

CHAPTER 63

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[HISTORY: Original Ordinance adopted by the Common Council of the City of Dunkirk on 7-2-1992. Local Law #4 of the Year 1994 adopted on 6-21-1994. Amended on 8-6-1996 as L.L. #13 (Intro No. 15) 1996. Amendments noted where applicable.]

ARTICLE I
Purpose

§ 63-1. Purpose.

The purpose of this Chapter is to provide for the use of the City-owned sewage facilities by residences, businesses, institutions and industries located in the City of Dunkirk and within those special districts with which the City has contracted to accept their sewage without damages to the physical facilities of the sewage works, without impairment of the normal function of collecting, treating and discharging sewage from the area served, and to ensure that all discharges by the City-owned sewage treatment plant are in compliance with its permitted discharge permit under the applicable laws of the United States and the State of New York, and the rules, regulations and orders of their regulatory agencies.

This Ordinance sets forth uniform requirements for direct and indirect contributions into the wastewater collection and treatment system for the City of Dunkirk and enables the City to comply with all applicable State and Federal laws required by the Clean Water Act of 1977 and the General Pretreatment Regulations (40 CFR, Part 403). The objectives of this Ordinance are:

- (a) To prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- (b) To prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system;
- (c) To improve the opportunity to recycle and reclaim wastewaters and sludges from the system; and
- (d) To provide for equitable distribution of the cost of the municipal wastewater system.

This Ordinance provides for the regulation of direct and indirect contributors to the municipal wastewater system through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customers' capacity will not be preempted, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

ARTICLE II Definitions

§ 63-2. Terms Defined.

Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

Sec. 1. “**Act or the Act**” shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et. seq.

Sec. 2. “**Approval Authority**” shall mean the Director in an NPDES state with an approved State Pretreatment Program and the Regional Administrator of the EPA in a non-NPDES State or NPDES State without an approved State Pretreatment Program.

Sec. 3. “**Authorized Representative of Industrial User**” shall mean (1) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation; (2) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively; (3) A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

Sec. 4. “**BOD**” (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20°C, expressed in milligrams per liter.

Sec. 5. “**Building Drain**” shall mean 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 (5) feet outside the inner face of the building wall.

Sec. 6. “**Building Sewer**” shall mean the extension from the building drain to the public sewer or other place of disposal.

Sec. 7. “**Categorical Standards**” shall mean National Categorical Pretreatment Standards or Pretreatment Standard.

Sec. 8. “**Chlorine Demand**” (expressed in milligrams per liter) shall mean the difference between the amount of chlorine added to wastewater and the amount of residual chlorine remaining at the end of a specific contact period.

Sec. 9. “**City**” shall mean the City of Dunkirk, New York.

Sec. 10. “**COD**” (denoting Chemical Oxygen Demand) shall mean the amount of oxygen required for the complete chemical oxidation of organics and oxidizable inorganics in a liquid.

Sec. 11. “**Combined Sewer**” shall mean a sewer receiving both surface runoff and sewage.

Sec. 12. “**Commercial Collector**” shall mean any person, partnership or corporation regularly engaged in the business of collecting for profit, sewage or other discharge for deposit at the sewage treatment facility.

Sec. 13. “**Control Authority**” shall refer to the "Approval Authority", defined herein; or the Director of Public Works if the City has an approved Pretreatment Program under the provisions of 40 CFR 403.11.

Sec. 14. “**Cooling Water**” shall mean the water discharged from any system of condensation, air conditioning, cooling, refrigeration, or other sources.

Sec. 15. “**DEC or NYSDEC**” shall mean the New York State Department of Environmental Conservation.

Sec. 16. “**Director**” shall mean the Chief Administrative Officer of a State or Interstate Water Pollution Control Agency with NPDES permit program approved pursuant to Section 402(b) of the Act and an approved State Pretreatment Program.

Sec. 17. “**Direct Discharge**” shall mean the discharge of treated or untreated wastewater directly to the waters of the State of New York.

Sec. 18. “**Director Of Public Works**” shall mean the Director of Public Works of the City of Dunkirk, New York, or his authorized representative.

Sec. 19. “**Dwelling Unit**” shall mean any house, apartment or other building designed or used for human habitation by one family and providing complete housekeeping facilities therefor. For the purposes of this chapter, "family" shall mean one person or two (2) or more persons related by blood or marriage, or not more than four (4) unrelated persons occupying a dwelling unit and living together as a single housekeeping unit; and "complete housekeeping facilities" shall include, but not be limited to or by, separate kitchen and bathroom facilities.

Sec. 20. “**Effluent**” shall mean wastewater after some degree of treatment flowing out of any treatment device or facilities.

Sec. 21. “**Environmental Protection Agency or EPA**” shall mean 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.

Sec. 22. “Grab Sample” shall mean 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.

Sec. 23. “Garbage” shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food and from the handling, storage, and sale of produce.

Sec. 24. “Holding Tank Waste” shall mean any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum pump tank trucks.

Sec. 25. “Indirect Discharge” shall mean the introduction of pollutants from any nondomestic source regulated under Section 307(b), (c) or (d) of the Act, (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).

Sec. 26. “Industrial User” shall mean a source of Indirect Discharge which does not constitute a "discharge of pollutants" under the regulations issued pursuant to Section 402 of the Act. (33 U.S.C. 1342).

Sec. 27. “Industrial Wastes” shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

Sec. 28. “Industry” shall mean any establishment which uses water in a product or generates a wastewater during the manufacturing of a product or the rendering of a service where such service results in the creation of a wastewater which differs in character from normal domestic sewage.

Sec. 29. “Interference” shall mean a discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) 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 Marine Protection, Research and Sanctuaries Act.

Sec. 30. “National Categorical Pretreatment Standard” shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. 1317) which applies to a specific category of Industrial Users.

Sec. 31. “National Prohibitive Discharge Standard Or Prohibitive Discharge Standard” shall mean any regulation developed under the authority of Section 307(b) of the Act and 40 CFR Section 403.5.

