ORDINANCE NO. 311A-03

AN ORDINANCE AMENDING ORDINANCE NO. 311, ESTABLISHING REGULATIONS FOR THE INTERCEPTION, TREATMENT, AND DISPOSAL OF WASTEWATER AND INDUSTRIAL WASTES AND THE CONTROL OF WASTEWATER, REQUIRING CHARGES TO BE MADE THEREFOR, AND FIXING PENALTIES FOR THE VIOLATION OF SAID REGULATIONS

Introduced by Director Foulkes ; Seconded by Director Richardson

WHEREAS, the East Bay Municipal Utility District administers a wastewater control program pursuant to Ordinance No. 311, entitled, "AN ORDINANCE ESTABLISHING REGULATIONS FOR THE INTERCEPTION, TREATMENT, AND DISPOSAL OF WASTEWATER AND INDUSTRIAL WASTES AND THE CONTROL OF WASTEWATER, REQUIRING CHARGES TO BE MADE THEREFOR, AND FIXING PENALTIES FOR THE VIOLATION OF SAID REGULATIONS;" and

WHEREAS, the U.S. Environmental Protection Agency and the Regional Water Quality Control Board required the District to conduct an ordinance review and submit proposed ordinance revisions, as part of their periodic reviews of the District's Pretreatment and Pollution Prevention Program; and

WHEREAS, in response to this request, staff conducted a review of the Ordinance No. 311 and has recommended that the Board of Directors amend the Ordinance incorporating specific regulatory mandated language to codify the District's legal authority to implement and enforce pretreatment regulations from the Code of Federal Regulations (40 CFR 403), adding language to provide enforcement authority for the Resource Recovery Program and clarifying the method to calculate wastewater capacity fees and wastewater treatment charges for multi-use facilities;

NOW, THEREFORE, BE IT ENACTED by the Board of Directors that Ordinance No. 311, as amended from time to time, is hereby further amended to read as follows:

TITLE I - GENERAL

Section 1 - Short Title

This Ordinance shall be known as the "WASTEWATER CONTROL ORDINANCE".

Section 2 - Purpose

Special District No. 1 of the EAST BAY MUNICIPAL UTILITY DISTRICT was formed and exists under the provisions of the Municipal Utility District Act (Public Utilities Code of the State of California, Division 6) for wastewater disposal service within its boundaries. Wastewater disposal facilities have been constructed for the interception, treatment, and disposal of wastewater and industrial wastes originating within its boundaries. The purpose of this Ordinance is to regulate the interception of wastewater and industrial wastes and to control wastewater to provide the maximum public benefit of the wastewater disposal facilities of the District. The regulations shall include provisions for source control in order to monitor and control quantity, quality, and flow of wastewater and industrial waste. The regulations shall require charges for use of wastewater disposal facilities of the District which are designed to achieve an equitable recovery of the capital and operating costs of such facilities. The regulations shall include provisions for enforcement and penalties for violations.

Section 3 - Definitions

For the purposes of this Ordinance, unless the context specifically indicates otherwise, the meaning of terms used shall be as follows:

a. "Business Classification Code" (BCC) - A classification of dischargers based on the 1987 Standard Industrial Classification Manual, Office of Management and Budget of the United States of America.

b. "Bypass" – The intentional diversion of wastestreams from any portion of a discharger's treatment facility.

c. "Categorical Pretreatment Standards" - Any regulations containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. 1317) and which apply to a specific category of industrial user and which appear in Title 40 of the Code of Federal Regulations (40 CFR) Chapter I, Subchapter N, Parts 405-471.

d. "Chemical Oxygen Demand, Filtered" - The amount of Chemical Oxygen Demand passing through a glass filter as measured in conformance with the District's approved method. Chemical oxygen demand is the measure of the oxygen equivalent of the organic matter of a sample that is susceptible to oxidation by a strong chemical oxidant.

e. "Community Sewer System" - The sewers owned and operated by public agencies within the boundaries of the District which are connected to an interceptor of the District.

A “community sewer” is that portion of a community sewer system which receives wastewater from the side sewer of a discharger.

f. “Contamination” - An impairment of the quality of the waters of the State by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. Contamination shall include any equivalent effect resulting from the disposal of wastewater, whether or not waters of the state are affected.

g. “Critical Industry” - A discharger whose wastewater requires special regulations or contains industrial wastes requiring source control or whose average wastewater strength cannot be established on a business classification basis.

h. “Director” – Director of the Wastewater Department of the East Bay Municipal Utility District, or his designated representative.

i. “Discharger” - Any person who discharges or causes the discharge of wastewater to a community sewer system.

j. "District" - Special District No. 1 of the East Bay Municipal Utility District.

k. “Federal Act, Clean Water Act, or Act” - The Federal Water Pollution Control Act, PL 92-500, and any amendments thereto; as well as any guidelines, limitations, and standards promulgated by the Environmental Protection Agency.

l. “General Manager” - The General Manager of the East Bay Municipal Utility District.

m. “General Pretreatment Regulations” - Any regulations promulgated by EPA in accordance with Sections 307(b) and (c), and 402(b)(8) of the Act (33 U.S.C. 1317) for the implementation, administration and enforcement of pretreatment standards.

n. “Industrial Waste” - Includes any nondomestic liquid or semisolid wastes from any producing, manufacturing, or processing operation of whatever nature.

o. “Interceptor” - An intercepting sewer found and determined by the Board of Directors of the District to be such and owned and operated by the District.

p. “Interference” - A discharge which, alone or in conjunction with 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.

q. "National Pretreatment Standard, Pretreatment Standard, or Standard" - Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5.

r. "New Source" - Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards which will be applicable to such source if such standards are thereafter promulgated, provided that:

(1) The building, structure, facility or installation is constructed at a site at which no other source is located; or

(2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(3) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

s. "Nuisance" - A discharge of wastewater in violation of District regulations or orders, or which is or could be harmful to or unreasonably affect the wastewater disposal facilities of the District, or which impairs or unreasonably affects the operation and maintenance of such facilities, or which violates quantity, quality, or flow standards adopted by the District, and all wastewater discharges which unreasonably affect the quality of the District's treatment plant effluent in such a manner that receiving water quality requirements established by law cannot be met by the District.

t. "Order" – A mechanism to control the contribution to the POTW by each discharger or trucked waste permitee to ensure compliance with applicable pretreatment standards and requirements and other wastewater discharge requirements. Includes but is not limited to Wastewater Discharge Permits, Pollution Prevention Permits, Cease and Desist Orders, Administrative or other orders.

u. “Pass Through” - A discharge which exits the POTW into waters of the State 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 requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

v. “Person” - Any individual, partnership, firm, association, corporation, or public agency, including the State of California and the United States of America.

w. “Pollution” - An alteration of the quality of the waters of the State by waste to a degree which unreasonably affects (1) such waters for beneficial use or (2) facilities which serve such beneficial uses.

