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May 9, 2022

Dr. Vijay Kubsad, PhD
Department of Ecology
Eastern Regional Office
N. 4601 Monroe Street, Suite 100
Spokane, Washington 99205

**RE: City of Spokane Industrial Pretreatment Program
and Ordinance – Amended Legal Authority
NPDES No. WA 002447-3**

Dr. Kubsad:

I am an Assistant City Attorney representing the City of Spokane, Public Works Division. The City operates a municipal wastewater treatment system under its NPDES permit issued by Washington Department of Ecology (NPDES No. WA 002447-3). This system is a Publicly Owned Treatment Works (POTW) as that term is used and defined in 40 CFR §403.

The City's most recent letter of legal authority was submitted to your office on January 27, 2012. This amended statement is provided pursuant to the requirements contained in 40 CFR §403.9(b)(1) regarding the legal authority for the City of Spokane to implement the City of Spokane Industrial Pretreatment Program (IPP). It is my opinion that the City of Spokane Public Works Division has legal authority to carry out the program elements described in the federal pretreatment regulations contained 40 CFR §403.8 and Washington state pretreatment program requirements in Washington Administrative Code Chapter 173-216, based upon the following constitutional provisions, statutes, and ordinances:

FEDERAL POTW PRETREATMENT REQUIREMENTS

The following sections of the Pretreatment Ordinance contained in Chapter 13.03A of the Spokane Municipal Code are correlated with the respective sections of 40 CFR § 403.8(f)(1) and (2), which are shown in bold:

403.8(f)(1)(i) provides that POTWs must have legal authority to “deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit”.

SMC 13.03A.0306 and 13.03A.0312 provides the Plant Manager or designee, authority to deny authorization for an industrial user to discharge industrial wastewater or other waste into the POTW. These sections also authorize the Plant Manager to require additional conditions and safeguards in wastewater discharge permits and other control documents.

403.8(f)(1)(ii) provides that POTWs must have the legal authority to “require compliance with applicable Pretreatment Standards and Requirements by Industrial Users”.

SMC 13.03A.0201 requires compliance with the general and specific discharge prohibitions of 40 CFR § 403.5(a) and (b). SMC 13.03A.0202 requires compliance with the Federal Categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, § 405-471.

SMC 13.03A.0204 requires compliance with local discharge limitations technically developed by the City.

In addition to federal requirements, SMC 13.03A.0203 requires industrial users discharging wastewater to comply with all State pretreatment standards and limitations located at Chapter 173-216 WAC.

403.8(f)(1)(iii)(A) provides that POTWs must have legal authority to “[c]ontrol through Permit, order or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under §403.3(v), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such User except as provided in §403.8(f)(1)(iii)(A).”

SMC 13.03A.0300 requires any SIU (Significant Industrial User) to obtain a wastewater discharge permit prior to the discharge of wastewater into the POTW. This section as well as sections .0301 and .0302 also authorizes the City to require other users to obtain a wastewater discharge permit or other control document.

SMC 13.03A.0313 requires any existing SIU to re-apply for a wastewater discharge permit at least 180 days prior to the expiration date of its permit.

SMC 13.03A.0204(E) gives the Plant Manager authority to develop best management practices (BMPs) for general application, in individual discharge permits or general discharge permits, to implement local limits and the requirements of article II of this chapter and require documentation of compliance.

SMC 13.03A.0206 provides for the City to enter into special agreements with customers or users setting out specific terms for discharge into the POTW.

403.8(f)(1)(iii)(B) provides that POTWs must have the authority to order “[b]oth individual and general control mechanisms that must be enforceable and contain, at a minimum, the following conditions:

- (1) Statement of duration (in no case more than five years);
- (2) Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
- (3) Effluent limits, including Best Management Practices, based on applicable general pretreatment Standards in §403 of this Chapter [Chapter I – *Environmental Protection Agency* of Title 40 Code of Federal Regulations], categorical Pretreatment Standards, local limits, and State and local law;
- (4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge in accordance with Sec. 403.12(e)(2), or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general Pretreatment Standards in §403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;
- (5) Statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines;
- (6) Requirements to control Slug Discharges, if determined by the POTW to be necessary.”

SMC 13.03A.0307 establishes the minimum conditions required for wastewater discharge permits (including without limitation, statement of duration; annual inspection; statement of non-transferability; self-monitoring, sampling, reporting, notification and recordkeeping requirements; statement of applicable civil and criminal penalties; requirement to control slug discharges, etc.).