Sec. 32. “National Pollutant Discharge Elimination System or NPDES” shall mean a permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

Sec. 33. “New Source” shall mean any source, the construction of which is commenced after the publication of proposed regulations prescribing a Section 307(c) (33 U.S.C. 1317) Categorical Pretreatment Standard which will be applicable to such source, if such standard is thereafter promulgated within 120 days of proposal in the Federal Register. Where the standard is promulgated later than 120 days after proposal, a new source means any source, the construction of which is commenced after the date of promulgation of the standard. The determination of whether or not a source is a "new source" shall be made in accordance with the criteria set forth in 40 CFR 403.3(k), in addition to the criteria set forth herein.

Sec. 34. “Pass Through” shall mean a discharge which exits the POTW into the waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirements of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

Sec. 35. “Person” shall mean any individual, firm, company, association, society, corporation, governmental entity, or group.

Sec. 36. “Ph” shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Sec. 37. “Pollutant” shall mean 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.

Sec. 38. “Pollution” shall mean the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

Sec. 39. “Premises” shall mean any parcel of real property including land, improvements or appurtenances, such as buildings, grounds, etc.

Sec. 40. “Pretreatment Requirements” shall mean any substantive or procedural requirement related to pretreatment, other than a National Pretreatment Standard imposed on an Industrial User.

Sec. 41. “Pretreatment or Treatment” shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except as prohibited by 40 CFR 403.6(d).

Sec. 42. “Private Living Quarters” shall mean any building or part thereof which may legally be used for human habitation which does not provide separate housekeeping facilities therefor.

Sec. 43. “Properly Shredded Garbage” shall mean 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 (1/2) inch in any dimension.

Sec. 44. “Public Sewer” shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

Sec. 45. “Publicly-Owned Treatment Works (POTW)” shall mean a treatment works as defined by Section 212 of the Act, (33 U.S.C. 1292) which is owned in this instance by the City. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purposes of this Ordinance, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the City who are, by contract or agreement with the City, users of the City's POTW.

Sec. 46. “POTW Treatment Plant” shall mean that portion of the POTW designed to provide treatment to wastewater.

Sec. 47. “Sanitary Sewer” shall mean a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

Sec. 48. “Sewage” shall mean a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and stormwaters as may be present.

Sec. 49. “Sewer” shall mean a pipe or conduit for carrying sewage.

Sec. 50. “SHALL” is mandatory; “may” is permissive.

Sec. 51. “Significant Industrial User” shall mean an Industrial User of the City's wastewater disposal system who (i) has a flow or load (BOD, TSS) greater than or equal to 25,000 gallons per day or greater than or equal to 5% of that carried by the treatment plant receiving the waste; or (ii) manufacturing industries using, on an annual basis, more than 10,000 pounds or 1,000 gallons of raw material containing priority pollutants (as defined in 40 CFR 401.15) or substances of concern, and discharging a measurable amount of these pollutants to the sewer system from the process using these pollutants; or (iii) is subject to promulgated categorical pretreatment standards, or (iv) is found by the Director of Public Works, NYSDEC, or USEPA to have a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

Sec. 52. “Slug” shall mean any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, local limits or permit conditions. **[Amended on 04-15-14 as L.L. #1 (Intro No. 1) 2014]**

Sec. 53. “State” shall mean the State of New York.

Sec. 54. “Standard Industrial Classification (SIC)” shall mean a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, or its most recent edition.

Sec. 55. “Storm Drain (sometimes termed "Storm Sewer")” shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

Sec. 56. “Storm Water” shall mean any flow occurring during or following any form of natural precipitation and resulting therefrom.

Sec. 57. “Substances Of Concern” shall mean any substance which, when discharged to the sewer system in sufficient quantities, offers the potential to: interfere with any sewage treatment process, constitute a hazard in the receiving waters of the effluent from the sewage treatment

plant, pose a hazard to men working in the sewer system or constitute a hazard to fish or animal life.

Sec. 58. “**Suspended Solids**” shall mean the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

Sec. 59. “**Toxic Pollutant**” shall mean any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under the provision of the Clean Water Act 307(a) or other Acts or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing Section 405(d) of the Act.

Sec. 60. “**Uncontaminated Wastewater**” shall be defined as noncontact cooling water, storm water discharge from roof drains, storm water discharge from drainage swales, and all other waters discharged to the sanitary sewer which do not contain, either inherently or by process addition, any pollutants or substances of concern.

Sec. 61. “**USEPA or EPA**” shall mean the United States Environmental Protection Agency.

Sec. 62. “**User**” shall mean any person who contributes, causes or permits the contribution of wastewater into the City's POTW.

Sec. 63. “**Wastewater**” shall mean the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, and institutions, together with any ground water, surface water, and storm water that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.

Sec. 64. “**Waters of the State**” shall mean all streams, lakes, ponds, marshes, watercourses, waterways, wells, wetlands, 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.

Sec. 65. “**Wastewater Contribution Permit**” shall mean as set forth in Article VI of this Ordinance.

The following abbreviations shall have the designated meanings:

BOD	Biochemical Oxygen Demand
CFR	Code of Federal Regulations
COD	Chemical Oxygen Demand

EPA	Environmental Protection Agency
l	Liter
mg	Milligrams
mg/l	Milligrams per Liter
NPDES	National Pollutant Discharge Elimination System
POTW	Publicly-Owned Treatment Works
SIC	Standard Industrial Classification
SWDA	Solid Waste Disposal Act, 42 U.W.C. 6901, et. seq.
USC	United States Code
TSS	Total Suspended Solids

**ARTICLE III
Use of Public Sewers Required**

§ 63-3. Unsanitary Deposits on Public or Private Property.

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 of Dunkirk, or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.

§ 63-4. Prohibited Discharges Into Natural Outlets.

It shall be unlawful to discharge to any natural outlet within the City of Dunkirk, or in any area under the jurisdiction of said City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Ordinance.