x. “Premises” - A parcel of real property, or portion thereof, including any improvements thereon, which is determined by the District to be a single unit for purposes of receiving, using, and paying for wastewater disposal service. In making this determination, the District shall take into consideration such factors as whether the unit could reasonably be subdivided, number and location of side sewers, and whether the unit is being used for a single activity and, if not, what is the principal activity for wastewater disposal services, but in any case the District determination shall be final.

y. “Pretreatment Requirement” - Any substantive or procedural pretreatment requirement other than a national pretreatment standard.

z. “Public Agency” - A city or a sanitary district or other public entity located within the boundaries of a special district.

aa. “Receiving Water Quality Requirements” - Requirements for District's treatment plant effluent established by law or by State or Federal regulatory agencies for the protection of receiving water quality. "Requirements" shall include effluent limitations, and waste discharge standards, requirements, limitations, or prohibitions which may be established or adopted from time to time by State or Federal laws or regulatory agencies.

bb. “Severe Property Damage” – Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

cc. “Sewage” - The water-borne wastes derived from human habitation and use of buildings for residential, business, commercial, institutional, and industrial purposes.

dd. “Side Sewer” - A sewer conveying the wastewater of a discharger from a residence, building, or other structure to a community sewer, including direct connections to a community sewer where permitted by the public agency.

ee. "Significant Industrial User"

(1) A user subject to Categorical Pretreatment Standards; or

(2) A user that:

(i) Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);

(ii) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(iii) Is designated as such by the District on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(3) Upon a finding that a user meeting the criteria in Subsection (2) above has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the District may at any time, on its own initiative or in response to a petition received from a user, determine that such user should not be considered a significant industrial user.

ff. "Significant Noncompliance" - An industrial user is in significant noncompliance with applicable pretreatment requirements if any violation meets one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter.

(2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period are equal to or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease and 1.2 for all other pollutants except pH.)

(3) Any other violations of a pretreatment effluent limit (daily maximum or longer term average) that the Agency determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.

(5) Failure to meet, within 90 days after the due date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction or attaining final compliance.

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

(7) Failure to accurately report noncompliance.

(8) Any other violation or group of violations which the District determines will adversely affect the operation or implementation of the local pretreatment program.

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

hh. "Suspended Solids" - The concentration of nonfilterable residue dried at 103° to $105^{o}C$ on a filter in conformance with the District's approved method.

ii. "User" – Any person who discharges, causes, or permits the discharge of wastewater into a community sewer. Same as "Discharger".

jj. "Waste" - Includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature.

kk. "Wastewater" - All sewage, industrial, and other wastes and waters, whether treated or untreated, discharged into or permitted to enter a community sewer system connected to a District interceptor, for treatment in wastewater disposal facilities of a special district. As used in this Ordinance, unless the context specifically indicates otherwise, "wastewater" shall mean sewage, industrial, and other wastes discharged to a community sewer by any person.

ll. "Wastewater Capacity Fee" - A charge to each new customer, or customer who increases his demand for capacity for wastewater treatment measured by flow and strength, which reasonably reflects the District cost for providing wastewater treatment capacity.

mm. "Wastewater Disposal Purposes" - The acquisition, construction, enlargement, operation, and maintenance of intercepting sewers, wastewater treatment works, pumping plants, outfall sewers, and appurtenances by a special district.

nn. "Wastewater Disposal Facilities" - Includes intercepting sewers, wastewater treatment works, pumping plants, outfall sewers, and appurtenances constructed, operated, and maintained by a special district created for wastewater disposal purposes. As used in this Ordinance, unless the context specifically indicates otherwise, "District Facilities" shall mean wastewater disposal facilities of a special district.

oo. "Wastewater Strength" - The quality of wastewater discharged as measured by its elements, including constituents and characteristics.

Section 4 - Connection to Interceptor

The District will not permit direct connections of or accept direct contributions of wastewater from sewers other than community sewers. Before any connection of a community sewer is made to an interceptor, there shall be filed with the District, in duplicate, an application signed by the public agency owning the community sewer to be connected. The application shall be in a form approved and supplied by the District, and shall contain such information and data as may be required from time to time by the District. The connecting of community sewers will be performed by the public agency at its expense in accordance with District requirements and subject to approval and inspection by the District.

Section 5 - Storm, Drainage, and Groundwater Prohibition - Interim Provisions

Existing District regulations prohibit the discharge of storm, drainage, and groundwater to community sewer systems and are intended to complement similar existing public agency rules, regulations, and ordinances which prohibit such discharges. The District and public agencies are cooperating to develop a joint program to eliminate the maximum feasible wet weather flow from community sewer systems. The District storm water prohibitions set forth in District Resolution No. 14979 shall remain in force as interim provisions until the completion, adoption, and implementation of said joint storm water program.

Section 6 - Unusual Conditions

Notwithstanding any provision of this Ordinance to the contrary, District and any discharger or public agency may enter into an agreement where unusual conditions compel special terms and conditions and charges for the interception, treatment, and disposal of the wastewater by the District. However, this Section does not pertain to the waiver of Federal or State standards or requirements.

TITLE II - REGULATION OF THE WASTEWATER DISCHARGES

Section 1 - Permissible Discharges

Wastewater may be discharged into community sewers for interception, treatment, and disposal by the District provided that such wastewater does not contain substances prohibited, or exceed limitations of wastewater strength, set forth in this Ordinance; and provided further that the

discharger pays all District wastewater disposal charges and is in compliance with all terms of this Ordinance, including the permit provisions if applicable.

Section 2 - Prohibited Discharges

a. General Prohibition. No person shall discharge wastewater into a community sewer which will result in contamination, pollution, or a nuisance.

b. Prohibited Effects. No person shall discharge wastewater into a community sewer if it contains substances or has characteristics which, either alone or by interaction with other wastewaters, cause or threaten to cause:

(1) Damage to District facilities.

(2) Interference with or impairment of the operation or maintenance of District facilities.

(3) Obstruction of flow in sewers or interceptors.

(4) Danger to life or safety of any person.

(5) Interference with, or overloading of, treatment or disposal processes.

(6) Flammable or explosive conditions at or near District facilities.

(7) Wastewater or any other by-products of the treatment process to be unsuitable for reclamation and reuse, or interfere with any processes for reclamation.

(8) Noxious or malodorous gases or odors at or near District facilities.

(9) Discoloration or any other condition in the quality of the District's treatment plant effluent in such a manner that receiving water quality requirements established by law cannot be met by the District.

(10) Conditions at or near District facilities which violate any statute or any rule, regulation, or ordinance of any public agency or State or Federal regulatory body, including the general prohibitions contained in Federal General Pretreatment Regulations.

(11) The presence of toxic gases, fumes, or vapors in quantities injurious to the health and safety of District personnel.

