

**WASTEWATER TREATMENT  
CAPACITY ALLOCATION ORDINANCE**  
As Amended, August 28, 2017

**SECTION 1**  
**Authority and General Provisions**

**Section 1.1. Authority.**

This Ordinance is adopted by the Western Lake Superior Sanitary District ("District") pursuant to Chapter 458D, and other provisions of Minnesota Law and is declared necessary for the efficient, economic and safe operation of the Treatment Works and for the protection of the health, safety, and general welfare of the public throughout the District.

**Section 1.2. Purpose.**

The Treatment Works have limited or finite capacity, both in a physical sense and from the standpoint of achieving acceptable wastewater treatment. The purpose of the rules and regulations established in this Ordinance is to recognize the finite capacity of the Treatment Works and to provide a system of allocating on a periodic basis that capacity among Users. This will allow the District to comply with provisions of its National Pollutant Discharge Elimination System permit and other provisions of applicable state and federal law.

**Section 1.3. Definitions.**

All terms in this Ordinance shall have the meaning hereinafter established, unless otherwise expressly provided or clearly indicated by the context:

Act - The Federal Water Pollution Control Act (PL92-500), also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et. seq.

Actual Biochemical Oxygen Demand (BOD) - The total quantity of Biochemical Oxygen Demand (BOD) discharged by a User during a calendar day (24-hour period) in pounds based on measurement determined and recorded by WLSSD.

Actual Flow - The total quantity of Wastewater discharged by a User during a calendar day (24-hour period) in million gallons per day (MGD) based on measurement determined and recorded by WLSSD.

Actual Peak Flow - The highest one-hour wastewater flow rate measured in million gallons per day (MGD) actually discharged by a User within any

individual clock hour (60-minute average) of any calendar day (24-hour period) based on measurement determined and recorded by WLSSD.

Actual Total Suspended Solids (TSS) - The total quantity of Total Suspended Solids (TSS) discharged by a User during a calendar day (24-hour period) in pounds based on measurement determined and recorded by WLSSD.

Agreement, Capacity Allocation - The Capacity Allocation Agreement ("Agreement") is that Agreement (also known as a Participation Agreement) previously made between the District and a User to permit the User to discharge a Permitted Share of Flow or Load to the Treatment Works.

Average Dry Weather Flow - The flow in a sanitary sewer during periods of dry weather in which the sanitary sewer is under minimum influence of inflow and infiltration. The average daily flow in the month of January is typically used.

Board (or WLSSD Board) - The governing body of the WLSSD.

BOD - Five (5) day Biochemical Oxygen Demand of Wastewater, as determined under standard laboratory procedures as set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater, published jointly by the American Public Health Association, the American Water Works Association and the Water Environment Federation. BOD is measured in milligrams per liter and is monitored as pounds discharged during a calendar day (twenty-four (24) hours).

Debt Service - The principal and interest necessary to pay bonded indebtedness and any other indebtedness of the District.

Debt Service Costs - All costs incurred by the District in paying Debt Service.

Design Capacity - Capacity of the Treatment Works to collect and treat Wastewater consistent with all requirements of the Act, the NPDES Permit and all other requirements established by the Board and otherwise without incurring unreasonable operating expense or causing damage to the Treatment Works. The listed specifications for Flow, TSS and BOD (plant design capacity) and Peak Flow (present hydraulic capacity as documented in the April 2001 Effluent Quality Plan) represent the maximum amount of capacity that can be permitted without compromising plant performance. Current plant capacity specifications are as follows:

Flow – 48.4 Million gallons per day (MGD)

Peak Flow – 100.0 Million gallons per day (MGD)

TSS – 112,000 lbs/day

BOD – 121,000 lbs/day

Plant capacity specifications can, and may, be modified should capital investment or aging infrastructure expand or reduce plant capacity.

Director - The person occupying the position of Executive Director of the District or the designee of the Executive Director.

Discontinued User - A User that goes out of business or otherwise discontinues discharging Wastewater to the District.

Flow - The total quantity of Wastewater discharged during a calendar day (24 hours) to the Treatment Works.

Influent - Wastewater entering the Treatment Works.

Load - Quantities of Wastewater components such as BOD and TSS, or other constituents that may be established from time to time for the Treatment Works.

NPDES Permit - A discharge permit issued to the District for operation of its wastewater treatment facilities pursuant to the National Pollutant Discharge Elimination System established under the Act.

