical laboratory; sampling and analysis shall be performed in accordance with the procedures established by the EPA pursuant to Section 304(h) of the Act and contained in 40 CFR, Part 136, as amended;

4. Time and duration of contribution;

5. Any other information as may be deemed by the Control Authority to be necessary to evaluate the permit application. The determination of what is necessary to evaluate the permit application shall be subject to appeal to a Committee consisting of a representative of the applicant, a representative of the Control Authority selected by the City Manager and a third person selected by the first two. The Committee's decision shall prevail unless specifically overruled by the Approval Authority.

b. The Control Authority may request the following information if deemed necessary to evaluate the permit application:

1. Average daily and 3 minute peak wastewater flow rates, including daily, monthly and seasonal variations if any;

2. Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections and appurtenances by the size, location and elevation;

3. Description of activities, facilities and plant processes on the premises including all materials which are or could be discharged;

4. The nature and concentration of any pollutants in the discharge which are limited by any City, State or Federal Pretreatment Standards and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional pretreatment or other measures are required for the User to meet applicable Pretreatment Standards;

5. If additional pretreatment or other measures will be required to meet the Pretreatment Standards; the shortest schedule by which the User will provide such additional pretreatment. The conditions established in Section 19-921 of this Article shall also apply to the schedule required by this paragraph:

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the

User to meet the applicable pretreatment Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, Superintendent review and approval of construction plans, executing contracts for major components, commencing construction, completing construction, etc.).

(b) No increment referred to in paragraph (1) shall exceed 9 months.

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the authorized representative of the User shall submit a progress report to the Control Authority including, as a minimum, whether or not 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 delay and the steps being taken by the User to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority.

6. Each product produced by type, amount, process or processes and rate of production;

7. Type and amount of raw materials processed (average and maximum per day);

8. Number and type of employees and hours of operation of plant and proposed or actual hours of operation of pretreatment system;

The Control Authority will evaluate the data furnished by the User and may require additional information. After evaluation and acceptance of the data furnished on the application form, the City may issue a Wastewater Discharge Permit subject to terms and conditions provided herein.

#### **Sec. 19-915 Permit Modifications.**

As soon as possible following the promulgation of the National Pretreatment Standard, the Wastewater Discharge Permit of all Industrial Users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where an Industrial User, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a Wastewater Discharge Permit as required by this Article IX, the User shall apply for a Wastewater Discharge Permit as soon as possible, but in no case more than 90 days, after the promulgation of the Federal Categorical Pretreatment Standard. Such application shall contain all the information required by paragraphs 5 through 8 of Section 19-914(b) of this Article.

#### **Sec. 19-916 Equivalent Concentration Limits.**

When the limits in a Categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

a. Equivalent mass-per-day limitations shall be calculated by multiplying the limits in the Standard by the Industrial User's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable estimate of the Industrial User's actual long-term daily production during a representative year. For new sources, production shall be estimated using projected production.

b. Equivalent concentration limitations shall be calculated by dividing the mass limitations derived under paragraph "a" of this section by the average daily flow rate of the Industrial User's regulated process wastewater. This average daily flow rate shall be based upon a reasonable estimate of the Industrial User's actual long-term average flow rate, such as the average daily flow rate during a representative year.

c. Equivalent limits calculated in accordance with paragraphs "a" and "b" of this section shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act and Part 403. Industrial Users will be required to comply with the equivalent limitations in lieu of the promulgated Categorical Standards from which the equivalent limitations were derived.

d. Where Categorical Pretreatment Standards specify one limit for calculating maximum monthly average or 4-day average limitations, the same production or flow figure shall be used in calculating both types of equivalent limitations.

e. Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based standard shall notify the Control Authority within 2 business days after such User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User which fails to notify the Control Authority of such anticipated change will be required to meet the mass or concentration limits in its permit, which limits were based on the original estimate of the long-term average production rate.

### **Sec. 19-917 Permit Conditions.**

Wastewater Discharge Permits shall be expressly subject to all provisions of this Article and all other applicable regulations, User charges and fees established by the Control Authority. Permits may contain the following:

- a. Limits on the average and maximum sewage constituents and characteristics;
- b. Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization;
- c. Requirements for installation and maintenance of inspection and sampling facilities;
- d. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for tests and reporting schedule;
- e. Compliance schedules;
- f. Requirements for submission of technical reports or discharge reports;
- g. Requirements for maintaining and retaining plant records of the User relating to sewage discharge as specified by the Control Authority access thereto;
- h. Requirements for notification of the Control Authority of any new introduction of sewage constituents or any substantial change in the volume or character of the sewage constituents being introduced into the sewage treatment plant;
- i. Requirements for notification of sludge discharges as per section 19-910; and
- j. Other conditions as deemed appropriate by the Control Authority to ensure compliance with this Article and with 40 CFR Part 403.8.

### **Sec. 19-918 Permit Duration.**

Permits shall be issued for a specific time period not to exceed 5 years. A permit may be issued for a period less than 1 year or may be stated to expire on a specific date. The User shall apply for permit reissuance a minimum of 90 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 Control Authority during the term of the permit as limitations or requirements as identified in Section 19-904 through Section 19-911 are modified or other just causes exist. The User shall be informed of any proposed changes in his permit at

least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

#### **Sec. 19-919 Permit Transfer.**

Wastewater Discharge Permits are issued to a specific Industrial User for a specific operation. A Wastewater Discharge Permit shall not be reassigned, transferred or sold to a new owner, new SIU, different premises, or a new or changed operation without the approval of the Control Authority.

#### **Sec. 19-920 Reporting and Signatory Requirements.**

a. Pursuant to the requirements of 40 CFR 403.12, the Industrial User shall submit to the Control Authority all reports (BMR's), compliance schedules, progress reports, permit applications, 90-day compliance reports, periodic compliance reports, self-monitoring reports, or any other technical or discharge reports, as directed by the Control Authority.

b. All reports specified in 40 CFR 403.12(1), including those listed in paragraph "a" of this section, shall include the following certification statement and shall be signed by an authorized representative of the Industrial User:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision and 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 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."

#### **Sec. 19-921 Baseline Reports.**

Within 180 days after the effective date of a Categorical Pretreatment Standard, or 180 days after the final administrative decision is made upon a category determination submission under 40 CFR 403.6(a)(4), whichever is later, existing Industrial Users subject to such Categorical Pretreatment Standards and currently discharging to or scheduled to discharge to the POTW shall submit to the Control Authority a report which contains all the information required by 40 CFR 403.12(b)(1)-(7). At least 90 days prior to commencement of discharge, new sources and sources which become Industrial Users subsequent to the promulgation of an applicable Categorical Standard, shall submit to the Control Authority a report which contains the information listed in 40 CFR 403.12(b)(1)-(5). Each new source shall also include in such report information on the method of

pretreatment it intends to use to meet applicable Pretreatment Standards. The information contained in the Baseline Report shall be as follows:

- a. Identifying Information. The name and address of the facility, including the name of the operator and owners;
- b. Permits. A list of any environmental control permits held by or for the facility;
- c. Description of Operations. A brief description of the nature, average rate of production and Standard Industrial Classification of the operation or operations to be carried on by the Industrial User, including a schematic process diagram showing points of discharge to the POTW from the regulated processes;
- d. Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:
  1. Regulated process streams; and
  2. Other streams as necessary to allow use of the combined wastestream formula.

The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

- e. Measurement of Pollutants.
  1. The User shall identify the Pretreatment Standards applicable to each regulated process;
  2. The User shall submit the results of sampling and analysis identifying the nature and concentration or mass, when required by the Standards or the Control Authority, of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration or mass, when required, shall be reported. The sample shall be representative of daily operations;
  3. A minimum of 4 grab samples must be used for pH, cyanide, oil and grease, total phenols, sulfide and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Control Authority may waive flow-proportional composite sampling for any Industrial User which demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of 4 grab samples when the User demonstrates that this will provide a representative sample of the effluent being discharged;

4. A minimum of one representative sample to compile the data necessary to comply with the requirements of this paragraph. Such samples shall be taken immediately downstream from pretreatment facilities if such exist. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the User shall measure the flows and concentrations necessary to allow use of the combined wastestream formula specified in 40 CFR 403.6(e) in order to evaluate compliance with the Pretreatment Standards. Where alternative concentration or mass limits have been calculated in accordance with 40 CFR 403.6(3), this adjusted limit along with supporting data shall be submitted to the Control Authority;

5. Sampling and analysis for the Baseline Report shall be performed in accordance with techniques prescribed in 40 CFR Part 136 and amendments thereto. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analysis procedures, including procedures suggested by the Control Authority or other parties, if approved by the Approval Authority;

6. The Baseline Report shall include the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW;

7. The Control Authority may allow the submission of a report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

f. The Baseline Report shall include a statement by an authorized representative of the Industrial User, certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis and, if not, whether additional operational, maintenance or pretreatment measures are required for such Industrial User to meet the Pretreatment Standards and requirements.

g. Compliance Schedule. If additional operational, maintenance or pretreatment measures are required to meet the Pretreatment Standards, the Industrial User shall submit the shortest schedule by which the User will implement such measures. The completion date shall not be later than the compliance date established for the applicable Pretreatment Standard. The following conditions shall apply to the schedule required by this paragraph.

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment facilities required for the Industrial User to meet the applicable Categorical Pretreatment Standards. Major events include, but are not limited to, hiring an engineer, completing preliminary

plans, executing contracts for major components, commencing construction and completing construction.

