

ORDINANCE 458-09

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING TOWN CODE CHAPTER 16 "UTILITIES" BY DELETING EXISTING ARTICLE 16-2 RESERVED; ARTICLE 16-3 EXTENSION AND REIMBURSEMENT AGREEMENTS AND ARTICLE 16-4 SANITARY SEWER REGULATIONS; AND CREATING AND ADOPTING A NEW ARTICLE 16-2 EXTENSION AND REIMBURSEMENT AGREEMENTS; CREATING AND ADOPTING A NEW ARTICLE 16-3 SANITARY SEWER REGULATIONS; AND CREATING AND ADOPTING A NEW ARTICLE 16-4 WASTEWATER DISCHARGE REGULATIONS (PRETREATMENT PROGRAM); AND ADOPTING THE TOWN'S ENFORCEMENT RESPONSE PLAN.

WHEREAS, the Town of Queen Creek is mandated by the Arizona Department of Environmental Quality (ADEQ) to provide regulations governing pretreatment for discharge to the Town sewer collection system by commercial and future industrial users; and

WHEREAS, the Town Council wishes to provide a process to prescribe and enforce sewer pretreatment regulations and to implement the application, administration, interpretation, and enforcement of these regulations in the Town.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the Town of Queen Creek, Arizona, as follows:

Section 1. That certain document titled "Town Code Chapter 16 Utilities, Articles 16-2 Extension and Reimbursement Agreements; Article 16-3 Sanitary Sewer Regulations and Article 16-4 Wastewater Discharge Regulations (Pretreatment Program)" and "Town's Enforcement Response Plan" ("ERP"), which document was made public record by Resolution 795-09 of the Town of Queen Creek, Arizona, is hereby referred to, adopted, and made a part of the Town of Queen Creek Town Code as if fully set out in this Ordinance.

Section 2: If any section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 3. Penalties from Articles 16-4; and the ERP

Section 16-4-29 Wastewater Discharge Permit Revocation

The Director of Utility Services may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- A. Failure to notify the Director of Utility Services of significant changes to the wastewater prior to the changed Discharge;
- B. Failure to provide prior notification to the Director of Utility Services of changed conditions pursuant to Section 16-4-36 of this ordinance;
- C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- D. Falsifying self-monitoring reports and certification statements;
- E. Tampering with monitoring equipment;
- F. Refusing to allow the Director of Utility Services timely Ready Access to the facility premises and records;
- G. Failure to meet effluent limitations;
- H. Failure to pay fines;
- I. Failure to pay sewer charges;
- J. Failure to meet compliance schedules;
- K. Failure to complete a wastewater survey or the wastewater discharge permit application;
- L. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
- M. Violation of any Pretreatment Standard or requirement, or any terms of the wastewater discharge permit or this ordinance.

Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular User are void upon the issuance of a new wastewater discharge permit to that User.

Section 16-4-49 Publication of Users in Significant Noncompliance

The Director of Utility Services shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the TCS and POTW, a list of the Users which, during the previous twelve (12) months, were in Significant Noncompliance (SNC) with applicable Pretreatment Standards and requirements. The term SNC shall be applicable to all SIUs (or any other Industrial User that violates paragraphs (C), (D) or (H) of this Section) and shall mean:

- A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same Pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or requirement, including Instantaneous Limits as defined in Section 16-4-6;
- B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each Pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment

Standard or requirement, including Instantaneous Limits as defined by Section 16-4-6, multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other Pollutants except pH);

- C. Any other violation of a Pretreatment Standard or requirement as defined by Sections 16-4-6, 16-4-7, 16-4-8, and 16-4-9 (Daily Maximum, long-term average, Instantaneous Limit, or narrative Standard) that the Director of Utility Services determines has caused, alone or in combination with other Discharges, Interference or Pass-Through, including endangering the health of TCS and POTW personnel or the general public;
- D. Any Discharge of a Pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Director of Utility Services' exercise of its emergency authority to halt or prevent such a Discharge;
- E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule deadline contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide within thirty (30) days after the due date, any required reports, including BMRs, reports on compliance with Categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report noncompliance; or
- H. Any other violation(s), which may include a violation of BMPs, which the Director of Utility Services, in his sole discretion, determines will adversely affect the operation or implementation of the pretreatment program.

Section 16-4-50 Notification of Violation

The Director of Utility Services may serve a written Notice of Violation (NOV) to a User that has violated, or continues to violate, any provision of this ordinance; a wastewater discharge permit or compliance order; or any other Pretreatment Standard or requirement. The User is required to respond in writing within fifteen (15) days of the receipt of the NOV, providing an explanation of the violation and the corrective action taken. Submission of this response in no way relieves the User of liability for any violations occurring before or after receipt of the NOV. The NOV will include a statement that additional enforcement actions may be pursued if corrective actions are not achieved as required. Nothing in this Section shall limit the authority of the Director of Utility Services to take any action, including emergency actions or any other enforcement action, without first issuing a NOV.

