

SILVER CREEK TOWNSHIP

CASS COUNTY, MICHIGAN

ORDINANCE NO. 22-03

Adopted: August 17, 2022

Effective: October 3, 2022

**SEWER USE AND RATE ORDINANCE FOR CONNECTIONS TO THE CITY OF
DOWAGIAC PUBLICLY-OWNED TREATMENT WORKS.**

TOWNSHIP OF SILVER CREEK

CASS COUNTY, MICHIGAN,

ORDAINS:

SECTION 1

PURPOSE

This ordinance is intended to provide for the regulation and use of public and private sewers and drains that are served by or discharged into the City of Dowagiac's Publicly-Owned Treatment Works (D-POTW); to adopt certain provisions of the City's Ordinance by reference; to assure compliance by D-DOTW users in Silver Creek Township with all applicable State and Federal laws, including the Clean Water Act (33 USC Section 1251 et seq) and the General Pretreatment Regulations (Title 40 of the federal Code of Regulations (CFR Part 403).

SECTION 2

GENERAL PROVISIONS

2.1 Policy. This ordinance sets forth uniform requirements for Users of the D-POTW generating waste into the system from Silver Creek Township premises; and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code [U.S.C.] section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the *Code of Federal Regulations* [CFR] Part 403). The objectives of this ordinance are:

- A. To ensure that Silver Creek Township users of the D-POTW comply with the standards set by statute, and state and federal law.
- B. To designate the City of Dowagiac as Silver Creek Township's agent for fulfilling the purposes of this Ordinance.
- C. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;
- D. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;
- E. To protect both Publicly Owned Treatment Works personnel who may be affected by

- wastewater and sludge in the course of their employment and the general public;
- F. To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;
 - G. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and
 - H. To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.

2.2 Scope. This ordinance shall apply to all Users of the D-POTW. The ordinance establishes administrative review procedures, adopts by reference specific standards and protocols contained in the City of Dowagiac Sewer Use and Rate Ordinance. The ordinance designates the City Administration for the issuance of individual wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; references User reporting as required in the City's Ordinance; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

2.3 Administration.

Except as otherwise provided herein, the City of Dowagiac Superintendent is hereby designated to administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the Superintendent may be delegated by the Superintendent to a duly authority City employee, who shall have the same authority by the Township of Silver Creek as if specifically delegated herein.

SECTION 3

DEFINITIONS

3.1 Abbreviations. All abbreviations contained in Section 1.3 of the City of Dowagiac Sewer Use and Rate Ordinance are adopted by reference as if fully repeated herein.

3.2 Definitions. Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated. Any Definition which does not appear here, but is in the City of Dowagiac's Sewer Use and Rate Ordinance shall have the same meaning as provided in the City's Ordinance.

A. Act or "the Act." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. section 1251 et seq.

B. Approval Authority. The State of Michigan acting through its Department of Environmental Quality.

C. *Authorized or Duly Authorized Representative* of the Silver Creek Township User of the D-POTW.

(1) If the User is a corporation:

(a) The president, secretary, treasurer, or a 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

(b) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the

operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(c) If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(2) If the User is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(3) The individuals described in paragraphs 1 through 3, above, may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

D. *Building sewer.* That part of a drainage system which extends from the end of a building drain and conveys its discharges to a public sewer, private sewer, or sewage disposal system or other point of disposal.

E. *Best Management Practices or BMPs* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 2.1 A and B [40 CFR 403.5(a)(1) and (b)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

F. *Categorical Pretreatment Standard or Categorical Standard.* Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

G. *Categorical Industrial User.* An Industrial User subject to a categorical Pretreatment Standard or categorical Standard.

H. *Cesspool, septic tank, or privy.* An individual, privately owned system for the disposal of sewage other than in a public sewer.

I. *City.* City of Dowagiac, Cass County, Michigan.

J. *Chemical Oxygen Demand or COD*. A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

K. *Control Authority*. The City.

M. *Director*. The Director of the City Department of Public Services, or his deputy, agent, or representative.

N. *Environmental Protection Agency or EPA*. The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

O. *Existing Source*. Any source of discharge that is not a "New Source."

P. *Indirect Discharge or Discharge*. The introduction of pollutants into the D-POTW from any nondomestic source.

Q. *Interference*. A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the D-POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the City's National Pollutant Discharge Elimination System permit; or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

R. *Local Limit*. Specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CPF 405.5 (a) (1) and (b).

S. *New Source*.

(1) 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 under section 307(c) of the Act that will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

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

(b). The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or

(c). 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.

(2) Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (1) (b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:

(a) Begun, or caused to begin, as part of a continuous onsite construction program

(i) Any placement, assembly, or installation of facilities or equipment; or

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

T. *Noncontact Cooling Water.* Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

U. *Pass Through.* A discharge which exits the D-D-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 City's NPDES permit, including an increase in the magnitude or duration of a violation.

V. *Person.* Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

W *pH.* A measure of the acidity or alkalinity of a solution, expressed in standard units.

X. *Pollutant.* Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, Medical Wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

Y. *Pretreatment.* The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the D-POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable Pretreatment Standard.

Z. *Local Limit*. Specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

AA. *Medical Waste*. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

BB. *Monthly Average*. The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

CC. *Monthly Average Limit*. The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

DD. *Pretreatment Requirements*. Any substantive or procedural requirement related to pretreatment imposed on a User, other than a Pretreatment Standard.

EE. *Pretreatment Standards or Standards*. Pretreatment Standards shall mean prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.

FF. *Private sewage disposal system*. Any approved system for the disposal of domestic wastewater which is privately owned and maintained.