§ 63-5. Septic Tanks and Cesspools.

Except as hereinafter 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.

§ 63-6. Connections With Available Sewers Required.

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 or combined 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 provision of this Ordinance, within ninety (90) days after date of official notice to do so, provided that said public sewer is within one hundred (100) feet of the property line.

**ARTICLE IV
Private Sewage Disposal**

§ 63-7. Connection to Private System Where Public Sewer is Not Available.

Where a public sanitary or combined sewer is not available under the provisions of Article III, Section 63-6, the building sewer shall be connected to an approved private sewage disposal system complying with the provisions of this article and the Chautauqua County Sanitary Code.

§ 63-8. Written Permit Required For Construction of Private System.

Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the Health Commissioner of the Chautauqua County Health Department. The application for such permit shall be made on a form furnished by the Chautauqua County Health Department, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the Health Commissioner of the Chautauqua County Health Department.

§ 63-9. Permit Not Effective Until Installation Completed to Satisfaction of Chautauqua County Health Department.

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Chautauqua County Health Commissioner. 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 Chautauqua County Health Commissioner when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 24 hours of the receipt of notice by the Chautauqua County Health Commissioner.

§ 63-10. System Shall Comply With State Health Department Requirements

The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the Department of Health of the State of New York.

§ 63-11. As Public Sewer Becomes Available, Connection to Same Shall Be Made.

At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Article III, Section 63-6, hereof, a direct connection shall be made to the public sewer in compliance with this

Ordinance, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be cleaned of sludge and filled with bank run gravel or dirt or other material approved by the Chautauqua County Health Commissioner.

§ 63-12. Owner Shall Operate and Maintain System in Sanitary Manner.

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.

§ 63-13. This Article Shall Not Interfere With Any Requirements Imposed By Chautauqua County Health Officer.

No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the Health Officer of Chautauqua County.

**ARTICLE V
Building Sewers and Connections**

§ 63-14. Plumbing Permit Required.

- (a) No building permit for any building construction or improvement involving any plumbing or connection to the sewage works shall be issued unless a plumbing permit has been issued by the Plumbing Inspector pursuant to Chapter 55 of the City Code which provides for

connection to the sewage works or to a private disposal system approved by the Chautauqua County Commissioner of Health pursuant to Article IV hereof.

- (b) No person shall lay, alter or repair any private sewer or make any connection whatever with any sewage works or do any kind of work connected with the laying of private sewers or make any repairs, additions to or alterations of any drain or sewer, designed to be connected with the sewage works without first having obtained a written permit from the Plumbing Inspector pursuant to the Plumbing Code. If said work involves a Private Sewage Disposal System, said work shall also comply with Article III hereof.

§ 63-15. Appropriate Provisions of Dunkirk Plumbing Code Incorporated.

This article hereby incorporates and makes applicable to this Ordinance all standards and regulations of the Dunkirk Plumbing Code as contained in Chapter 55 of the Code of the City of Dunkirk, New York.

**ARTICLE VI
Prohibited Sewer Uses**

§ 63-16. Discharge.

No person shall discharge or cause to be discharged any stormwater, surface water, ground water, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer, unless permitted pursuant to Section 63-17.

§ 63-17. Permits Required.

Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, approved by the Director of Public Works. Industrial cooling water or unpolluted process waters may be discharged to a storm sewer or combined sewer only upon approval of the Director of Public Works. Permits required by higher regulatory authorities or agencies shall be acquired by the User. Copies of such permits issued by higher authorities or agencies shall be submitted to the Director of Public Works.

§ 63-18. Prohibited Discharge.

No User shall contribute or cause to be contributed, directly or indirectly any pollutant or wastewater which will pass through or interfere with the operation or performance of the POTW. These general prohibitions apply to all such Users of a POTW whether or not the User is subject to National Categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or Requirements. A User may not contribute the following substances to any POTW:

- (a) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides, and any other substances which the City, the State, or EPA has notified the User is a fire hazard or a hazard to the system.
- (b) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to: grease, garbage with particles greater than one-half inch (1/2") in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.
- (c) Any wastewater having a Ph less than 5.0, or greater than 10.0, or wastewater having any other corrosive property capable of causing

damage or hazard to structures, equipment, and/or personnel of the POTW. **[Amended on 8-6-96 as L.L. #13 (Intro No. 15) 1996]**

- (d) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or to exceed the limitations set forth in a Categorical Pretreatment Standard. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the Act.
- (e) Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life result in toxic gasses, fumes, or vapors in quantities capable of causing acute health and safety problems for POTW personnel, or are otherwise sufficient to prevent entry into the sewers for maintenance and repair.
- (f) Oils and grease - Any commercial, institutional, or industrial wastes containing floatable fats, waxes, grease, or oils, or which become floatable when the wastes cool to the temperature prevailing, in the wastewater at the POTW treatment plant, during the winter season; also any commercial, institutional, or industrial wastes containing more than 100 mg/l of emulsified oil or grease; also any substances which will cause the sewage to become substantially more viscous, at any seasonal sewage temperature in the POTW; also petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
- (g) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall the substance discharged to the POTW cause the POTW to be in non-compliance 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.
- (h) Any substance which will cause the POTW to violate its NPDES and/or State Disposal System Permit or the receiving water quality standards.

- (i) Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
- (j) Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in Interference, but in no case wastewater with a temperature at the introduction into the POTW which exceeds 40°C (104°F).
- (k) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which will cause Interference to the POTW. In no case shall a slug load have a flow rate or contain concentration or quantities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration, quantities, or flow during normal operation.
- (l) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Director of Public Works in compliance with applicable State or Federal regulations.
- (m) Any pollutant having a closed cup flashpoint of less than 140°F or 60°C using the test methods specified in 40 CFR 261.21.
- (n) Any wastewater which causes a hazard to human life or creates a public nuisance.
- (o) Any pollutants discharged by truck or hauled wastes to sanitary sewers except at points designated by the Director of Public Works.
- (p) Any substance, whether or not subject to other requirements contained herein, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261, except upon written notice [containing the information required by 40 CFR 403.12(p)] to the City, EPA and NYSDEC.