2. No increment referred to in subparagraph 1 of this paragraph shall exceed 9 months in duration.

3. Not later than 14 days following each date in the schedule, including the final date for compliance, the Industrial User shall submit a progress report to the Control Authority including, at a minimum, whether it has complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with such increment; the reason for the delay; and the steps being taken by the Industrial User to return the construction to the established schedule. In no event shall more than 9 months elapse between progress reports to the Control Authority.

### **Sec. 19-922 Compliance Date Report.**

a. Within 90 days following the date for final compliance with applicable Pretreatment Standards or, in the case of a New Source, following commencement of the introduction of sewage into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a 90 day Compliance Report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by Pretreatment Standards and Requirements and the average and maximum daily flow for these process units in the User's facility which are limited by such Pretreatment Standards or Requirements. The report shall state whether the applicable Pretreatment Standards or Requirements are being met on a consistent basis and, if not, what additional pretreatment or other measures are necessary to bring the Industrial User into compliance with the applicable Pretreatment Standards or Requirements. This statement shall be signed by an authorized representative of the Industrial User, and certified by a licensed professional engineer in the State of Kansas.

b. For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in section 403.6(c) of the General Pretreatment Regulations, this report shall contain a reasonable measure of the User's long-term production rate. For all other Industrial Users subject to Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), such report shall include the Industrial User's actual production during the sampling period.

### **Sec. 19-923 Periodic Compliance Reports.**

a. Any Industrial User subject to a Pretreatment Standard shall submit to the Control Authority during the months of June and December, unless require more frequently in the Pretreatment Standard or by the Control Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such

Pretreatment Standards. In addition, this report shall describe the nature and concentration of those prohibited pollutants in the effluent which are regulated by the User's Wastewater Discharge Permit and a record of all daily flows which during the reporting period exceeded the average daily flow. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are to be submitted.

b. The Control Authority may impose mass limitations on Industrial Users, where the imposition of mass limitations are appropriate, to meet applicable Pretreatment Standards or Requirements. In such cases, the report required by this section shall indicate the mass of pollutants regulated by Pretreatment Standards in the effluent of the User. These reports shall contain the results of sampling and analysis of the discharge, including the flow, the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. The frequency of monitoring shall be prescribed in the applicable Pretreatment Standard. For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with procedures in section 403.6(c) of the General Pretreatment Regulations, this report shall contain a reasonable measure of such User's long-term production rate. For all other Industrial Users subject to Categorical Pretreatment Standards of production or other measure of operation, the report shall include the User's actual average production rate for the reporting period.

c. The reports required by subsection "a" of this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. This sampling and analysis may be done by the Control Authority in lieu of the Industrial User. All analyses shall be performed in accordance with procedures established by the Approval Authority pursuant to section 304(h) of the Act and contained in 40 CFR Part 136 and amendments thereto, by a laboratory certified by KDHE to perform such analyses. Sampling shall be performed in accordance with the techniques approved by the Approval Authority. Where 40 CFR, Part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with any other sampling and analytical procedures approved by the Approval Authority. If an Industrial User subject to the reporting requirements of subsection "a" of this section monitors any pollutant more frequently than required by the Control Authority, using the procedures prescribed in this section, the results of such monitoring shall be included in the report.

d. If sampling by an Industrial User indicates a violation, such User shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation; provided, that such User shall not be required to resample if:

1. The Control Authority performs sampling of such User's discharge at least once per month; or

2. The Control Authority performs sampling of such User's discharge between the time when such User performed its initial sampling and the time when such User received the results of such initial sampling.

e. Appropriate reports containing the results of sampling and analysis of the discharge, including the flow, nature and concentration of pollutants contained therein which are limited by the Industrial User's Wastewater Discharge Permit and by the Control Authority as set forth in this chapter, shall be required from those SIU's with discharges which are not subject to Categorical Pretreatment Standards. Requirements for sampling and analysis shall be as set forth in subsection "c" of section 19-923. The Control Authority shall require that frequency of monitoring which is necessary to assess and assure compliance by such non-categorical SIU's with applicable permit requirements and local limits.

#### **Sec. 19-924 Recordkeeping Requirements.**

a. Any Industrial User subject to the reporting requirements established in this chapter shall maintain records of all information resulting from any monitoring activities required by this chapter. Such records shall include, for all samples:

1. The date, exact place, method and time of sampling and the names of the persons taking the samples;

2. The dates such samples were analyzed;

3. The identity of the persons performing such analyses;

4. The analytical techniques and methods used to perform such analyses; and

5. The results of such analyses.

b. Any Industrial User subject to reporting requirements established in this chapter shall retain for a minimum of 3 years all records of monitoring activities and results, whether or not such monitoring activities are required by this chapter, and shall make such records available for inspection and copying by the Superintendent/Director and the Regional Administrator. This period of retention shall be extended during the course of any litigation regarding the Industrial User or the POTW, or upon request of the Superintendent/Director or the Regional Administrator.

#### **Sec. 19-925 Monitoring Facilities.**

The Control Authority may require monitoring facilities to be provided and operated at the User's own expense and to allow inspection, sampling and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the User's premises, but the Control Authority may, when such a location would be impractical or cause undue hardship on the User, allow the facility to be constructed in the public right-of-way and located so that it will not be obstructed by landscaping or parked vehicles.

#### **Sec. 19-926 Equipment Maintenance.**

There shall be ample room in or near such sampling manhole or monitoring facility to allow accurate sampling and preparation of samples for analysis. The monitoring facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the User.

#### **Sec. 19-927 Construction Requirements.**

Whether constructed on public or private property, sampling and monitoring facilities shall be provided in accordance with the Control Authority's requirements and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the Control Authority or as soon thereafter as mutually agreed upon.

#### **Sec. 19-928 Inspection and Sampling.**

The Control Authority may inspect the facilities of any User to ascertain whether the purpose of this Article is being met and all requirements are being complied with. Persons or occupants of premises where sewage is created or discharged shall allow the Control Authority or their representative(s) ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination or in the performance of any of their duties. The Control Authority, KDHE and the EPA shall have the right to install on the User's property such devices as are necessary to conduct sampling inspection, compliance, monitoring and/or metering operations. Where a User has security measures in force which would require proper identification and clearance before entry into their premises, the User shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the Control Authority, KDHE and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. An inspector representing the Control Authority and acting pursuant to this section shall give notice of his or her presence to a representative of the administrative or management office of the user.

#### **Sec. 19-929 Pretreatment.**

Required Users shall provide sewage treatment as required to comply with this Article and shall achieve compliance with all Federal Categorical Pretreatment Standards within the time limitations as specified by the Federal Pretreatment Regulations. Any facilities

required to pretreat sewage to a level acceptable to the Control Authority shall be provided, operated and maintained at the User's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the Control Authority for review and shall be acceptable to the Control Authority before construction of the facility. The review of such plans and operating procedures will in no way relieve the User from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the Control Authority under the provisions of this Article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the Control Authority prior to the User's initiation of the changes.

**Sec. 19-930 Bypass of Pretreatment Facilities Prohibited.**

a. Definitions:

1. "Bypass" means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities, which damage causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to exist in the absence of the bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass of pretreatment facilities by an Industrial User is prohibited generally, and:

1. The Control Authority may take enforcement action against an Industrial User unless:

a. Bypass was unavoidable to prevent loss of life, personal injury or sever property damage;

b. There were no feasible alternatives to the bypass, such as the user of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal periods of downtime. This condition shall not be considered satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The Industrial User submitted notices as required in subsection "d" of this section.

2. The Control Authority may approve an anticipated bypass after considering its adverse effects, if the Control Authority determines that it will meet the 3 conditions set forth in paragraph "b"(1) of this section.

c. An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it is for essential maintenance to assure efficient operation. Such bypasses are not subject to the provisions of subsections "b" and "d" of this section.

d. If an Industrial User knows in advance of the need for a bypass, it shall, if possible, submit prior notice to the Control Authority at least 10 days before the date of the bypass. In the event of an unanticipated bypass which exceeds applicable Pretreatment Standards, the Industrial User shall submit oral notice of the bypass to the Control Authority within 24 hours after the time such Industrial User becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the Industrial User becomes aware of the bypass. Such written submission shall contain a description of the bypass and its cause: the duration of the bypass: including exact date and time and, if the bypass has not been corrected, the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate and prevent recurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report was received within 24 hours.

#### **Sec. 19-931 Publication of Non-compliance.**

The Control Authority shall annually publish in the official City newspaper a list of the Industrial Users which, at any time within the previous 12 months, were in significant noncompliance, with applicable pretreatment requirements. For the purpose of this provision, an Industrial User is in significant noncompliance if its violation meets one or more of the following criteria:

a. Chronic violations of wastewater discharge limits, defined herein as those in which 66% or more of all of the measurements taken during a 6 month period exceed, by any magnitude, the daily maximum limit or the average limit for the same pollutant parameter;

b. Technical Review Criteria (TRC) violations, defined herein as those in which 33% or more of all the measurements for each pollutant parameter taken during a 6 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);

c. Any other violation of a pretreatment effluent limit (daily maximum or longer term average) which the Control Authority determines has caused, alone or in combination with other discharges, interference or passthrough (including endangering the health of POTW personnel or the general public);

d. Any discharge of a pollutant which has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of

its emergency authority under 40 CFR 403.8(f)(1)(vi)(b) to halt or prevent such a discharge;

e. 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;

f. Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, reports on compliance with compliance schedules, and periodic self-monitoring reports;

g. Failure to accurately report noncompliance; and

h. Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

The notification shall also summarize any enforcement actions taken against the Industrial User(s) during the same 12 months.

