

- (5) Changes in design or capability of any part of the POTW,
- (6) Discovery that the permitted discharge causes or contributes to pass through or interference, and
- (7) Changes in the nature and character of the sewage in the POTW as a result of other permitted discharges.

Any changes or new conditions in the permit shall include a reasonable time schedule for compliance as set forth in Section 1004 A (12) (a) .

Section 1004 C - Permit Conditions

Wastewater Discharge Permits shall be expressly subject to all the provisions of this Law, and all other applicable regulations, user charges and fees established by the appropriate municipal board. Permits may contain the following:

- (1) Limits on the average and maximum rate and time of discharge, or requirements for flow regulation and equalization.
- (2) Limits on the average and maximum wastewater constituents and characteristics, including concentration or mass discharge limits.
- (3) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW.
- (4) Requirements for installation and maintenance (in safe condition) of inspection and sampling facilities.
- (5) Specifications for monitoring programs which may include sampling locations/ frequency of sampling/ number/ types/ and standards for tests/ and reporting schedules.
- (6) Compliance schedules
- (7) Requirements for submission of technical reports or discharge reports.
- (8) Requirements for maintaining and retaining plant records relating to wastewater discharge/ as specified by the appropriate municipal board and affording the Superintendent access thereto.
- (9) Requirements for notification of the appropriate municipal board of any new introduction of wastewater constituents or of any substantial change in the volume or character of the wastewater constituents being introduced into the POTW.
- (10) Requirements for the notification of the appropriate municipal board of any change in the manufacturing and/or pretreatment process used by the permittee.
- (11) Requirements for notification of excessive/ accidental/ or slug discharges.
- (12) Other conditions as deemed appropriate by the appropriate municipal board to ensure compliance with this Law/ and State and Federal laws/ rules/ and regulations.

Section 1004 D - Permit Duration

Permits shall be issued for a specified time period/ not to exceed five (5) years. A permit may be issued for a period less than five (5) years.

Section 1004 E - Permit Reissuance

The user shall apply for permit reissuance a minimum of 180 days prior to the expiration of the user/s existing permit. The terms and conditions of the permit may be subject to modification/ by the Superintendent/ during the term of the permit/ as limitations or requirements/ as identified in Section 1004 B/ or other just cause exists. The User shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of the change. Any changes or new conditions in the reissued permit shall include a reasonable time schedule for compliance as established in Section 1004 A (12) (a).

Section 1004 F - Permit Transfer

Wastewater Discharge Permits are issued to a specific User for a specific operation, or discharge at a specific location. A Wastewater Discharge Permit shall not be reassigned, transferred, or sold to a new owner, new User, different premises, or a new or changed operation.

Section 1004 G - Permit Revocation

Wastewater Discharge Permits may be revoked for the following reasons: falsifying self-monitoring reports, tampering with monitoring equipment, refusing to allow the Superintendent timely access to the industrial premises, failure to meet effluent limitations, failure to pay fines, failure to pay user charges, and failure to meet compliance schedules.

Section 1004 H - Public Notification

The appropriate municipal board will publish in the Clinton Courier an informal notice of intent to issue a Wastewater Discharge Permit, at least 14 days prior to issuance.

Section 1005 - Reporting Requirements for Permittee

The reports or documents required to be submitted or maintained under this section shall be subject to:

- (a) The provisions of 18 USC Section 1001 relating to fraud and false statements;
- (b) The provisions of Sections 309 (c) (4) of the Act, as amended, governing false statements, representation or certification; and
- (c) The provisions of Section (c) (6) of the Act, as amended, regarding corporate officers.

(1) Baseline Monitoring Report

Within 180 days after promulgation of an applicable Federal Categorical Pretreatment Standard, a User subject to that standard shall submit, to the Superintendent, the information required by paragraphs (8) and (9) of Section 1004 A.

(2) 90-Day Compliance Report

Within 90 days following the date for final compliance with applicable Pretreatment Standards, or, in the case of a New Source, following commencement of the introduction of wastewater into the POTW, any User subject to Pretreatment Standards and Requirements shall submit, to the Superintendent, a report indicating the nature and concentration of all pollutants *in* the discharge, from the regulated process,

which are limited by Pretreatment Standards and Requirements, and the average and maximum daily flow for these process units in the User's facility which are limited by such Pretreatment Standards and Requirements. The report shall state whether the applicable Pretreatment Standards and Requirements are being met on a consistent basis, and, if not, what additional O&M and/or pretreatment is necessary to bring the User into compliance with the applicable Pretreatment Standards or Requirements. This statement shall be signed by an authorized representative of the Industrial User, and certified to by a qualified professional.

(3) Periodic Compliance Reports

- (a) Any User subject to a Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Superintendent, during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Superintendent, a report indicating the nature and concentration of pollutants in the effluent which are limited by such Pretreatment Standards. In addition, this report shall include a record of all daily flows which, during the reporting period, exceeded the average daily flow reported in Section 1004 A. At the discretion of the Superintendent, and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Superintendent may agree to alter the months during which the above reports are to be submitted, however, no fewer than two reports shall be submitted per year.
- (b) The Superintendent may impose mass limitations on Users, which are using dilution to meet applicable Pretreatment Standards or Requirements, or, in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by *Section 1005 (3) (a)* shall indicate the mass of pollutants regulated by Pretreatment Standards in the effluent of the User. These reports shall contain the results of discharge sampling and analysis, including the flow, and the nature and concentration, or production and mass, where requested by the Superintendent, of pollutants contained therein, which are limited by the applicable Pretreatment Standard. All analyses shall be performed in accordance with Standard Methods, by a laboratory certified by NYSDOH to perform the analyses.