When the Director of Public Works determines that a User(s) is contributing to the POTW, any of the above enumerated substances in such amounts as to interfere with the operation of the POTW, the Director of Public Works shall:

- (1) Advise the User(s) of the impact of the contribution on the POTW; and
- (2) Develop effluent limitation(s) for such User to correct the Interference with the POTW.

No User shall discharge wastewater to the sanitary sewer system when any of the pollutant concentrations exceed the limits specified below unless permitted by the Director of Public Works upon finding that such concentrations do not interfere with the overall operation of the POTW and its ability to meet the State and Federal discharge requirements. These concentrations shall be applied to wastewater effluents at a point just prior to discharge into the City sewer system. With the express written consent of the Director of Public Works, Users with multiple discharge outfalls may combine waste streams by calculation to report on wastewater characteristics.

<u>Substance</u>	<u>Effluent Concentration Limit (mg/l)</u>
Arsenic	0.2
Barium	4.0
Cadmium	0.2
Chromium-hex	2.0
Chromium-total	8.0
Copper	3.0
Lead	0.5
Mercury	0.2
Nickel	8.0
Selenium	0.1
Silver	0.2
Zinc	5.0
Cyanide-Total	2.0
Phenol	4.0

§ 63-19. Interceptors.

- (a) Grease, oil and sand interceptors shall be provided when, in the opinion of the Director of Public Works, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or 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 Director of Public Works and shall

be located as to be readily and easily accessible for cleaning and inspection.

- (b) Grease interceptors of a type and capacity approved by the Director of Public Works shall be required for all businesses engaging in food processing.

ARTICLE VII
Industrial Use of Public Sewers

§ 63-20. Permits Required For Discharge.

Any discharge of industrial wastes to the public sewer system shall be unlawful, unless specifically authorized by a Sewer Use Permit issued by the Director of Public Works.

§ 63-21. Sewer Use Permits.

It shall be unlawful to discharge without a City permit to any natural outlet within the City of Dunkirk, or in any area under the jurisdiction of said City, and/or to the POTW any wastewater except as authorized by the Director of Public Works in accordance with the provisions of this Ordinance.

- (a) Sanitary Sewer Use Permits shall be issued by the Director of Public Works authorizing the discharge of industrial wastewaters to the sanitary sewer system. The permits shall be specific in terms of the quantity of flow to be discharged and the contaminants contained therein.
- (b) Storm Sewer Use Permits shall be issued by the Director of Public Works to industries utilizing public storm sewers as a means of conveying treated uncontaminated cooling water not in excess of 150°F (65°C) receiving waters. It should be noted that industries utilizing public storm sewers as a means of discharge of cooling water, or any other pollutant, must also apply for a SPDES permit from the State.
- (c) No Sewer Use Permit is required for industries discharging only normal sanitary sewage from facilities such as toilets, urinals, sinks, showers, etc., and for that portion of each industry's flow which is comprised of strictly domestic sewage.

§ 63-22. Permit Duration.

Permits shall be issued for a specified time period, not to exceed three (3) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date. The User shall apply for permit reissuance a minimum of 180 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 City during the term of the permit as limitations or requirements as identified in Section 2 are modified or other just cause exists. 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.

§ 63-23. Permit Transfer.

Sewer Use Permits are issued to a specific User for a specific operation. A Wastewater Discharge Permit shall not be reassigned or transferred or sold to a new Owner, new User, different premises, or a new or changed operation without the approval of the City. Any succeeding Owner or User shall also comply with the terms and conditions of the existing permit.

§ 63-24. Revocation of Permit.

Any User who violates any condition of his Permit or of this Ordinance, or of any applicable state and federal regulations, is subject to having his Permit revoked.

§ 63-25. Applications For Sewer Use Permits.

General Permits - All Significant Industrial Users proposing to connect to or contribute to the POTW shall obtain a Sewer Use Permit before connecting to or contribution to the POTW. All existing Significant Industrial Users connected to or contributing to the POTW shall obtain a Sewer Use Permit within 180 days after the effective date of this Ordinance.

Industries presently discharging uncontaminated cooling waters to the storm sewer system shall immediately apply to the Director of Public Works under § 63-20 and § 63-21.

Permit Application - Users required to obtain a Sewer Use Permit shall complete and file with the City, an application in the form prescribed by the City. Existing Users shall apply for a Sewer Use Permit within ninety (90) days after the effective date of this Ordinance, and proposed new Users shall apply at least ninety (90) days prior to connecting to or contributing to the POTW. In support of the application, the User may be required to submit, in units and terms appropriate for evaluation, the following information:

- (a) Name, address, and location, (if different from address);
- (b) SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972 as amended, or its most recent edition;
- (c) Wastewater constituents and characteristics including, but not limited to, those mentioned in Section 63-26 of this Ordinance as determined by a reliable analytical laboratory; sampling and analysis shall be performed in accordance with procedures established by the EPA

pursuant to Section 304(g) of the Act and contained in 40 CFR 136, as amended;

- (d) Time and duration of contribution;
- (e) Average daily and maximum daily wastewater flow rates, including daily, monthly and seasonal variations, if any;
- (f) Site plans, floor plans, mechanical and plumbing plans and details to show all sewer connections, and appurtenance by the size, location and elevation;
- (g) Description of activities, facilities and plant processes on the premises including all materials which are or could be discharged;
- (h) Where known, the nature and concentration of any pollutants in the discharge which are limited by any City, State or Federal Pretreatment Standards or Requirements, and a statement regarding whether or not the pretreatment standards or requirements are being met on a consistent basis and, if not, whether additional Operation and Maintenance (O&M) and/or additional pretreatment is required for the User to meet applicable Pretreatment Standards or Requirements;
- (i) If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards or Requirements; the shortest schedule by which the User will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard or Requirement:

The following conditions shall apply to this Schedule:

- (1) The Schedule shall contain increments of progress in the form of dates for commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet applicable Pretreatment Standards or Requirements (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
- (2) No increment referred to in Paragraph (1) shall exceed nine (9) months.

