

ADMINISTRATIVE ORDER NO. 58-23-02-F
of the
City Manager of the City of Eugene

AMENDING AND REPLACING INDUSTRIAL PRETREATMENT PROGRAM ADMINISTRATIVE RULE R-6.501 ADOPTED BY ADMINISTRATIVE ORDER NO. 58-02-28-F; AND REPEALING ADMINISTRATIVE ORDER NO. 58-23-21.

The City Manager of the City of Eugene finds that:

A. Sections 2.019 and 6.501 of the Eugene Code, 1971, authorize the City Manager to adopt rules deemed necessary for the administration and enforcement of the provisions of the Eugene Code, 1971. Pursuant to that authority, on November 5, 2002, the City Manager issued Administrative Order No. 58-02-28-F, making the most recent amendments to Industrial Pretreatment Program Administrative Rule R-6.501 (“the Rule”).

B. On April 5, 2023, I issued Administrative Order No. 58-23-02 ordering that notice be given of the opportunity to submit written comments on a proposal to amend the Rule so that it would conform to the new local limits set for the region’s Publicly Owned Treatment Works, and to eliminate the Rule’s references to the City’s Enforcement Response Guide because that document is intended to serve as an internal reference, not a mandatory schedule.

C. Notice of the Rule amendments proposed by Administrative Order No. 58-23-02 was given by making copies of the notice available to any person who had requested such notice and by publication of the notice in the Register Guard newspaper on April 27, 28, 30, and May 1, and 2, 2023, providing interested persons an opportunity to submit comments on the proposed amendments until the end of the day on May 12, 2023.

D. To meet a deadline set by the Oregon Department of Environmental Quality, on May 2, 2023, I used the emergency adoption procedures described at Eugene Code 2.019(6) to adopted Administrative Order No. 58-23-21, to immediately but temporarily enact the Rule amendments proposed by Administrative Order No. 58-23-02

E. No comments concerning the proposed Rules were submitted by the end of the day on May 12, 2023, and so this Administrative Order No. 58-23-02-F is adopted to replace the emergency rule with permanent amendments to Industrial Pretreatment Program Administrative Rule R-6.501.

On the basis of these findings, I order that:

- 1.** Administrative Order No. 58-23-21 is repealed.

2. Industrial Pretreatment Program Administrative Rule R-6.501 is amended by revising Rules R-6.501-B and R-6.501-D.

3. The unamended provisions of Industrial Pretreatment Program Administrative Rule R-6.501 adopted by Administrative Order No. 58-02-28-F are reaffirmed and incorporated into Industrial Pretreatment Program Administrative Rule R-6.501 as set out in Section 4 of this Order.

4. The following is Industrial Pretreatment Program Administrative Rule R-6.501:

**INDUSTRIAL PRETREATMENT PROGRAM
ADMINISTRATIVE RULE R-6.501**

R-6.501-A General Provisions

These rules are intended to ensure that the City's pretreatment program complies with the objectives of the Eugene Code, 1971, applicable state and federal law, and rules and regulations adopted thereunder. Notwithstanding the specific requirements of these rules, each industrial user of the City Sewerage System shall comply with all applicable local, state and federal laws and regulations governing the pretreatment of industrial wastes. Therefore, all references in these rules to other statutes and regulations are to those statutes and regulations as amended.

R-6.501-B Specific Restricted Substance Limitations

No significant industrial user shall discharge wastewater containing pollutants in excess of the maximums shown on the following table or in concentration limits set by any local, state or federal regulatory agency having jurisdiction, whichever is stricter:

Pollutant	Maximum
Arsenic, Total	0.19 milligrams per liter
Cadmium, Total	0.10 milligrams per liter
Chromium, Total	Categorical Limit, where applicable
Copper, Total	1.8 milligrams per liter
Lead, Total	0.69 milligrams per liter
Mercury, Total	0.036 milligrams per liter

Nickel, Total	1.9 milligrams per liter
Silver, Total	0.14 milligrams per liter
Zinc, Total	4.9 milligrams per liter

R-6.501-C Annual Permit Fee

A nonrefundable annual permit fee in an amount established by the City Manager pursuant to Section 2.020 of the Eugene Code, 1971 shall be paid for each industrial wastewater discharge permit. The initial payment shall be due upon permit issuance. Thereafter, the fee shall be due annually on August 1.

R-6.501-D Enforcement

1. Definitions. As used herein, the following words and phrases mean:

- (a) Noncompliance. A violation.
- (b) Upset. An exceptional incident in which an industrial user is in unintentional and temporary noncompliance with applicable pretreatment standards or requirements set forth in Sections 6.511 to 6.541 of the Eugene Code, 1971, these rules or its permit, 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.
- (c) Violation.
 - (1) A discharge exceeding a constituent limitation; or
 - (2) A failure to comply with requirements of a discharge permit, an order issued by the City Manager, these rules, an Administrative Compliance Order issued under these rules, or the Eugene Code, 1971.
- (d) Director. The person designated as the Wastewater Division Director of the Public Works Department of the City of Eugene, or designee.