(4) Violation Report

If sampling, performed by the user, indicates a violation of this Law and/or the User's discharge permit, the User shall notify the Superintendent 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 Superintendent within 30 days after becoming aware of the violation. The User is not required to re-sample if the POTW performs monitoring of the User's discharge at least once a month for the parameter which was violated, or if the POTW performs sampling, for the parameter which was violated, between the User's initial sampling and when the User receives the results of this sampling.

(5) Other reports

The superintendent may impose reporting requirements equivalent to the requirements imposed by Section 1005(3) for users not subject to pretreatment standards.

Section 1006 - Flow Equalization

No person shall cause the discharge of slugs to the POTW.

Each person discharging, into the POTW, greater than 100,000 gallons per day or greater than five percent (5%) of the average daily flow in the POTW, whichever is lesser, shall install and maintain, on his property and at his expense, a suitable storage and flow control facility to insure equalization of flow over a twenty-four (24) hour period. The facility shall have a capacity for at least fifty percent

(50%) of the daily discharge volume and shall be equipped with alarms and a rate of discharge controller, the regulation of which shall be directed by the Superintendent. A wastewater discharge permit may be issued solely for flow equalization.

Section 1007 - Monitoring Stations (Control Manholes)

- (a) All Significant Industrial Users, and other Industrial Users whose industrial waste discharge has caused or may cause Interference or Pass-Through shall install and maintain a suitable monitoring station, on their premises at their expense, to facilitate the observation, sampling, and measurement of their industrial wastewater discharge.
- (b) If there is more than one street lateral serving an Industrial User, the Superintendent may require the installation of a control manhole on each lateral.
- (c) The Superintendent may require that such monitoring station(s) include equipment for the continuous measurement and recording of wastewater flow rate and for the sampling of the wastewater. Such station(s) shall be accessibly and safely located, and the Industrial User shall allow immediate access, without prior notice, to the station by the Superintendent, or his designated representative.

Section 1008 - Proper Design and Maintenance of Facilities and Monitoring Stations

Preliminary treatment, and flow equalization facilities, or monitoring stations, if provided for any wastewater, shall be constructed and maintained continuously clean, safe, and continuously operational by the owner at his expense. Where an Industrial User has such treatment, equalization, or monitoring facilities at the time this Law is enacted, the Superintendent may approve or disapprove the adequacy of such facilities. Where the Superintendent disapproves of such facilities and construction of new or upgraded facilities for treatment, equalization, or monitoring are required, plans and specifications for such facilities shall be prepared by a licensed professional engineer and submitted to the Superintendent. Construction of new or upgraded facilities shall not commence until written approval of the Superintendent has been obtained.

Section 1009 - Vandalism, Tampering with Measuring Devices

No unauthorized person shall negligently break, damage, destroy, uncover, deface, tamper with, prevent access, or render inaccurate, or cause or permit the negligent breaking, damaging, destroying, uncovering, defacing, tampering with, preventing access, or rendering inaccurate to:

- i. any structure, appurtenance, or equipment which is a part of the Town of Kirkland POTW, or
- ii. any measuring, sampling, and/or testing device or mechanism

installed pursuant to any requirement under this Law except as approved by the Superintendent.

Section 1010 - Sampling and Analysis

Sampling shall be performed so that a representative portion of the wastewater is obtained for analysis.

All measurements, tests, and analyses of the characteristics of waters and wastes required in any section of this Law shall be carried out in accordance with Standard Methods, by a laboratory certified by NYSDOH to perform the analyses. Such samples shall be taken at the approved monitoring stations described in Section 1007, if such a station exists. If an approved monitoring station is not required, then samples shall be taken from another location on the industrial sewer lateral before discharge to the public sewer. Unless specifically requested otherwise, or unless specifically not allowed in Federal regulation, samples shall be gathered as flow proportioned (where feasible) composite samples made up of individual samples taken not less than once per hour for the period of time equal to the duration of industrial wastewater discharge during daily operations (including any cleanup shift) .

Section 1011 - Accidental Discharges; SPCC Plan

Each user shall provide for protection from accidental or slug discharges of prohibited materials or discharges of materials in volume or concentration exceeding limitations of this Law or of an Industrial Wastewater Discharge Permit. Users shall immediately notify the Superintendent and Sanitary Inspector of the discharge of wastes in violation of this Law or any Permit. Such discharges may result from:

- (1) Breakdown of pretreatment equipment
- (2) Accidents caused by mechanical failure, or negligence
- (3) Other causes.

Where possible, such immediate notification shall allow the Superintendent to initiate appropriate countermeasure action at the POTW. The user shall prepare a detailed written statement following any accidental or slug discharge, which describes the causes of the discharge and the measures being taken to prevent future occurrences, within five (5) days of the occurrence, and the Superintendent shall receive a copy of such report no later than the fifth calendar day following the occurrence. Analytical results and their interpretation may be appended to the report at a date not exceeding 45 calendar days after the occurrence.

When required by the Superintendent, detailed plans and procedures to prevent accidental or slug discharges shall be submitted to the Superintendent, for approval. These plans and procedures shall be called a Spill Prevention, Control, and Countermeasure (SPCC) Plan. The plan shall address, at a minimum, the following:

- (a) Description of discharge practices, including non- routine batch discharges;
- (b) Description of stored chemicals;
- (c) Procedures for immediately notifying the POTW of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any provision of the permit and any National Prohibitive Discharge Standard;

- (d) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

Section 1012 - Posting Notices

In order that the Industrial User's employees be informed of the appropriate municipal board requirements, a notice shall be permanently posted on appropriate bulletin boards within the user's facility advising employees of the appropriate municipal board requirements and whom to call in case of an accidental discharge in violation of this Law.