#### **Sec. 19-932 Availability of Records.**

All records relating to compliance with Pretreatment Standards shall be made available to officials of the EPA and KDHE upon request.

#### **Sec. 19-933 Trade Secrets.**

a. Information and data on a Industrial User, except that which is entitled to protection as a trade secret, obtained from reports, questionnaires, permit applications, permits, monitoring programs and inspections shall be available to the public without restriction. Wastewater characteristics and constituents shall not be considered trade secrets. Trade secrets which must be divulged by the user for the effective implementation of this chapter may be submitted separately from any other information required under this chapter, and, if so submitted, shall be captioned by the user, TRADE SECRET. Trade secrets shall be maintained by the Department in a locked and secure manner. It shall be the Department's responsibility to establish a system of limited access to trade secrets so as to eliminate the possibility of public disclosure.

b. No person, while an official or employee of the City of Hutchinson, or thereafter, shall use to his own advantage, or reveal, other than to the authorized representatives of the United States Government, the State of Kansas, or other government, in their official capacity, or as ordered by a court in a judicial proceeding, any information acquired under the authority of this chapter concerning any matter which is entitled to protection as a trade secret.

c. The portions of a report which might disclose trade secrets or secret processes shall not be made available for public inspection but shall be made available to governmental agencies for uses related to this chapter, the Control Authority's NPDES permit, and/or the Pretreatment Program; provided, that such portions shall be made available for use by the State or any State agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater characteristics and constituents will not be recognized as confidential information.

**Sec. 19-934 Harmful Contributions.**

a. The Control Authority may suspend the sewage treatment service and/or a Wastewater Discharge Permit when such suspension is necessary, in the opinion of the Control Authority in order to stop an actual or threatened discharge which presents or may present an eminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the sewage works or causes the City to violate any condition of its NPDES Permit.

b. Any person notified of a suspension of the sewage treatment service and/or the Wastewater Discharge Permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the Control Authority shall take such steps as deemed necessary, including immediate severance of the sewer connection, and/or severance of the water supply to prevent or minimize damage to the sewage works or endangerment to any individuals. The Control Authority shall reinstate the Wastewater Discharge Permit and/or the sewage treatment service upon proof of the elimination of the non-complying discharge.

**Sec. 19-935 Revocation of Permit.**

Any User who violates the following conditions of this Article, or applicable State and Federal regulations, is subject to having his permit revoked in accordance with the procedures in sections 19-935 through 19-940.

a. Failure of a User to factually report the sewage constituents and characteristics of his discharge.

b. Failure of the User to report significant changes in operations, or sewage constituents and characteristics.

c. Refusal of reasonable access to the User's premises for the purpose of inspection or monitoring.

d. Violation of conditions of the permit.

### **Sec. 19-936 Notification of Violation.**

Whenever the Control Authority finds that any User has violated or is violating this Article, his or her Wastewater Discharge Permit, or any prohibition, limitation or requirements contained herein, the Control Authority may serve upon such person a written notice stating the nature of the violation. Within 30 days of the date of the notice, a plan for the satisfactory correction thereof shall be submitted to the Control Authority by the User. Submission of such plan in no way relieves the User of liability for any violations occurring before or after receipt of a Notice of Violation.

### **Sec. 19-937 Show Cause Hearing.**

a. The Control Authority may order any Industrial User which causes or contributes to a violation of this article or a wastewater permit or order issued hereunder, to show cause why the proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place of a hearing to be held regarding the violation, the proposed enforcement action and the reasons why such action is proposed to be taken, and directing the User to show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least 10 days before the hearing. Service may be made on any principal executive, general partner or corporate officer.

b. The Control Authority may designate a person or body to conduct such hearing and to:

1. Issue in the name of the Control Authority notices of hearings and orders requiring the attendance and testimony of witnesses and production of evidence relevant to any matter involved in such hearings;

2. Take evidence;

3. Make findings and conclusions and issue such orders as are supported by such findings and conclusions and necessary to carry out the purposes of this article; and

4. Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Control Authority for such other action thereon as may be appropriate under all the circumstances.

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

d. Regardless of whether a duly notified Industrial User appears at any such hearing, immediate enforcement action may be taken by the Control Authority.

### **Sec. 19-938 Consent Orders.**

The Director, acting for the Control Authority, may enter into consent orders or agreements, assurances of voluntary compliance or other similar instruments establishing an agreement with an Industrial User responsible for a violation of or noncompliance with any provision of this article. Such instruments shall include specific action to be taken by the Industrial User to correct any such violation or noncompliance within a time period to be specified in such instrument. Consent orders and other like instruments shall have the same force and effect as administrative compliance orders issued pursuant to this article.

### **Sec. 19-939 Administrative Compliance Orders.**

When the Control Authority finds that an Industrial User has violated or continues to violate any provision of this chapter or of a permit or order issued hereunder, it may issue an administrative compliance order to such Industrial User, directing that after a period of time specified in such order such Industrial User's sewer service shall be discontinued unless adequate treatment facilities, devices or other appurtenances have been installed and are properly operating. Administrative compliance orders may also include any other requirements which are reasonably necessary or appropriate to address any such violation, including but not limited to installation of pretreatment technology, additional self-monitoring and additional or alteration of management practices.

### **Sec. 19-940 Legal Action.**

If any person violates the provisions of this Article, Federal or State Pretreatment Requirements, Wastewater Discharge Permits or any order of the Control Authority, the City Attorney may commence an action for appropriate legal and/or equitable relief in the District Court of Reno County. This provision shall apply to both discharge and non-discharge violations.

### **Sec. 19-941 Civil Penalties.**

Any User who is found to have violated an order of the Control Authority or who failed to comply with any provision of this Article, and the orders, rules, regulations and permits issued hereunder, shall be fined not less than \$100 nor more than \$1,000 for each offense. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. In addition to the penalties provided herein, the Control Authority may recover reasonable attorneys' fees, court costs, court reporters' fees and other expenses of litigation by appropriate suit at law against the person found to have violated this Article or the orders, rules, regulations and permits issued hereunder.

### **Sec. 19-942 Cease and Desist Orders.**

Whenever the Control Authority finds that an Industrial User has violated, continues to violate or threatens to violate any provision of this chapter or of a permit or order issued hereunder, it may issue an order to cease and desist all such violations and direct such Industrial User to:

- a. Forthwith comply with any such provision or order; and
- b. Take such appropriate remedial or preventive actions as may be necessary to properly address a continuing or threatened violation, including ceasing operations and terminating discharge to the POTW.

**Sec. 19-943 Falsifying Information.**

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 Article, or Wastewater Discharge Permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this Article, shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than 6 months or by both.

**Sec. 19-944 Repeal of inconsistent ordinances.**

All Ordinances or parts of Ordinances inconsistent or conflicting herewith are hereby repealed to the extent of such inconsistency or conflict.

**Sec. 19-945 Invalidity of the Ordinance.**

The invalidity of any section, clause, sentence or provision of this chapter shall not affect the validity of any other part of this chapter which can be given effect without such invalid part or parts.

**Article X – Stormwater Pollution Prevention**

**Sec. 19-1001 General Provisions**

- a. Purposes

The purposes and objectives of this Article are as follows:

- 1. To maintain and improve the quality of waters impacted by the storm drainage system within the City;
- 2. To prevent the discharge of contaminated stormwater runoff and illicit discharges into the storm drainage system within the City;

3. To promote public awareness and responsible behavior pertaining to the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and/or any other pollutants into the storm drainage system;

4. To encourage recycling of used motor oil and safe disposal of other hazardous consumer products;

5. To enable the City to comply with all federal and state laws and regulations applicable to the National Pollutant Discharge Elimination System (NPDES) permitting requirements for stormwater discharges; and

6. To establish legal authority to carry out all inspections, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this article.

b. **Applicability.** This ordinance shall apply to all waters or substances entering the storm drain system within the City generated from any developed and/or undeveloped lands unless explicitly exempted by this ordinance or an authorized enforcement agency.

c. **Administration.** The City of Hutchinson (authorized enforcement agency) shall administer, implement and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated to persons or entities acting in the beneficial interest of or in the employ of the City.

d. **Severability.** The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Article is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall remain in full force and effect.

e. **Ultimate Responsibility.** The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

f. **Compliance Monitoring**

1. **Right of Entry.** The City's authorized representatives shall have the right to enter the premises of any person discharging storm water to the municipal separate storm sewer system (MS4) or to the waters of the United States at any reasonable time to determine if the discharger is complying with all requirements of this chapter, and with any state or federal discharge permit, limitation, or requirement. Dischargers shall allow the inspectors ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties.

If such building or premises is occupied, the inspector shall present credentials to the occupant and request entry. If such building or premises is unoccupied, the inspector shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the inspector has recourse to every remedy provided by law to secure entry.

When the City's authorized representative has first obtained an administrative warrant or other remedy provided by law to secure entry, an owner or occupant having charge, care of control of the building or premises shall not fail or neglect, after proper request is made as herein provided, to permit entry therein by the Inspector for the purpose of inspection and examination pursuant to this code.

2. Records. Subject to the requirements of subsection 1, dischargers shall make available upon request, any SWP3's, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, notices of intent, and any other records, reports, and other documents related to compliance with this chapter and with any state or federal discharge permit.

3. Sampling. The City's authorized representatives shall have the right to set up on the discharger's property any such devices that are necessary to conduct sampling of storm water discharges.

