

## **ORDINANCE NO. 403**

### **AN ORDINANCE OF THE CITY OF PORT ST. JOE AMENDING ORDINANCE 272 (CITY OF PORT ST. JOE PRETREATMENT ORDINANCE); PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Port St. Joe Ordinance No. 272 has been reviewed by Florida Department of Environmental Protection; and

**WHEREAS**, certain changes need to be made and certain sections need to be added;  
**NOW THEREFORE BE IT ENACTED BY THE PEOPLE OF THE CITY OF  
PORT ST. JOE AS FOLLOWS:**

1. The following Sections of Ordinance 272 currently read as follows:

#### **5.2 Wastewater Discharge Permit Contents**

A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the Plant Manager to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

### **SECTION 6 – REPORTING REQUIREMENTS**

#### **6.1 Baseline Monitoring Reports**

B. Users described above shall submit the information set forth below.

6. Certification. A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
7. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 6.2 of this ordinance.

8. Signature and Certification. All baseline-monitoring reports must be signed and certified in accordance with Section 4.6 of this ordinance.

#### **6.10 Analytical Requirements**

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. 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 EPA.

### **SECTION 7 – COMPLIANCE MONITORING**

#### **7.1.1 Right of Entry: Inspection and Sampling**

### **SECTION 11 – JUDICIAL ENFORCEMENT REMEDIES**

- 11.3 A. A user who willfully or negligently violates any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, on any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor punishable by a fine of \$500 per violation per day or imprisonment for not more than six months, per violation, per day, or both.
- B. A user who willfully or by gross negligence introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than \$500 or imprisonment for not more than six months or both. This penalty shall be in addition to any other cause of action, available under State Laws.
- C. A user who knowingly, willfully or wantonly makes any false statements, representations or certification in any application, record, report, plan, or other documentation filed or required pursuant to this ordinance, wastewater discharge permit or order issued hereunder or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required by this ordinance, shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than \$500, or imprisonment for not more than six months or both.

## **SECTION 13 – AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS**

### **13.1 Prohibited Discharge Standards**

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2.1 (a) of this ordinance or the specific prohibition in Sections 2.1 (b)(3) through 2.1(b)(18) of this ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- A. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- B. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City of Port St. Joe was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

### **13.2 Bypass**

- A. For the purposes of this section,
  - (1) "Bypass" means the intentional diversion of waste streams from any portion of a user's treatment facility.
  - (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facility, which causes it 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.
- B. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.

- C. (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the Plant Manager, at least ten (10) days before the date of the bypass, if possible.
- (2) A user shall submit oral notice to the Plant Manager of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Plant Manager may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- D. (1) Bypass is prohibited, and the Plant Manager may take an enforcement action against a user for a bypass, unless
  - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - (c) The user submitted notices as required under paragraph (c) of this section.
- (3) The Plant Manager may approve an anticipated bypass, after considering its adverse effects, if the Plant Manager determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

2. The following Sections are changed to read as follows:

## 5.2 Wastewater Discharge Permit Contents

A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the Plant Manager to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

### A. Wastewater discharge permits must contain:

- (1) A statement that indicates wastewater discharge permit duration, which in no event shall exceed (5) years;
- (2) A statement that the wastewater discharge permit is nontransferable without prior notification to the City in accordance with Section 5.5 of this ordinance, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
- (3) Effluent limits based on applicable pretreatment standards;
- (4) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law; and
- (5) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.

### B. Wastewater discharge permits may contain, but need not be limited to, the following conditions:

- (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- (2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- (3) 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;
- (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
- (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;

- (7) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit; and
- (8) Other conditions as deemed appropriate by to the Plant Manager to ensure compliance with this ordinance, and State and Federal laws, rules, regulations.

## **SECTION 6 – REPORTING REQUIREMENTS**

### **6.2 Baseline Monitoring Reports**

B. Users described above shall submit the information set forth below.

- (6) Certification. A statement, reviewed by the user’s authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
- (7) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 6.2 of this ordinance.
- (8) Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with Section 4.6 of this ordinance.