- (3) Not later than 14 days following each date in the Schedule and the final date for compliance, the User shall submit a Progress Report to the Director of Public Works 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 nine (9) months elapse between such progress reports to the Director of Public Works.
- (j) Each product produced by type, amount, process or process and rate of production;
- (k) Type and amount of raw materials processed (average and maximum) per day;
- (l) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
- (m) Any other information as may be deemed by the City to be necessary to evaluate the Permit application.

The City will evaluate the data furnished by the User and may require additional information. After evaluation and acceptance of the data furnished, the City may issue a Sewer Use Permit subject to terms and conditions provided herein.

Permit Modifications - Within nine (9) months of the promulgation of a National Categorical Pretreatment Standard, the Sewer Use Permit of Users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a User, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a Sewer Use Permit as required by Article VI of this Ordinance, the User shall apply for a Sewer Use Permit within 180 days after the promulgation of the applicable National Categorical Pretreatment Standard. In addition, the User with an existing Sewer Use Permit shall submit to the Director of Public Works within 180 days after the promulgation of an applicable Federal Categorical Pretreatment Standard the information required by Paragraphs (h) and (i) of the preceding section.

Permit Conditions - Sewer Use Permits shall be expressly subject to all provisions of this Ordinance and all other applicable regulations, User charges and fees established by the City. Permits may contain the following:

- (a) The unit charge or schedule of User charges and fees for the wastewater to be discharged to a community sewer;
- (b) Limits on the average and maximum wastewater constituents and characteristics;
- (c) Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization.
- (d) Requirements for installation and maintenance of inspection and sampling facilities;
- (e) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for tests and reporting schedule;
- (f) Compliance schedules;
- (g) Requirements for submission of technical reports or discharge reports;
- (h) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the City, and affording City access thereto;
- (i) Requirements for notification of the City or any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system.
- (j) Requirements for notification of slug discharges;
- (k) Requirements for development of a spill prevention program to prevent slug discharges due to the improper storage or handling of materials;
- (l) Other conditions as deemed appropriate by the City to ensure compliance with this Ordinance.

§ 63-26. Limitations On Permit Issuance.

- (a) No Sanitary Use Permit shall be issued at any time for the discharge of uncontaminated wastewaters and/or cooling waters to the sanitary sewer system where there is ample evidence that such wastewaters could be discharged directly to the storm sewers and/or receiving stream without further treatment.

- (b) No Storm Sewer Use Permit shall be issued, at any time, for a discharge to the storm sewer system of treated industrial effluents. It should be noted that, in addition to any permit issued by the Director of Public Works, industries utilizing public storm sewers as a means of discharge of cooling waters or storm waters (under certain circumstances as set forth in 40 CFR 122.26) must also apply for a SPDES permit from the State.
- (c) No Sanitary Sewer Use Permit shall be issued at any time permitting the discharge or infiltration into the public sewer of any substances described in Section 63-18 of this Ordinance.

§ 63-27. Federal Pretreatment Standards.

Upon the promulgation of the Federal Pretreatment Standards for a particular industrial subcategory, the Federal Standard, if more stringent than limitations imposed under this Ordinance for sources in that subcategory, shall immediately supersede the limitations imposed under this Ordinance. The Director of Public Works shall notify all affected Users of the applicable reporting requirements under 40 CFR 403.12.

Modification of Federal Categorical Pretreatment Standards.

Where the City's wastewater treatment system 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 the average of the lowest 50 percent of the removal measured according to the procedures set forth in 40 CFR Section 403.7 (b)(2) - "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 403.7 are fulfilled and prior approval from the Approval Authority is obtained.

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 Ordinance.

City's Right of Revision.

The City reserves the right to establish by Ordinance more stringent limitations or requirements on discharges to the wastewater disposal system if deemed necessary to comply with the objectives presented in this Ordinance.

Excessive Discharge.

No User shall ever increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a National Pretreatment Standard or Pretreatment Requirement or any pollutant-specific limitation developed by the City or State.

Accidental Discharges.

Each User shall provide protection from accidental discharge of prohibited materials or other substances regulated by this Ordinance. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the Owner's or User's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review, and shall be approved by the City before construction of the facility. In the case of an accidental discharge, it is the responsibility of the User to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

Written Notice.

Following an accidental discharge, and within five (5) days of the Director of Public Works request, the User shall submit to the Director of Public Works a detailed written report describing the cause of 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 POTW, fish kills, or any 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.

Fees.

Purpose - It is the purpose of this chapter to provide for the recovery of costs from Users of the City's wastewater disposal system for the implementation of the program established herein. The applicable charges or fees shall be set forth in the City's Schedule of Charges and Fees.

Charges and Fees - 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 of 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.

These fees relate solely to the matters covered by this Ordinance and are separate from all other fees chargeable by the City.

Pretreatment.

Users shall provide necessary wastewater treatment as required to comply with this Ordinance and shall achieve compliance with all Federal Categorical Pretreatment Standards and Requirements within the time limitations as specified by the Federal Pretreatment Regulations. Any facilities required to pretreat wastewater to a level acceptable to the City 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 City for review, and shall be acceptable to the City 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 City under the provisions of this Ordinance. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the City prior to the User's initiation of the changes.

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

§ 63-28. Local Pretreatment Option.

- (a) Where pretreatment and/or equalization are required, plans, specifications, design and installation of plant equipment for such equalization, and/or pretreatment facilities shall be subject to the review and approval of the Director of Public Works and subject to all applicable codes, Ordinances and laws. Approval shall in no way exempt the discharge or such facilities from complying with this Chapter or the rules, regulations and orders of the USEPA or

NYSDEC. Such pretreatment facilities, when constructed, shall be maintained continuously in satisfactory and effective operation by the Owner at his expense. The Owner, subsequent to the commencement of operations of any pretreatment facilities, shall make periodic reports to the Director of Public Works setting forth therein data upon which he may determine the effectiveness and adequacy of such installation in reducing the concentrations to acceptable limits. Any approval by the Director of Public Works of a type, kind or capacity of an installation shall not relieve the Owner of the responsibility of revamping, enlarging or otherwise modifying an installation to accomplish its intended purpose to the degree necessary to comply with any and all rules and regulations.