GG. *Prohibited Discharge Standards or Prohibited Discharges*. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 2.1 of this ordinance.

HH. *Publicly Owned Treatment Works or D-POTW*. A treatment works, as defined by section 212 of the Act (33 U.S.C. section 1292), which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

II. *Septic Tank Waste*. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

JJ. *Sewage*. Human excrement and gray water (household showers, dishwashing operations, etc.).

KK. *Significant Industrial User (SIU)*. Except as provided in paragraphs (3) and (4) of this Section, a Significant Industrial User is:

- (1) An Industrial User subject to categorical Pretreatment Standards; or
- (2) An Industrial User that:
 - Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the D-POTW (excluding sanitary, noncontact cooling and boiler blow down wastewater);
 - Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the D-POTW treatment plant; or

- Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the D-POTW's operation or for violating any Pretreatment Standard or Requirement.

- (3) Upon a finding that a User meeting the criteria in Subsection (2) of this part has no reasonable potential for adversely affecting the D-POTW's operation or for violating any Pretreatment Standard or Requirement, the City may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f) (6), determine that such User should not be considered a Significant Industrial User.

LL. *Slug Load or Slug Discharge.* Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 2.1 of this ordinance. A Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the D-POTW's regulations, Local Limits or Permit conditions.

MM. *Storm Water.* Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

NN. *Superintendent.* The person designated by the City to supervise the operation of the D-POTW, and who is charged with certain duties and responsibilities by this ordinance. The term also means a Duly Authorized Representative of the Superintendent.

OO. *Total Suspended Solids or Suspended Solids.* The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

PP. *User or Industrial User.* A source of indirect discharge.

QQ. *Wastewater.* Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the D-POTW.

UU. *Wastewater Treatment Plant or Treatment Plant.* That portion of the D-POTW which is designed to provide treatment of municipal sewage and industrial waste.

SECTION 4

GENERAL SEWER USE REQUIREMENTS FOR THOSE DISCHARGING INTO THE DOWAGIAC PUBLICLY-OWNED TREATMENT WORKS.

4.1 Prohibited Discharge Standards:

A. No user of the D-POTW shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes Pass Through or Interference. This standard applies to all Users of the POTW whether or not they are subject to the categorical Pretreatment Standards of Any other National, State or local Pretreatment Standards or requirements.

B. The Township of Silver Creek adopts all of those Specific Prohibitions contained in the City of Dowagiac's Sewer Use and Rate Ordinance Section 2.1B and applies them to all of those Users of the D-POTW located in Silver Creek Township.

C. No pollutants, substances or wastewater prohibited by this Section (and the referenced Section 2.B of the City of Dowagiac Sewer Use and Rate Ordinance.

4.2 National Categorical Pretreatment Standards apply to Silver Creek Township Users of the D-POTW.

1. Silver Creek Township adopts all of the categorical pretreatment standards found at 40 CFR 1 Subchapter N, Parts 405-471 as if fully restated herein and applies such standards to Users of the D-POTW.

2. Silver Creek Township adopts by reference all of the explanatory language applicable to certain categories of pretreatments from Section 2.2 B through H as if fully restatement herein and applies such standards to Users of the D-POTW in Silver Creek Township.

4.3 State Pretreatment Standards. Silver Creek Township adopts by reference all of the State of Michigan Pretreatment Standards from Section 2.3 of the City of Dowagiac Sewer Use and Rate Ordinance as if fully restated herein and applies such standards to Users of the D-POTW in Silver Creek Township.

4.4 Local Limits. Silver Creek Township designated the Superintendent as its agent to establish Local Limits pursuant to 40 CFR 403.5. Such local limits, after adoption, shall apply to all Users of the D-POTW in Silver Creek Township.

A. Silver Creek Township adopts all of those pollution concentration limits which are established in Section 2.4 B) of the City of Dowagiac Sewer Use and Rate Ordinance as if fully restated herein and applies such limits to Silver Creek Township Users of the D-POTW.

B. Silver Creek Township designates the Superintendent as its agent to develop Best Management Practices by ordinance or in individual wastewater discharge permits; and applies such practices to Users of the D-POTW in Silver Creek Township.

4.5 Superintendent's Right of Revision. Silver Creek Township designates the Superintendent as its Agent for purposes of making revisions to individual wastewater discharge permits for Users of the D-POTW in Silver Creek Township.

4.6 Dilution. No User in Silver Creek Township shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Requirement.

4.6a. Silver Creek Township hereby designates the Superintendent as its Agent to impose mass limitations on Users who are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases when the imposition of mass limitations is appropriate and applies such limitations, when declared by the Superintendent, on Silver Creek Township Users of the D-POTW.

4.7 Design Parameters—New Users. The size, slope, alignment, materials of construction of a building sewer in Silver Creek Township intended for connection to the D-POTW shall conform to the regulations of the City as determined by the Superintendent. The methods to

be used in excavating, placing of pipe, jointing, testing, and backfilling the trench, shall conform to the requirements of the State Construction Code and the State Plumbing Code as administered and enforced by Silver Creek Township and any specification required by the City. Where connections are made to sewer main wyes or tees, only approved joint materials shall be used. Residential building sewers shall have an inside diameter of not less than four inches. All other classes of building sewers shall have an inside diameter of not less than six inches in diameter. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor so that gravity service can be provided.

4.8 Separate Sewers Required for Each Home or Building; Exception. Each home or building sewer shall have an independent building sewer and connection to the public sewer unless written permission is obtained from the Director. Owners of homes or buildings with existing joint building sewers shall maintain, replace, and operate the sewers at no cost to the city. The Director may require owners of homes and buildings with joint building sewers to be connected to the public sewer with an independent building sewer, when deemed necessary.