Operation and Maintenance Costs - The cost of operation, maintenance and administration of the Treatment Works, together with, unless otherwise apportioned by the District, costs expended by the District for pollution prevention, the District's planning functions, and the District's regulatory programs, together with capital costs not funded with borrowed funds. Operation and Maintenance Costs do not include Debt Service and Debt Service Costs.

Operation and Maintenance Rate (or O & M Rate) - The separate rates established by the Board from time to time applicable to Flow, BOD, TSS or other constituents, respectively.

Permit - Means the permit issued by the District to the User for an Allotted Share of Peak Flow, Flow and components of Load to the User, and defining such other conditions for discharge to the Treatment Works as determined by the District, as described in Section 3 hereof.

Permitted Biochemical Oxygen Demand (BOD) - The total quantity of Biochemical Oxygen Demand (BOD) allowed to be discharged by a User during a calendar day (24-hour period) measured in pounds.

Permitted Flow - The total quantity of Wastewater allowed to be discharged by a User during a calendar day (24-hour period) under normal conditions measured in million gallons per day (MGD).

Permitted Peak Flow – The highest one-hour wastewater flow rate measured in million gallons per day (MGD) allowable per User within any individual clock hour (60-minute average) of any calendar day (24-hour period) as identified in the User's Capacity Allocation Permit. This value is determined by averaging on a five-year basis the Average Dry Weather Flow for each municipal customer and applying the wet weather Municipal Peak Flow Standards (attached) as included in the WLSSD Comprehensive Wastewater Services Plan. For industrial customers the Permitted Peak Flow rate is based upon the remaining hydraulic capacity of the WLSSD system.

Permitted Share - The quantity of Permitted Flow, Permitted Peak Flow, Permitted BOD and Permitted TSS that are allowed or allotted a User in the manner provided for in this Ordinance.

Permitted Total Suspended Solids (TSS) – The total quantity of Total Suspended Solids (TSS) allowed to be discharged by a User during a calendar day (24-hour period) measured in pounds.

Residuals Disposal - The disposal of solids and associated liquids removed from Wastewater.

TSS - Total Suspended Solids of Wastewater as determined under laboratory procedures set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater, published jointly by the American Public Health Association, the American Water Works Association, and the Water Environment Federation. TSS is measured in milligrams per liter and is monitored as pounds discharged for a calendar day (twenty-four (24) hours).

Treatment Works - The entire wastewater system operated by the District including, but not limited to, the interceptors, pumping stations, sampling and flow monitoring stations, the wastewater treatment plant, effluent discharge and Residuals Disposal facilities and any other equipment of the District in any way connected with or utilized in the treatment of Wastewater.

User - The cities of Duluth, Proctor, Hermantown, Cloquet, Carlton, Rice Lake, Scanlon and Wrenshall, the townships of Midway, Thomson and Twin Lakes, Jay Cooke State Park, the Pike Lake Area Wastewater Collection System, the Duluth North Shore Sanitary District, the Village of Oliver, Wisconsin, and the Knife River-Larsmont Sanitary District. Any other person, firm, corporation or other entity or organization of any kind or nature, whether a municipal or local governmental entity or a state or federal entity, agency or subdivision which discharges directly to the Treatment Works and is not a customer of another governmental entity.

Wastewater - The words "wastewater" and "sewage" are used interchangeably herein and have the following meaning: all liquid or water-carried waste products from whatever source derived, together with such

groundwater infiltration and surface water inflow as may be present, which enters or is intended to enter the Treatment Works.

Wastewater Collection System - The network of interceptor sewers owned and operated by the WLSSD.

WLSSD (or District) - The Western Lake Superior Sanitary District, a public corporation and political subdivision of the State of Minnesota, existing under the authority of Chapter 458D.

## **SECTION 2**

### **Regulations**

#### **Section 2.1. Establishment of Treatment Capacity Allocation System.**

No User shall discharge to the Treatment Works any quantity of Wastewater without first obtaining a Permit from the District pursuant to the requirements and provisions of this Ordinance.

#### **Section 2.2. Board Allocates Treatment Capacity.**

A. Allocation. The Board, in its discretion, shall on a periodic basis in the manner and subject to the limitations set forth in this Ordinance, provide for the allocation of capacity of the Treatment Works among the Users. In allocating capacity, the Board may take into account the Permitted Share of all Users during the previous five years, projected or anticipated increases in Actual Flow, Actual Peak Flow, Actual TSS and Actual BOD of all Users, the anticipated requirements of potential new Users and such other factors as in the judgment of the Board will fairly allocate capacity among both current and potential Users. The Board may afford each User the opportunity to present information about the User's anticipated capacity needs during the period of the Permit. The District shall make a preliminary allocation of capacity to apply during the period of the Permit and advise each User of that preliminary allocation. The User may accept such allocation or request a higher or lower allocation. Thereafter the Board shall make a final allocation determination specifying the Permitted Share of each User, which shall be incorporated in the User's Permit.