Confidential Information.

Information and data on a User provided from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the User specifically requests and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information processes or methods of production entitled to protection as trade secrets of the User.

When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this Ordinance, the National Pollutant Discharge Elimination System (NPDES) Permit, State Disposal System Permit and/or the Pretreatment Programs; provided, however, that such portions of a report shall be available for use by the United States and the State or Federal agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

Information accepted by the City as confidential, shall not be transmitted to the general public by the City until and unless a ten-day (10) notification is given to the User.

§ 63-29. Commercial Collectors.

- (a) The Director of Public Works may enter into agreements with commercial collectors of wastewater and sewage for disposal of same at an appropriate point in the City wastewater and sewage system facilities. The Director of Public Works shall establish standards for commercial collectors to be followed as part of such agreements, including the need for appropriate permits, etc. **[Amended on 8-6-96 as L.L. #13 (Intro No. 15) 1996]**

- (b) Commercial collectors shall be charged at a rate to be established by the Director of Public Works in an amount not to exceed \$100.00 per one thousand gallons (1M) or part thereof, of wastewater and/or sewage delivered. **[Amended on 8-6-96 as L.L. #13 (Intro No. 15) 1996]**
- (c) The City Attorney shall either approve or prepare any such agreement entered into by the City.

§ 63-30. Facilities For Sampling and Flow Measurement Required.

- (a) The Director of Public Works shall, at least once per year, sample each Significant Industrial Discharge and measure the volume of flow. The data collected shall be used in the calculation of sewer use charges and to determine compliance with these regulations.
- (b) The Director of Public Works shall require all Significant Industrial Users to determine, at a minimum twice per year at each discharge point to the City sewers, both the volume and characteristics of the wastewater discharged from their facility. The specific requirements of the self-monitoring to be performed shall be identified in the User's Wastewater Discharge Permit. The results of this self-monitoring are to be evaluated by the User with respect to the limits contained in the User's Wastewater Discharge Permit. If sampling performed by the Industrial User indicates a violation, the User shall notify the Director 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 Director within 30 days after becoming aware of the violation.
- (c) Samples shall be taken and flow measurements made, whenever economically and technically feasible, at a common manhole into which all industrial wastes from such premise are combined. Such manhole shall be constructed by the Owner of such premises, at the Owner's expense, prior to the issuance of any Sewer Use Permit under Article VII, Section 63-20 of this Ordinance. Such manhole shall be maintained by the Owner so as to be safe and accessible at all times. Whenever the installation of such common manhole is deemed by the Owner to be economically and/or technically unfeasible, the Owner shall accept the burden of preparing and presenting to the Director of Public Works, an alternative plan whereby the City may obtain that information, (flow and analytical data) which the City deems necessary to the successful operation of their industrial wastewater monitoring program.

- (d) All measurements, tests and analyses of the characteristics of water and wastes to which reference is made in this Ordinance shall be determined in accordance with the methods specified in 40 CFR Part 136 or equivalent methods approved by USEPA, and shall be determined at the control manhole or upon suitable samples taken at said control manhole. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of any hazards.
- (e) All reports required to be submitted by Industrial Users under this Ordinance are required to be certified by a responsible corporate officer of the firm. The Industrial User is required to identify to the Director at the time of application, or of renewal of its Wastewater Discharge Permit, all responsible officers who would be authorized to certify any reports required to be submitted to the Director by this Ordinance.

ARTICLE VIII
Protection from Damage

§ 63-31. Arrest.

No person shall break, 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 subject to immediate arrest.

ARTICLE IX
Powers and Authority of Inspectors

§ 63-32. Entering Premises For Inspection.

The Director of Public Works and other duly authorized employees of the City USEPA or NYSDEC bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, testing or repair and maintenance of any portion of the sewage works lying within such premises in accordance with the provisions of this Ordinance.

The Director of Public Works or his representatives shall be permitted to access all areas of the facility, including areas where chemicals and raw materials are stored and records are kept.

§ 63-33. Safety Rules.

While performing the necessary work on private properties referred to in Article IX, Section 63-32 above, the Director of Public Works 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 Article VII, Section 63-30.

ARTICLE X
Administration & Enforcement

§ 63-34. Affirmative Defenses.

Treatment Upsets.

- (a) For the purposes of this section, "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. Any Industrial User which experiences such an upset shall inform the Director thereof immediately upon becoming aware of the upset. Where such information is given orally, a written report thereof shall be filed by the User within five (5) days. The report shall contain:
- (i) A description of the upset, its cause(s), and impact on the discharger's compliance status
 - (ii) The duration of noncompliance, including exact dates and times of noncompliance, and if the noncompliance is continuing, the time by which compliance is reasonably expected to be restored
 - (iii) All steps taken or planned to reduce, eliminate, and prevent recurrence of such an upset.
- (b) Industrial User which complies with the notification provisions of this Section in a timely manner shall have an affirmative defense to any enforcement action brought by the Director for any noncompliance with this Ordinance, or an order or permit issued hereunder by the User, which arises out of violations attributable to and alleged to have occurred during the period of the documented and verified upset.

Treatment Bypasses.

- (a) A bypass of the treatment system is prohibited unless all of the following conditions are met:

- (i) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (ii) There was no feasible alternative to the bypass, including the use of auxiliary treatment or retention of the wastewater; and
 - (iii) The Industrial User properly notified the Director described in paragraph (b) below.
- (b) Industrial Users must provide immediate notice to the Director upon discovery of an unanticipated bypass. If necessary, the Director may require the Industrial User to submit a written report explaining the cause(s), nature, and duration of the bypass, and the steps being taken to prevent its recurrence.
- (c) An Industrial User may allow a bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it is for essential maintenance to ensure efficient operation of the treatment system. Industrial Users anticipating a bypass must submit notice to the Director at least ten (10) days in advance. The Director may only approve the anticipated bypass if the circumstances satisfy those set forth in Paragraph (a) above.