Section 16-4-51 Consent Decree

The Director of Utility Services may enter into Consent Decrees, negotiated settlement agreements, assurances of voluntary compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such documents will include specific action to be taken by the User 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 pursuant to Sections 16-4-53 and 16-4-54 of this ordinance and shall be judicially enforceable.

Section 16-4-52 Notice to Show Cause

The Director of Utility Services may issue a Notice to Show Cause to a User which has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or

compliance order, or any other Pretreatment Standard or requirement. A Show Cause meeting provides the User with the opportunity to present information to the Director of Utility Services about why a proposed enforcement action should not be taken. The notice will be served to the User specifying the time and place of the Show Cause meeting, the proposed enforcement action, the reasons for such action, and a request that the User show cause why the proposed enforcement action should not be taken. The notice will be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the meeting. Such notice may be served on any Authorized Representative of the User. A Show Cause meeting shall not be a bar against, or prerequisite for, taking any other action against the User. The User may waive the right for a Show Cause meeting.

Section 16-4-53 Administrative Orders: Compliance Orders

When the Director of Utility Services finds that a User has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other Pretreatment Standard or requirement, the Director of Utility Services may issue an order to the User responsible for the Discharge directing that the User come into compliance within a specified time. If the User does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed, maintained and/or properly operated. The compliance order shall be served personally or by registered or certified mail (return receipt requested). Compliance orders may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of Pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or requirement, nor does a compliance order relieve the User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.

Section 16-4-54 Administrative Orders: Cease and Desist Orders

The Director of Utility Services may issue a Cease and Desist Order to a User that has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other Pretreatment Standard or requirement. The Town has the authority to immediately halt any actual or threatened discharge to the TCS or POTW that may represent an endangerment to public health, the environment, or the TCS or POTW. The Cease and Desist Order may direct the User to immediately comply with all Pretreatment Standards and requirements and to take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Cease and desist order shall be served personally or by registered or certified mail (return receipt requested). Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the User.

Section 16-4-55 Administrative Fines

- A. When the Director of Utility Services finds that a User has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other Pretreatment Standard or requirement, the Director of Utility Services may fine such User in an amount not to exceed twenty-five thousand dollars (\$25,000), in accordance with A.R.S. 49-391. Such fines shall be assessed on a per violation, per day

basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation.

- B. Unpaid charges and fines shall, after thirty (30) calendar days, be assessed an additional penalty of ten percent (10%) of the unpaid balance, and interest shall accrue thereafter at a rate of one percent (1%) per month. A lien against the User's property may be sought for unpaid charges and fines.
- C. Each and every day any violation continues shall be deemed and considered a separate offense. Any Person, firm or corporation violating any provisions of this chapter shall become liable to the Town for any expense, loss or damage occasioned by the Town by reason of such violation.
- D. The fines set forth above shall be cumulative and nonexclusive. In addition to those fines set forth herein, the Town may institute any other remedies available, including, but not limited to, a civil action to recover any and all monies due the Town.
- E. Users desiring to dispute such fines must file a written request for the Director of Utility Services to reconsider the fine along with full payment of the fine amount within fifteen (15) days of being notified of the fine. Where a request has merit, the Director of Utility Services may convene a hearing on the matter. In the event the User's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the User. The Director of Utility Services may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.
- F. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the User.

Section 16-4-56 Emergency Suspensions

The Director of Utility Services may immediately suspend a User's Discharge, after informal notice to the User, whenever such suspension is necessary to stop an actual or threatened Discharge which reasonably appears to present or cause an imminent and substantial endangerment to public health and the environment; the health, safety or welfare of TCS and POTW employees; damage or cause to damage the TCS and POTW, or cause a detrimental decrease in the POTW effluent water quality. The Director of Utility Services may also immediately suspend a User's Discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the TCS and POTW, or which presents, or may present, an endangerment to the environment.

- A. Any User notified of a suspension of its Discharge shall immediately stop or eliminate its wastewater Discharge. In the event of a User's failure to immediately comply voluntarily with the suspension order, the Director of Utility Services may take such steps as deemed necessary including, but not limited to, immediate severance of the Sewer Connection, to prevent or minimize damage to the TCS and POTW, the aquifer or other receiving waters, or endangerment to any individuals. The Director of Utility Services may allow the User to recommence its Discharge when the User has demonstrated to the satisfaction of the Director of Utility Services that the period of endangerment has passed, unless the termination proceedings in Section 16-4-57 of this ordinance are initiated against the User.
- B. A User that is responsible, in whole or in part, for any Discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Director of Utility Services prior to the date of any show cause or termination meeting under Sections 16-4-52 or 16-4-57 of this ordinance.

Nothing in this Section shall be interpreted as requiring a hearing prior to any emergency suspension under this Section.