Section 1013 - Sample Splitting

When so requested in advance by an industrial user, and when taking a sample of industrial wastewater, the appropriate municipal board representative(s) and the Superintendent of the respective POTW shall gather sufficient volume of sample so that the sample can be split into two nearly equal volumes, each of size adequate for the anticipated analytical protocols including any Quality Control (QC) procedures. One of the volumes shall be given to the industry whose wastewater was sampled, and the other shall be retained by the Town of Kirkland for its own analysis.

Section 1014 - Access to Information

When requested, the Superintendent shall make available, to the public, for inspection and/or copying, information and data on industrial users obtained from reports, questionnaires, permit applications, permit and monitoring programs, and inspections, unless the Industrial User specifically requests, and is able to demonstrate to the satisfaction of the Superintendent, that such information, if made public, would divulge processes or methods of production entitled to protection as trade secrets of the user. Wastewater constituents and characteristics, and reports of accidental discharges shall not be recognized as confidential.

Confidential information shall not be made available for inspection and/or copying by the public but shall be disclosed, upon written request, to governmental agencies, for uses related to this Law, or the SPDES Permit, providing that the governmental agency making the request agrees to hold the information confidential, in accordance with State or Federal Laws, Rules and Regulations. The Superintendent shall provide written notice to the industrial user of any disclosure of confidential information to another governmental agency.

Section 1015 A - Access to Property

The Superintendent, Sanitary Inspector or their designees, and other authorized representatives of the appropriate municipal board, representatives of EPA, NYSDEC, NYSDOH, and/or Oneida County Health Department, bearing proper credentials and identification, shall be permitted to enter upon all non-residential properties at all times for the purpose of inspection, observation, sampling, flow measurement, and testing to ascertain a user's compliance with applicable provisions of Federal and State law governing use of the Town of Kirkland POTW, and with the provisions of this Law. Inspections of residential properties shall be permitted, subject to observance of the resident's civil rights. Such representative(s) shall have the right to set up, on the User's

property or property rented/leased by the User, such devices as are necessary to conduct sampling or flow measurement. Guard dogs shall be under proper control of the User while the representatives are on the User's property or property rented/leased by the User. Such representative(s) shall, additionally have access to and may copy any records the User is required to maintain under this Law. Where a User has security measures in force which would require proper identification and clearance before entry into the premises, the user shall make necessary arrangements so that upon presentation of suitable identification, inspecting personnel will be permitted to enter, without delay, for the purpose of performing their specific responsibilities.

Section 1015 B - Access to Easements

The superintendent, Sanitary Inspector or their designees, bearing proper credentials and identification, shall be permitted to enter all private premises through which the Town of Kirkland holds an easement for the purpose of inspection, observation, measurement, sampling, repair, and maintenance of any portion of the public sewer system within the Town of Kirkland lying within the easement. All entry and subsequent work on the easement shall be done in accordance with the terms of the easement pertaining to the private premises involved.

Section 1015 C - Liability of Property Owner

During the performance, on private premises, of inspections, sampling, or other similar operations referred to in Sections 1014 A and 1014 B, the inspectors shall observe all applicable safety rules established by the owner or occupant of the premises. The owner and/or occupant shall be held harmless for personal injury or death of the inspector and the loss of or damage to the inspector's supplies and/or equipment; and the inspector shall indemnify the owner and/or occupant against loss or damage to property of the owner or occupant by the inspector and against liability claims asserted against the owner or occupant for personal injury or death of the inspector or for loss of or damage to the inspector's supplies or equipment arising from inspection and sampling operations, except as such may be caused by negligence or failure of the owner or occupant to maintain safe conditions.

Section 1016 - Special Agreements

Nothing in this Article shall be construed as preventing any special agreement or arrangement between the appropriate municipal board and any User of the POTW whereby wastewater of unusual strength or character is accepted into the POTW and specially treated, subject to any payments or user charges, as may be applicable. In entering into such a special agreement, the appropriate municipal board shall consider whether the wastewater will:

- (1) pass-through or cause interference
- (2) endanger the public municipal employees
- (3) cause violation of the SPDES Permit
- (4) interfere with any Purpose stated in Section 102
- (5) prevent the equitable compensation to the Town of

Kirkland for wastewater conveyance and treatment, and sludge management and disposal

No discharge which violates the Federal Pretreatment Standards will be

allowed under the terms of such special agreements.

ARTICLE 11

ENFORCEMENT AND PENALTIES

Section 1101- Enforcement Response Plan

The appropriate municipal board shall prepare an Enforcement Response Plan. The Enforcement Response Plan, in a step-by-step fashion, shall outline the procedures to be followed to identify, document, and respond to violations by Users of the POTW. All violations by Users of the POTW shall be met with some type of enforcement response. The response shall be comprehensive and effective.

The Enforcement Response Plan shall, at a minimum:

- (1) describe how the Superintendent will investigate instances of non-compliance
- (2) describe the types of escalated enforcement actions that the Superintendent will take in response to all anticipated types of User violations and the time periods within which to initiate and follow-up these actions
- (3) adequately reflect the appropriate municipal board's responsibility to enforce all applicable standards and requirements.

The Enforcement Response Plan shall contain:

- (1) criteria for scheduling periodic inspection and/or sampling visits to POTW Users
- (2) forms and guidelines for documenting compliance data in a manner which will enable the information to be used as evidence
- (3) systems to track due dates, compliance schedule milestones, and pending enforcement actions
- (4) criteria, responsible personnel, and procedures to select and initiate an enforcement action.