§ 63-35. Division Of Enforcement Responsibilities.

This section identifies each member of the enforcement response team and establishes the role each is assigned in expeditiously carrying out enforcement actions.

Laboratory and Sampling Technicians.

The technicians are responsible for preliminary screening of compliance monitoring data. The laboratory and sampling technicians are not authorized to issue any warnings, citations, or violations to SIU's; but are responsible for making direct information requests to industrial users when, in their opinion, such information is necessary in order establish compliance\noncompliance in either emergency or non-emergency situations. The technicians are required to report promptly and directly to the chief operator, who then acts on the information provided him\her.

Chief Operator.

This person is responsible for maintaining a current library of all regulatory changes and guidance documents pertaining to industrial pretreatment. The Chief

Operator is vested with the primary responsibility of ensuring proper implementation of the City's Industrial Pretreatment Program (IPP) and will serve as primary contact with all industrial users. Consequently, the Chief Operator is responsible for independently issuing all Notices of Violation and Administrative Orders. The Chief Operator is also responsible (in non-emergency situations) for drafting all Industrial Wastewater Discharge Permits, the technical requirements of consent orders, assessing fines and penalties, and determining what is considered a "significant violation" of the industrial pretreatment program for annual publishing.

The Chief Operator of the wastewater treatment plant is responsible for compliance with the terms and conditions of the POTW's SPDES permit and for the overall operation and maintenance of the POTW. Thus he/she is responsible for employee safety, protection of the collection system and the treatment plant, effluent quality, and sludge use and disposal. In this role, the Chief Operator is authorized to take whatever actions are deemed necessary to protect the POTW in emergency situations (viz. the threatened health and safety of plant personnel, major treatment plant upset, or damage of POTW equipment).

Director of Public Works.

The Director of Public Works (DPW) acts as final review and evaluation of City policy regarding industrial pretreatment program issues. The Director is responsible for performing prompt review and approval of all pretreatment activities brought to his attention by the Chief Operator.

City Attorney.

The City Attorney advises the Director of Public Works and the Chief Operator on enforcement matters and serves as Counsel to the City in all administrative and judicial proceedings.

§ 63-36. Compliance Monitoring Procedures and Documentation.

The pretreatment program staff's compliance monitoring activities will detect and document violations in a manner that ensures that the results are both timely and admissible as evidence in judicial proceedings. All sampling will be performed in accordance with USEPA and NYSDEC-approved procedures and fully documented in bound notebooks.

In order to assure that the City's pretreatment program staff systematically inspects and samples each SIU on a regular basis and has adequate time to review the data collected for compliance/noncompliance; the due dates for industrial user reporting and City sampling and inspections will be set in advance and staggered. All violations will be identified and a record made of the response, even where the decision is made to take "no action".

§ 63-37A. Enforcement Responses.

This section establishes the types of enforcement responses which may be enacted by the pretreatment program staff. The City will consider the following criteria when determining a proper enforcement response among the available enforcement options:

- (a) magnitude of the violation;
- (b) duration of the violation;
- (c) effect of the violation on the receiving water;
- (d) effect of the violation on the POTW;
- (e) compliance history of the industrial user; and
- (f) good faith of the industrial user.

Notice of Violation (NOV).

The NOV is a letter providing the industrial user with notice of the violation(s) and the opportunity to correct violations prior to the City's use of other enforcement remedies.

Administrative Fines.

An administrative fine is a monetary penalty assessed by the City for violations of pretreatment standards and requirements. Notwithstanding any other section of this Ordinance, any user who is found to have violated any provision of this Ordinance, or permits and orders issued hereunder, shall be fined in an amount not to exceed five thousand dollars (\$5,000) per violation per day for each day on which noncompliance shall occur or continue.

The user may, within 15 days of notification of such fine, petition the Chief Operator to modify or suspend the fine. Such petition shall be in written form and shall be transmitted to the Chief Operator by registered mail. The Chief Operator may:

- (1) Reject any frivolous petitions;
- (2) Modify or suspend the fine;
- (3) Request additional information from the user; or
- (4) Order the petitioner to show cause as described herein.

Administrative fines are punitive in nature and are not related to a specific cost borne by the City. Instead, fines are to recapture the full or partial economic benefit on noncompliance, and to deter future violations.

Economic Penalties.

An economic penalty is a monetary penalty assessed by the City for violations of permit limits on BOD discharges. Notwithstanding any other section of this ordinance, any permit holder who is found to have discharged in excess of the permit regarding BOD limits, shall be assessed a penalty equal to three times (300%) the surcharge rate provided in the City's fees ordinance, for all amounts in excess of the permit amounts.

Economic penalties are not punitive in nature, but are assessed to recover the additional costs the City incurs as a result of additional operating expenses resulting from violations, additional testing, analysis, and administrative time and expenses incurred in assisting the violator returning to compliance.

Administrative Orders.

Administrative Orders (Aos) are enforcement documents which direct industrial users to either undertake or to cease specified activities. Aos are utilized as the first formal response to significant noncompliance (unless judicial proceedings are more appropriate), and may incorporate compliance schedules, administrative penalties, and termination of service orders.

The four (4) types of Aos which the City may employ are:

Cease and Desist Orders.

A cease and desist order directs a non-compliant user to cease illegal or unauthorized discharges immediately or to terminate its discharge(s) altogether. The Chief Operator may issue a cease and desist order in situations where the discharge could cause interference or pass through, or otherwise create an emergency situation.

Consent Orders.

The consent order is an agreement between the City and the industrial user which will normally contain three elements: (1) compliance schedules; (2) stipulated fines or remedial actions; and (3) signatures of City and industry representatives.

Show Cause Hearing.