(12) Pass-through of the District’s treatment plant, causing a violation of any requirement of the District’s NPDES permit.

c. Prohibited Substances. No person shall discharge the following to a community sewer:

(1) Wastewater which is not polluted and meets requirements for and is acceptable for discharge to storm sewers or to receiving waters of the State; provided that the Director may grant permission for the discharge of unpolluted wastewaters which comply with regulations of the public agency owning the community sewer.

(2) Wastewater which creates a fire or explosion hazard including, but not limited to, discharges with a closed cup flashpoint of less than 140° F (60° C) using the test methods specified in 40 CFR 261.21.

(3) Garbage, except ground garbage from residential and commercial premises where food is prepared and consumed.

d. Prohibited Locations. Except for sewer construction and maintenance by public agencies and contractors, no person shall discharge any wastewater directly into a manhole or other opening in a community sewer system other than through side sewers approved by the public agency owning the system; provided that the Director may grant permission for such direct discharges, upon written application, at locations approved by the public agency and upon payment of applicable sewage disposal charges to the District.

e. Prohibition on Use of Dilution**.** Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no user shall increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate pretreatment to achieve compliance with a pretreatment standard, requirement or discharge limitation. The District may impose mass limitations on the users which are using dilution to meet applicable Pretreatment Standards or requirements, or in other cases where the imposition of mass limitations is appropriate.

f. Prohibition on Slug Discharges**.** No user shall discharge any pollutant, including oxygen-demanding pollutants, at a flow rate and/or pollutant concentration which causes or threatens to cause interference with the wastewater treatment process. For the purposes of this section, any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards or limitations in Title II, Sections 2 and 3 of this ordinance shall be deemed a slug discharge.

g. Bypass Prohibited.

(1) Bypass of pretreatment equipment and/or discharge points is prohibited and the District may take enforcement action against any user for bypass unless:

(i) bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(ii) there were no feasible alternatives to the bypass, as described in 40 CFR 403.17(d) and the industrial user submits the notifications required in 40 CFR 403.17(c).

(2) The District may approve an anticipated bypass, after considering its adverse effects, if the District determines that it will meet the conditions specified in part g(1) of this prohibition.

h. Discharge of Petroleum or Mineral Oil Causing Pass-through or Interference Prohibited. Notwithstanding the provisions of Section 3.a., no user may discharge petroleum oil, non-biodegradable cutting oil or other products of mineral origin in any amount that causes interference or pass-through.

i. Discharge of Trucked or Hauled Wastes Prohibited. No user shall discharge any trucked or otherwise hauled wastes to the community sewer or to any District facilities unless a permit has been issued by the District.

Section 3 - Limitations on Discharges

a. Wastewater Strength Limits. No person shall discharge wastewater from a side sewer into a community sewer if the strength of the wastewater exceeds the following:

Arsenic	2	mg/L
Cadmium	1	mg/L
Chlorinated Hydrocarbons (total identifiable)	0.5	mg/L
Chromium (total)	2	mg/L
Copper	5	mg/L
Cyanide	5	mg/L
Iron	100	mg/L
Lead	2	mg/L
Mercury	0.05	mg/L
Nickel	5	mg/L
Oil and Grease	100	mg/L
pH	not less than 5.5	S.U.
Phenolic compounds	100	mg/L
Silver	1	mg/L
Temperature	150[(1)]	ºF
Zinc	5	mg/L

[(1)] 150°F (65.5°C), or any thermal discharge which as a result of temperature and/or volume causes the influent of the wastewater treatment plant to exceed 104°F (40°C)

b. Additional Wastewater Strength Limits. Wastewater strength limits for constituents not listed in Section 3a may be established in a wastewater discharge permit based on available

treatment technology, existing wastewater conditions in the District's facilities or other factors as determined by the Director. The Director may also establish wastewater strength limits on the wastewater discharge permits at locations within a premises whenever non-process water may dilute the wastewater discharging from side sewers.

c. Quantity and Rate of Flow Limits. No person shall discharge wastewater into a community sewer in quantities or at rates of flow which may have an adverse or harmful effect on or overload District facilities or cause excessive or additional District treatment costs. The Director may establish mass discharge limits in wastewater discharge permits to control the quantity and rate of flow of wastewater discharges.

d. Radioactive Limits. No person shall discharge or cause to be discharged any radioactive wastewater into a community sewer except when the person is authorized to use radioactive material by the Nuclear Regulatory Commission or other governmental agency empowered to regulate the use of radioactive materials and when the wastewater is discharged in strict conformity with current Nuclear Regulatory Commission regulations and recommendations for safe, disposal and in compliance with all rules and regulations of State and local regulatory agencies.

e. Deny or Condition New or Increased Contributions. The Director may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the District's wastewater treatment facility by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the District to violate its NPDES permit.

Section 4 - Federal Pretreatment Standards

Upon promulgation of the Federal General and Categorical Pretreatment Standards, the Federal Standards, if more stringent than limitations imposed under the Ordinance for dischargers, shall supersede the limitations imposed under this Ordinance. The Director shall notify all affected dischargers of the applicable standards and other requirements. National Categorical Standards, found in 40 CFR Chapter I, Subchapter N, Parts 405-471, are hereby incorporated into these regulations. Effluent limitations promulgated by the Federal Act shall apply in any instance where they are more stringent than those in these regulations.

Section 5 - District Pretreatment Program

The Director shall implement a pretreatment program in accordance with General Pretreatment Regulations adopted by EPA and in accordance with this Ordinance.

Section 6 - Permits for Federal Categorical Pretreatment Standards

The Director shall issue permits to dischargers subject to Federal Categorical Pretreatment Standards and require compliance in accordance with dates established by EPA. The Permits shall be issued in accordance with the provisions of Title IV of this Ordinance but pretreatment permits

may be issued with renewal dates from twelve to sixty months after issuance of the initial pretreatment permits.

Section 7 - Confidential Information - Federal Categorical Pretreatment Standards

All information and data obtained from a discharger in connection with Federal Pretreatment Standards shall be available to the public or other governmental agencies without restriction unless the discharger specifies that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets, in which case the discharger shall be solely responsible for taking any action necessary to prevent the release of such information. Wastewater constituents and characteristics will not be recognized as confidential information.

TITLE III - DISCHARGER CLASSIFICATION AND CALCULATION OF WASTEWATER DISPOSAL CHARGES

Section 1 - Classification

All dischargers shall be classified for wastewater disposal purposes in accordance with the principal activity conducted upon the premises, or in accordance with the use of the premises, for purposes of wastewater treatment, as determined by the District in case multiple tenants or activities are on the premises. The purpose of classification is to facilitate the regulation of wastewater dischargers based on quality, quantity and flow, to provide an effective means of industrial waste source control, and to establish a system of wastewater disposal service charges based upon flow and waste strength which will insure an equitable recovery of District capital and operating costs.