Section 16-4-57 Termination of Discharge

In addition to the provisions in Section 16-4-29 of this ordinance, any User who violates the following conditions is subject to discharge termination:

- A. Violation of wastewater discharge permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its Discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to Discharge;
- D. Refusal of Ready Access to the User's premises for the purpose of inspection, monitoring, or sampling; or
- E. Violation of the Pretreatment Standards in Section 16-4-5 through 16-4-11 of this ordinance.

Such User will be notified of the proposed termination of its Discharge and be offered an opportunity to show cause under Section 16-4-52 of this ordinance why the proposed action should not be taken. Exercise of this option by the Director of Utility Services shall not be a bar to, or a prerequisite for, taking any other action against the User.

Section 16-4-58 Town's Enforcement Response Plan

The administrative enforcement procedures and remedies identified in Sections 16-4-50 through 16-4-57 of this ordinance shall be carried out by the Director of Utility Services as such procedures and remedies are more particularly described in the Town's Enforcement Response Plan. The Town's Enforcement Response Plan is promulgated and adopted by the Town pursuant to statutory requirements set forth in the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977. The Enforcement Response Plan is incorporated into this ordinance by reference. A copy of the Enforcement Response Plan is available through a public records request submitted to the Town Clerk.

Section 16-4-59 Judicial Enforcement Remedies

A. Injunctive Relief

When the Director of Utility Services finds that a User has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or requirement, the Director of Utility Services may petition the Superior Court of Arizona, Maricopa County, through the Town's Legal Counsel for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the User. The Director of Utility Services may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a User.

B. Civil Fines

1. A User who has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or any order issued hereunder, or any other

Pretreatment Standard or requirement shall be liable to the Town for a maximum civil penalty of up to twenty-five thousand dollars (\$25,000) per violation, per day, in accordance with A.R.S. 49-391. In the case of a monthly or other long-term average discharge limit, fines shall accrue for each day during the period of the violation. A.R.S. 49-391 permits recovery of civil fines provided therein by action in superior court or negotiated settlement agreement. No consent decree in superior court or negotiated settlement may become final until the Town has provided a period of thirty (30) days for public comment.

2. The Director of Utility Services may recover reasonable attorneys' fees, court costs, and other expenses, including expert fees, associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the Town.
3. In determining the amount of civil liability, the Town or Court shall take into account all relevant circumstances, including, but not limited to, the seriousness of the violation; the economic benefit, if any, resulting from the violation; any history of such violation; any good faith efforts to comply with the applicable requirements; the economic impact of the penalty on the violator; and such other factors as justice may require.
4. Filing a civil action for civil fines shall not be a bar against, or a prerequisite for, taking any other action against a User.

C. Criminal Prosecution

1. A User who willfully or negligently violates any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or requirement shall, upon conviction, be guilty of a Class I misdemeanor, punishable by a fine of not more than two thousand five hundred (\$2,500) per violation, per day, or imprisonment for not more than six (6) months, or both.
2. A User who willfully or negligently introduces any substance into the TCS and POTW which causes personal injury or property damage shall, upon conviction, be guilty of a Class I misdemeanor and be subject to a penalty of up to two thousand five hundred (\$2,500) per violation, per day, or the cost of property repairs, whichever is greater, or be subject to imprisonment for not more than six (6) months, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under Arizona law.
3. A User who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, 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 under this ordinance shall, upon conviction, be guilty of a Class I misdemeanor and punished by a fine of not more than two thousand five hundred (\$2,500) per violation, per day, or imprisonment for not more than six (6) months, or both.
4. In the event of a second conviction of a Class I misdemeanor, a User shall be punished by a fine of not more than two thousand five hundred (\$2,500) per violation, per day, or imprisonment for not more than two (2) years, or both.

D. Remedies Nonexclusive

The remedies provided for in this ordinance are not exclusive. The Director of Utility Services may take any, all, or any combination of these actions against a noncompliant User. Enforcement of Pretreatment violations will generally be in accordance with the Town's Enforcement Response Plan. However, the Director of Utility Services may take other action against any User when the circumstances warrant. Further, the Director of Utility Services is empowered to take more than one enforcement action against any noncompliant User.

Section 16-4-60 Supplemental Enforcement Action

A. Fines for Late Reports

A fine shall be assessed to any User for each day that a report required by this ordinance, a permit, or order issued hereunder is late, beginning five (5) days after the date the report is due, according to the schedule in the Town's Enforcement Response Plan. Actions taken by the Director of Utility Services to collect late reporting fines shall not limit the Director of Utility Service's authority to initiate other enforcement actions that may include fines for late reporting violations.

B. Performance Bonds

The Director of Utility Services may decline to issue or reissue a wastewater discharge permit to any User who has failed to comply with any provision of this ordinance, a previous wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or requirement, unless such User first files a satisfactory bond, letter of credit, cash, or other security device payable to the Town, in a sum not to exceed a value determined by the Director of Utility Services to be necessary to achieve consistent compliance.