The range of appropriate enforcement actions shall be based on the nature and severity of the violation and other relevant factors, such as:

- (1) magnitude of the violation;
- (2) duration of the violation
- (3) effect of the violation on the receiving water;
- (4) effect of the violation on the POTW
- (5) effect of the violation on the health and safety of the POTW employees
- (6) compliance history of the User; and
- (7) good faith of the User and shall promote consistent and timely use of enforcement remedies.

The appropriate municipal board shall approve the Enforcement

Response Plan. The Enforcement Response Plan shall be reviewed at least every five years.

ADMINISTRATIVE REMEDIES

Section 1102 – Phone call from County

(A) When the Superintendent finds that any user has violated or is violating this Law, or any permit, order, prohibition, limitation or requirement pursuant to this Law, the Superintendent may telephone such user to discuss the factors contributing to the violation, and to determine if additional enforcement actions are necessary. The Superintendent may require the user to provide additional self-monitoring, a letter explanation of the reason for violation, and/or a plan for the satisfactory correction and prevention thereof.

Section 1103 - Notification of Violation

Whenever the Superintendent finds that any User has violated or is violating this Law, or any Wastewater Discharge Permit, order, prohibition, limitation, or requirement permitted by this Law, the Superintendent may serve upon such person a written notice stating the nature of the violation. Within ten (10) calendar days of the date the Superintendent mails the notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof shall be submitted to the Superintendent, by the User. The correction and prevention plan shall include specific actions. Submission of this plan in no way relieves the User of liability for any violations caused by the User before or after receipt of the Notice of Violation.

Section 1104 - Consent Orders

The Superintendent is hereby empowered to enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the User responsible for the noncompliance. Such orders shall include specific action to be taken by the User to correct the noncompliance within a time period also specified by the order. Consent Orders shall have the same force and effect as an administrative order.

Section 1105 - Administrative or Compliance Orders

When the Superintendent finds that a User has violated or continues to violate this Law or a permit or administrative order issued thereunder, he may issue an administrative order to the User responsible for the discharge directing that, following a specified time period, sewer service shall be discontinued, severed and abated unless the violation is corrected and that there is no reoccurrence of the violation. Administrative orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the installation of pretreatment technology, additional self-monitoring, and management practices.

The User may, within fifteen (15) calendar days of receipt of such order, petition the Superintendent to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:

- (1) Reject any frivolous petitions,
- (2) Modify or suspend the order,
- (3) Request additional information from the User; and/or

- (4) Order the petitioner to show cause in accordance with Section 1109 and may as part of the show cause or request the User to seek judicial relief as may otherwise be provided in this Article.

Section 1106 - Administrative Fines

Notwithstanding any other section of this Law, any User who is found to have violated any provision of this Law, or a wastewater discharge permit or administrative order issued hereunder, shall be fined in an amount not to exceed one thousand dollars (\$1,000.00) per violation. Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation.

The User may, within fifteen (15) calendar days of notification of the Superintendent's notice of such fine, petition the Superintendent to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:

- (1) Reject any frivolous petitions,
- (2) Modify or suspend the fine;
- (3) Request additional information from the user; and/or
- (4) Order the petitioner to show cause in accordance with Section 1109 and may as part of the show cause or request the User to seek judicial relief as may be otherwise be provided in this Article.

Section 1107 - Cease and Desist Orders

When the Superintendent finds that a User has violated or continues to violate this Law or any permit or administrative order issued hereunder, the Superintendent may issue an administrative order to cease and desist all such violations and direct those persons in noncompliance to:

- (1) Comply forthwith
- (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations or terminating the discharge.

Noncompliant Users will be notified in person or by registered mail of the proposed cease and desist order. The User may, within fifteen (15) calendar days of receipt of notice from the Superintendent of such order, petition the Superintendent to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:

- (1) Reject any frivolous petitions,
- (2) Modify or suspend the fine;
- (3) Request additional information from the user; and/or
- (4) Order the petitioner to show cause in accordance with Section 1109 and may as part of the show cause or request the User to seek judicial relief as may be otherwise be provided in this Article.

Section 1108 - Termination of Permit

Any User who violates the following conditions of this Law or a wastewater

discharge permit or administrative order, or any applicable or State and Federal law, is subject to permit termination:

- (1) Violation of permit conditions
- (2) Failure to accurately report the wastewater constituents and characteristics of its discharge
- (3) Failure to report significant changes in operations or wastewater constituents and characteristics
- (4) Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring, or sampling.

Non-compliant industrial Users will be notified, by registered mail, of the proposed termination of their wastewater permit.

The User may, within fifteen (15) calendar days of the receipt of such notification, petition the Superintendent to permit continued use of the POTW by the user. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:

- (1) Reject any frivolous petitions,
- (2) Modify or suspend the fine;
- (3) Request additional information from the user; and/or
- (4) Order the petitioner to show cause in accordance with Section 1109 and may as part of the show cause or request the User to seek judicial relief as may be otherwise be provided in this Article.

Section 1109 - Water Supply Severance

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

The User may, within fifteen (15) calendar days of severance, petition the Superintendent to reconnect water supply service. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:

- (1) Reject any frivolous petitions,
- (2) Reconnect the water supply, or
- (3) Order the petitioner to show cause in accordance with Section 1109 and may as part of the show cause notice request the User to supply additional information.