*(Ord. 2010-26, Adop. 6/15/10; Ord. 2009-03, Adop. 1/20/09)*

## **Sec. 19-1002 Prohibition of Illegal Discharges and Connections**

a. General Prohibition. No person shall discharge or cause to be discharged into the municipal separate storm sewer system (MS4) or watercourses any discharge that is not composed entirely of storm water, except as allowed in subsection 1003. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is expressly prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of the connection.

b. Specific Prohibitions and Requirements. The specific prohibitions and requirements in this section are not necessarily inclusive of all the discharges prohibited by the general prohibition in Section 19-1002(a).

1. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a KDHE water quality standard, the City's NPDES stormwater permit or any state or federally issued discharge permit for discharges from its MS4.

2. No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced the following substances into the MS4:

- a. Any used motor oil, antifreeze or any other petroleum product or waste;
- b. A harmful quantity of industrial waste;
- c. Any hazardous waste, including household hazardous waste;
- d. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
- e. Any garbage, rubbish, or yard waste;
- f. Wastewater that contains a harmful quantity of soap, detergent, degreaser, solvent, or surfactant based cleaner from a commercial car wash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, by a business or public entity;
- g. Wastewater from the washing, cleaning, deicing, or other maintenance of aircraft;
- h. Wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any harmful quantity of soap, detergent, degreaser, solvent, or any surfactant based cleaner;
- i. Any wastewater from commercial floor, rug, or carpet cleaning;
- j. Any wastewater from the wash-down or other cleaning of pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;
- k. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blow-down from a boiler;
- l. Any ready-mixed concrete, mortar, ceramic asphalt base material or hydro-mulch material, or discharge resulting from the cleaning of vehicles or equipment containing or used in transporting or applying such material;
- m. Any runoff, wash-down water or waste from any animal pen, kennel, fowl or livestock containment area;
- n. Any swimming pool water containing a harmful level of chlorine (usually considered to be greater than 1 ppm), muriatic acid, or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;

- o. Any discharge from water line disinfection by super chlorination if it contains a harmful level of chlorine at the point of entry into the MS4 or waters of the United States;
- p. Any water from a water curtain in a spray room used for painting vehicles or equipment;
- q. Any contaminated runoff from vehicle salvage, automobile graveyard, and recycling centers;
- r. Any substance or material that will damage, block, or clog the MS4; or
- s. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by leaking PST; or any discharge of pumped, confined, or treated wastewater from the remediation of any such pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge has received an NPDES permit from the State or other authorizing agency.

3. No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation, or other construction activities in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable under prevailing circumstances.

4. Regulation of Pesticides, Herbicides, and Fertilizers:

a. No person shall use or cause to be used any pesticide, herbicide, or fertilizer in any manner that the person knows or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.

b. No person shall dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer, or its container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.

5. No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4 or allow such a connection to continue.

6. Notwithstanding the provisions of Section 19-1003, any discharge shall be prohibited by this Section if the discharge in question has been determined by the authorized enforcement agency to be a source of pollutants to the storm drainage system.

7. No person shall maliciously destroy or interfere with BMPs implemented pursuant to this Article.

c. Release Cleanup and Reporting Required. If any person releases, or causes to be released, any prohibited substance into the stormwater system or waters of the United States, such person shall take all necessary steps to contain, abate, or clean up such discharge. If any person releases, or causes to be released, any prohibited substances into the stormwater system or waters of the United States, such person shall notify the City in person or by phone or facsimile no later than 5:00 p.m. of the next business day. Provided that, if any person releases, or causes to be released, any hazardous substance, such person shall immediately notify emergency response agencies via emergency dispatch services.

d. Authorization to Adopt and Impose Best Management Practices. The City may adopt and impose requirements identifying Best Management Practices (BMPs) for any activity, operation, or facility, which may cause a discharge of pollutants to the storm drainage system. Where specific BMPs are required, every person undertaking such activity or operation, or owning or operating such facility shall implement and maintain these BMPs at their own expense.

1. Compliance Required. It shall be unlawful for any person required to comply with City BMPs to fail to comply with City BMPs.

2. Damage to BMPs Unlawful. It shall be unlawful for any person to damage, destroy, or interfere with any implemented BMPs.

*(Ord. 2009-03, Adop. 1/20/09)*

### **Sec. 19-1003 Exemptions**

The following non-stormwater discharges are exempted from the above Section and are not a violation of this Article:

1. Water line flushing, diverted stream flow, rising groundwater, uncontaminated groundwater infiltration as defined under 40 CFR 35.2005(20) to separate storm sewers, uncontaminated pumped groundwater, contaminated groundwater if authorized by KDHE and approved by the City of Hutchinson, discharges from potable water sources, foundation drains, air conditioning condensate, irrigation waters, springs, water from crawl space pumps, footing drains, individual residential car washing, flows from riparian habitats and wetlands, street wash waters (excluding street sweepings which have been removed from the street), discharges or flows from emergency fire fighting activities, heat pump discharge waters (residential only), treated wastewater meeting requirements of a NPDES permit, and other discharges determined by KDHE to not be a significant source of pollutants to waters of the State, a public health hazard or a nuisance.

2. The prohibitions set forth in Section 19-1002 shall not apply to discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

3. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

4. The prohibitions set forth in Section 19-1002 shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Environmental Protection Agency, 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 storm drain system.

*(Ord. 2009-03, Adop. 1/20/09)*

**Sec. 19-1004 Requirements Applicable to Certain Dischargers.** The following requirements shall apply:

1. **Private Drainage System Maintenance:** The owner of any private drainage system shall maintain the system to prevent or reduce the discharge of pollutants. This maintenance shall include, but is not limited to, sediment removal, bank erosion repairs, maintenance of vegetative cover, and removal of debris from pipes and structures.

2. **Cleaning of Paved Surfaces Required:** The owner of any paved parking lot, street or drive shall clean the pavement as required to prevent the buildup and discharge of pollutants. The visible buildup of mechanical fluids, waste materials, sediment or debris is a violation of this ordinance. Paved surfaces shall be cleaned by dry sweeping, wet vacuum sweeping, collection and treatment of wash water or other methods in compliance with this Article. This section does not apply to pollutants discharged from construction activities which are regulated under a separate section.

3. **Maintenance of Equipment:** Leaks or spills related to equipment maintenance in an outdoor, uncovered area shall be contained to prevent the potential release of pollutants. Vehicles, machinery and equipment should be maintained to reduce leaking fluids.

4. **Materials Storage:** In addition to other requirements of this Article, materials shall be stored in such a manner as to prevent the potential release of pollutants. The uncovered, outdoor storage of unsealed containers of hazardous substances is also prohibited.

5. **Pet Waste:** Pet and animal waste shall be disposed of as solid waste or sanitary sewage in a timely manner, in order to prevent discharge to the storm drainage system.

6. Pesticides, Herbicides, and Fertilizers: Pesticides, herbicides, and fertilizers shall be applied in accordance with manufacturer recommendations and applicable laws. Excessive application shall be avoided. Use of any pesticide, herbicide, or fungicide, the manufacture of which has been either voluntarily discontinued or prohibited by the Environment Protection Agency, or any Federal, State, or City regulations is prohibited.

*(Ord. 2009-03, Adop. 1/20/09)*

### **Sec. 19-1005 Enforcement and Penalties for Illicit Discharge Violations**

a. Violations. Any activity that is commenced or is conducted contrary to this Article will be considered a violation of this Article and may be restrained by injunction or otherwise abated in a manner provided by law.

b. Notice of Violation. When the City determines that an activity is not being carried out in accordance with the requirements of this Article, or that an illicit or prohibited discharge to the City's MS4 has occurred, it shall issue a written Notice of Violation (NOV) to the property owner or perpetrator of the illicit or prohibited discharge. The NOV shall contain:

1. The name and address of the owner or perpetrator;
2. The address when available or a description of the building, structure, or land upon which the violation is occurring;
3. A statement specifying the nature of the violation;
4. A description of the remedial measures necessary to bring the development activity or illicit or prohibited discharge into compliance with this ordinance and a time schedule for the completion of such remedial action;
5. A statement of the penalty or penalties that shall or may be assessed against the person to whom the Notice of Violation is directed; and
6. A statement that the determination of violation may be appealed to the City by filing a written notice of appeal within fifteen days of service of Notice of Violation.

c. Action Without Prior Notice. Any person who violates a prohibition or fails to meet a requirement of this ordinance will be subject, without prior notice, to one or more of the enforcement actions identified in 19-1005(d), when attempts to contact the person have failed and the enforcement actions are necessary to stop an actual or threatened discharge which presents or may present imminent danger to the environment, or to the health or welfare of persons, or to the storm drainage system.

d. Enforcement Actions. Any person who fails to comply with or appeal a Notice of Violation, or fails to comply with an appeal decision of the City, will be subject to one or more of the following enforcement actions:

1. Stop Work Order. The City may issue a Stop Work Order to the owner and contractors on a construction site, by posting the order at the construction site and distributing the order to all City departments whose decisions may affect any activity at the site. Unless express written exception is made, the Stop Work Order shall prohibit any further construction activity at the site and shall bar any further inspection or approval necessary to commence or continue construction or to assume occupancy at the site. A Notice of Violation shall accompany the Stop Work Order, and shall define the compliance requirements.

2. Abatement of an Illicit Connection. City representatives may terminate an illicit connection to the MS4. Any expense related to such abatement by City representatives shall be fully reimbursed by the property owner.