2. Enforcement Orders.

- (a) Notice of Noncompliance. The Director may issue a Notice of Noncompliance for any violation. A Notice of Noncompliance shall be in

writing and specify the violation(s), and the consequences of continued noncompliance.

- (b) Notice of Violation. The Director may issue a Notice of Violation for any violation. A Notice of Violation shall be in writing and specify the violation(s). The Notice may require a written response from the violator detailing the actions that will be taken to resolve the violation(s). A Notice of Violation may also include a Notice of Civil Penalty Assessment.
- (c) Notice of Civil Penalty Assessment. As part of a Notice of Violation, Administrative Compliance Order, or separately, the Director may issue a Notice of Civil Penalty Assessment pursuant to Sections 6.586 and 2.018 of the Eugene Code, 1971 for any violation. The Notice shall comply with the requirements contained in Section 2.018.
- (d) Administrative Compliance Order. The Director may issue an Administrative Compliance Order for any violation. The Order shall be in writing, specify the violation(s) and require compliance measures. The Order may also include a Notice of Civil Penalty Assessment for the violation.
- (e) Appeals. A Notice of Violation, Notice of Civil Penalty Assessment, or Administrative Compliance Order issued under this section may be appealed in the manner set forth in Subsection 6.586(6) of the Eugene Code, 1971.
- (f) Service. All notices/orders shall be delivered or sent by first class mail. Any notice/order served by mail shall be deemed received for purposes of time computations hereunder, three days after the date mailed, if to an address within this state, and seven days after the date mailed, if to an address outside this state.
- (g) Settlement of Civil Penalty Assessment. Upon receipt of Notice of Civil Penalty Assessment, an industrial user may request a conference with the City Manager or designee. The City Manager or designee may compromise or settle any unpaid civil penalty assessment where authorized under Section 2.582 of the Eugene Code, 1971. A request under this paragraph shall not act as a stay, or otherwise affect the filing or processing of an appeal under paragraph (e) of this section.

3. Other Administrative Orders.

- (a) Stipulated Enforcement Order. The Director may enter into a Stipulated Enforcement Order for any violation. The Stipulated Enforcement Order shall state findings, direct the user to come into compliance within a specified time and may contain other requirements to address the noncompliance, including but not limited to interim pretreatment limits and compliance goals, and

additional self-monitoring and management designed to minimize the amount of pollutants discharged to the city sewerage system.

- (b) Cease and Desist Order. The Director may issue a Cease and Desist Order in accordance with the provisions of Section 6.561 of the Eugene Code, 1971.
- (c) Termination and Revocation Order. The Director may issue a Termination and Revocation Order in accordance with the provisions of Section 6.571 of the Eugene Code, 1971.
- (d) Reconsideration and Appeal. Reconsideration and appeals of orders issued under subparagraphs (b) and (c) of this section shall be pursuant to Section 6.591 of the Eugene Code, 1971.
- (e) Service. All notices/orders shall be delivered or sent by first class mail. Any notice/order served by mail shall be deemed received for purposes of any time computations hereunder, three days after the date mailed, if to an address within this state, and seven days after the date mailed, if to an address outside this state.

4. Affirmative Defense.

- (a) An upset shall constitute an affirmative defense to an enforcement action if the requirements of the paragraph (b) of this subsection are met.
- (b) To establish the affirmative defense of upset, an industrial user must demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and the industrial user can identify the specific cause(s) of the upset;
 - (2) The industrial user was at the time operating in a prudent manner and in compliance with applicable operation and maintenance procedures; and
 - (3) The industrial user has submitted the following information to the Director within 12 hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five days.
 - a. A description of the occurrence and cause of noncompliance;
 - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

- c. All steps being taken and/or planned to reduce, eliminate and prevent reoccurrence of the noncompliance; and
 - d. Evidence the industrial user took all reasonable steps to minimize or prevent any discharge resulting from an upset.
- (c) The industrial user seeking to establish the occurrence of an upset in an enforcement proceeding shall have the burden of proof.
- (d) Notwithstanding this rule providing for the upset affirmative defense, to the extent such an affirmative defense is not available to the City or the Metropolitan Wastewater Management Commission, it is not available to the industrial user.

5. Single Operational Event.

- (a) A single operational event is an exceptional incident which causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one effluent discharge pollutant parameter. A single operational event does not include violations of the Eugene Code, 1971 involving discharge without a Wastewater Discharge Permit or noncompliance to the extent caused by improperly designed or inadequate treatment facilities. A single operational event which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation. The industrial user bears the burden of proving, by a preponderance of the evidence, the occurrence of the single operational event and its relationship to the effluent limitation exceedances in question. Each day of a single operational event is a violation.
- (b) Notwithstanding the provisions of this rule, a single operational event shall be treated as a single violation only to the extent that, in resulting enforcement action against the City or the Metropolitan Wastewater Management Commission the single operational event is treated as a single violation.

Dated and effective this 15th day of June, 2023.


MR



Sarah Medary
City Manager