403.8(f)(1)(iv) provides that the POTW shall have the authority to “[r]equire (A) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (B) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in §403.12.

Requirement **403.8(f)(1)(iv)(A)** is found in SMC 13.03A.0304(G), SMC 13.03A.0401, and SMC 13.03.0404 authorizes the City to require existing and new users to submit compliance schedules for steps necessary to meet Pretreatment Standards and Requirements.

Requirement **403.8(f)(1)(iv)(B)** is found in SMC 13.03A.0401 through 13.03A.0411 requiring submission of notices and self-monitoring and compliance reports by users.

403.8(f)(1)(v) provides that the POTW shall have authority to “[c]arry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act”.

SMC 13.03A.0601 provides authority for persons designated by the Plant Manager to access any facility for inspection and sampling to determine compliance with Pretreatment Standards and Requirements.

SMC 13.03A.0603 provides that if the Plant Manager has been refused access, the Plant Manager may seek issuance of a search and/or seizure warrant from any court of competent jurisdiction.

403.8(f)(1)(vi)(A) provides that the POTW shall have authority to “[o]btain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW’s shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000.00 a day for each violation by Industrial Users of Pretreatment Standards and Requirements”.

SMC 13.03A.1001 through SMC 13.03A.1005 and SMC 10.08.065 establish enforcement remedies and penalties for violation of the Pretreatment Standards and Requirements. These penalties include fines up to ten thousand dollars, but not less than one thousand dollars per violation, per day, and the ability of the City to seek injunctive relief against violations, as well as criminal penalties for gross negligence and nuisance.

403.8(f)(1)(vi)(B) provides that the POTW shall have the authority to implement “[P]retreatment requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vi)(A) of this section, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by POTW; any requirements set forth in control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or these regulations in this part. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the

health or welfare of persons. The POTW shall also have the authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment, or which threatens to interfere with the operation of the POTW. The Approval Authority shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the Approval Authority believes to be insufficient”.

SMC 13.03A.0901 through 13.03A.0904, and SMC 10.08.065 provide for administrative enforcement remedies, emergency actions, monetary penalties and administrative fines, criminal penalties and/or injunctions for any violation of the Pretreatment Standards and Requirements including failure to allow entry for purposes of sampling and inspections, failure to comply with permit conditions or orders, and failure to meet reporting requirements. SMC 13.03A.0901 establishes the City’s authority to enforce the pretreatment standards through its administrative enforcement process. The City has authority under SMC 13.03A.0903 to immediately halt any discharge threatening human health or the environment or endangering the operation of the POTW.

403.8(f)(1)(vii) requires a POTW to “comply with the confidentiality requirements set forth in §403.14”.

SMC 13.03A.0701 provides that users may request specific information be maintained confidential under 40 CFR §403.14. Wastewater discharge characteristics shall not be considered confidential information.

403.8(f)(2) requires a POTW to develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. The Pretreatment Program Elements submission contains procedures implemented to ensure compliance with the requirements of the program.

403.8(f)(2)(i) requires a POTW to identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program.

The Pretreatment Program Elements, Volume 2, Tab # 06 contains the Industrial User Survey Procedures for identifying and locating all possible Industrial Users which might be subject to the POTW Pretreatment Program.

403.8(f)(2)(ii) requires a POTW to identify the character and volume of pollutants contributed to the POTW by the identified Industrial Users.

The Pretreatment Program Elements, Volume 2, Tab # 06 contains the Industrial User Survey Procedures for identifying the character and volume of pollutants contributed to the POTW by identified Industrial Users.

403.8(f)(2)(iii) requires a POTW to notify identified Industrial Users of applicable Pretreatment Standards and applicable requirements.

The Inspection Guidance Manual, Volume 2, Tab # 07 provides the procedures by which the POTW notifies identified Industrial Users of applicable Pretreatment Standards and applicable requirements, as well as the step by step procedures to conduct an inspection of Industrial Users in the POTW service area.

403.8(f)(2)(iv) requires a POTW to receive and analyze self-monitoring reports in accordance with § 403.12.

SMC 13.03A.0403 provides that any user required to have a discharge permit and perform self-monitoring must comply with 40 CFR § 403.12 and submit at least two reports per year, at least five months apart, to the Plant Manager.

403.8(f)(2)(v) requires a POTW to randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in order to identify, independent of information supplied by Industrial Users.