4.9 Use of Old Building Sewers. Old building sewers may be used in connection with new buildings only when found by examination and testing by the Superintendent to meet the requirements of this Ordinance and the City Sewer Use and Rate Ordinance.

4.10 Lift devices. In all buildings where any building drain is too low to permit gravity flow to the building sewer, sewage carried by such building drain shall be lifted by a means approved by the Superintendent and discharged to the building sewer. Where such lift devices are provided, they shall be maintained and operated by the owner at no expense to the city.

4.11 Safeguarding Excavations and Restoration. All excavations in the public right-of-way in Silver Creek Township and on private property for the purpose of installing building sewers, manholes, and related appurtenances as well as connections to the public sewer shall be adequately guarded with barricades and lights so as to protect the public from hazards. Streets, sidewalks, parkways and other public property disturbed in the course of work shall be restored in a manner satisfactory to the County Road Commission and the Superintendent within one week after the work has been completed, and at no expense to the city or the Township.

4.12 Building and Sewer Permit and Inspections Generally. No unauthorized person shall uncover, make any connection with or opening into, use, alter, or disturb any public sewer or appurtenance owned or used by the D-POTW without first obtaining a written permit from the Superintendent. The Superintendent shall not issue a permit unless there is capacity available in all downstream sewers, lift stations, force mains, and the wastewater treatment plant for the propose discharge. The applicant for a building sewer permit shall notify the Superintendent and the Township Plumbing Inspector when the building sewer is ready for an inspection and connection to the D-POTW. The connection shall be made under the supervision of the Township Plumbing Inspector accompanied by a designee of the Superintendent, at the direction of the Superintendent if desired.

4.13 Conflict of Laws. Where any provisions of this Ordinance or any applicable local, state or federal law, rule or regulation conflict with any of the provisions of this Ordinance, the more restrictive shall control. In the case of any conflict with federal laws or rules, the federal law or rule shall control.

SECTION 5

PRETREATMENT OF WASTEWATER

5.1 Pretreatment Facilities.

Silver Creek Township Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all categorical Pretreatment Standards, Local Limits, and the prohibitions set out in Section 4.1 of this ordinance within the time limitations specified by EPA, the State, or the Superintendent, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the User's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Superintendent for review, and shall be acceptable to the Superintendent before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the User from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the City under the provisions of this ordinance.

When required by the city, the supervision, control, and operation of pretreatment facilities provided by a User shall be by a person certified by the state to operate industrial wastewater facilities.

5.2 Additional Pretreatment Measures.

A. Silver Creek Township hereby designates the Superintendent as its Agent to require Silver Creek Township Users of the D-POTW to reduce discharge during peak flow periods; to require a User to discharge into specific sewers; to relocation and/or consolidate powers of discharge; to separate sewage wastestreams from industrial wastestreams, and to address such other conditions as make such orders as may be necessary to protect the D-POTW.

B. Silver Creek Township hereby designates the Superintendent as its Agent and hereby allows such Superintendent or his/her designee to make such rulings and determinations as are included in Section 3.2 B-D of the City's Sewer Use and Rate Ordinance and hereby applies such rulings and determinations to Users of the D-POTW in Silver Creek Township.

5.3 Accidental Discharge/Sludge Discharge Control Plans. Silver Creek Township hereby designates the Superintendent as its Agent to evaluate whether an accidental slug discharge control plan is needed for Users in Silver Creek Township and permits such Agent to require Silver Creek Township Users to address those necessary items as contained in Section 3.3 of the City's Sewer Use and Rate Ordinance. Any such determination of the Superintendent shall apply to Silver Creek Township Users through this Ordinance.

5.4 Power Failure. Silver Creek Township Users of the D-POTW shall control production of all discharges to the extent necessary to maintain compliance with categorical Pretreatments 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.

SECTION 6

INDIVIDUAL WASTEWATER DISCHARGE PERMITS

6.1. Silver Creek Township hereby adopts by reference all of Section 4 “Individual Wastewater Discharge Permits” of the City of Dowagiac Sewer Use and Rate Ordinance as if fully restated herein and grants the Superintendent all of those powers and authorities as are provided in said Section and applies them to Users of the D-POTW in Silver Creek Township.

Sections 4.1 “Wastewater Analysis”; Section 4.2 “Individual Wastewater Discharge Permit Requirement”; Section 4.3 “Individual Wastewater Discharge Permitting: Existing Connections”; Section 4.4 “Individual Wastewater Permitting: New Connections”; Section 4.5 “Individual Wastewater Discharge Permit Application: Contents”; Section 4.6 “Application Signatories and Certifications; and Section 4.7 “Individual Wastewater Discharge Permit Decisions” of the City Sewer Connection and Rate Ordinance are specifically incorporated by reference herein.

6.2 *Individual Wastewater Discharge Permit Contents.* Silver Creek Township hereby adopts by reference all of Section 5.2 “Individual Wastewater Permit Contents” of the City of Dowagiac Sewer Use and Rate Ordinance as if fully restated herein and applies such standards to Users of the D-POTW in Silver Creek Township. Additionally, those powers and authorities granted to the Superintendent in Section 5.2 of the City of Dowagiac Sewer Use and Rate Ordinance apply to Silver Creek Township as if such powers and authorities were fully restated herein.