Section 1109 - Show Cause Hearing

The Superintendent may order any User appealing administrative remedies for violations of this Law to show cause, before the appropriate municipal board, why an enforcement action, initiated by the Superintendent, should not be taken. A notice shall be served on the User specifying the time and place of a hearing to be held by the appropriate municipal board regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the User to show cause before

the appropriate municipal board why the proposed enforcement action should not be taken. The notice of the hearing shall be served at least ten (10) calendar days before the hearing in accordance with Section 1111 of this Article. Service shall be made on any principal or executive officer of a User's establishment or to any partner in a User's establishment. The notice of the hearing shall be served at least ten (10) calendar days before the hearing, in accordance with Section 1111.

The appropriate municipal board may itself conduct the hearing, or may designate any of its members or any officer or employee of the appropriate municipal board to conduct the hearing:

- (1) Issue, in the name of the appropriate municipal board, notices of hearings requesting the attendance and testimony of witnesses, and the production of evidence relevant to any matter involved in such hearings,
- (2) Take the evidence,
- (3) Take sworn testimony,
- (4) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the appropriate municipal board for action thereon.

After the appropriate municipal board has reviewed the evidence and testimony, it may order the user to comply with the Superintendent's order or fine, modify the Superintendent's order or fine, or vacate the Superintendent's order or fine.

Section 1110 - Failure of User to Petition the Superintendent

In the event the Superintendent issues any administrative order, terminates the User's permit, or makes any fine as set forth in this article, and the User fails, within the designated period of time set forth, to petition the Superintendent, as provided in appropriate sections of this article, the User shall be deemed in default and its rights to contest the administrative order or fine shall be deemed waived.

Section 1111 - Notice

The notices, orders, petitions, or other notification which the User or Superintendent shall desire or be required to give pursuant to any sections of this Law shall be in writing and shall be served personally or sent by certified mail or registered mail, return receipt requested, postage prepaid, and the notice, order, petition, or other communication shall be deemed given upon its mailing as provided herein. Any notice, administrative order, or communication mailed to the User pursuant to the sections of this Law shall be mailed to the User where the User's effluent is discharged into transmission lines to the Town of Kirkland's POTW. Any notice, petition, or other communication mailed to the Superintendent shall be addressed and mailed to the Town Hall of the Town of Kirkland.

Section 1112 - Right to Choose Multiple Remedies

The Superintendent shall have the right, within the Superintendent's sole discretion, to utilize anyone or more appropriate administrative remedies set forth in this Article. The Superintendent may utilize more than one administrative remedy established pursuant to this Article, and the Superintendent may hold one show cause hearing combining more than one enforcement action.

JUDICIAL REMEDIES

Section 1113 - Civil Actions For Penalties

Any person who violates any of the provisions of or who fails to perform any duty imposed by this Law, or any administrative order or determination of the Superintendent promulgated under this Law, or the terms of any permit issued hereunder, shall be liable to the Town of Kirkland for a civil penalty not to exceed one thousand dollars (\$1000) for each such violation, to be assessed after a hearing (unless the User waives the right to a hearing) held in conformance with the procedures set forth in this Article. Each violation shall be separate and distinct violation, and in the case of continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation. Such penalty may be recovered in an action brought by the Town of Kirkland attorney, or his designated attorney, at the request of the Superintendent in the name of the Town of Kirkland, in any court of competent jurisdiction giving preference to courts local to the Town of Kirkland. In addition to the above described penalty, the Superintendent may recover all damages incurred by the Town of Kirkland from any persons or Users who violate any provisions of this Law, or who fail to perform any duties imposed by this Law or any administrative order or determination of the Superintendent promulgated under this Law, or the terms of any permit issued hereunder. In addition to the above described damages, the Superintendent may recover all reasonable attorney's fees incurred by the Town of Kirkland in enforcing the provisions of this Article, including reasonable attorney's fees incurred in any action to recover penalties and damages, and the Superintendent may also recover court costs, and other expenses associated with the enforcement activities, including sampling and monitoring expenses.

In determining the amount of civil penalty, the court shall take into account all relative circumstances, including, but not limited to the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the User's violation, corrective actions by the User, the compliance history of the User, and any other relative factors as justice may require.

Such civil penalty may be released or compromised by the Superintendent before the matter has been referred to the Town of Kirkland attorney, and where such matter has been referred to the Town of Kirkland attorney, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the Town of Kirkland attorney, with the consent of the Superintendent.

Section 1114 - Court Orders

In addition to the power to assess penalties as set forth in this Article, the Superintendent shall have the power, following the hearing held in conformance with the procedures set forth in this Article, to seek an order:

- (1) Suspending, revoking, or modifying the violator's Wastewater Discharge Permit, or
- (2) Enjoining the violator from continuing the violation.

Any such court order shall be sought in an action brought by the Town of Kirkland attorney, at the request of the Superintendent, in the name of the Town of Kirkland, in any court of competent jurisdiction giving precedence to courts local to the Town of Kirkland.

The Town of Kirkland attorney, at the request of the Superintendent shall petition

the Court to impose, assess, and recover such sums imposed according to this Article. In determining amount of liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the User's violation, corrective actions by the User, the compliance history of the User, and any other factor as justice requires.

Section 1115 - Criminal Penalties

Any person who willfully violates any provision of this Law or any final determination or administrative order of the Superintendent made in accordance with this Article shall be guilty of a Class A Misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000), or imprisonment not to exceed one (1) year or both. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

Any User who knowingly makes any false statements, representations, or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this Law, or wastewater permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Law shall be guilty of a Class A Misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) per violation per day or imprisonment for not more than one (1) year or both.

No prosecution, under this Section, shall be instituted until after final disposition of a show cause hearing, if any, was instituted.