### **6.10 Analytical Requirements**

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must meet the requirements of Rule 62-625.600(1)(e)6, F.A.C., Rule 62-160 F.A.C. and the Department of Environmental Protections Standard Operation Procedures for field activities, DEP-SOP 001/01, ES 2400, Wastewater sampling.

## **SECTION 7 – COMPLIANCE MONITORING**

### **7.1 Right of Entry: Inspection and Sampling**

## **SECTION 11 – JUDICIAL ENFORCEMENT REMEDIES**

### **11.3 Criminal Prosecution**

- A. A user who willfully or negligently violates any provision of this article, a wastewater discharge permit, or order issued hereunder, on any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor punishable by a fine of \$1000.00 per violation per day or imprisonment for not more than six months, per violation, per day, or both.
- B. A user who willfully or by gross negligence introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than \$1000.00 or imprisonment for not more than six months or both. This penalty shall be in addition to any other cause of action, available under state laws.
- C. A user who knowingly, willfully or wantonly makes any false statements, representations or certification in any application, record, report, plan or other documentation filed or required pursuant to this article, wastewater discharge permit or order issued hereunder or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required by this article, shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than \$1000.00 or imprisonment for not more than six months or both.

## **SECTION 13 – AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS**

### **13.1 Upset**

- A. For the purpose of this section, “upset” means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph, C, below, are met.

- C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
- (1) An upset occurred and the user can identify the cause(s) of the upset;
  - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - (3) The user has submitted the following information to the Plant Manager within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days]:
    - (a) A description of the indirect discharge and cause of noncompliance;
    - (b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
    - (c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- F. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

### **13.2 Prohibited Discharge Standards**

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2.1 (a) of this ordinance or the specific prohibition in Sections 2.1 (b)(3) through 2.1(b)(18) of this ordinance if it



can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- A. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- B. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City of Port St. Joe was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

### **13.3 Bypass**

- A. For the purposes of this section,
  - (1) "Bypass" means the intentional diversion of waste streams from any portion of a user's treatment facility.
  - (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facility which causes it 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.
- B. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs C and D of this section
- C.
  - (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the Plant Manager, at least ten (10) days before the date of the bypass; if possible.
  - (2) A user shall submit oral notice to the Plant Manager of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the

anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Plant Manager may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

- D. (1) Bypass is prohibited, and the Plant Manager may take an enforcement action against a user for a bypass, unless
  - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - (c) The user submitted notices as required under paragraph C of this section.
- E. The Plant Manager may approve an anticipated bypass, after considering its adverse effects, if the Plant Manager determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

### 3. Severability

If any court of competent jurisdiction invalidates any provision of this ordinance, the remaining provisions shall not be effected and shall continue in full force and effect.

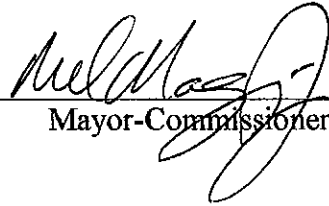
### 4. Effective Date

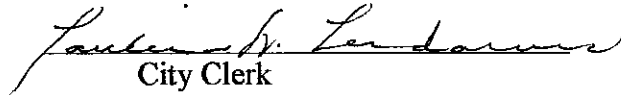
This ordinance shall be in full force and effect immediately following its passage, and publication, as provided by law.

**THIS ORDINANCE ADOPTED** this 15th day of April, 2008.

**BOARD OF CITY COMMISSION  
PORT ST. JOE, FLORIDA**

ATTEST:

  
\_\_\_\_\_  
Mayor-Commissioner

  
\_\_\_\_\_  
City Clerk

The following commissioners voted yea: Mayor Magidson, Commissioners White,  
Stephens, Roberts and Horton  
The following commissioners voted nay: None