6.3 *Permit Issuance Process.*

a. *Public Notification .* The Superintendent is hereby designated as Agent for Silver Creek Township and affords him/her the ability to publish in a newspaper of general circulation that provides meaningful public notice, a notice to issue a pretreatment permit, at least 30 days prior to issuance. The notice will indicate a location where the draft permit may be reviewed and an address where written comments may be submitted.

b. *Permit Appeals.* Silver Creek Township Users of the D-POTW are hereby granted the appeal rights related to permits as are contained in Section 5.3B. of the City Sewer Use and Rate Ordinance. Appeal standards and time limits contained in said subsection apply to Silver Creek Township Users of the D-POTW.

c. *Permit Modification.* Silver Creek Township hereby grants to the Superintendent the power and authority to modify an individual wastewater discharge permit for good cause, including but not limited to all of those reasons identified in Section 5.4A (1) through (9) of the City Sewer Use and Rate Ordinance as if fully restated herein.

6.4 *Individual Wastewater Permit Transfer.*

Individual wastewater discharge permits may be transferred to a new owner or operator only if the permittee provides at least 30 days advance notice to the Superintendent and the Superintendent approves the individual wastewater discharge permit transfer. The notice to the Superintendent must include a written certification by the new owner or operator which

- A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
- B. Identifies the specific date on which the transfer is to occur; and
- C. Acknowledges full responsibility for complying with the existing individual wastewater discharge permit.

Failure to provide advance notice of a transfer renders the individual wastewater discharge permit void as of the date of facility transfer.

6.5 *Individual Wastewater Discharge Permit Revocation.* Silver Creek Township hereby designates the Superintendent as its Agent for the revocation of any Individual Wastewater Discharge Permit for good cause shown for any of the reasons set forth in Section 5.6 A through L of the City of Dowagiac Sewer Use and Rate Ordinance.

6.6 *Individual Wastewater Discharge Permit Reissuance.* Silver Creek Township hereby designates the Superintendent as its Agent for the reissuance of any expiring individual wastewater discharge permit. All Silver Creek Township Users of the D-POTW receiving re-issued permits from the Superintendent shall abide by the terms of the re-issued permit.

6.7 *Regulation of Silver Creek Township Users of D-POTW; Silver Creek Township's Adherence to City's Sewer Use and Rate Ordinance.* Silver Creek Township and the City agree to enter into an interlocal agreement prior to any contribution of its own into the D-POTW. Silver Creek Township Users who contribute to the D-POTW shall adhere to the terms of this Ordinance, the City's Sewer Use and Rate Ordinance; and any permit issued by or regulation required by the Superintendent. In the case of a conflict between this Ordinance and the City's Sewer Use and Rate Ordinance, the more restrictive provision shall control. The Superintendent shall have the final say on any provision or interpretation of the ordinances or permits.

SECTION 7

REPORTING REQUIREMENTS, STOPPAGES, AND SPILL CONTAINMENT AND PREVENTION

7.1 *Baseline Monitoring Reports.*

(A) Existing Users; New Standards; Final Administrative Decisions.

Within either 180 days after the effective date of a categorical Pretreatment Standard, or the final administrative decision on a category determination under 40 CFR 403.6(a) (4), whichever is later, existing Categorical Industrial Users of the D-POTW in Silver Creek Township who are currently discharging to or scheduled to discharge to the D-POTW shall submit to the Superintendent a report which contains the information listed In Section 6 B. of the City's Sewer Use and Rate Ordinance; including but not limited to a Compliance Certification provided by the User's Authorized Representative (6B.3. of the City's Ordinance); a Compliance Schedule as required by 6B(4) of the City's Sewer Use and Rate Ordinance; and a Signature and Report Certification as required by Section 6C of the City's Sewer Use and Rate Ordinance).

(B) *New Sources.* A New Source shall report to the Superintendent the method of pretreatment it intends to use to meet applicable categorical Standards. A New Source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

7.2 *Compliance Schedule Progress Reports.* All Silver Creek Township Users of the D-POTW shall adhere to the Compliance Schedule contained in Section 6.2 of the City's Sewer Use and Rate Ordinance; and shall provide such progress reports as are required by said Section of the City's Ordinance, which is adopted by reference as if fully restated herein.

7.3 *Periodic Compliance Reports.* All Silver Creek Township Significant Industrial and Categorical Industrial Users of the D-POTW shall submit not less than twice per year, in June and December, or on the dates specified and at a frequency determined by the Superintendent, reports indicating the nature,

concentration of pollutants in the discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the Superintendent or the Pretreatment Standard necessary to determine the compliance status of the User. Such reports shall be signed and certified as required by the Superintendent. Silver Creek Township Users of the D-POTW subject to the provisions of this Section shall submit samples and make reports of mass or concentrations limits to the Superintendent in accordance with the provisions of Section 6.4 C-E of the City's Sewer Use and Rate Ordinance which are incorporated by reference herein.

7.4 Reports of Changed Conditions. Silver Creek Township Users of the D-POTW shall adhere to the requirements of Section 6.5 of the City's Sewer Use and Rate Ordinance requiring reporting of anticipated change in conditions. The Superintendent is designated as the Agent of Silver Creek Township for purposes of accepting and acting on such reports as may be necessary to establish compliance with this Ordinance and the City's Sewer Use and Rate Ordinance.

7.5 Reports of Potential Problems. Silver Creek Township Users of the D-POTW shall adhere to the reporting requirements of Section 6.6 of the City's Sewer Use and Rate Ordinance requiring reporting of potential problems with discharge, including accidental, episodic, non-customary batch discharges or potential change in discharge or Slug Load and Slug Discharge. The Superintendent is designated as the Agent of Silver Creek Township for purposes of accepting and acting on such reports as may be necessary to establish compliance with this Ordinance and the City's Sewer Use and Rate Ordinance.