C. Liability Insurance

The Director of Utility Services may decline to issue or reissue a wastewater discharge permit to any User who has failed to comply with any provision of this ordinance, a previous wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or requirement, unless the User first submits proof that it has obtained suitable insurance (or other suitable financial assurances) sufficient to restore or repair damage to the TCS and POTW caused by its Discharge.

D. Payment of Outstanding Fees and Fines

The Director of Utility Services may decline to issue or reissue a wastewater discharge permit to any User who has failed to pay any outstanding fees or fines incurred as a result of any provision of this ordinance, a previous wastewater discharge permit, or order issued hereunder.

E. Water Supply Severance

Whenever a User has violated or continues to violate any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or requirement, water and/or sewer service to the User may be severed. Service will only recommence, at the User's expense, after it has demonstrated its ability to comply to the satisfaction of the Director of Utility Services.

F. Public Nuisances

A violation of any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the Director of Utility Services. Any Person(s) creating a public nuisance shall be subject to the provisions of the Town Code Chapter 10, Article 10, Health and Safety, governing such nuisances, including reimbursing the

Town for any costs incurred in removing, abating, or remedying said nuisance. The remedy provided herein shall be in addition to any other remedy authorized by this Chapter.

G. Informant Rewards

The Director of Utility Services may pay up to five hundred dollars (\$500) for information leading to the discovery of noncompliance by a User.

H. Contractor Listing

Users 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 Town. Existing contracts for the sale of goods or services to the Town held by a User found to be in SNC with Pretreatment Standards or requirements may be terminated at the discretion of the Director of Utility Services.

7.6 Enforcement Actions

Once noncompliance is determined, the enforcement action must be taken in a timely manner. In order to be effective and fair, enforcement actions must be taken quickly. By acting quickly, the instance of noncompliance is easier to address and future noncompliance may be avoided. The Town will attempt to initiate all enforcement actions within 30 days of the date of noncompliance notification. Table 1, incorporated herein, outlines enforcement action options that may be taken depending on the type and nature of the violation.

Enforcement actions are described in order to achieve fair and consistent implementation of the Pretreatment Program. Enforcement responses are dependent on the nature and severity of the discharge violation, as well as the factors described in Section 7.5. Enforcement actions can range from a simple telephone call to assessment of fines and termination of water and/or sewer service. All enforcement actions will be documented in writing and placed in the IU's pretreatment file. Written notices to IUs will be sent by certified mail with a return receipt requested. The following sections describe enforcement actions from the least formal to the most stringent.

7.6.1 Inspection and Monitoring

The Compliance Schedule will set specific time periods for self-monitoring for an IU's wastewater discharge. If the results of the self-monitoring indicate that a violation has occurred, the IU must repeat the sampling and analysis for the parameter in violation. The resampling must consist of a minimum of four consecutive days of monitoring with flow and discharge conditions consistent with the facility's Industrial Wastewater Discharge Permit. The analytical results of the resampling must be submitted to the Town within 30 days of the IU becoming aware of the violation.

When permit or discharge violations occur, the Town may perform an inspection of the facility to assess if the violation has been corrected and if the facility is operating normally. Inspections are typically not scheduled ahead of time. The IU must allow the Pretreatment Coordinator access to the facility for sampling and inspection purposes within a reasonable timeframe from inspection notification (typically within 24 hours).

7.6.3 Notice of Violation (NOV)

The Director of Utility Services may serve written NOV to an IU that has violated, or continues to violate, any provision of Article 16-4 of the Town Code; a wastewater discharge permit or compliance order; or any other pretreatment standard or requirement. The IU is required to respond in writing within 15 days of receipt of the NOV, providing an explanation of the violation

and the corrective action taken. Submission of this response in no way relieves the IU of liability for any violations occurring before or after receipt of the NOV. The NOV will include a statement that additional enforcement actions may be pursued if corrective actions are not achieved as required.

The NOV will identify the specific time frame for follow-up and/or other corrective actions. Upon review of the facility's response to the NOV, the Pretreatment Coordinator or Field Operations Superintendent will determine the validity or appropriateness of the response. If the response is determined to be unsatisfactory, further actions may be taken; otherwise, the NOV will be closed and recorded in the facility file as part of compliance history. Closure to the NOV will be documented in writing and provided to the facility; however, NOV closure does not preclude further action if necessary.