Section 2 - Calculation of Wastewater Disposal Charge

All dischargers shall pay a use charge for District wastewater disposal services. The charges will reflect the quantity, quality, and flow of the wastewater of the dischargers and will be based on District capital and operating costs to intercept, treat and dispose of wastewater. All dischargers shall also pay all other charges, fees, tolls, rentals or taxes as from time to time established or adopted by the District. Flat charges, unit charges and classification charges shall be established from time to time and set forth in a schedule of rates and charges. Unit charges will be established for each element of wastewater strength which incurs District costs of interception, treatment and disposal. The total wastewater disposal charge for each discharger shall be calculated as set forth herein:

a. Dischargers from Residential Premises with Four or Less Dwelling Units. Dischargers of wastewater in this class shall pay a total wastewater disposal charge, regardless of the source of water, which shall be the sum of a uniform flat monthly charge per dwelling unit for wastewater strength and the unit charge for volume multiplied by the volume of water used, subject to a maximum volume established by the District from time to time and set forth in a schedule of rates and charges. This wastewater disposal methodology was

established on November 26, 1982 and shall apply to all billing periods commencing on and after November 1, 1982.

b. Dischargers from Residential Premises with Five or More Dwelling Units and Dischargers from Nonresidential Premises. All dischargers of wastewater in this class will be assigned a business classification code depending on the principal activity conducted on the premises or the use of the premises for purposes of wastewater treatment, as determined by the District in case multiple tenants or activities are on the premises. All dischargers conducting the same principal activity will receive the same business classification code. The Director shall determine the typical wastewater strength for each business classification code, and each discharger within that classification will be assumed, for wastewater disposal charge purposes, to have the same typical wastewater strength. The Director shall also subclassify within each business classification code those dischargers who discharge primarily segregated domestic wastes or wastes from sanitary conveniences. A classification charge shall be established by the District for each business classification code and subclassification, which will be based on unit charges for the elements of wastewater strength, including volume, as applied to the typical wastewater strength of the particular classification. The wastewater disposal charge to a discharger in this class will be calculated by multiplying the classification charge by the volume of water used by the discharger. Any discharger in this class who is issued a wastewater discharge permit will thereafter pay a wastewater disposal charge as a permitted discharger.

c. Permitted Dischargers. Dischargers of wastewater who are required to obtain a permit under the provisions of this Ordinance, excluding permits issued solely for flow estimation, shall pay a wastewater disposal charge which shall be the sum of the products of the following: The unit charge for each element of wastewater strength multiplied by the allowable limits of each element set forth in the permit multiplied by the volume of water used; and the unit charge for volume multiplied by the volume of water used as determined herein. The wastewater disposal charge for permitted dischargers, including both wastewater strength and water use, shall be calculated by an apportionment by the Director of strength and use to each side sewer at the discharger's premises. Dischargers requiring permits who have seasonal variations in operations shall have the capital cost element adjusted in the calculation of wastewater disposal charges to ensure equitable recovery of capital costs of design capacity from such dischargers. Dischargers requiring permits solely for flow estimation shall pay a wastewater disposal charge calculated by multiplying the classification charge by the volume of water determined by the estimation. In addition to a wastewater disposal charge, the permitted discharger shall pay all applicable District permit charges. Commencing on the effective date of this Ordinance, all dischargers required to obtain a permit shall pay a wastewater disposal charge in accordance with their business classification code until a permit is issued.

d. Capacity fee. A wastewater capacity fee shall be paid as established from time to time by the District and which reasonably reflects the cost of providing wastewater treatment capacity. The wastewater capacity fee shall be payable prior to the time a new discharger commences a use of the community sewer system, or connection to the District interceptor system. The District will calculate the wastewater capacity fee based on the best available

estimated information for the proposed business, based on the flow, strength, and other pertinent design information at the time the new discharger applies for the District's service. Once the business is fully established, within 24 months from commencement of discharge, the District may review the actual flow and/or strength to verify the estimated demand for wastewater treatment capacity. If the review indicates that the actual measured flow or strength of the business is greater than the initially estimated information, the District will collect an additional wastewater capacity fee. The wastewater capacity fee was made effective September 11, 1984 and the wastewater capacity fee shall apply to all dischargers who increased demand for wastewater treatment capacity on or after July 1, 1984.

An existing discharger pays a capacity fee when the District determines that the discharger has increased their demand for wastewater treatment capacity. An increased demand for wastewater treatment capacity may also be reviewed when an existing business significantly increases their wastewater treatment capacity demand or changes the nature of business (e.g., BCC, ownership). An increased demand for wastewater treatment capacity can occur even if estimating parameters (e.g., square footage, fixtures) for the business may not have changed.

Section 3 - Determination of Water Used

The applicable volume of water upon which wastewater disposal charges shall be based will be determined as follows:

a. Water Discharged to Community Sewer. For premises where no portion of the water received from any source is consumed in the principal activity of the discharger or is removed from the premises by means other than community sewers, the wastewater disposal charge shall be applied against the total amount of water used from all sources. The amount of East Bay Municipal Utility District water received will be determined by registration on an East Bay Municipal Utility District meter. The amount of water used from other sources will be determined by means of a meter installed at the expense of the discharger and approved by the District or by an estimate prepared by the District, after the discharger obtains a permit in accordance with this Ordinance. The discharger shall report to the District the sources of all water used at his premises other than that supplied by the East Bay Municipal Utility District and shall notify the District of any changes in such sources.

b. Water Not Discharged to Community Sewer. For premises where a portion of the water received from any source does not flow into community sewers, because of the principal activity of the discharger or removal by other means, the charge for wastewater disposal service will be applied against the volume of water discharging from such premises into community sewers. Written notification and proof of the diversion of water must be provided by the discharger if he is to avoid application of the wastewater disposal charge against the total amount of water used from all sources. He may be required to install a meter, of a type and at a location approved by the District and at his own expense, to determine the quantity of water flowing into community sewers. However, where it is

impractical to install meters and where the quantity of water diverted from the sewers amounts to more than 20 percent of the total water used, then the charge for wastewater disposal service may be based upon an estimate prepared by the District, after the discharger obtains a permit in accordance with this Ordinance.

TITLE IV - WASTEWATER DISCHARGE PERMITS

Section 1 - Permit Requirement

All dischargers, other than residential, whose wastewater requires special regulation or contains industrial wastes requiring source control and all dischargers requiring an estimation of water use shall secure a wastewater discharge permit.

a. Mandatory Permits. All dischargers in the following categories must obtain a wastewater discharge permit:

(1) Significant Industrial Users, as defined in Title I, Section 3 of this Ordinance.

(2) Critical Industries, as defined in Title I, Section 3 of this Ordinance.

(3) Dischargers whose average wastewater strength cannot be established on a business classification basis, because of seasonal or other variations in operations.