7.6 Reports from Unpermitted Users. Silver Creek Township Users of the D-POTW which are not required to obtain permits by this Ordinance shall adhere to any reporting requirement established by the Superintendent.

7.7 Notice of Violation/Sampling and Reporting. If sampling performed by a Silver Creek Township User of the D-POTW indicates a violation, the User must notify the Superintendent within 24 hours of becoming aware of the violation. The Superintendent is hereby designated as the Agent of the Township for purposes of administering and enforcing this Section. The Silver-Creek Township 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. Resampling by the Industrial User is not required if the City performs sampling at the User's facility at least once a month, or if the City performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the City receives the results of this sampling, or if the City has performed the sampling and analysis in lieu of the Industrial User. If the City monitors in lieu of the User and a violation is detected, the Superintendent shall so notify the User of the violation within 10 days of receiving the sample results and either conduct the required repeat sampling or instruct the User to resample within 30 days of being notified.

7.8 Notification of Discharge of Hazardous Waste. Any Silver Creek Township User of the D-POTW who commences the discharge of hazardous waste shall notify the Superintendent, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the D-POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Silver Creek Township User discharges more than 100 kilograms of such waste per calendar month to the D-POTW, the notification also shall contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous

constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. This notification requirement does not apply to pollutants already reported by Silver Creek Township Users of the D-POTW who are subject to categorical Pretreatment Standards under the self-monitoring requirements this Ordinance and Sections 6.1, 6.3, and 6.4 of the City's Sewer Use and Rate Ordinance.

(A) *Exemptions from notification requirement.* Silver Creek Township Dischargers into the D-POTW are exempt from the requirements of the above paragraph during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the User discharges more than such quantities of any hazardous waste do not require additional notification.

(B) If any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Silver Creek Township User of the D-POTW must notify the Superintendent, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(C) In the case of any notification made under this Section, the Silver Creek Township User of the D-POTW 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.

(D) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance; the City's Sewer Use and Rate Ordinance; or a permit issued under either or any applicable Federal or State law.

7.9 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 and amendments thereto, 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, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Superintendent or other parties and approved by the Superintendent.

7.10. Sample Collection. All Silver Creek Township Users of the D-POTW which are required to submit samples for analysis under this Section or Section 6 et al of the City's Sewer Use and Rate

Ordinance shall adhere to the requirements of Section 6.10 of the City's Sewer Use and Rate Ordinance and any standards, including referenced standards therein.

7.11 Date of Receipt of Reports. All reports required by this Ordinance shall be Submitted to the Superintendent, who is designated as the Township's Agent for receipt thereof. Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

7.12 Retention of Reports. Silver Creek Township Users of the D-POTW which are subject to the reporting requirements of this ordinance and/or the City's Sewer Use and Rate Ordinance shall retain and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities; any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirement; and all documentation associated with Best Management Practices established under Section 2.4 C. "Records" of the City's Sewer Use and Rate Ordinance (incorporated by reference in this Ordinance) shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; a description of the analytical techniques or methods used; and the results of such analyses. These records shall be retained by the Silver Creek Township User of the D-POTW for a period of three (3) years and shall be made available to the Superintendent during such time period. This period shall be automatically extended for the duration of any litigation concerning the Silver Creek Township User of the D-POTW or upon request by the Superintendent if needed for litigation purposes.

7.13 Sewer Stoppages.

A. The city shall be responsible to remove a stoppage when it is located in the city's sewer main or the sewer lateral installed by the city from the sewer main to the public right-of-way line (property boundary line) or limits of an easement granted to city for the purpose of the installation, construction, and maintenance of a sewer main. The Silver Creek Township User of the D-POTW shall be responsible to remove stoppages, at no expense to the city, when such stoppage is located between the public right-of-way line or easement limit and the building being served.

B. Whenever a stoppage of a sewer occurs on a Silver Creek Township User's Site, the Silver Creek Township User shall notify the Superintendent, unless the stoppage is located on private property. The Silver Creek Township User of the D-POTW shall make every effort to determine if the stoppage is located on private property before notifying the Superintendent. Any costs incurred by the City in investigating a privately-located stoppage when reports as a public stoppage may be billed by the City to the Silver Creek Township User, who shall pay such costs.

7.14. Certification of Permit Applications, User Reports and Initial Monitoring Waiver. The following certification statement is required to be signed and submitted by Silver Creek Township Users of the D-POTW who are submitting permit applications in accordance with the requirements of this Ordinance, or Sections 4.7; 6.1 B (5); 6.3; and 6.4 A-D of the City's Sewer Use and Rate Ordinance. All such statements shall be signed by a designated and authorized representative of the Silver Creek Township User of the D-POTW and shall contain the following certification:

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.

7.15 *Spill Prevention.*

A. *Accidental Discharges.* Every User of the sewage system shall provide, when required by the Superintendent, protection from accidental discharge into the sewage system of materials that cause or may cause interference with the sewage system or pass through of the wastewater treatment plant or violation the pretreatment standards or requirements of this Ordinance or any standard adopted by reference in this Ordinance.

B. *Spill Prevention Plans.* All significant industrial users and categorical industrial users located in Silver Creek Township using the D-POTW shall prepare spill prevention plans which describe how the User intends to prevent a spill from occurring and what actions will be undertaken if a spill occurs. The spill prevention plan shall be submitted to the Superintendent and shall contain, at a minimum, the following information:

- A. Identification of the type of materials used or stored on the site.
- B. Identification of potential spill situations.
- C. A description of existing and/or proposed containment structures used to prevent a spill from reaching the sewage system.
- D. A description of existing and/or proposed onsite materials to be used to prevent a spill from reaching the sewer system.
- E. A description of the procedures that will be used to prevent a spill and/or accidental discharge from entering the sewage system, including instructions for notifying appropriate authorities.
- F. A description of the emergency cleanup procedures.
- G. A description of the type of surveillance the User intends to employ at the site in order to detect and prevent pollutant discharges.