7.6.4 Compliance Meeting

Compliance Meetings are required when significant violations occur or when previous violations appear to remain uncorrected, as evidenced by repeated violations. Compliance Meetings between the IU and Town Pretreatment Program staff are scheduled as a last step to ensure compliance before pursuing a more stringent intervention, such as a Cease and Desist Order(s). During a Compliance Meeting, a Compliance Schedule is developed and tracked by the Pretreatment Coordinator. Compliance Meetings may be scheduled when any one of the following occurs:

- Discharge concentration exceeds five times the applicable discharge limit, or six times the applicable discharge limit for oil and grease
- Discharge has a pH violation of less than 5.5 or greater than 9 for duration of 30 minutes or more and/or a volume greater than 100 gallons
- The IU has demonstrated a pattern of noncompliance, defined as inconsistent compliance for two consecutive quarters for the same parameter; four or more NOV's within a 6-month period; or failure to respond to an NOV within 30 days of the due date

7.6.5 Notice to Show Cause

The Director of Utility Services may issue a Notice to Show Cause to an IU which has violated, or continues to violate, any provision of Article 16-4 of the Town Code; a wastewater discharge permit or compliance order; or any other pretreatment standard or requirement. A Show Cause meeting provides the IU with the opportunity to present information to the Director of Utility Services about why a proposed enforcement action should not be taken. The notice will be served to the IU specifying the time and place of the Show Cause meeting, the proposed enforcement action, the reasons for such action, and a request that the IU show cause why the proposed enforcement action should not be taken. The notice will be served personally or by registered or certified mail (return receipt requested) at least 10 days prior to the meeting. A Show Cause meeting will not be a bar against, or prerequisite for, taking any other action against the IU. The IU may waive the right for a Show Cause meeting.

7.6.6 Administrative Orders

The Town may issue an Administrative Order (e.g., Compliance Orders and Cease and Desist Orders as described in the Town Code Sections 16-4-53 and 16-4-54, respectively) requiring a facility to achieve compliance with pretreatment standards or other requirements of the Town Code. The Administrative Order will place a facility on an enforceable compliance schedule or require immediate compliance. The Town may require a facility to install treatment devices and/or to operate and maintain treatment equipment correctly.

7.6.7 Administrative Fines

Administrative Fines may be assessed by the Department of Utility Services under the Town Code Article 16-4. Each day that a violation continues may constitute a separate violation. When determining the amount of an Administrative Fine, other factors (discussed in Section 7.5) may be taken into account, as well as any economic benefit resulting from the violation, the economic impact of the penalty on the violator, and the severity of the violation. Table 2, which is incorporated herein by this reference, outlines the administrative fines that may be assessed based on the type and nature of the violation. In the event the IU and the Town agree on the amount of the Administrative Fines to be paid by the IU, the IU and the Town may enter into a Pretreatment Settlement Agreement to be negotiated by the parties. In the event the IU and the Town are not able to so agree, the Town has the authority to file a Civil Action against the IU, as more particularly described in Section 7.6.9

7.6.8 Termination or Suspension of Discharge

The Director of Utility Services may issue a Cease and Desist Order to an IU that has violated, or continues to violate, any provision of Article 16-4 of the Town Code; a wastewater discharge permit or compliance order; or any other pretreatment standard or requirement. The Town has the authority to immediately halt any actual or threatened discharge to the TCS or POTW that may represent an endangerment to public health, the environment, or the TCS or POTW. The Cease and Desist Order may direct the IU to immediately comply with pretreatment standards and requirements and to take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. The Cease and Desist Order will be served personally or by registered or certified mail (return receipt requested). Issuance of a Cease and Desist Order will not be a bar against, or a prerequisite for, taking any other action against the IU.

Termination or suspension of discharge may be an appropriate response to facilities that have not complied with previous enforcement actions. This action is an administrative response, which may be implemented by the Department of Utility Services without initiating civil and/or criminal proceedings.

Circumstances warranting termination or suspension of discharges include any of the following:

- Unpermitted discharge which results in violation of TCS or POTW effluent permits
- Any dangerous situation threatening human health, the environment, or the TCS or POTW
- Discharges that exceed local limits or categorical discharge limits and/or result in damage to the environment or the TCS or POTW
- Slug loads that result in interference, pass-through, or which may cause any dangerous situation threatening human health, the environment, or the TCS or POTW
- Failure of the facility to notify the Town of effluent violations of slug load discharge, or recurring slug loads, that causes any dangerous situation threatening human health, the environment, or the TCS or POTW
- Failure of the facility to install monitoring equipment as required by an Administrative Order
- Major violation of permit conditions or administrative action accompanied by evidence of negligence or intentional violation

The process for terminating or suspending an IU's wastewater discharge permit is described below:

- The Pretreatment Coordinator or Field Operations Superintendent prepares documentation to support the action and advises the Director of Utility Services of the impending action.
- Upon approval by the Director of Utility Services, the IU is provided written notification of the proposed termination. The IU will be given the opportunity to appear before the Field Operations Superintendent at a Show Cause meeting and provide reasons why the proposed action should not be taken.
- If the facility appears to have an actual or threatened discharge that may cause interference with the TCS or POTW or will present an imminent endangerment to the health or welfare of any person or environment, the Director of Utility Services may suspend any sewer service connection to the TCS or POTW without a Show Cause meeting.