(4) Dischargers whose wastewater strength exceeds the normal range of wastewater strength for the business classification code to which the discharger is assigned.

(5) Dischargers using an unmetered source of water.

(6) Other dischargers determined by the Director to require special regulations or source control.

b. Optional Permits. The Director may issue wastewater discharge permits to any discharger after application in accordance with the terms of this Title, in the following categories:

(1) A discharger who requests a District estimation of wastewater flow because more than 20 percent of the metered water consumption is not being discharged to a community sewer.

(2) Any person whose discharge is less than the normal range of wastewater strength for the business classification code to which he is assigned because of pretreatment, process changes, or other reasons.

Section 2 - Application

Dischargers seeking a wastewater discharge permit shall complete and file with the Director a District application form, accompanied by the applicable District fees. New dischargers shall file applications 60 days prior to commencement of discharges and existing dischargers shall file applications within 30 days of notification by the Director, unless such time is extended for good cause. The application may require the following information:

a. name, site address, and mailing address (if different than site address) of business;
b. estimated wastewater strength;
c. estimated wastewater flow, average and peak wastewater discharge flow for each side sewer;
d. locations of side sewers, sampling points, and pretreatment facilities;
e. description of activity, facilities, and plant process on the premises, including raw materials, processes and types of materials which are or could be discharged;
f. total product produced, by type;
g. number and type of employees;
h. days and hours of operation and days and hours of discharge;
i. slug control plan which outlines discharge practices (including non-routine batch discharges), describes stored chemicals, and contains procedures both to notify the district immediately of slug discharges and to prevent adverse impacts from any accidental spill; and
j. any other information the Director shall deem necessary to evaluate the permit application.

Section 3 - Terms and Conditions of Permit

a. Terms. All wastewater discharge permits shall be subject to all provisions of this Ordinance and all rates and charges established by the District. All permits shall be issued for a specified time period, not to exceed five (5) years. The Director may establish renewal dates up to sixty months. Applications for permit renewal shall be submitted to the District at a minimum of 60 days prior to expiration. All permits, except those issued solely for estimation of water used, shall contain the following terms:

(1) The typical wastewater strength and water use for the flow in each side sewer.

(2) Average and maximum limits on the elements of the discharger's wastewater strength and flow, apportioned to each side sewer.

b. Conditions. Wastewater discharge permits may contain any or all of the following conditions:

(1) Limits on rate and time of discharge or requirements for flow regulation and equalization.

(2) Requirements for inspection and sampling facilities, including District access to such facilities.

(3) Monitoring program which may include: Sampling locations; frequency and method of sampling; number, types and standard of tests; and establishing a reporting schedule. The discharger assigned a monitoring program in conformance with this Ordinance shall pay all applicable District charges.

(4) Submission of technical reports or discharge reports, including, but not limited to, reports described in Title V, Section 2. of this Ordinance, or any report required by 40 CFR 403.12.

(5) Maintenance of plant records relating to wastewater discharges, as specified by the Director, and affording District access thereto.

(6) A statement of applicable penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.

(7) Requirements for the development and implementation of pollution prevention plans to reduce the amount of pollutants discharged to the District's treatment plant.

(8) Notification requirements.

(9) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges.

(10) Installation of technology, as specified by the Director.

(11) Other conditions as deemed appropriate by the Director to ensure compliance with this Ordinance or the terms and conditions of the permit.

Section 4 - Change of Permit Terms and Conditions

The District may change the terms and conditions of a wastewater discharge permit, including changing the average limits on the elements of wastewater strength, from time to time as circumstances may require. The District shall allow a discharger reasonable time to comply with any District required changes in the permit except that a change in average limits of wastewater strength shall immediately affect calculation of the wastewater disposal charge.

Section 5 - Transfer of Permit Prohibited

A wastewater discharge permit shall not be assigned or transferred.

Section 6 - Termination

The Director may terminate any wastewater discharge permit for violation of the terms and conditions of the permit or the provisions of this Ordinance. A discharger whose permit has been terminated shall apply for a new permit within 30 days of notice of termination. Any discharger whose permit has been terminated shall pay wastewater disposal charges based upon his former permit or on his assigned business classification code, whichever is higher, until a new permit has been applied for, approved, and issued.

TITLE V - ADMINISTRATION

Section 1 - Authority of Director

The Director is charged with responsibility for District's wastewater control program and the administration and enforcement of the provisions of this Ordinance.

Section 2 - Wastewater Source Control Requirements

In order to effectively administer and enforce the provisions of these regulations, the Director may require any discharger to comply with any or all the following requirements:

a. Discharge Reports. The Director may require discharge reports, including but not limited to questionnaires, technical reports, sampling reports, and test analyses, and periodic reports of wastewater discharge. When a report filed by a person pursuant to this section is not adequate in the judgment of the Director, he may require such person to supply such additional information as the Director deems necessary. The discharge report may include, but not be limited to, nature of the process, volume and rates of wastewater flow, elements, constituents, and characteristics of the wastewater, together with any information required in an application for wastewater discharge permit.

b. Baseline Monitoring Report. Each categorical industrial user shall submit a baseline monitoring report (BMR). The requirements for a BMR, as described in 40 CFR 403.12(b) are hereby incorporated into these regulations. A BMR, if required, shall be reviewed by an authorized representative of the user, and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and if not, whether additional operation and maintenance and/or additional pretreatment is required for the user to meet the pretreatment standards and requirements.

c. Periodic Report of Continued Compliance. Any categorical industrial user shall submit to the District twice annually, a report indicating the nature and concentration of the pollutants which are regulated by the user’s federal pretreatment standards. The report shall include the average and maximum daily flows. The District may determine during which months the discharger shall submit these reports.

d. Compliance Schedule for the Installation of Technology. The District may require each user to develop a compliance schedule for the installation of technology to meet applicable

pretreatment standard or requirement. The compliance schedule for the installation of technology is not conditioned on the determination of violations. Progress reports for the compliance schedule shall be considered a requirement.

e. Report on Compliance with Categorical Deadline. Each categorical user shall submit a report within 90 days after the final date for compliance, or upon commencement of discharge, whichever comes later, which contains flow and pollutant measurements, a certification of whether pretreatment standards are being met consistently, and if not, a description of needed additional operations and maintenance or pretreatment. The report on compliance with categorical deadline, if required, shall be reviewed by an authorized representative of the user, and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the user to meet the pretreatment standards and requirements.

f. Notice of Violation/ Resampling Report. If sampling by a user indicates a violation, the user shall notify the District 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 District within 30 days of becoming aware of the violation, unless the District samples the user between the time of the initial sampling and the time when the user receives the results of this sampling. Within five (5) days of detecting such violation , the user shall, unless waived by the District, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.

g. Slug Control Plan. The District may require a plan which outlines discharge practices, including non-routine batch discharges, describes stored chemicals, and contains procedures both to notify the District immediately of slug discharges and to prevent adverse impacts from any accidental spill.

h. Notice of Potential Problems**.** All categorical and non-categorical industrial users shall notify the District immediately of all discharges that could cause problems to its wastewater treatment facility, including any slug loadings, as defined by 40 CFR 403.5 (b), by the industrial user.

i. Notification of Changed Conditions. All industrial users shall promptly notify the District in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 CFR 403.12 (p).

j. Notification of Hazardous Waste Discharge.