Section 1116 - Additional Injunctive Relief

Whenever a User has violated or continues to violate the provisions of this Law or permit or order issued hereunder, the Superintendent, through counsel may petition the Court, in the name of the Town of Kirkland, for the issuance of a preliminary or permanent injunction or both (as may be appropriate) which restrains the violation of, or compels the compliance with any order or determination thereunder by the Superintendent.

Section 1117 - Summary Abatement

Notwithstanding any inconsistent provisions of this Law, whenever the Superintendent finds, after investigation, that any User is causing, engaging in, or maintaining a condition or activity which, in the judgment of the Superintendent, presents an imminent danger to the public health, safety, or welfare, or to the environment, or is likely to result in severe damage to the POTW or the environment, and it therefore appears to be prejudicial to the public interest to allow the condition or activity to go unabated until notice and an opportunity for a hearing can be provided, the Superintendent may, without prior hearing, order such User by notice, in writing wherever practicable or in such other form as practices are intended to be proscribed, to discontinue, abate, or alleviate such condition or activity, and thereupon such person shall immediately discontinue, abate, or alleviate such condition or activity; or where the giving of notice is impracticable, or in the event of a User's failure to comply voluntarily with an emergency order, the Superintendent may take all appropriate action to abate the violating condition. As promptly as possible thereafter, not to exceed fifteen (15) calendar days, the Superintendent shall provide the User an opportunity to be heard, in

accordance with the provisions of this Article.

If the User is not within the geographic boundaries of the Town of Kirkland the right of summary abatement to discontinue, abate, or alleviate conditions or activities shall be those prescribed in the applicable inter-municipal agreement.

The Superintendent, acting upon the belief that an emergency exists, shall be indemnified against any personal liability that may arise in the performance of his duties to protect the public health, safety, or welfare, or to preserve the POTW or the environment.

MISCELLANEOUS

Section 1118 - Delinquent Payments

If there shall be any payments which are due to the Town of Kirkland, or any Department thereof, pursuant to any Article or Section of this Law, which shall remain due and unpaid, in whole or in part, for a period of twenty (20) calendar days from the date of billing by the Town of Kirkland, the same shall constitute a default, and there shall be added to the entire amount of the original bill, a penalty equal to twenty percent (20%) of the original bill, and interest shall accrue on the unpaid balance, at the rate of two percent (2%) per month, retroactive to the date of the original billing.

In the event that there are any sewer taxes, assessments, or other service charges which shall have been delinquent for a period of at least sixty (60) calendar days as of December 15 of any year, the superintendent shall report the names of the defaulting persons to the Town Board of the Town of Kirkland, the Town Clerk of the Town of Kirkland, and the Town of Kirkland Assessor, on or before December 15 of the same year. The Assessor of the Town of Kirkland is hereby directed to add the entire amount of the sewer tax, assessment, or other service charge which shall be in default, plus penalty and interest, as provided for in this Law, to the real property taxes due and owing to Town of Kirkland in the next succeeding year, and the Assessor of the Town of Kirkland is directed to collect the same in the same manner as real property taxes due and owing to the Town of Kirkland are collected.

Where charges are delinquent and the violator is not a resident of the Town of Kirkland, or is located outside the geographical boundaries of the Town of Kirkland, then the Town of Kirkland attorney is authorized to seek recovery of charges, including punitive damages, in a court of competent jurisdiction or make arrangements with the appropriate county where the User is located to add the amount of the sewer assessment or other charges which shall be in default, plus penalty and interest, as provided for in the Law, to the real property taxes due to the County in the next ensuing year.

Section 1119 - Performance Bonds

The Superintendent may decline to reissue a permit to any User which has failed to comply with the provisions of this Law or any order or previous permit issued hereunder unless such User first files with it a satisfactory bond, payable to the POTW, in a sum not to exceed a value determined by the Superintendent to be necessary to achieve consistent compliance.

Section 1120 - Liability Insurance

The Superintendent may decline to reissue a permit to any User which has failed to comply with the provisions of this Law or any order or previous permit issued hereunder, unless the User first submits proof that it has obtained financial assurances

sufficient to restore or repair POTW damage caused by its discharge.

Section 1121 -Informant Rewards

The Superintendent is authorized to pay up to \$500 for information leading to the discovery of noncompliance by a User. In the event that the information provided results in an administrative fine or civil penalty levied against the User, the Superintendent is authorized to disperse up to ten (10) percent of the collected fine or penalty to the informant. However, a single reward payment may not exceed \$10,000, including the discovery reward.

Section 1122 - Public Notification

The Superintendent shall provide public notification, in the Clinton Courier in the Town of Kirkland, of Users which were in significant non-compliance of local or Federal pretreatment standards or requirements since the last such notice. The frequency of such notices shall be at least once per year. The Superintendent may provide public notification also in any other daily newspaper with the largest circulation within the Town of Kirkland.

Section 1123 - Contractor Listings

- (1) Users which have not achieved consistent compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the Town of Kirkland.
- (2) Existing contracts for the sale of goods or services to the Town of Kirkland held by a User found to be in significant violation with pretreatment standards may be terminated at the discretion of the Town of Kirkland Board.

ARTICLE 12

SEWER RENTS AND CHARGES

SECTION 1200: Short Title and Purpose

(1) Short Title

This chapter shall be known and may be cited and referred to as the "Sewer Rent Law" of the Town of Kirkland.

(2) Purpose

It is the purpose of this chapter to provide a means for the Town of Kirkland to recover the costs of retiring debt service, capital expenditures, operation and maintenance associated with the sewer districts in the Town of Kirkland including but limited to the waste sewer treatment plants and sewer systems within the Town of Kirkland including but not limited to the Consolidated Sewer District, Clark Mills Sewer District and Route 5 Sewer District of the Town of Kirkland.