Service will be restored only after compliance has been achieved to the satisfaction of the Field Operations Supervisor or the Director of Utility Services.

7.6.9 Civil Actions

The Town has the authority to file a Civil Action against IUs for alleged violations of applicable pretreatment standards and seek injunctive relief, compliance, civil fines, and/or damages. Civil fines may be assessed in an amount up to \$25,000 per violation per day in accordance with A.R.S. §49-391. Filing Civil Actions is an appropriate enforcement response in the following situations:

- An emergency situation where injunctive relief is necessary to halt or prevent discharges which threaten human health, or the environment, or interfere with the TCS or POTW
- When efforts to restore compliance through cooperation with the IU has failed and action is necessary to enforce Pretreatment Program requirements
- To seek fines and other remedies in law, or equity, or statutory for violations
- Any other situation deemed reasonable by the Town for the protection of the public health, safety, welfare of the community, TCS, POTW, or the environment

In instances that require filing a Civil Action, the Department of Utility Services will collect all pertinent information sufficient to support the complaint, and provide the information to the Town's Legal Counsel. The Department of Utility Services staff will support the Town's Legal Counsel in preparing and carrying out the civil case.

7.6.10 Criminal Actions

Willful or negligent violations can seriously damage the TCS or POTW and the environment, and enforcement action must be decisive. As in civil actions, the Department of Utility Services will work closely with the Town's Legal Counsel when pursuing enforcement actions that support criminal punishment. Criminal fines may be assessed in an amount up to \$2,500 per violation per day as a Class I misdemeanor, or as provided by applicable law.

The Town's Legal Counsel is authorized to seek criminal punishment for any person who violates pretreatment standards or any person who knowingly makes false statements in any report, application, record, or other document required by pretreatment regulations and Town Code.

The Field Operations Superintendent and Director of Utility Services may consider several factors when identifying violations to be referred to the Town's Legal Counsel for possible criminal prosecution. These factors include:

- The willfulness or negligence of the IU
- Repetitive violations
- Nature and severity of the violation, including any fines received by the Town from federal or Arizona agencies
- Need for deterrence
- Compliance history of the facility
- Lack of compliance with Administrative Orders

7.6.11 Modification or Revocation of Permit

A facility's Industrial Wastewater Discharge Permit may be revoked if any provision of the permit or Town Code is violated or for any of the reasons listed in Town Code Article 16-4. A permit may be modified for any one of the following reasons:

- Information obtained subsequent to permit issuance indicates that the permitted discharge poses a threat to the TCS or POTW personnel, or the receiving water
- The permit was obtained by misrepresentation or failure to fully disclose all relevant facts
- Increased monitoring or reporting required as a result of enforcement activities

Permit modification is revoked at the discretion of the Field Operations Superintendent or Director of Utility Services and may be initiated for reasons other than those listed above.

Table 1
Enforcement Response Actions

Type of Violation	Nature of Violation	Enforcement Response Options
Un-Permitted Discharges		
Un-Permitted Discharge	IU aware of requirement; no harm to the TCS/POTW or environment	• Verbal Warning • Warning Notice • NOV with permit application form • Resample discharge • Unannounced inspection • Unannounced Town monitoring
	IU aware of requirement; discharge causes harm to the TCS/POTW or environment	• NOV • Resample discharge • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action
	Failure to comply; discharge continues after notice by Town	• NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action • Terminate sewer connection • Revoke Permit
Failure to Renew Permit	Permit expired; no application submitted	• NOV • Administrative Order • Administrative Fines • Civil Action • Terminate sewer connection

Table 1
Enforcement Response Actions (cont.)

Type of Violation	Nature of Violation	Enforcement Response Options
Discharge Limit Violations		
Exceedance of Local Limit, Permit Limit or Federal Standard	Random violation; no harm to TCS/POTW or environment	• Verbal Warning • Warning Notice • NOV • Resample discharge • Unannounced inspection • Unannounced Town monitoring
	Random violation; discharge caused harm to TCS/POTW or environment	• NOV • Resample discharge • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action
	Pattern violation; no harm to TCS/ POTW or environment	• NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action
	Pattern violation; discharge caused harm to TCS/ POTW or environment	• NOV • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action • Terminate sewer connection • Revoke Permit

Table 1
Enforcement Response Actions (cont.)