(1) All industrial users discharging any substance which, if otherwise disposed of, would be a hazardous or acutely hazardous waste under 40 CFR 261, must comply with the reporting requirements of 40 CFR 403.12(p)(1) and (3) unless exempted under the provisions of 40 CFR 403.12(p)(2).

(2) In the case of any notification made under section (1) above, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical. The District may accept a copy of a hazardous waste reduction or minimization plan otherwise required by law, as compliance with this requirement.

k. Monitoring Programs. The Director may require of dischargers such technical or monitoring programs, including the submission of periodic reports, as he deems necessary, provided that the burden, including costs, of such programs and reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom. The discharger shall pay the applicable District charge for the monitoring program, in addition to the wastewater disposal and other charges established by the District. The monitoring program may require the discharger to conduct a sampling and analysis program of a frequency and type specified by the Director or as required by the Federal General Pretreatment Regulations (40 CFR 403.5) to demonstrate compliance with prescribed wastewater discharge limits. The discharger may either:

(1) Conduct his own sampling and analysis program provided he demonstrates to the Director that he has the necessary qualifications and facilities to perform the work; or

(2) Engage a private consulting firm or laboratory, certified by the State of California, Department of Public Health.

l. Inspection Facilities. The Director may require any non-residential discharger to construct, at his own expense, a sampling facility or inspection manhole together with necessary related measuring and sampling equipment, in accordance with construction standards and specifications of the public agency owning the community sewer. The sampling facility or inspection manhole shall be constructed on the side sewer of the discharger and within the public right of way at a location approved by the District and the public agency owning the community sewer; provided that the Director may permit the installation of such facilities on the premises of the discharger at a location which will permit District access to the facility at all times. Construction shall be completed within 60 days of written notification from the Director, unless such time is extended by the Director for good cause. The Director may require the discharger to install such sampling facilities or inspection manholes on each side sewer.

m. Pretreatment. Pretreatment systems or devices may be required by the Director to treat wastewater prior to discharge to the community sewer when it is necessary to restrict or prevent the discharge to the community sewer of wastewater having strength in violation of the prohibitions or exceeding the limits established by this Ordinance, or to distribute wastewater discharges over a period of time. All pretreatment systems or devices shall be approved by the Director but such approval shall not relieve a discharger of the responsibility for taking all steps necessary to comply with wastewater limitations established by the District. All required pretreatment equipment shall be installed and operated at the discharger's expense. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the District.

n. Protection From Accidental Discharge. Each discharger shall provide protection from accidental discharge of prohibited materials or other wastes regulated by this Ordinance. Such facilities shall be provided and maintained at the discharger's expense. These facilities shall be approved by the Director but such approval shall not relieve the discharger from the responsibility of modifying the facilities to provide the protection necessary to meet the requirements of this section.

o. Any other reports, as deemed necessary by the District, to determine a user's compliance status with local, state and federal limits or requirements.

Section 3 - Signature Requirement

a. All reports and/or permit applications received and/or required under these regulations, including BMR, reports on compliance with categorical standard deadlines (90-day compliance reports) and periodic reports on continued compliance, shall be signed:

(1) by a responsible corporate officer, if the user submitting the reports is a corporation. For the purpose of this paragraph, a responsible corporate officer means:

(i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(ii) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) by a general partner or proprietor if the user submitting the reports is a partnership or sole proprietorship, respectively;

(3) by a duly authorized representative of the individual designated in paragraph (1) or (2) of this section if:

(i) The authorization is made in writing by the individual designated in paragraph (1) or (2);

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

(iii) The written authorization is submitted to the District.

(4) If an authorization under paragraph (a)(3) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (a)(3) of this section must be submitted to the District prior to or together with any reports to be signed by an authorized representative.

b. Reports and applications must include the following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Section 4 - Retention of Records

All records, including but not limited to all information resulting from any monitoring activities, discharge reports, permits, self-monitoring data, pretreatment system process control logs, and relevant correspondence (whether or not required by these regulations) must be maintained by the user for a period of not less than three years. Monitoring records shall be included for all samples as specified in 40 CFR 403.12 (o) (1). All such records shall be made available for inspection and copying by a duly authorized representative of the District or any other governmental entity having jurisdiction. The retention period may be extended in the case of unresolved litigation or at any time at the request of the District, the State or U.S. EPA.

Section 5 - Analytical and Sampling Methodology and Procedures

(a) The method and procedures utilized for all analyses which are reported under the requirements of these regulations shall be as specified by the provisions of 40 CFR Part 136.

(b) The methods and procedures utilized for all sampling performed and/or reported under the requirements of this regulation shall be as specified by the provisions of 40 CFR Part 136.

(c) If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by U.S. EPA.

Section 6 - Public Notification of Dischargers Found to be in Significant Non-Compliance

At an interval of not less than once per year, the District will publish the identities of any user(s) which is (are) found to be in significant non-compliance of any national pretreatment standard, discharge limitation or prohibition, or any other requirement of these regulations. The definition of significant non-compliance shall be as specified in Title I, Section 3, The publication shall occur in the newspaper having the largest daily circulation within the service area of the District.

Section 7- Trade Secrets

When requested by the person furnishing a report or permit application or questionnaire, the portions of the report, or other document, which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available to governmental agencies including the U.S. EPA, the State, and the District in judicial review or enforcement proceedings involving the person furnishing the report. All confidential information in connection with Federal Pretreatment Standards shall comply with Title II, Section 7 of this ordinance.

Section 8 - District Inspection

The District may inspect the facilities of any discharger to ascertain whether the provisions of this Ordinance are being met and the wastewater discharge limits are being complied with. Dischargers shall allow the District or its representatives ready access at all reasonable times to all parts of the premises for the purposes of inspection or sampling or in the performance of any of their duties. Where a discharger has security measures which would require proper identification and clearance before entry into their premises, the user shall make arrangements with their security personnel so that, upon presentation of proper identification, District personnel will be permitted to enter without delay for the purposes of performing their specific responsibilities. Such inspection shall be made with the consent of the owner or possessor of such facilities. If the District has been refused access to any part of a discharger's facility, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or

sample as part of the routine inspection and sampling program of the District, then the Director may seek issuance of an inspection warrant or a search warrant, duly issued pursuant to the procedures set forth in Title 13 (commencing with Section 18222.5) of Part 3 of Code of Civil Procedure; provided, however, that in the event of an emergency affecting the public health or safety such inspection may be made without consent or the issuance of a warrant. To verify the wastewater flows and strengths reported by dischargers or to determine compliance with this Ordinance, inspection, measurement, and sampling may be conducted from time to time by the District. The District shall have the right to install, maintain, and operate necessary sampling and measuring equipment on the premises of discharger.