- (a) In addition to the provisions listed above and in no way limiting their application, the Director of Public Works may order any offender of a provision of this Ordinance to appear before him or his designated representative to show cause why such offense should not be discontinued. A written notice shall be served upon the offending party, specifying the time and place of said hearing and directing the offending party to show cause why an order should not be issued directing the discontinuance of the offense. The notice shall be served personally or by Certified or Registered mail at least five (5) days prior to the date of hearing; service may be made on any agent or officer of a corporation.
- (b) The Director of Public Works shall request the City Attorney or his designated representative to be present at such show cause hearings.
- (c) Witnesses may be called by either party to such an action.
- (d) A record shall be made of all testimony and evidence presented at the hearing. A transcript of the proceedings shall be made.
- (e) The officer presiding at the hearing shall render his decision and findings of fact, based on the evidence, and issue an appropriate order in accordance therewith within a reasonable period of time.

Compliance Orders.

A compliance order directs the user to achieve or restore compliance by a date specified in the order. The compliance order is usually issued when noncompliance cannot be resolved without construction, repair, or process changes, or when requiring industrial users to develop management practices, spill prevention programs and related pretreatment program requirements.

The compliance order will document the noncompliance and state required actions to be accomplished by specific dates, including interim and final reporting requirements.

Civil Litigation.

Civil litigation is the formal process of filing lawsuits against industrial users to secure court ordered action to correct violations and to secure penalties for violations including the recovery of costs to the POTW of the noncompliance. The City Attorney is authorized to commence civil litigation in a court of competent jurisdiction to obtain injunctive relief, penalties and damages under any applicable Local, State or Federal statute.

Consent Decrees.

Consent decrees are agreements between the City and the industrial user reached after a lawsuit has been filed. To be binding, the decree must also be signed by the judge assigned to the case.

Injunctive Relief.

Whenever an Industrial User has violated or continues to violate the provisions of this Ordinance or permit or order issued hereunder, the Director, through Counsel, may petition the Court for the issuance of a preliminary or permanent injunction or both (as may be appropriate) which restrains or compels the activities on the part of the Industrial User.

Civil Penalties and Cost Recovery.

Civil litigation may be necessary to recover costs associated with noncompliance and to impose civil penalties. A civil suit commenced by the City Attorney in a court of competent jurisdiction will seek to require the industrial user to pay for all expenses which the City incurred in responding to the noncompliance, including restoration of the City's POTW, payment for medical treatment of injured employees, and indemnification of the City for all fines assessed against it for SPDES permit violations.

Termination of Sewer Service.

Termination of service is the revocation of an industrial user's privilege to discharge industrial wastewater into the City's sewer system. Termination may be accomplished by physical severance of the industry's connection to the collection system, by issuance of an AO which compels the user to terminate its discharge, or by a court ruling.

§ 63-37B. Supplemental Enforcement Responses.

This section outlines the "supplemental" enforcement responses available to the City to complement the more traditional responses described in the preceding sections. Normally, these responses will be used in conjunction with more traditional approaches.

Public Notices.

According to USEPA regulations, the City of Dunkirk must comply with the public participation requirements of 40 CFR 403.8(f)(2)(vii). Among these requirements is annual publication of a list of industrial users which were significantly violating applicable pretreatment standards or requirements.

The criteria for determining significant non-compliance are set forth in 40 CFR 403.8(f)(2)(vii) and include one or more of the following:

1. chronic violations (exceedences 66 percent of the time or more during a six month period) of the same parameter limits;
2. technical review criteria (TRC) violations [33 percent or more of measurements for each pollutant parameter taken during a six month period equal or exceed the TRC (1.4 times the limit for conventionals or 1.2 times the limit for toxics)];
3. causing pass through or interference;
4. a discharge of imminent endangerment to human health, welfare, or the environment, or which required the POTW to use its emergency authorities;
5. violations of a compliance schedule milestone by 90 days or more;
6. violations of report submittal deadlines by 30 days;
7. failure to report noncompliance; or
8. any other violation deemed significant by the Control Authority.

Water Service Termination.

Whenever a User has violated or continues to violate a provision of this Ordinance or an order or permit issued hereunder, water service to the User may be severed and service will only recommence, at the users expense, after it has satisfactorily demonstrated its ability to comply.

The user may, within 15 days of severance, petition the Chief Operator to reconnect water supply service. Such petition shall be in written form and shall be transmitted to the Chief Operator by registered mail. The Chief Operator may:

- (1) Reject any frivolous petitions;
- (2) Reconnect the water supply;
- (3) Request additional information from the user; or
- (4) Order the petitioner to show cause as described herein.

Performance Bonds/Liability Insurance.

The City may require, through an AO or as part of a consent agreement, a noncompliant industrial user to post a performance bond covering expenses which the POTW might incur in the event of future violations. This action may require the industry to obtain sufficient liability insurance to cover the cost of restoring the treatment works in the event a second upset occurs.

Increased Monitoring and Reporting.

Industrial users demonstrating a history of noncompliance will be subject to increased surveillance (i.e, sampling and inspections) by the City. Since recurring violations indicate that at least one chronic problem exists at the facility, the City will monitor the user closely and require additional user self-monitoring until the problem is corrected and consistent compliance is demonstrated. For example, where a pretreatment system is found to be inadequate to meet applicable limits, an AO requiring the installation of additional technology may also include increased self-monitoring frequency.

Short Term Permits.

The length of a permit's effective period is a discretionary matter. The City can use a permit's duration to force an "early look" at a noncompliant industry by issuing it a short-term permit. In addition to scheduling a comprehensive review of the industrial user's circumstances, a short-term permit may be used to increase self-monitoring and reporting requirements as well as to impose a compliance schedule which concludes shortly before permit expiration.

ARTICLE XI
Validity

§ 63-38. Conflict with the Ordinances.

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

§ 63-39. Severability.

The invalidity of any section, clause, sentence, or provision of this Ordinance as finally determined by a court of competent jurisdiction, shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid parts or parts.