Type of Violation	Nature of Violation	Enforcement Response Options
Discharge Limit Violations (cont.)		
Exceedance of Local Limit, Permit Limit or Federal Standard (cont.)	Pattern violation; with knowledge or intent or negligence	• NOV • Show Cause Meeting • Administrative Order • Administrative Fines • Criminal Action • Terminate sewer connection • Revoke Permit
Monitoring and Reporting Violations		
Reporting Violation	Report is improperly signed or certified	• Verbal Warning • Warning Notice • NOV
	Report is improperly signed or certified after notification by Town	• NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action
	Random violation with no harm caused to TCS/POTW or environment report, reported less than 30 days late	• Verbal Warning • Warning Notice • NOV • Unannounced inspection
	Report late by 30 days or more	• NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action
	Missing or incomplete information in report	• Verbal Warning • Warning Notice • NOV

Table 1
Enforcement Response Actions (cont.)

Type of Violation	Nature of Violation	Enforcement Response Options
Monitoring and Reporting Violations (cont.)		
Reporting Violation (cont.)	Failure to correct report with missing or incomplete information after notification by Town	• NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action
	Failure to report spill or changed discharge; no harm caused to TCS/POTW or environment	• Verbal Warning • Warning Notice • NOV • Resample discharge • Unannounced inspection • Unannounced Town monitoring
	Failure to report spill or changed discharge; discharge caused harm to TCS/POTW or environment	• NOV • Resample discharge • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action
	Repeated failure to report spills or changed discharge	• NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action • Terminate sewer connection • Revoke Permit

Table 1
Enforcement Response Actions (cont.)

Type of Violation	Nature of Violation	Enforcement Response Options
Monitoring and Reporting Violations (cont.)		
Reporting Violation (cont.)	Falsification of information presented in report	• NOV • Show Cause Meeting • Administrative Order • Administrative Fines • Criminal Action • Terminate sewer connection • Revoke permit
Failure to Monitor Correctly	Failure to monitor all pollutants as required by Permit	• Verbal Warning • Warning Notice • NOV
	Pattern violation or evidence of intent	• NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action • Terminate sewer connection • Revoke Permit
Improper Sampling	Random violation	• Verbal Warning • Warning Notice • NOV • Resample discharge • Unannounced inspection • Unannounced Town monitoring

Table 1
Enforcement Response Actions (cont.)

Type of Violation	Nature of Violation	Enforcement Response Options
Monitoring and Reporting Violations (cont.)		
Improper Sampling (cont.)	Pattern violation or evidence of intent	• NOV • Show Cause Meeting • Administrative Order • Administrative Fines • Criminal Action • Terminate sewer connection • Revoke Permit
Failure to Install Monitoring Equipment	Delay of 30 days or more after notification by Town	• NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action • Terminate sewer connection • Revoke Permit
Compliance Schedules	Missed compliance deadline by less than 30 days	• Verbal Warning • Warning Notice • NOV
	Missed compliance deadline by more than 30 days; IU has good cause for delay	• NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines
	Missed compliance deadline by more than 30 days; IU does not have good cause for delay	• NOV • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action • Terminate sewer connection • Revoke Permit

Table 1
Enforcement Response Actions (cont.)

Type of Violation	Nature of Violation	Enforcement Response Options
Monitoring and Reporting Violations (cont.)		
Compliance Schedules (cont.)	Pattern violation or violation of schedule in Administrative Order	• NOV • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action • Terminate sewer connection • Revoke Permit
Other Permit Violations		
Waste Streams are Diluted in Lieu of Treatment	Random violation	• Verbal Warning • Warning Notice • NOV • Resample discharge • Unannounced inspection • Unannounced Town monitoring
	Pattern violation	• NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action • Terminate sewer connection • Revoke Permit
Failure to Mitigate Noncompliance or Halt Production	Discharge causes no harm to TCS/POTW or environment	• Verbal Warning • Warning Notice • NOV • Resample discharge • Unannounced inspection • Unannounced Town monitoring

Table 1
Enforcement Response Actions (cont.)

Type of Violation	Nature of Violation	Enforcement Response Options
Other Permit Violations (cont.)		
Failure to Mitigate Noncompliance or Halt Production (cont.)	Discharge causes harm to TCS/POTW or environment	• NOV • Resample discharge • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action
Failure to Properly Operate and Maintain Pretreatment Facility	Random violation	• Verbal Warning • Warning Notice • NOV • Resample discharge • Unannounced inspection • Unannounced Town monitoring
	Pattern violation	• NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action • Terminate sewer connection • Revoke Permit
Violations Observed During Site Visit/Inspection		
Entry Denial	Entry denied or consent withdrawn; copies of records denied	• Warning Notice • NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines

Table 1
Enforcement Response Actions (cont.)

Type of Violation	Nature of Violation	Enforcement Response Options
Violations Observed During Site Visit/Inspection (cont.)		
Failure to Report Additional Monitoring	Inspector finds additional files/records; initial violation	• Verbal Warning • Warning Notice • NOV
	Pattern violation after notice from Town to correct	• NOV • Compliance Meeting • Show Cause Meeting • Administrative Order • Administrative Fines • Civil Action • Terminate sewer connection • Revoke Permit

Notes:

NOV = Notice of Violation; Random violation = The first, second, or third violation and not severe or frequent enough to be classified as a Significant Violation or a Pattern Violation; Pattern Violation = Four or more Random Violations during a moving 12-month period.