Section 9 - New Connections

Dischargers will be assigned a business classification code and informed of the applicable prohibitions, limits or conditions, and the applicable rates and charges, governing wastewater disposal service at the time of application for water service from East Bay Municipal Utility District. All nonresidential dischargers seeking a new side sewer connection to a community sewer and any new discharger requiring information prior to applying for water service should contact the Director. The Director will inform the discharger of the regulations governing wastewater disposal service and the applicability of requirements for inspection, sampling, or pretreatment facilities.

TITLE VI - ENFORCEMENT AND PENALTIES

Section 1 - Director's Orders

The Director may adopt procedures and rules for the implementation and administration of this Ordinance. The Director shall enforce the provisions of this Ordinance, including requirements established or permits issued hereunder, as provided herein.

a. Requiring Discharger to Submit Schedule of Remedial or Preventive Measures. When the Director finds that a discharge of wastewater is taking place or threatening to take place that violates or will violate prohibitions or limits prescribed by this Ordinance or wastewater source control requirements or the provisions of a wastewater discharge permit, the Director may require the discharger to submit for approval of the Director, with such modifications as he deems necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.

b. Issuance of Cease and Desist Orders. When the Director finds that a discharge of wastewater is taking place or threatening to take place in violation of prohibitions or limits of this Ordinance or wastewater source control requirements or the provisions of a wastewater discharge permit, the Director may issue an order to cease and desist and direct that those persons not complying with such prohibitions, limits, requirements, or provisions (1) comply forthwith, (2) comply in accordance with a time schedule set by the Director, or (3) in the event of a threatened violation, take appropriate remedial or preventative action.

c. Damage to Facilities. When the discharge of wastewater causes an obstruction, damage, or other impairment to District disposal facilities, the Director may recover costs from the discharger to correct the problem caused by the discharger.

d. Termination of Service. The District may terminate or cause to be terminated wastewater disposal or water service to any premises if a violation of any provision of this Ordinance pertaining to control of wastewater is found to exist or if a discharge of wastewater causes or threatens to cause a condition of contamination, pollution, or nuisance, as defined in this Ordinance. This provision is in addition to other statutes, rules, or regulations authorizing termination of service for delinquency in payment, or for any other reason.

e. Appeal Procedures for Director's Orders. Any permit applicant, permit holder, or other discharger affected by any decision, action, or determination, including cease and desist orders, made by the Director in interpreting or implementing the provisions of this Ordinance, or any permit issued hereunder, may file with the Director a written request for reconsideration within 10 days of such decision, action, or determination, setting forth in detail the facts supporting the request. The Director may elect to hold a hearing on the request. The request for reconsideration shall be acted upon by the Director within 10 days from the date of filing or the close of the reconsideration hearing. The decision, action, or determination shall remain in effect during such period of review by the Director. If the ruling made by the Director is unsatisfactory to the person requesting reconsideration, he may, within 10 days after notice of the action by the Director, file a written appeal to the General Manager. The written appeal shall state all pertinent aspects of the matter and shall include the hearing record if one was requested. Within 30 days after the written appeal is received, the General Manager shall hold a hearing after due notice to the appellant. The General Manager may establish rules and regulations governing the hearings of such appeals. The General Manager shall make a final ruling on the appeal within 10 days after close of the hearing. The decision, action, or determination shall remain in effect during such period of review by the General Manager. If the decision of the General Manager is unsatisfactory to the person appealing, he may file a written appeal to the Board of Directors of the District within 10 days after receipt of the decision. The Board of Directors may hear the appeal or refer the matter to a neutral hearing officer for an advisory opinion. The Board of Directors shall make a final ruling on the appeal within 10 days of the close of the hearing or receipt of the advisory opinion. The decision, action, or determination shall remain in effect during such period of review by the Board of Directors. The Director may adopt rules and regulations to implement the provisions of this section.

Section 2 - Director's Enforcement Remedies and Penalties

The Director may administratively impose penalties, up to specified maximums, against any person who violates the provisions of this Ordinance. For purposes of this section of the Ordinance, the Director or his/her designee shall be the hearing officer.

a. Issuance of Complaints.

(1) The Director may issue a complaint to any person on whom civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

(2) The complaint shall be served by personal notice or certified mail on the person subject to the District's discharge and reporting requirements, and shall inform the party served that a hearing shall be conducted within 60 days after the party has been served.

b. Civil Liability Penalties. Civil liability may be imposed by the Director as follows:

(1) In an amount which does not exceed one thousand dollars ($l,000) for each day for knowingly or willfully failing or refusing to furnish technical or monitoring reports.

(2) In an amount which does not exceed five thousand dollars ($5,000) for each day of intentionally or negligently discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, knowingly falsifying any information provided in any furnished technical or monitoring report.

(3) In an amount which does not exceed ten dollars ($10) per gallon for discharges in violation of any of the District's cease and desist or other orders, or prohibitions issued, reissued, or adopted by the District.

(4) Unless appealed, orders setting administrative civil liability shall become effective and final upon issuance thereof, and payment shall be made within 30 days.

c. Appeal.

(1) The person who has been issued a complaint may waive the right to a hearing, in which case the District shall not conduct a hearing. A person dissatisfied with the decision of the Director may appeal to the Board of Directors within 30 days of notice of the Director's decision.

(2) Any party aggrieved by a final order issued by the Board after granting review of a hearing officer order, may obtain review of the order of the board in the superior court by filing in the court a petition for writ of mandate within 30 days following the issuance of the order by the board. Any party aggrieved by a final order of a Director issued pursuant to Title VI, Section 2 of this Ordinance for which the board denies review may obtain review of the order of the Director in the superior court by filing in the court a petition of writ of mandate within 30 days following the denial of review by the board.

Section 3 - Criminal Penalties

a. Any person who intentionally discharges wastewater in any manner, in violation of any order issued by the Director, which results in contamination, pollution, or a nuisance, as defined in this Ordinance, is guilty of a misdemeanor and may be subject to criminal penalties of not more than $1,000 per day for each such violation, including, but not limited to, any violation of pretreatment standards or requirements.

b. Any person who knowingly makes any false statement or representation in any record, report, plan, or other document filed with the District, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required by the District, shall be punished by a fine of not more than twenty-five thousand dollars ($25,000) or by imprisonment in the county jail for not more than six months, or by both.

Section 4 - Civil Enforcement Remedies and Penalties

The District may pursue any of the alternative civil remedies herein against any discharger who violates the provisions of this Ordinance.

a. Civil Enforcement Penalties.