7.16 *Containment Facilities.* All Silver Creek Township Users of the D-POTW shall provide facilities to contain spillage from storage areas or tanks. The containment shall be constructed of steel, concrete, or solid masonry designed to be liquid-tight and to withstand a full hydrostatic head. The containment structure shall have a capacity to hold at least 150 percent of the tank volume or, in the case of multiple tanks within one contained area, 150 percent of the largest tank volume.

Silver Creek Township Users of the D-POTW shall submit plans and specifications for all containment facilities to the Superintendent for approval. The Superintendent may require any Silver Creek Township User to take interim measures for emergency containment if circumstances so require.

SECTION 8

COMPLIANCE MONITORING

Silver Creek Township hereby appoints the Superintendent as its agent to undertake all compliance monitoring of Silver Creek Township Users of the D-POTW, including the right of entry, inspection and sampling as provided in Section 7 of the City Sewer Use and Rate Ordinance. The Superintendent or the Township may seek an administrative search warrant in order to permit compliance monitoring.

SECTION 9

PUBLICATION OF SILVER CREEK TOWNSHIP USERS IN SIGNIFICANT NON-COMPLIANCE

9.1. *Superintendent Authorized to Publish.* The Superintendent is hereby authorized to publish annually in a newspaper of general publication in the Township a meaningful public notice within Silver Creek Township, a list of Users, including Silver Creek Township Users, who at any time during the previous twelve (12) months, were in Significant Non-Compliance with applicable pretreatment standards and requirements as established in this Ordinance or as incorporated by reference from the City Sewer Use and Rate Ordinance.

9.2. *Definition of Significant Non-Compliance.* Silver Creek Township adopts by reference as if fully restated herein all of the definitions of “significant non-compliance” contained in Section 9 A-E of the City Sewer Use and Rate Ordinance and applies the same to all Silver Creek Township Users of the D-POTW.

SECTION 10

ADMINISTRATIVE ENFORCEMENT REMEDIES

10.1 *Notification of Violation.* Silver Creek Township hereby appoints the Superintendent as its Agent for purposes of providing Notification of Violation to Silver Creek Township Users when the Superintendent finds that a Silver Creek Township User has violated or continues to violate, any provision of this ordinance, any referenced standard contained herein; an individual wastewater discharge permit, or order issued under this Ordinance or the City Sewer Use and Rate Ordinance; or any other Pretreatment Standard or Requirement. The Superintendent may serve upon that Silver Creek Township User a written Notice of Violation. Within 10 days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the Silver Creek Township User of the D-POTW to the Superintendent. Submission of such a plan in no way relieves the Silver Creek Township User of liability for any violations occurring before or after receipt of the Notice of Violation. The authority granted to the Superintendent in this Section is not limited and he or she can take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

10.2 *Consent Orders.* Silver Creek Township hereby designates the Superintendent to enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any Silver Creek Township User of the D-POTW responsible for noncompliance. Such documents shall include specific action to be taken by the Silver Creek Township User of the D-POTW to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued under this Ordinance or the City’s Sewer Use and Rate Ordinance.

10.3 *Show Cause Hearing.* Silver Creek Township hereby authorizes the Superintendent to provide Silver Creek Township Users of the D-POTW with notice of show cause hearings and to conduct show cause hearings in accordance with Section 10.3 of the City’s Sewer Use and Rate Ordinance which is adopted by reference as if fully restated herein.

10.4 *Compliance Orders Issued by Superintendent.* Silver Creek Township hereby designates the Superintendent as its agent for issuance of Orders Requiring Compliance for Silver Creek Township Users that violate, continue to violate or have in the past violated this Ordinance, or any individual wastewater discharge permit, or order entered under this Ordinance or any provision of the City Sewer

Use and Rate Ordinance. Such Order may direct the Silver Creek Township User of the D-POTW responsible for the discharge to come into compliance within a specified time. If the User does not come into compliance within the time frame provided, the Superintendent is authorized to discontinue sewer service to the Silver Creek Township User of the D-POTW. The Superintendent is granted wide latitude with respect to the provisions of a compliance order, which may include but is not limited to those provisions contained in Section 10.4 of the City Sewer Use and Rate Ordinance.

10.5 *Cease and Desist Orders.* Silver Creek Township hereby appoints the Superintendent to issue Cease and Desist Orders to Silver Creek Township Users of the D-POTW for those circumstances described in Section 10.5 of the City Sewer Use and Rate Ordinance, which are fully incorporated by reference herein.

10.6. *Administrative Fines.* Silver Creek Township hereby authorizes the Superintendent to levy administrative fines, payable to the City of Dowagiac, against any Silver Creek Township User of the D-POTW that violated, or continues to violate any provision of this Ordinance or the City of Dowagiac Sewer Use and Rate Ordinance, an individual wastewater discharge permit, or order issued herein, or any other pretreatment Standards or Requirement. No individual fine may exceed \$1,000. Unpaid charges and fines shall be assessed an additional 10% on the unpaid balance and bear interest at the rate of 1% per month. Unpaid fines, penalties and interests shall be added to the Silver Creek Township tax rolls by the Township Treasurer annually, upon request by the Superintendent, in accordance with standard procedure and MCL . Silver Creek Township Users of the D-POTW wishing to challenge fines imposed by the Superintendent shall follow the provisions of Section 10.6.C. of the City Sewer Use and Rate Ordinance, which is incorporated by reference herein.