The Pretreatment Program Elements Enforcement Response Plan, Volume 2, Tab #04 provides the procedures for identifying and investigating instances of noncompliance and activities to identify and verify information supplied by Industrial Users. Additionally, SMC 13.03A.0203(E) provides that all monitoring data shall be analyzed by an accredited or registered laboratory or person under the provisions of WAC 173-50. See *also*, The Inspection Guidance Manual, Volume 2, Tab # 07. All discharge permits provide for unannounced inspections and any applicable arrangements. See, SMC 13.03A.0307.

403.8(f)(2)(vi) requires a POTW to evaluate whether each Significant Industrial User needs a plan or other action to control slug discharges.

SMC 13.03A.0103(AZ) defines slug discharges and 13.03A.0407 provides procedures for users to report slugs or spills. SMC 13.03A.0211 provides that the Plant Manager can evaluate the need for a slug control plan or other action to control slug discharges and require any user to develop and implement such a plan.

403.8(f)(2)(vii) requires a POTW to investigate instances of noncompliance with Pretreatment Standards and Requirements.

SMC 13.03A.0601 provides authority for entry and access to all parts of any premises to determine compliance with all pretreatment requirements, discharge permit or order.

403.8(f)(2)(viii) requires a POTW to comply with public participation requirements of 40 CFR § 25 in the enforcement of National Pretreatment Standards and require at least annual publication of all SIUs who were in significant non-compliance with pretreatment requirements at any time during the previous 12 months.

SMC 13.03A.0801 requires an annual publication of a list of users which at any time in the previous calendar year were in significant non-compliance with applicable pretreatment standards and requirements.

SMC 13.03A.0203(F) requires public notice for users applying for a new permit or a permit renewal or modification which allows a new or increased pollutant loading, at the user's expense.

403.8(f)(4) provides the POTW shall develop local limits as required in § 403.5(c)(1).

SMC 13.03A.0204 establishes the local limits, expressed as Maximum Allowable Discharge Limits for any SIU discharges into the POTW.

403.8(f)(5) provides the "POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

- (i) Describe how the POTW will investigate instances of noncompliance;
- (ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
- (iii) Identify (by title) the official(s) responsible for each type of response;
- (iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (f)(2)."

SMC 13.03A.1004 provides that the "provisions of SMC 13.03A.0801 through SMC 13.03A.1105 ... are not exclusive remedies. The City reserves the right to take any, all, or any combination of these actions against a non-compliant user. Enforcement in response to pretreatment violations will generally be in accordance with the City's enforcement response plan. However the City reserves the right to take other action against any user when the circumstances warrant. Further, the City is empowered to take more than one enforcement action against any non-compliant user. These actions may be taken concurrently". The City's Industrial Pretreatment Program Enforcement Response Plan, Volume 2, Tab #04 sets out the procedures for identifying, investigating, and enforcing instances of noncompliance.

403.8(f)(6) requires the POTW to prepare and maintain a list of its Industrial Users meeting the criteria in § 403.3(v)(1). This information is listed and filed in the City's Industrial User Survey database and reported to the Department of Ecology annually.

The City of Spokane implements Pretreatment Standards and Requirements through its Pretreatment Program Elements manual, which is approved by Department of Ecology. The control of industrial users' discharges are managed through the wastewater

discharge permit system, industry monitoring and reporting requirements, surveillance activities such as monitoring and inspections, and direct enforcement using the remedies provided in the Pretreatment Ordinance and the Enforcement Response Plan, as described above.

STATE PRETREATMENT REQUIREMENTS

The following sections of SMC 13.03A.0201 and 13.03A.0203 include additional requirements for discharges to POTWs that are unique to Washington State as codified in Chapter 173-216 WAC – *Washington State Discharge Permit Program*.

SMC 13.03A.0201 affirms the discharge prohibitions described in 40 CFR §403.5(a) and (b). WAC 173-216-060 additionally includes a prohibition of any wastewater having a pH greater than 11.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the system, unless the system is specifically designed to accommodate such discharge and the discharge is authorized by a permit under this chapter. The Department of Ecology approved the City of Spokane's pH 12 Upper Limit Engineering Report in a letter dated March 14, 2004.

SMC 13.03A.0203 requires that any person who constructs or modifies or proposes to construct or modify wastewater treatment facilities must first comply with the regulations for *Submission of plans and reports for construction of wastewater facilities* under Chapter 173-240.

SMC 13.03A.0203(C) requires that all users apply All Known, Available, and Reasonable methods of control and treatment (AKART) to waste discharges to the waters of the State.

SMC 13.03A.0203(D) states that the discharge restrictions in Chapter 173-303 WAC (Dangerous Waste regulations) apply to all users.