(3) Inflow/Infiltration and Mitigation

The elimination of Sanitary Sewer Overflows (SSO) is a high priority for the Town of Kirkland Clark Mills Sewer District (the "District"). While improvements are planned and implemented, requests for additional flows to the sewer system are being made by developers and other entities. The Town

Board is delegated and authorized to adopt and offset plan to ensure that flow from new connections does not exacerbate existing conditions and to adopt, collect and implement such inflow/infiltration remediation plans, inflow/infiltration fund(s), mitigation fees, rules and regulations as it deems necessary to protect and maintain the integrity of the District.

Section 1201 - Normal Sewage Service Charges

All persons discharging or depositing wastes into the public sewers shall pay a sewer service charge proportional to the liquid volume of waste so deposited, which charge shall be collected as a sewer rent.

The equivalent household unit (EHU) system shall be the standard measure of volume and the basic unit is a single family residence as herein defined. All other users shall be assigned an equivalent number of such units to reflect the volume of wastewater which they contribute to the system.

SECTION 1201 A:

Hamilton College Sewer District

(1) Hamilton College Sewer District

Hamilton College Sewer District is a sewer district established under and by § 228 of the Education Law of the State of New York as amended and shown on a map of the sewer district dated July 30th, 1971.

(2) Statutory Authority

Pursuant to the authority of the Sewer Rent Law of the State of New York (Article 14-F of the General Municipal Law) and any and all amendments thereto, there are hereby established and imposed sewer rents as a means of producing revenue for the sewer system of the Hamilton College Sewer District of the Town of Kirkland, Oneida County, New York.

(3) Imposition and Computation of Rents

A. The owner of any parcel of land or real property situate within the Hamilton College Sewer District connected with the sewer system or any part or parts thereof, including but not limited to real property connected with the sewer system or any part or parts thereof by means of a private sewer drain emptying into the sewer system, shall pay an annual sewer rent for the use of the sewer system or any part or parts thereof.

B. Annual sewer rent:

(1) such annual sewer rent shall be based upon the metered consumption of water on all such real property connected with the sewer system or any part or parts thereof, except as may be otherwise herein provided. The amount of such annual sewer rents is as established annually by the Hamilton College Sewer District after public hearing.

(2) if any such property is supplied with water obtained from a source other than from the Hamilton College water supply system, the sewer rent for such property shall be one hundred percent (100%) of the amount that would be charges for the quantity of water

supplied from such source if such water were supplied by the Hamilton College water supply system. The Sewer Superintendent shall estimate the quantity of water supplied from such source and shall compute the sewer rent on the basis of such estimated quantity in accordance with the provisions of this subsection; or the Sewer superintendent may require or permit the installation of a water meter by the owner or occupant of the premises to measure the quantity of water supplied from such source, and the quantity of water measured by such meter shall constitute the basis for computing the sewer rent in accordance with the provisions of this subsection. The cost of the purchase and installation of a water meter shall be paid for by the property owner.

(3) **Payments of Sewer Rents; Collection of Delinquent Payments**

Sewer rents shall become due and payable on each March 31st and September 30th in each year. The Sewer District shall semiannually cause a statement to be prepared setting forth the amount of the sewer rents for each of the properties subject thereto and the name of the person in whose name such real property is assessed, which shall be mailed to said person in advance of the aforesaid due date. Such amounts unpaid thirty (30) days after mailing of said statement shall be collected and enforced, together with a penalty of ten percent (10%). Such amount of rents as remain unpaid after 30 days shall be collected and enforced in accordance with § 452, Subdivision 4, of the General Municipal Law of the State of New York.

SECTION 1201 B:

Clark Mills Sewer District, Route 5 Sewer District and the Old Bristol Road Area of the Consolidated Sewer District

(1) **Source of Revenue [Amended 10-9-89]**

The costs of retiring the debt service and the operation and maintenance of the sewage treatment plant shall be recovered by a user benefit assessment, as described in "Sewer Rent". The costs for the operation and maintenance of the Sewage Works shall be consistent with the applicable provisions of USEPA Regulations, 40 CFR Part 35.

(2) **User Benefit Assessment [Amended 10-9-89]**

The user benefit assessment to recover the costs of debt service and the operation and maintenance of the sewage treatment plant shall be established each year and shall be based upon the budgeted costs for the operation and maintenance of the wastewater treatment facility and the wastewater collection system. The costs shall be distributed equitably over the equivalent household units in the service district. The user benefit assessment shall be established in the annual budget of the Town of Kirkland.

(3) **Surcharges**

Users discharging wastewater, whether industrial or sanitary, to the sewage works which exceeds the strength of normal sanitary sewage, as described in "Sewer Use Law of the Town of Kirkland", shall be assigned a surcharge in addition to their normal user benefit assessment. The surcharge shall be determined after conferences among the user, Town Engineer and the Administrator.

(4) Rate Structure

- A. The rates for sewer rents for the Clark Mills Sewer District, Route 5 Sewer District and the Old Bristol Road Area of the Consolidated Sewer District shall be established in the annual budget of the Town of Kirkland:
- B. The rate structure may be charged annually by resolution of the Administrator as found appropriate during the annual review of the system of charged and fees described in § 1201 D (7).