10.7 *Emergency Suspensions.* Silver Creek Township hereby designates the Superintendent to pronounce and effectuate emergency suspensions of use the D-POTW for emergency purposes. The Superintendent shall provide notice to Silver Creek Township Users of the D-POTW in accordance with Section 10.7 of the City Sewer Use and Rate Ordinance. Silver Creek Township Users of the D-POTW shall abide by any emergency suspension of service issued by the Superintendent.

10.8 *Termination of Discharge.* In addition to any other reason for termination addressed within this Ordinance or the City Sewer Use and Rate Ordinance which is incorporated by reference herein, the Superintendent is hereby designated as Silver Creek Township Agent for the purposes of requiring termination of discharge for any of the reasons contained in Section 10.8 A-E of the City Sewer Use and Rate Ordinance. Silver Creek Township Users of the D-POTW whose discharge is terminated by the Superintendent shall abide by any termination issued.

SECTION 11

JUDICIAL ENFORCEMENT REMEDIES

11.1 *Civil Action by City of Dowagiac.* Nothing in this Ordinance shall prevent the enforcement of it against any Silver Creek Township User of the D-POTW in any court of appropriate jurisdiction. The Superintendent shall obtain authorization of the Silver Creek Township Board before undertaking any suit for injunctive relief or other civil action against a Silver Creek Township User of the D-POTW.

11.2 *Silver Creek Township Ordinance Violation.* In addition to the administrative remedies addressed in Section 10 of this Ordinance, any violation of any provision of this Ordinance, including any order, permit, directive or agreement entered hereunder by a Silver Creek Township User shall be deemed to be a municipal civil infraction, punishable by a fine of up to \$500 and

court orders requiring compliance with the Ordinance. Each day that a violation occurs constitutes a separate offense. The Silver Creek Township Ordinance Enforcement Officer is empowered to issue violation citations. The Superintendent shall provide necessary testimony if a citation issued under this Ordinance goes to a formal hearing.

11.3. *Remedies Non-Exclusive.* The remedies provided for in this Section are not exclusive. Silver Creek Township hereby appoints the Superintendent as its agent and ordinance enforcement officer of the Township for purposes of issuing citations and seeking civil penalties as described herein and criminal penalties as described in the City Sewer Use and Rate Ordinance.

SECTION 12

SUPPLEMENTAL ENFORCEMENT ACTION

12.1 *Performance Bonds.* Silver Creek Township hereby authorizes the Superintendent to decline to issue or reissue an individual wastewater discharge permit to any Silver Creek Township User of the D-POTW who has failed to comply with any provision of this ordinance, the City Sewer Use and Rate Ordinance as incorporated by reference herein, a previous individual wastewater discharge permit, or order issued, or any other Pretreatment Standard or Requirement, unless such Silver Creek Township User first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Superintendent to be necessary to achieve consistent compliance.

12.2 *Liability Insurance.* Silver Creek Township hereby authorizes the Superintendent as its agent to decline to issue or reissue an individual wastewater discharge permit, order, or any other pretreatment standard or requirement, unless the Silver Creek Township User of the D-POTW first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the D-POTW caused by its discharge.

12.3 *Payment of Outstanding Fees and Penalties.* Silver Creek Township hereby authorizes the Superintendent to require payment of outstanding fees and penalties to the City of Dowagiac prior to the issuance or reissuance of any individual wastewater discharge permit or order.

12.4 *Water Supply Severance.* If a Silver Creek Township User of the D-POTW is also a user of public water service supplied by the City, the Superintendent is authorized to sever water service to such Silver Creek Township User as may be required to assure compliance with this Ordinance and to assure the public health, safety and welfare. The Superintendent shall

12.5. *City Contract Denial or Repudiation.* Silver Creek Township Users of the D-POTW which have not achieved compliance with applicable Pretreatment Standards and Requirements are not eligible to receive a contractual award for the sale of goods or services to the City. Existing contracts for the sale of goods or services to the City held by a Silver Creek Township User of the D-POTW found to be in Significant Noncompliance with Pretreatment Standards or Requirements may be terminated at the discretion of the Superintendent.

SECTION 13

AFFIRMATIVE DEFENSES

13.1 *Upset.* Silver Creek Township Users of the D-POTW are permitted to use “Upset” as an affirmative defense to an action taken by the Superintendent in accordance with this Ordinance or the City of Dowagiac Sewer Use and Rate Ordinance. “Upset” for purposes of this Section is defined as 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. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (A), below, are met.

A. A Silver Creek Township User of the D-POTW 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; and
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 Silver Creek Township User of the D-POTW has submitted the following information to the Superintendent 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.

B. Any Silver Creek Township User of the D-POTW wishing to use “upset” as an affirmative defense has the burden of proof.

C. Silver Creek Township Users of the D-POTW shall only have the opportunity for a judicial determination of “upset” in an enforcement action brought for noncompliance with Pretreatment Standards.

13.2 Prohibited Discharge Standards. A Silver Creek Township User of the D-POTW shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2 of this Ordinance or Section 2.1(A) of the City of Dowagiac Sewer Use and Rate Ordinance or the specific prohibitions in the City’s Sewer Use and Rate Ordinance Sections 2.1(8)(3) through (B)(6) if it can prove by a preponderance of the evidence 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 Silver Creek Township User of the D-POTW 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 Silver Creek Township User's prior discharge when the City 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. “Bypass” for purposes of this Section means the intentional diversion of wastestreams from any portion of a Silver Creek Township User's treatment facility. “Severe Property Damage” for purposes of this Section means “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.”