3. Abatement of a Violation on Private Property. When a property owner is not available, not able, or not willing to correct a violation, City representatives may enter private property to take any and all measures necessary to abate the violation. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow City representatives to enter upon the premises for these purposes. Any expense related to such abatement by City representatives shall be fully reimbursed by the property owner.

4. Recovery of Costs. Within 30 days after abatement by City representatives, the City shall notify the property owner of the costs of abatement, including administrative costs, and the deadline for payment. The property owner may protest the assessment before the City Council. The written protest must be received by the City Manager's office within 15 days of the date of the notification. A hearing on the matter will be scheduled before the City Council. The decision of the City Council shall be final. If the amount due is not paid within the protest period or within 10 days of the decision of the City Council, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. A copy of the resolution shall be turned over to the County Clerk so that the Clerk may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the Treasurer shall include the amount of the assessment on the bill for taxes levied against the parcel of land.

5. Termination of Utility Services. After lawful notice to the customer and property owner concerning the proposed disconnection, the City shall have the authority to order the disconnection of City water, sanitary sewer and/or sanitation services, upon a finding that the disconnection of utility services will

remove a violation of this Article that poses a public health hazard or environmental hazard.

6. **Criminal Penalties.** The violation of any provision of this Article shall be deemed a class C misdemeanor. Any person violating this ordinance shall, upon an adjudication of guilt or a plea of no contest, be fined a minimum of \$250 to a maximum of \$1,000. Each separate day on which a violation is committed or continues shall constitute a separate offense. The fine as assessed may not be suspended in the court proceeding.

7. **Other Legal Action.** Notwithstanding any other remedies or procedures available to the City, if any person discharges into the storm drainage system in manner that is contrary to the provision of this Article, the City Attorney may commence an action for appropriate legal and equitable relief including damages and costs in the District Court of Reno County. The City Attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.

*(Ord. 2009-03, Adop. 1/20/09)*

## **ARTICLE XI – Stormwater Discharges from Construction Activities**

### **Sec. 19-1101 General Requirements for Construction Sites**

a. **Responsibility.** The owner of a site of construction activity shall be responsible for compliance with the requirements of this Section. In the case of new subdivisions, builders on individual lots can operate under the developers NPDES permit if the developer's SWP3 deals with individual lots and the contractor's certification have been assigned.

b. **Waste Disposal.** Solid waste, industrial waste, yard waste and any other pollutants or waste on any construction site shall be controlled through the use of Best Management Practices (BMPs). Waste or recycling containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste that may blow, wash or otherwise be released from the site is prohibited.

c. **Concrete.** Ready-mix concrete, or any materials resulting from the cleaning of vehicles or equipment containing or used in transporting or applying ready-mixed concrete, shall be contained on construction sites for proper disposal. Release of these materials is prohibited.

d. **Erosion and Sediment Control.** Best Management Practices shall be implemented to prevent the release of sediment from construction sites. Disturbed areas shall be minimized, disturbed soil shall be managed and construction site entrances shall

be managed to prevent sediment tracking. Excessive sediment tracked onto public streets shall be removed.

e. **Inspection Required.** Qualified personnel (provided by the owner of the site) shall inspect disturbed areas that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of a storm that produces one-half inch or more of precipitation. Based on the results of the inspection, the BMPs in place shall be revised as necessary as soon as practicable. These inspections, along with a description of revisions, shall be documented in writing and available for inspection by the City or other enforcement authority upon request. These inspections and documentation shall be provided to the City upon NOT.

f. **Abatement Required.** Should it be found that soil or pollutants have already been or may be carried into the MS4 or waters of the United States, immediate measures will be taken by the owner to remedy the violation and/or remove the pollutant(s). If the owner fails to remove said pollutants within the time period prescribed in an issued Notice of Violation (NOV) from the City, the City may remove the pollutants and assess the cost thereof to the responsible owner. Failure by the owner to pay said costs will be grounds for the denial of further approvals or the withholding of occupancy certificates.

g. **Plan Approval Required When Determined Necessary.** When determined to be necessary for the effective implementation of this section, the City shall require any plans and specifications that are prepared for the construction of site improvement to illustrate and describe the Best Management Practices that will be implemented at the construction site per approved plans. Should the proper BMPs not be installed or if the BMPs are ineffective, upon reasonable notice to the owner, the City may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other City approval necessary to commence or continue construction, or to assume occupancy.

h. **Contractor BMPs Required.** Any contractor on a construction site will also be required to use Best Management Practices so as to minimize pollutants that enter into the MS4.

i. **Continuing Responsibility.** Upon completion of permitted construction activity on any site, the property owner and subsequent property owners will be responsible for continued compliance with the requirements of this Section in the course of maintenance, reconstruction, revegetation or any other construction activity on the site including construction BMP's.

*(Ord. 2010-26, Adop. 6/15/10; Ord. 2009-03, Adop. 1/20/09)*

**Sec. 19-1102 Construction Sites Requiring Federal and/or State NPDES Storm Water Discharge Permits**

a. All owners of and contractors on sites of construction activity that require a federal or state NPDES stormwater discharge permit, or that are part of a common plan of development or sale requiring said permit(s) shall take steps to obtain the necessary permit coverage and shall comply with the following requirements in addition to those in Section 19-1002:

1. NOI to be Submitted. Any owner who intends to obtain coverage for storm water discharges from a construction site under the Kansas General Permit for Storm Water Discharges from Construction Sites (“the construction general permit”) shall submit a signed copy of its notice of intent (NOI) to the City when a building permit application is made. If the construction activity is already underway upon the effective date of this Article, the NOI shall be submitted within thirty days. When ownership of the construction site changes, a revised NOI shall be submitted within fifteen days of the change in ownership.

2. Storm Water Pollution Prevention Plan Required. A Storm Water Pollution Prevention Plan (SWP3) shall be prepared and implemented in accordance with the requirements of the construction general permit or any individual or group NPDES permit issued for stormwater discharges from the construction site, and with any additional requirement imposed by or under this Article and any other City ordinance.

3. SWP3 Prepared by Qualified Person. The SWP3 shall be prepared by a qualified person and shall comply with State NPDES requirements. The signature of the preparer shall constitute his/her attestation that the SWP3 fully complies with the requirements of the permit issued. The SWP3 shall be prepared in accordance with the standards provided in the City of Hutchinson Construction Site Storm Water Best Management Practices.

4. When a SWP3 is required to be Completed. The SWP3 shall be completed prior to the submittal of the NOI to the City and for new construction, prior to the commencement of construction activities. The SWP3 shall be updated and modified as appropriate and as required by the NPDES permit.

5. Contractor Schedule. The Contractor shall provide a detailed schedule of work prior to beginning, which shall include information on timing, duration, and sequencing of erosion and sediment control measures and construction phasing. Once approved, such schedule shall become a part of the SWP3PP, and changes to the schedule shall require amendment to the SWP3PP.

6. Submittal of SWP3 to City. The City may require any owner who is required by subsection 19-1102(a)(2) of this Chapter to prepare a SWP3 to submit the SWP3 and any modifications thereto to the appropriate City official or representative for review at any time.

7. Denial of Permits and Approval. Upon the City's review of the SWP3 and any site inspection that may be conducted, if the SWP3 is not being fully implemented, the City and/or its representative may upon reasonable notice to the owner, deny approval of any building permit, grading permit, site development plan, final occupancy certificate, or any other City approval necessary to commence or continue construction. A stop work order may also be issued.

8. Contractors Responsibilities. Any and all contractors working on a site subject to an NPDES permit shall be responsible for their own activities to ensure that they comply with the owner's SWP3. Failure to comply with the SWP3 or malicious destruction of BMP devices is hereby deemed to be a violation of this Article.

9. SWP3 to be Retained on Site. The SWP3 and any modifications attached shall be retained at the construction site from the date of construction commencement through the date of final stabilization, and shall be made available to City, State, or Federal entities upon request.

10. Notification of SWP3 Insufficiency. The City may notify the owner at any time that the SWP3 does not meet the requirements of the NPDES permit issued or any additional requirements imposed by or under this Article. Such notification shall identify those provisions of the permit or this Article which are not being met by the SWP3, and identify which provisions of the SWP3 require modification in order to meet such requirements. Within ten (10) days of such notification from the City, the owner shall make the required changes to the SWP3 and shall submit to the City a written certification from the owner that the requested changes have been made.

11. SWP3 Amendments. The owner shall amend the SWP3 whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, and which has not otherwise been addressed in the SWP3, or if the SWP3 proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges.

12. Inspection by Owner Required. Qualified personnel shall inspect disturbed areas that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of the storm that produces one-half inch or greater of precipitation. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWP3 shall be observed to ensure that they are operating correctly. Where discharge locations or points are

accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

13. SWP3 to be Revised as Appropriate. Based on the results of the inspections required by the above subsection, the pollution prevention measures identified in the SWP3 shall be revised as appropriate. Such modifications shall provide for timely implementation of any changes to the SWP3 within ten calendar days following the inspection.

14. Documentation of Required Inspections. Any and all inspections made pursuant to subsection 19-1102(a)(11) of this section, shall be documented. Documentation shall include the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, effectiveness and, major observations relating to the implementation of the SWP3, and any actions taken as a result of the inspection to correct deficiencies, and listing of areas where construction operations have permanently or temporarily stopped. Any instance(s) of non-compliance identified during the inspection shall be included in the documentation. The inspection report shall be signed by the Inspector. Where an inspection does not identify any non-compliance, the person responsible for making the inspection shall certify by signature that the facility is in compliance with the SWP3, the NPDES permit, and this Article.