(3) Payment

- A. The rents shall be payable annually and shall be billed as part of the annual tax bill on January 1 in each year.
- B. All rents shall be due and payable on the date of rendition thereof provided, however, that if such bills are paid on or before January 31, no penalty shall be added thereto.
- C. In the event that charges for sewage service or sewer rents are not paid within the period allowed, then a penalty of ten percent (10%) of the amount in arrears shall be added thereto. Also, such charges shall be deemed and declared to be delinquent, and thereafter such delinquency shall constitute a lien upon real estate for which such service is supplied, and the Town Clerk of the collector of sewer rents, as the case may be, is hereby authorized to file sworn statements showing such delinquencies in the Town Clerk's Office, and the filing thereof shall be deemed notice of lien of such charges for such service.
- D. The rates and charges herein established shall be collected from the owner's, occupants and users of the premises within the Clark Mills Sewer District, Route 5 Sewer District and the Old Bristol Road area of the Consolidated Sewer District, from and after the effective date of this chapter.

SECTION 1201 C:

Consolidated Sewer District

- (1) Old Bristol Road Area (of the Consolidated Sewer District)
- (2) Sewer rents for the Old Bristol Road Area of the Consolidated Sewer District shall be charged in accordance with the provisions of Article IV herein.
- (3) Consolidated Sewer District (Other than Old Bristol Road Area)

The sewer rents for the Consolidated Sewer District (other than the Old Bristol Road Area) shall be charged in accordance with the applicable intermunicipal agreement between the Town of Kirkland and the Village of Clinton. The Village of Clinton shall bill each user for the operation and maintenance portion of the sewer rents. The Town of Kirkland shall bill each user for the payment of interest on and amortization of or payment of any indebtedness which has been or shall be incurred in the construction of the sewer system or such parts thereof.

SECTION 1201 D:

General Provisions

(1) When Effective

This user charge system shall be in effect upon its passage as provided by law, and a copy thereof properly certified by the Town Clerk shall be filed in the Oneida County Clerk's office, and it shall be deemed notice to all owners of real estate of their liability for sewage service supplied to any occupant or user of such service on their property.

(2) Sewer Rents to be Liens Against Property

Sewer rents shall constitute a lien upon the real property served by the sewer system, or such part or parts thereof, for which sewer rents shall have been established and imposed. The lien shall be prior and superior to every other lien and claim except the lien of any existing tax, assessment or other lawful charge imposed by or for the state or a political subdivision or district thereof, in accordance with § 452, Subdivision 3 of the General Municipal Law of the State of New York.

(3) Sewer Rents for Districts Outside the Town of Kirkland

Sewer rents for districts outside the Town of Kirkland shall include cost of operation, maintenance and repairs to the sewer system or parts thereof and the payment of interest on and amortization of any indebtedness which has been or shall be incurred for the construction of the sewer system or parts thereof. The sewer rents for districts outside the Town of Kirkland shall be a sum one and a half times the user benefit assessment established in the annual budget of the Town of Kirkland. Sewer rents for districts outside the Town of Kirkland shall also include any costs of construction of sewer treatment and disposal works and the necessary appurtenances, including pump stations and for the extension, enlargement or replacement or additions to the sewer systems or parts thereof, applicable intermunicipal agreement with the Town of Kirkland.

(4) Cost of Extraneous Flow

The cost of all extraneous flow treatment shall be distributed among all users in accordance with United States Environmental Protection Agency Regulations, 40 CFR 35.929-3.

(5) Cost Recovery System to Prevail

The system of recovering costs described herein takes precedence over any inconsistent agreements between the municipality and users and supersedes any contract provisions of the Sewer Ordinance of the Town of Kirkland.

(6) Obtaining Necessary Information

The Sewer Superintendent may require every owner and/or occupant of real property with the Sewer District to furnish him with such information as may be necessary and reasonable in order to carry out the provisions of this Part. It shall be permissible for the Sewer Superintendent or other properly authorized person employed by the Sewer District to enter upon real property at reasonable times for the purpose of obtaining such information as may be necessary to carry out the provisions of this Part.

(7) Annual Review

The system of charges and fees, the wastewater contribution of users and the total cost of operation and maintenance of the sewage works shall be reviewed annually and shall be revised as necessary to:

- A. Maintain the distribution of costs among users in an equitable manner and in a manner which recovers the cost of the debt service, operation and maintenance of the sewage works and the collector sewers in each district.
- B. Generate sufficient revenue to pay the total operation and maintenance costs necessary for the proper operation and maintenance of the sewage works.
- C. Apply excess revenues to the costs of operation and maintenance for the next year and adjust the rate accordingly.

Section 1202 - Surcharge for Abnormal Sewage

All persons discharging or depositing wastes with concentrations in excess of the pollutant concentrations in normal sewage shall pay a surcharge.

Section 1203 - Total Sewer Service Charge

The total sewer service charge shall be comprised of three parts:

- (a) A sewer charge based on the sewer rents provided for in this section relating to all sewer connections in the Town of Kirkland.
- (b) A sewer charge associated with abnormal sewage to be determined by the Superintendent, and
- (c) The user's share of pretreatment costs, if any, as set forth in Section 1207 below.

Section 1204 - Segmenting the POTW

The service area of the POTW may be segmented to assist in a fair distribution of user charges, especially if there is a pump station serving a segment.

Section 1205 - Measurement of Flow

The volume of flow to be used in computing sewer service charges and abnormal sewage surcharges shall be established by the Sewer Superintendent in accordance with the provisions of Section 1201, and the other applicable sections of this Local Law.

Section 1206 - Billing Period

The Billing Period shall be monthly for industrial and bi-monthly for non-industrial users.

Section 1207 - Pretreatment Program Costs

The additional charges and fees associated with the operation of the pretreatment program shall be assessed the Industrial User, and include:

- (1) reimbursement of costs of setting up and operating the pretreatment program
- (2) issuing permits
- (3) monitoring, inspections, and surveillance procedures