A. A Silver Creek Township User of the D-POTW 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 (B) and (C) of this Section.

B. *Bypass Notifications.* If is a Silver Creek Township User of the D-POTW knows in advance of the need for a bypass, it shall submit prior notice to the Superintendent, at least ten (10) days before the date of the bypass, if possible.

(1) A Silver Creek Township User of the D-POTW shall submit oral notice to the Superintendent 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 Silver Creek Township User of the D-POTW 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 Superintendent may waive the written report on a case-by case basis if the oral report has been received within twenty-four (24) hours.

13.4 *Prohibited Bypass.* Bypass is prohibited, and the Superintendent 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 Silver Creek Township User of the D-POTW submitted notices as required under paragraph (B) of this Section.

D. *Approval of Anticipated Bypass.* The Superintendent may approve an anticipated bypass, after considering its adverse effects, if the Superintendent determines that it will meet the three conditions listed in paragraph 13.4. B of this Section.

SECTION 14

WASTEWATER TREATMENT RATES

14.1 *Adoption of City's Rate Resolution and Applicability to Silver Creek Township Users.* Silver Creek Township hereby adopts the most recent rate resolution adopted by the City of Dowagiac without enhancement for outside-of-city users. Silver Creek Township Users of the D-POTW shall pay those rates as required and adopted by the City of Dowagiac.

14.2 *Extra Strength Waste Discharge—Limitations.* No Silver Creek Township User of the D-POTW shall discharge or cause to be discharged into the D-POTW domestic or nondomestic waste containing any substance or exhibiting any characteristics above the limitation set forth below without obtaining written approval of the Superintendent allowing the Silver Creek Township User of the D-POTW to pay a surcharge fee for treatment of extra-strength waste, in addition to regular charges for use of the D-POTW.

A. *Surcharges* Surcharges shall be calculated using end-of-pipe flows and the averages of analytical results from two consecutive 24-hour composite samples. Surcharge fees are included in an appendix to the City of Dowagiac’s Sewer Use and Rate Ordinance and are adopted by reference herein and applied to Silver Creek Township Users of the D-POTW. Said rate sheet, as may be adopted from time to time by the City Council shall be automatically updated to the most-recent rate sheet without the need to amend this Ordinance.

<u>Parameter</u> Per Pound	<u>Surcharge Rate</u>	<u>Surcharges</u>
CBODs	Above 225	
TSS	Above 245	*
O&G	Above 125	
Phosphorus (T)	Above 10	
Ammonia Nitrogen	Above 30	

*see Section 14.2 of City Sewer Use and Rate Ordinance incorporated by reference herein.

B. Silver Creek Township Industrial Users of the D-POTW contributing extra strength wastewater for the parameters above, which causes or has the ability to cause D-POTW inhibition or pass through, shall receive from the Superintendent a restricted limit for the specific parameter causing the problem.

14.3. *Determination of Sewer Use Charges.* All Silver Creek Township Users of the D-POTW shall have approved meters on the public water supply which subsequently discharges to the sewage system. Those Silver Creek Township Users of the D-POTW with private (well) supplies shall have approved meters on them when required by the Superintendent. The Township authorizes the Superintendent to require certain Silver Creek Township Users of the D-POTW to install flow meter devices on their sewer services to measure the actual volume of their discharges to the sewage system. Such devices shall be installed and maintained by the Silver Creek Township User at no expense to the city and may be of a type approved by the city. The Superintendent is authorized to require a Silver Creek Township User of the D-POTW to have the flow measuring device calibrated at any time to ensure its accuracy.

14.4 *Industrial Pretreatment Program Charges.* The Township of Silver Creek hereby adopts by reference as if fully incorporated herein the most current fees, rates, and charges for the recovery of costs of the operation of the industrial pretreatment program and applies such industrial pretreatment program charges to Silver Creek Township Industrial Users of the - POTW.

14.5 *Charges for High-Strength Waste.* The Township of Silver Creek hereby adopts the most-recent industrial users surcharge for high-strength waste as may be approved from time-to-time by the City as if fully restated herein and applies the same to Silver Creek Township Industrial Users of the D-POTW generating high-strength waste.

14.6 *Pretreatment Charges and Fees.* The Township of Silver Creek hereby adopts the most-recent pretreatment program charges and applies the same to the Silver Creek Township Users of the D-POTW.

14.7 *Building Sewer Permit and Inspections.* The Township of Silver Creek hereby adopts the city council resolution approving costs and fees for residential and/or domestic wastewater discharges and for service to commercial or industrial establishments producing nondomestic wastewaters and applies such fees to Silver Creek Township Users of the D-POTW. The Township of Silver Creek hereby adopts the most recent city council resolution approving costs and fees for inspections of Silver Creek Township Users of the D-POTW and applies such costs to Silver Creek Township Users of the D-POTW.

SECTION 15

ADMINISTRATIVE LIABILITY AND SECTION HEADINGS

15.1 No officer, agent or employee of Silver Creek Township or of the City shall render themselves personally liable for any damages that may occur to any person as a result of any action required or permitted in the discharge of their duties under and in the enforcement of this Ordinance.

15.2 Section Headings Contained herein are for ease of use and ordinance navigation purposes only and should not be construed as Ordinance language.

SECTION 16

SEVERABILITY

The provisions of this ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of this ordinance other than said part or portion thereof.

SECTION 17

EFFECTIVE DATE

This ordinance shall take effect 30 days after publication, after adoption.

SILVER CREEK TOWNSHIP
Lorri Behnke, Clerk