SMC 13.03A.0203(E) requires that all required monitoring data be analyzed by a laboratory registered or accredited under the provisions of Chapter 173-50 WAC – *Accreditation of Environmental Laboratories*, except for flow, temperature, settleable solids, conductivity, pH, turbidity, and internal process controls.

SMC 13.03A.0203(F) includes public notice requirements for users applying for new or increased pollutant loadings to the POTW. Such notices shall include certain information and fulfill the requirements of WAC 173-216-090.

SMC 13.03A.0203(G) requires that the City to hold a public meeting if the Director of Public Works determines that there is sufficient public interest after public notification as described in SMC 13.03A.0203(F).

SMC 13.03A.0300 affirms that all Significant Industrial Users shall apply for and obtain a permit prior to discharge of wastewater.

SMC 13.03A.0301 requires all existing users determined by the Plant Manager to be a Significant Industrial User to apply for a permit at with sixty (60) days of being notified.

SMC 13.03A.0302 requires all new users determined by the Plant Manager to be a Significant Industrial User shall apply for a permit at least ninety (90) days prior to anticipated start-up and discharge.

SMC 13.03A.0701 requires that claims of confidentiality shall be submitted and reviewed in accordance with WAC 173-216-080.

INTERLOCAL AGREEMENTS

The City of Spokane requires in SMC 13.03A.0303 that any existing or new users located outside the city limits must comply with SMC 13.03A, or similar local pretreatment ordinance or ordinance approved by the EPA and/or the State of Washington. This section further requires that compliance is a condition of continuing discharge into the POTW.

The City of Spokane maintains interlocal agreements with contributing jurisdictions as described in SMC 13.03A.0314 - *Regulation of Wastewater Received from Other Jurisdictions* to provide supplemental legal authority and procedural assistance in the implementation and enforcement of the Pretreatment Ordinance in SMC 13.03A. The interlocal agreements are with Spokane County, Airway Heights, and City of Spokane Valley.

The City's interlocal agreements establish that as a condition for services to be provided by the City's POTW, contributing jurisdictions shall adopt, maintain, and enforce pretreatment standards and requirements that meet or exceed the City's applicable standards and requirements in accordance with SMC 13.03A, and the City's approved Industrial Pretreatment Program Elements Manual, in the contributing service areas that discharge wastewater to the City's POTW. The agreements include, among other duties and responsibilities, for contributing jurisdictions to diligently enforce SMC 13.03A, or a sewer use/pretreatment resolution that is not less stringent and is as broad in scope as SMC 13.03A to which the resolution will apply to users in the contributing service area. If a contributing jurisdiction does not take timely enforcement action against non-compliant users, the agreement provides authority for the City to immediately take such action on behalf of and as an agent of the contributing jurisdiction to the extent authorized by law.

The City's interlocal agreements include the provision for contributing jurisdictions to take steps as necessary to fulfill all duties and obligations established in local agreements. If the City determines that a contributing jurisdiction has failed or refused to fulfill any parts of its duties and obligations set forth in the local agreements, the

agreement requires that either the City or the contributing jurisdiction develop and issue a remedial plan designed to remedy deficiencies in a timely manner. The plans shall be specifically enforceable in a court of competent jurisdiction.

ENFORCEMENT

SMC Sections 13.03A.0901 through 13.03A.0906, and SMC 10.08.065 provide for administrative enforcement remedies, emergency actions, monetary penalties and administrative fines, criminal penalties and/or injunctions for any violation of the Pretreatment Standards and Requirements including failure to allow entry for purposes of sampling and inspections, failure to comply with permit conditions, orders or requirements, and failure to meet reporting requirements.

SMC 13.03A.1004 establishes the City's authority to apply its Enforcement Response Plan in enforcement actions.

The City has authority under SMC 13.03A.0903 to immediately halt any discharge threatening human health or the environment or endangering the operation of the POTW.

SMC 13.03A.1001 through 13.03A.1003 provide for civil and criminal prosecution as well as injunctive relief, for violation of any provision of the chapter.

Please don't hesitate to contact me should you have any questions or need further information. I can be reached at Eschoedel@spokanecity.org or (509)625-6232.

Sincerely,
OFFICE OF THE CITY ATTORNEY
MICHAEL ORMSBY, City Attorney



Elizabeth L. Schoedel
Assistant City Attorney

cc: Marlene Feist, Director Public Works, City of Spokane
Raylene Gennett, Director Wastewater Management, City of Spokane
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