15. Documents to be Retained. The owner shall retain copies of any SWP3 and all inspection reports required by this chapter or by the NPDES permit for the site, and records of all data used to complete the NOI for a period of at least three years from the date that the site is finally stabilized and provide all documentation to the City at the conclusion of the project construction.

16. Maximum Areas of Disturbance at One Time. The surface area of erodible earth exposed shall be limited to the Contractor's capability and progress in keeping with the approved schedule. Existing vegetation will be preserved or retained as long as practical and the time period for soil areas to be without permanent surface or vegetative cover shall be maximized. The maximum surface area of erodible earth exposed at one time will not exceed ten (10) acres unless approved in writing by the Engineer or otherwise provided for in the plans. The contractor shall pay close attention to the grading and disturbance limits indicated on the plan or authorized by the Engineer.

17. Duration of Owner/Contractor's Responsibility. The Owner/Contractor is responsible for water pollution control and permit compliance from the issuance of Notice to Proceed until final completion of the work and during any subsequent maintenance bond period. The Contractor will be released from responsibility for erosion and sediment control for any portion of the job for which a Notice of Termination has been submitted and accepted by the local permit

authority, provided that the Contractor does not subsequently do work in such areas that create new disturbances. The notice of termination will not be submitted by the Owner until all permit requirements are met, which includes the requirement that final stabilization be achieved. Vegetation must have a density of at least 75% of the density of the undisturbed areas of the site.

18. Removal. Control measures shall be completely removed by the Owner/Contractor from the site when they are no longer needed, unless they are approved by the Engineer to remain in place for permanent stabilization or biodegradation (i.e. erosion control blankets).

19. Certification of Final Stabilization. Upon final stabilization of the construction site, the owner shall submit written certification of such to the City. The City may withhold the final occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the City has determined, following any appropriate inspection, that final stabilization has occurred and that any required permanent structural controls have been completed.

*(Ord. 2010-26, Adop. 6/15/10; Ord. 2009-03, Adop. 1/20/09)*

**Sec. 19-1103 Storm Water Discharges Associated with Industrial Activity.** All operators of industrial facilities that are required to obtain NPDES stormwater discharge permits due to their Standard Industrial Classification or narrative description shall submit a signed copy of their Notice of Intent (NOI) to obtain coverage under the Kansas General Permit for Storm Water Discharges Associated with Industrial Activity (the "industrial general permit") to the City and shall comply with all requirements and limits imposed by the industrial general permit including preparation of a properly signed SWP3. *(Ord. 2009-03, Adop. 1/20/09)*

## **Sec. 19-1104 Subdivision Development.**

1. The developer of any subdivision requiring a federal or state NPDES storm water discharge permit will be responsible for obtaining the required permit and developing and implementing an overall SWP3 for the subdivision. Said SWP3 shall include BMPs to be used on individual lot building sites.

2. City contractors installing public streets, water, sanitary sewer, storm sewer lines, and/or sidewalks will be required to comply with the developers or the municipality's SWP3s and sign the appropriate contractor certification statement. For work in the public right-of-way or easements requiring a federal or state NPDES storm water discharge permit, the City or its representative shall be responsible for obtaining the required permit and preparing and implementing the required SWP3s.

3. Any utility company installing utilities within a new subdivision shall also be required to comply with the developers SWP3 and sign the appropriate contractor certification statement. For work in public right-of-way or easements requiring a federal or state NPDES storm water discharge permit, the utility company shall be responsible for obtaining the required permit and preparing and implementing the required SWP3s.

4. The purchasers of individual lots within the subdivision for construction purposes shall comply with the developer's SWP3 and shall sign a certification statement agreeing to do so. The purchaser shall retain a copy of the signed certification on the construction site (lot).

*(Ord. 2009-03, Adop. 1/20/09)*

## **Sec. 19-1105 Enforcement and Penalties for Construction Site Stormwater Violations**

In General. The City shall conduct enforcement of violations through a tiered or level system that is based upon the severity of violation identified during City inspections. This system shall be the standard policy of the City and shall be developed and adopted by the Engineering Department. The policy can incorporate any or all of the following enforcement measures.

a. **Violations.** Any activity that is commenced or is conducted contrary to this Article will be considered a violation of this Article and may be restrained by injunction or otherwise abated in a manner provided by law.

b. **Action Without Prior Notice.** Any person who violates a prohibition or fails to meet a requirement of this ordinance will be subject, without prior notice, to one or more of the enforcement actions identified in 19-1105(c), when attempts to contact the person have failed and the enforcement actions are necessary to stop an actual or threatened discharge which presents or may present imminent

danger to the environment, or to the health or welfare of persons, or to the storm drainage system.

c. Enforcement Actions. Any person who fails to comply with or appeal a Notice of Violation, or fails to comply with an appeal decision of the City, will be subject to one or more of the following enforcement actions:

1. Stop Work Order. The City may issue a Stop Work Order to the owner and contractors on a construction site, by posting the order at the construction site and distributing the order to all City departments whose decisions may affect any activity at the site. Unless express written exception is made, the Stop Work Order shall prohibit any further construction activity at the site and shall bar any further inspection or approval necessary to commence or continue construction or to assume occupancy at the site. A Notice of Violation shall accompany the Stop Work Order, and shall define the compliance requirements.

2. Abatement of Violation. City representatives may abate a violation. Any expense related to such abatement by City representatives shall be fully reimbursed by the property owner.

3. Abatement of a Violation on Private Property. When a property owner is not available, not able, or not willing to correct a violation, City representatives may enter private property to take any and all measures necessary to abate the violation. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow City representatives to enter upon the premises for these purposes. Any expense related to such abatement by City representatives shall be fully reimbursed by the property owner.

4. Recovery of Costs. Within 30 days after abatement by City representatives, the City shall notify the property owner of the costs of abatement, including administrative costs, and the deadline for payment. The property owner may protest the assessment before the City Council. The written protest must be received by the City Manager's office within 15 days of the date of the notification. A hearing on the matter will be scheduled before the City Council. The decision of the City Council shall be final. If the amount due is not paid within the protest period or within 10 days of the decision of the City Council, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. A copy of the resolution shall be turned over to the County Clerk so that the Clerk may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the Treasurer shall include the amount of the assessment on the bill for taxes levied against the parcel of land.

5. Termination of Utility Services. After lawful notice to the customer and property owner concerning the proposed disconnection, the City shall have the authority to order the disconnection of City water, sanitary sewer and/or sanitation services, upon a finding that the disconnection of utility services will remove a violation of this Article that poses a public health hazard or environmental hazard.

6. Performance Bonds. Where necessary for the reasonable implementation of this Article, the City may, by written notice, order any owner of a construction site or subdivision development to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the City to be necessary to achieve consistent compliance with this Article. The City may deny approval of any building permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or to assume occupancy, until such a performance bond has been filed. The owner may protest the amount of the performance bond before the City Council. The written protest must be received by the City Manager's office within 15 days of the date of the notification. A hearing on the matter will be scheduled before the City Council. The decision of the City Council shall be final.

7. Criminal Penalties. The violation of any provision of this Article shall be deemed a class C misdemeanor. Any person violating this ordinance shall, upon an adjudication of guilt or a plea of no contest, be fined a minimum of \$250 to a maximum of \$1,000. Each separate day on which a violation is committed or continues shall constitute a separate offense. The fine as assessed may not be suspended in the court proceeding.

8. Other Legal Action. Notwithstanding any other remedies or procedures available to the City, if any person discharges into the storm drainage system in manner that is contrary to the provision of this Article, the City Attorney may commence an action for appropriate legal and equitable relief including damages and costs in the District Court of Reno County. The City Attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.

*(Ord. 2010-26, Adop. 6/15/10; Ord. 2009-03, Adop. 1/20/09)*

## **Article XII – Stormwater Management**

### **Sec. 19-1201 General provisions.**

- a. Purposes. The purpose and objective of this Article are as follows:

1. To maintain and improve the quality of surface water and groundwater within the city;

2. To enable the city to comply with all federal and state laws and regulations applicable to its NPDES permit for stormwater discharges.

3. To regulate the management of stormwater for purposes of public safety, welfare and quality of life;

b. Administration. The City of Hutchinson (authorized enforcement agency) shall administer, implement and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated to persons or entities acting in the beneficial interest of or in the employ of the City.

### **Sec. 19 – 1202 Stormwater Quality Management Standards.**

a. Applicability.

1. Water quality treatment shall be required of owners of new developments and redevelopments that cause a land disturbance greater than or equal to one (1) acre, including projects that cause a land disturbance less than one (1) acre that are part of a larger common plan of development or sale.

2. The requirements of 19-1202 shall not apply, unless superseded by state or federal regulation, to:

a. Properties on which a preliminary plat has been approved by the Planning Commission prior to February 3, 2011 and a final plat approved by the City Council and recorded at the Reno County Register of Deeds prior to February 7, 2012. If all phases of the subdivision are not under construction by May 1, 2015, all requirements of this Article shall apply and Plats and Plans shall be revised accordingly.

b. Site plans for which a building permit has been obtained prior to February 3, 2011.

c. Redevelopment projects that consist solely of ordinary maintenance activities, remodeling of buildings on the existing foundation, resurfacing (milling and overlay) of existing paved areas, and exterior changes or improvements.

b. Water Quality Treatment Standard for New Developments. Stormwater runoff from applicable new developments must be treated for water quality prior to discharge from the development site in accordance with the stormwater treatment standards and criteria provided in the Post Construction Stormwater Best Management Practices Manual.

c. Water Quality Treatment Standard for Redevelopments. Owners of applicable redevelopments must adhere to one of the following requirements.