(1) Any person who fails to comply with any order issued by the District, including orders related to pretreatment standards or requirements, shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each day in which the discharge, violation, or refusal occurs.

(2) Any person who intentionally or negligently violates any order issued by the District for violation of rules regulating or prohibiting discharge of wastewater which causes or threatens to cause a condition of contamination, pollution or nuisance, as defined in this article, may be liable civilly in a sum not to exceed twenty-five thousand dollars ($25,000) for each day in which the violation occurs. The attorney of the District, upon request of the Board of Directors of the District, shall petition the Superior Court to impose, assess, and recover such sums.

b. Injunction. Whenever a discharge of wastewater is in violation of the provisions of this Ordinance, including but not limited to violation of a pretreatment standard or requirement, or otherwise causes or threatens to cause a condition of contamination, pollution, or nuisance, or whenever non-discharge violations occur including failure to submit a required report or failure to allow the District's inspectors access to an industrial facility, the District may petition the Superior Court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining the continuance of such violations.

TITLE VII - RESOURCE RECOVERY (TRUCKED WASTE) PROGRAM

Section 1 – Purpose

The Resource Recovery program was established under the authority of the Municipal Utility District Act to utilize excess capacity at the District's Main Wastewater Treatment Plant by accepting permitted trucked waste. The provisions of this title do not regulate discharges to community sewers.

Section 2 – Regulation of Discharges

Permitted wastes may be discharged into identified receiving stations at District wastewater facilities provided that such wastewater has been deemed acceptable by the District under Resource Recovery waste acceptance procedures and has been permitted by the District. It is entirely within the District's discretion to accept or reject any waste or any hauler. The District maintains full discretion on the issuance, terms and conditions, and revocation of trucked waste permits.

No person shall discharge wastewater through the Resource Recovery Program as described in title II Prohibited Discharges, Section 2b Prohibited Effects.

Section 3 – Permit requirements

All trucked waste haulers shall secure a trucked waste permit. The permitting process may include collection of information about the waste stream and generator; collection and laboratory analysis of samples; and an evaluation of potential impacts including worker health and safety, plant process impacts, and regulatory impacts to air, liquid and solid waste permits. Persons seeking a trucked waste permit shall complete and file a District application form accompanied by the applicable District Permit fee. The application requires information on waste characterization including, but not limited to, origin of the waste, estimated waste quantity, waste characteristics including pH, organic analysis, and analysis for other potential pollutants including metals. The application also includes a certification of liability insurance. All permitting decisions shall rest with the Director.

All trucked waste permits shall be subject to all provisions of this title and all applicable rates and charges established by the District. All permits shall be issued for a specific time period, not to exceed five (5) years. The Director may establish renewal frequencies of up to sixty months. Permit conditions may contain any and all of the following: Limits on rate, time and location of discharge; Monitoring and audit program which may include random and unannounced inspections and sampling; Other conditions as deemed appropriate by the Director to insure compliance with this Ordinance and/or terms and conditions of the permit. A trucked waste discharger is prohibited from discharging waste except as expressly provided in the trucked waste discharge permit.

Section 4 – Administration and Enforcement

The Director is charged with responsibility for District's wastewater control program and the administration and enforcement of the provisions of this ordinance. In order to effectively administer and enforce the provisions of these regulations, the Director may require any trucked waste hauler to comply with any or all of the requirements described in Title V Administration, section 2 Wastewater Source Control Requirements.

The Director may adopt procedures and rules for the implementation and administration of this Title. The Director shall enforce the provisions of this Title, including requirements established or permits issued hereunder as provided herein.

a. Requiring Permitee to Submit Schedule of Remedial or Preventive Measures. Trucked waste permittees shall be subject to Title VI Enforcement and Penalties, section 1a of this Ordinance.
b. Discharge in Violation of Permit. No person shall discharge any substance under the Resource Recovery Program into a District facility without a Trucked Waste Permit.
c. Violation of Permit Terms and Conditions. When the Director finds that a discharge of waste is taking place or about to take place in violation of prohibitions or limits of this Ordinance or a trucked waste permit, the Director may direct those persons not complying with such prohibitions, limits, requirements, or provisions to (1) comply forthwith, (2) comply in accordance with a time schedule set by the Director, or (3) in the event of a threatened violation, take appropriate remedial or preventative action. Discharges in violation of a trucked waste permit may be fined an amount not to exceed $10/gallon.
d. Damage to facilities. Trucked waste permittees shall be subject to Title VI Enforcement and Penalties, section 1c of this Ordinance.
e. Termination of Permit The District may terminate or cause to be terminated trucked waste disposal to any facility if a violation of this Ordinance pertaining to control of wastewater is found to exist or if a discharge of waste causes or threatens to cause a condition of contamination, pollution, or nuisance, as defined in this Ordinance. This provision is in addition to other statutes, rules, or regulations authorizing termination of service for delinquency in payment, or for any other reason.
f. Civil Liability Penalties. Civil liability may be imposed by the Director as described in Title VI Enforcement and Penalties, Section 2b Civil Liability Penalties.
g. Criminal Penalties. Criminal liability may be imposed by the Director as described in Title VI Enforcement and Penalties, Section 3a & 3b Criminal Penalties.
h. Civil Enforcement Remedies and Penalties. The District may pursue any of the alternative civil remedies herein against any discharger who violates the provisions of this Ordinance as described in Title VI Enforcement and Penalties, Section 4a Civil Enforcement Penalties.

TITLE VIII- SEVERABILITY

If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of the Ordinance, or the application of such provision to other persons or circumstances, shall not be affected thereby.

TITLE IX - EFFECTIVE DATE

This Ordinance shall become effective on July 24, 2003. All resolutions in conflict herewith are hereby rescinded, with the express exception that Paragraph No. 3 of Resolution No. 14979, prohibiting the discharge of storm water, shall remain in full force and effect. This Ordinance supersedes Ordinance No. 270 and all amendments thereto, including Ordinance Nos. 279, 293, 296, and 300.

FRANK MELLON

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President

I HEREBY CERTIFY that the foregoing Ordinance was duly and regularly introduced at a regular meeting of the Board of Directors of East Bay Municipal Utility District held on June 10, 2003 at the offices of said District, 375 – 11th Street, Oakland, California, and thereupon, after being read, further action was scheduled for the regular meeting of said Board of Directors held at the same place on June 24, 2003, at which time the same was finally adopted by the following vote:

AYES: Directors Coleman, Foulkes, Linney, McIntosh, Patterson, and President Mellon.

NOES: None.

ABSENT: Director Richardson.

ABSTAIN: None.

ATTEST:

LYNELLE M. LEWIS

_____

Secretary

APPROVED AS TO FORM AND PROCEDURE:

ROBERT C. HELWICK

_____

General Counsel

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