Table 2
Schedule of Fines

Type of Violation	Nature of Violation	Options for Fines
Administrative Fines		
Un-Permitted Discharge	IU aware of requirement; discharge causes harm to TCS or POTW or environment	Up to \$10,000 per day per violation
	Failure to comply; discharge continues after notice by Town	Up to \$25,000 per day per violation
Failure to Renew Permit	Permit expired; no application submitted	Up to \$10,000 per day per violation
Exceedance of Local Limit, Permit Limit or Federal Standard	Random violation; discharge caused harm to TCS or POTW or environment	Up to \$10,000 per day per violation
	Pattern violation, 4 or more violations within moving 12-month period; no harm to TCS or POTW or environment	Up to \$10,000 per day per violation
	Pattern violation, 2 or more violations within 90 days; discharge causes harm to TCS or POTW or environment	Up to \$10,000 per day per violation
	Pattern violation with knowledge or intent or negligence	Up to \$25,000 per day per violation
Reporting Violations	Report is improperly signed or certified after notification by Town	Up to \$1,000 per day per violation

Table 2
Schedule of Fines (cont.)

Type of Violation	Nature of Violation	Options for Fines
Administrative Fines		
Reporting Violations (cont.)	Report late by 30 days or more	Up to \$1,000 per day per violation
	Failure to correct report with missing or incomplete information after notification by Town	Up to \$5,000 per day per violation
	Failure to report spill or changed discharge; discharge caused harm to TCS or POTW or environment	Up to \$10,000 per day per violation
	Pattern violation; failure to report spills or changed discharge	Up to \$10,000 per day per violation
	Falsification of information presented in report	Up to \$1,000 per day per violation
Failure to Monitor Correctly	Pattern violation; failure to monitor discharge	Up to \$5,000 per day per violation
Improper Sampling	Evidence of intent	Up to \$5,000 per day per violation
Failure to Install Monitoring Equipment	Delay of 30 days or more after notification by Town	Up to \$1,000 per day per violation
Compliance Schedule	Missed compliance deadline by more than 30 days; IU has good cause for delay	Up to \$500 per day per violation
	Missed compliance deadline by more than 30 days; IU does not have good cause for delay	Up to \$1,000 per day per violation
	Pattern violation or violation of schedule in Administrative Order	Up to \$5,000 per day per violation
Waste Streams are Diluted in Lieu of Treatment	Pattern violation	Up to \$5,000 per day per violation
Failure to Mitigate Noncompliance or Halt Production	Discharge causes harm to TCS or POTW or environment	Up to \$10,000 per day per violation

Table 2
Schedule of Fines (cont.)

Type of Violation	Nature of Violation	Options for Fines
Administrative Fines (cont.)		
Entry Denial	Entry Denied or consent withdrawn; copies of records denied	Up to \$100 per day per violation
Illegal Discharge	Pattern violation; no harm to TCS or POTW or environment	Up to \$1,000 per day per violation
	Discharge causes harm to TCS or POTW or environment or there is evidence of intent or negligence	Up to \$10,000 per day per violation
Inadequate Record Keeping or Documentation	Pattern violation after notice from Town to correct	Up to \$5,000 per day per violation
Failure to report Additional Monitoring	Pattern violation after notice from Town to correct	Up to \$5,000 per day per violation

Notes:

In addition to the described fines, the Director of Utility Services may recover reasonable attorney's fees, court costs, and other expenses associated with the enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the Town.

After 30 days, unpaid fines will be assessed an additional penalty of 10% of the unpaid balance, and the interest will accrue thereafter at a rate of 1% per month. A lien against the IU's property will be sought for unpaid fines.

The Town, in its sole discretion, may respond to noncompliance on a case-by case basis. The fines presented above should be considered guidance and the maximum fine available may be used as an appropriate first response.

Section 4. The Town Clerk is hereby directed to publish this adopting ordinance in full.

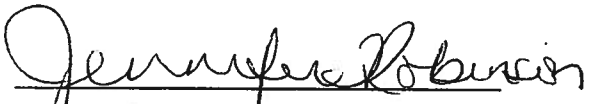
PASSED AND APPROVED by the Mayor and Common Council of the Town of Queen Creek, this 7th day of October 2009.

FOR THE TOWN OF QUEEN CREEK:



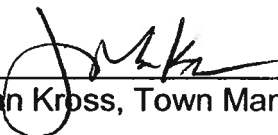
Arthur M. Sanders, Mayor

ATTESTED TO:



Jennifer F. Robinson, Town Clerk

REVIEWED BY:



John Kross, Town Manager

APPROVED AS TO FORM:



Mariscal, Weeks, McIntyre &
Friedlander, PA
Attorneys for the Town