1. The total impervious cover of the property after redevelopment shall be reduced by at least twenty-percent (20%) from the total impervious cover of the property prior to the proposed redevelopment.

2. Stormwater runoff from at least thirty percent (30%) of the site's existing impervious cover and for one-hundred percent (100%) of any new land disturbance that will result from the proposed redevelopment shall be treated for water quality prior to discharge from the redevelopment site in accordance with the stormwater treatment standards and criteria provided in the Post Construction Stormwater Best Management Practices Manual.

#### **Sec. 19 – 1203 Stormwater Quantity Management Standards.**

a. Applicability. Stormwater runoff peak discharge analysis and control shall be required for new developments and redevelopments that cause a land disturbance greater than or equal to one (1) acre, including projects that cause less than one (1) acre of land disturbance that are part of a larger common plan of development or sale that will result in one (1) acre or greater of land disturbance.

b. Water Quantity Management Standard. Stormwater runoff peak discharge analysis and control shall be required for applicable new developments or redevelopments in accordance with the Preliminary and/or Final Stormwater Management Study requirements.

c. A plan showing proposed site drainage shall be submitted for review and approval for sites between 0.5 acre and one (1) acre.

#### **Sec. 19 – 1204. Other Stormwater Management Requirements.**

a. Applicability. Section 19 - 1204 is applicable to new developments and redevelopments that are required to comply with section Section 19 - 1202 and/or Section 19 - 1203.

b. Any discharge of stormwater runoff to groundwater must meet all applicable local, State and Federal requirements, permits, plans and programs. The owner is responsible for complying with all local State and Federal permits that are applicable to the site.

c. Requirement to Stabilize Banks. Banks of all streams, channels, ditches and other earthen stormwater conveyances shall be left in a stabilized condition upon completion of the new development or redevelopment. No actively eroding, bare or unstable vertical banks shall remain after completion of construction.

d. Stormwater Facilities on Public Property. Stormwater management facilities shall not be installed within public rights-of-way or on public property unless a license agreement has been signed by the property owner and the City.

**Sec. 19 – 1205      Waivers and Exemptions from Stormwater Management Standards for New Developments**

a. Exemptions. Owners of properties where the following activities are undertaken are exempt from the requirements of sections 19 - 1202, 19 - 1203, and 19 - 1204 of this article.

1. Farming activities;

2. Unplanned emergency work and emergency repairs necessary to protect life or property.

b. Waivers. All or some of the stormwater management standards required in section 19 - 1202 and/or 19 - 1203 of this article may be waived by the City under the following circumstances.

1. Existing Downstream Facilities. A waiver may be provided for one or more stormwater management standards if the waived standard(s) are met by discharging the stormwater runoff to an existing stormwater management facility, whether public or private, that is:

a. already in existence, or will be in existence at the time of construction of the new development or redevelopment; and,

b. designed, constructed and maintained to provide a level of stormwater control that is equal or greater than that which would be afforded by on-site stormwater management facilities.

2. Adverse Impact. A waiver may be provided if engineering studies determine that installing a stormwater management facility in order to meet the stormwater management standard being considered for waiver will cause adverse impact to water quality, or cause increased channel erosion, or downstream flooding.

c. Engineering Study Required. In the event that a waiver from stormwater management control requirements is requested, the adequacy of downstream or shared off-site stormwater management facilities to control stormwater runoff shall be determined, reviewed and approved by an engineering study. The engineering studies shall be performed at the expense of the owner(s) of the proposed new development or redevelopment, unless a study has already been or is being performed by the city as part of a watershed plan or other land use plan.

## **Sec. 19-1206 General Requirements for Stormwater Design Plans**

a. Stormwater design information shall be submitted as part of the preliminary plat, final plat and construction plans, in accordance with the policy and requirements established by the City Engineering Department pertaining to Preliminary and/or Final Stormwater Management Studies.

b. a building permit shall not be issued for the land development activity until the required stormwater design information and corresponding plans are approved by the city.

c. Stormwater design information shall be prepared under the supervision of and stamped by a professional engineer licensed to practice in the State of Kansas.

d. The portions of the new development or redevelopment on which stormwater management facilities and systems are located shall be shown on the preliminary and final plats for all subdivisions and recorded with the plat as permanent reserves or easements.

e. Conformity to the Approved Plans.

1. Grading designs shown on approved master grading plans and the design of stormwater facilities and controls shown on approved design plans shall be adhered to during grading and construction activities. Under no circumstance is the owner or operator of land development activities allowed to deviate from the approved plans without prior approval by the city.

2. Grading and stormwater design plans shall be amended to meet all local ordinances and standards if the proposed site conditions change after plan approval is obtained, or if it is determined by the city during the course of grading or construction that the approved plan is inadequate.

f. Duty to Provide an Operations and Maintenance Plan

1. An Operations and Maintenance Plan shall be included with the stormwater design information submitted with the construction plan. The Operations and Maintenance Plan shall include the required operation and maintenance provisions, maintenance and inspection checklist for each stormwater management facility and water quality volume treatment area that is serving, or will serve, the development or redevelopment.

2. A statement shall be included on the final plat that indicates the owners responsibility for operation, maintenance, and inspection of stormwater management facilities.

g. Duty to Provide Stormwater Construction Information on As-Built Drawings.

1. Prior to the release of the performance bond or issuing an occupancy permit, complete As-Built Drawings shall be provided to the Engineering Department, and shall include sufficient design information to show that the stormwater facilities will operate as designed under the approved drainage plan.

2. The As-Built Drawings shall be prepared and stamped by a professional engineer licensed to practice in the State of Kansas.

**Sec. 19-1207 Maintenance and Inspection of Stormwater Drainage Paths and Controls.**

a. Duty to Inspect and Maintain Stormwater Systems and Controls. Property owners shall at all times properly maintain and shall at intervals in accordance with the Operations and Maintenance Plan inspect all stormwater facilities, systems, conveyances, pipes, channels, ditches, swales, inlets, catchbasins, and other facilities and systems of stormwater treatment and control (and related appurtenances) so that they operate at their full function. Maintenance and inspection of privately-owned stormwater management facilities, systems, conveyances, pipes, channels, ditches, swales, inlets, catchbasins, and other facilities and systems of stormwater treatment and control (and related appurtenances) shall be performed at the expense of the owner(s) of such facilities.

b. Duty to provide inspection reports. After construction on the property is complete, property owners shall provide to the City on a biennial basis a completed and signed copy of the inspection report for each stormwater management facility that is included with the Operations and Maintenance Plan for the property. The inspection report is due every two years after the date (month and day) of approval of the as-built plan for the property.

c. Duty to Preserve Approved Grading Designs. Re-grading an individual lot or lots, or portions of a lot or lots, in a manner that is not in accordance with the approved master grading plan, such that the direction(s) of stormwater runoff is altered from the direction that would occur under the approved master grading plan, shall be considered a violation of this article.

d. Duty to Preserve Existing Drainage Paths. Blockage of a channel, ditch, stream or any other drainage path or stormwater system appurtenance that is located in a stormwater easement or drainage easement shall be considered a violation of this article.

e. Pollutant Removal for Maintenance. The removal of pollutants, sediment and/or other debris for the purpose of maintenance of stormwater management facilities shall be performed in accordance with all city, State, and Federal laws.

f. Inspection After Construction. Once the site has been stabilized and construction has ceased, the property owner or his/her appointed designee shall conduct routine inspections for the stormwater management facilities and water quality reduction areas, based on the guidance provided in the Operations and Maintenance Plan.

g. Inspection Records. Property owners shall make available upon request any self-inspection reports, monitoring/maintenance records, compliance evaluations, notices of intent, and any other records, reports, receipts, and other documents related to compliance with this article and with any related local, State or Federal permit.

h. Right-of-Entry. The Director of Engineering, Building Official and any other authorized employees shall have the right to enter the premises of any person discharging stormwater to the MS4 or to waters of the United States at any reasonable time to determine if the discharger is complying with all requirements of this article, and with any State or Federal discharge permit, limitation, or requirement. Dischargers shall allow ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties.

i. Inspection and Notice by City. The city may periodically inspect these privately owned stormwater controls. If the facility is not operating as shown in the approved As-Built Drawing, or should conditions be found that cause or may cause the pollution of downstream receiving waters or the flooding of adjacent or downstream properties, the City may issue a notice of violation in accordance with the enforcement provisions stated in this article and shall notify the property owner(s) of the potential violation(s). The City may order the property owner(s) to perform corrective actions as are necessary to facilitate the proper operation of these facilities for the purposes of flood prevention, water quality treatment and/or public safety, and/or to ensure compliance with jurisdictional regulatory conditions.

j. Failure to Perform Corrective Actions. If property owner(s) fail to make the necessary corrective actions in the timeframe specified in the enforcement provisions of this article, the city is authorized to perform the corrective actions at the expense of the owner(s). If the owner(s) fail to reimburse the city for the corrective actions upon demand, the city may assess the cost of the corrective actions to the owner and initiate any collection proceedings authorized by law.

k. Access to Adjacent Properties. This ordinance does not authorize access by a property owner or site operator to private property adjacent to or downstream of the owner's property. Arrangements concerning removal of sediment or pollutants on adjoining property must be settled by the owner or operator with the adjoining landowner.

l. Access Easement Required. All City maintained open channels must have a minimum ten (10) foot wide maintenance access on each side of the stream as measured from the top-of-bank on each side of the stream.

**Sec. 19-1208. Enforcement actions.**

a. The discharge of, or potential discharge of, any pollutant to the MS4 or waters of the United States and/or the failure to comply with the provisions of this article and/or the failure to comply with any directive issued under this article; are violations of this article for which enforcement action may be taken.

b. Prior to taking any enforcement action as specified in this section, a violator will be issued a notice of violation except when, in the opinion of the City, an owner or contractor has repeatedly ignored the requirements of this article and has not made any reasonable intent to comply with these provisions. When issued, the notice of violation will detail the nature of the violation, actions to be taken to remedy the violation, and any specific time periods within which to accomplish said actions. Failure to successfully comply with the notice of violation may result in enforcement action.

c. Enforcement actions. Any person who fails to comply with or appeal a Notice of Violation, or fails to comply with an appeal decision of the City, will be subject to one or more of the following enforcement actions:

1. Abatement of Violation. City representatives may abate a violation. Any expense related to such abatement by City representatives shall be fully reimbursed by the property owner.

2. Abatement of Violation on Private Property. When a property owner is not available, not able, or not willing to correct a violation, City representatives may enter private property to take any and all measures necessary to abate the violation. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow City representatives to enter upon the premises for these purposes. Any expense related to such abatement by City representatives shall be fully reimbursed by the property owner.

3. Recovery of Costs. Within 30 days after abatement by City representatives, the City shall notify the property owner of the costs of abatement, including administrative costs, and the deadline for payment. The property owner may protest the assessment before the City Council. The written protest must be received by the City manager's office within 15 days of the date of the notification. A hearing on the matter will be scheduled before the City Council. The decision of the City Council shall be final. If the amount due is not paid within the protest period or within 10 days of the decision of the City Council, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. A copy of the resolution shall be turned over to the County Clerk so that the Clerk may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the treasurer shall include the amount of the assessment on the bill for taxes levied against the parcel of land.

4. Criminal Penalty. Any person violating any provision of this Article is guilty of a class C misdemeanor and upon conviction thereof shall be punished by a fine between a minimum of two-hundred and fifty dollars and not more than five hundred dollars. Each and every day during which any violation of any provision of this article is committed, continued, or permitted is a separate violation. The fine may not be suspended or remitted in the court proceeding.

5. Other Legal Action. Notwithstanding any other remedies or procedures available to the city, if any person who is found to have violated any provision of this article, the City Attorney may commence an action for appropriate legal and equitable relief including damages and costs in the District Court of Reno County, Kansas. The City Attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the person in violation of this article.

*(Ord. 2010-36, Adop. 12/21/2010)*

### **ARTICLE XIII. Storm Water Utility**

#### **Sec. 19-1301. Creation of Storm Water Utility.**

Pursuant to the provisions of Charter Ordinance No. 48, the City of Hutchinson does hereby establish a Storm Water Utility, the purpose of which is to assist the City of Hutchinson in its responsibility for the operation, construction, maintenance and repair of storm water drainage system facilities to provide adequate systems of collection, conveyance, detention, treatment and release of storm water and the reduction of potential hazards to property and life resulting from storm water runoff, improvement in general health and welfare through reduction of undesirable storm water conditions and improvements to the water quality in the storm and surface water system and its receiving waters.

#### **Sec. 19-1302. Program Responsibility.**

The City of Hutchinson shall be empowered to administer the Storm Water Utility and may delegate such duty and responsibility as is necessary to carry out the provisions of this Ordinance within the limits of the budget, directives and storm drainage regulations adopted by the Governing Body of the City of Hutchinson for this utility.

#### **Sec. 19-1303. Operating Budget**

The City of Hutchinson shall adopt an operating budget for each fiscal year. The operating budget shall set forth, for each fiscal year, the estimated revenues and the estimated costs for the storm water utility. The initial operating budget shall be for the fiscal year commencing January 1, 2013.

#### **Sec. 19-1304. Fee Schedule Established.**

A. There is hereby assessed against all property within the City that is connected to either water or sanitary sewer systems, or both, of the City, a monthly storm water utility fee. Such fee is based upon a determination of a comparable amount of impervious area for uses within each rate category, as set forth hereinafter. The owner, occupant and any person who is responsible for the payment of water and/or sewer service to the property, shall all be jointly and severally responsible for the payment of said fee. Persons responsible for the payment of water and/or sewer service to the property shall include the person responsible for payment for water provided to a master meter that is then distributed to multiple users, whether or not said users are located on the same property as the master meter. The fee shall be calculated as follows:

1. All property devoted to a residential use shall be assessed the sum of Two Dollars (\$2.00) per month per living unit. The term "residential" shall include single-family homes, mobile homes and mobile home parks, duplexes and apartment units. The term "residential" shall not include rooming or boarding houses, dormitories and similar facilities. The term "living unit" shall mean one or more rooms in a residential building which are arranged, designed, used or intended for use by one (1) family, and which includes cooking space and lawful sanitary facilities reserved for the occupants thereof.
2. Property devoted to any use other than residential, as set forth above, and further described as non-residential, shall be assessed a monthly fee based upon the number of square feet developed for that particular use and the associated charge as follows:

Less than or equal to 20,000 square feet	\$4.00
20,001 to 40,000 square feet	\$8.00
40,001 to 80,000 square feet	\$16.00
80,001 to 120,000 square feet	\$24.00
120,001 to 160,000 square feet	\$32.00
160,001 to 200,000 square feet	\$40.00
200,001 to 240,000 square feet	\$48.00
240,001 to 280,000 square feet	\$56.00
280,001 to 320,000 square feet	\$64.00
320,001 to 360,000 square feet	\$72.00
360,001 to 400,000 square feet	\$80.00
400,001 to 440,000 square feet	\$88.00
440,001 to 480,000 square feet	\$96.00
480,001 to 520,000 square feet	\$104.00
520,001 to 560,000 square feet	\$112.00
560,001 to 600,000 square feet	\$120.00
Over 600,000 square feet	\$128.00

3. In determining the area of property developed for a particular use, the area measured shall include all property contiguous to the particular use, and under the same ownership, except that portion of said property that is both

unimproved and legally subject to being subdivided from that portion actually devoted to the primary use. Most non-residential customers shall be placed in the proper fee category from reviewing billing records, aerial photos and/or tax assessor records. In situations involving extremely large, unusual or questionable properties, and properties with multiple building and multiple utility connections, actual measurements, including impervious areas, may be required and specially determined charges may be assessed for the total monthly fee.

4. For non-residential properties an impervious area amount of 60% has been used. For non-residential properties with 160,001 square feet or greater, with an impervious area of less than 40% of the total property size, the Director of Engineering or his/her designee may adjust the assessment to more accurately reflect the proportionate property size monthly fee assessment.

B. The monthly storm water utility fees set forth above shall be included as part of the monthly bill for water and or other utility services of the City, but shall be identified separately on said billing. Said fees shall be due at the same time as water and or other utility services of the City charges are due and the failure to pay said fees shall be considered a failure to pay utility services of the City charges and enforceable pursuant to Sections 10-209, 19-806 and 20-304 of the Code of the City of Hutchinson, Kansas. In addition, any time utility services of the City are established, or re-established to a property, all fees hereunder shall be paid current, as of the date such service is established or re-established.

1. Any person who disagrees with the calculation of their storm drainage fee or who believes that a reduction is justified may appeal the determination of their fee to the Director of Engineering or his/her designee. The appeal shall be in writing. The Director of Engineering or his/her designee shall thereafter hold an informal hearing. The Director of Engineering or his/her designee, prior to such hearing, may request that the appealing party provide information concerning the basis of the appeal, including a land survey showing the dwelling units, total property area and impervious area, as appropriate, if such information is deemed to be material by the Director of Engineering or his/her designee. Based upon information provided, the Director of Engineering or his/her designee shall make a determination of the storm drainage fee for such property. The Director of Engineering or his/her designee shall notify parties in writing of his/her decision.
2. A person shall have the right to appeal the decision of the Director of Engineering or his/her designee to a board comprised of the City Manager, or his/her designee, the Director of Public Works and the Planning and Community Development Director. Such appeal shall be made within fifteen (15) days of the date of the written decision of the Director of Engineering or his/her designee. Such appeal shall be in writing and filed with the Director of Engineering or his/her designee. A hearing on such

appeal shall be held within thirty (30) days from the date of filing and the applicant shall be given seven (7) days advance notice of the time and date of such hearing. Within seven (7) days after the conclusion of such hearing, said board shall render a decision in writing that sets forth findings that support its decision. The decision of said board shall be final and any further appeal of such decision shall be to the District Court pursuant to K.S.A. 60-2101(d).

C. Changes in the storm water utility fees from those set forth in this Charter Ordinance, may be established from time to time by resolution of the Governing Body.

#### **Sec. 19-1305. Storm Water Utility Fund**

The revenue generated by this storm water utility fee shall be set-aside in a special fund, which is hereby created to be known as the Storm Water Utility Fund. Such funds shall be used only for the construction, reconstruction, maintenance, operation and repair of storm water system facilities, including the acquisition, and related costs thereof, of real estate for such use. In addition, said fund may be used to pay fees to study and prepare documents related to such facilities, pay costs associated with compliance with stormwater regulations and to make payments of principal and interest on bonds issued for such improvements. Nothing in this Article shall be deemed to limit or restrict the City's ability to use and obtain other sources of funds for the same or similar purposes.  
*(Charter Ord. 49, 10/16/2012)*