B. Board Reallocation During Permit Period. If, during the period a Permit is in effect, the Board determines that during the balance of the Permit period the User will not utilize all of its Permitted Share and determines that another User or potential User has need for capacity, or the Board determines that the User is frequently exceeding its Permitted Share, the Board shall have the right but not the obligation to adjust the User's Permitted Share up or down consistent with the Board's new findings as to the User's Permitted Share for the balance of the period of the Permit. Prior to making a determination as allowed hereunder, the Board shall afford the existing User the opportunity to present

information about that User's capacity needs during the balance of the period of the Permit. The Board may, to the extent that the Design Capacity of the Treatment Works allows, assign the User an increased Permitted Share for the remainder of the Permit period or for a new Permit period.

C. User Requested Capacity Adjustment. During the period of the Permit, any User that projects a significant increase or decrease in Flow and Load from the User's Permitted Share may petition the Board for an increase or decrease in Permitted Share. The petition shall include sufficient factual information to enable the Board to determine the User's Permitted Share needs, the parameters thereof, and such other information as to the User's process as may be requested by the Board. The Board may, to the extent that the Design Capacity of the Treatment Works allows, modify the User's Permitted Share for the remainder of the Permit period or for a new Permit period.

D. Correction of Errors. If during the period of the Permit the District concludes that the User's Permitted Share was calculated in error, the Board may correct the error and adjust the User's Permitted Share. The maximum period of a retroactive adjustment is up to twelve months from the date of correction of the error. The period of retroactive adjustment shall be determined in the discretion of the Director.

E. New Users. Potential new Users may petition the Board for Permitted Share. The petition shall contain the information specified in Subsection 2.2.C. above. The Board, in acting on such petition, shall follow the procedure set forth in Subsection 2.2.C. above.

**Section 2.3.** Discharge in Accordance with Allocation. All Users shall be permitted to discharge Flow and Load to a maximum of the User's Permitted Share at the O & M Rates then in effect.

**Section 2.4.** Cost Apportionment. The Board will adopt a cost apportionment policy establishing a framework for apportioning Operation and Maintenance Costs and Debt Service Costs among the Users, which policy may be modified from time to time.

A. Allocation of Operation and Maintenance Costs. The Board will implement the cost apportionment policy by resolution, specifically prescribing the method of apportioning Operation and Maintenance Costs among all of the Users of the Treatment Works. The District will apportion Operation and Maintenance Costs among the Users based upon the operation and maintenance component of the District's cost apportionment policy. Such apportionment shall be based upon each User's Permitted Share, subject to the discretion of the Director.

B. Allocation of Debt Service and Debt Service Costs. The Board will adopt a resolution implementing the cost apportionment policy and specifically prescribing the method of apportioning Debt Service and Debt Service Costs among all of the Users of the Treatment Works. Each User shall, at a minimum, be responsible for that portion of District Debt Service incurred or for which the District became obligated during the period of each particular Capacity Allocation Agreement or Permit equal to the User's Permitted Share as assigned to the User for that period (whether or not such User actually discharges Flows and Loads to the maximum of the User's Permitted Share).

C. Continuing Debt Service Obligation of Discontinued User. A Discontinued User shall continue to pay its share of Debt Service until all Debt Service Costs for debt existing at the time of the start of such User's first Capacity Allocation Agreement or Permit and all debt incurred during the subsequent period during which such User discharged Wastewater to the Treatment Works has been paid. The Discontinued User shall have no ownership interest in or rights to the unused capacity upon which the Discontinued User pays Debt Service. If there is another User that requires capacity the Board may, but shall not be required to, reallocate all or a portion of the Permitted Share of the Discontinued User to such other User and to make adjustments in the Debt Service obligation of the Discontinued User to the extent deemed reasonable and appropriate by the Board.

#### **Section 2.5. User Operating Upsets.**

A. Any User that experiences an upset in operations that places the User in a temporary state of noncompliance with this Ordinance or its Permit shall inform the Director immediately upon first awareness of commencement of the upset.

B. Where such information is given orally, a written follow-up report may be requested by the Director and shall be filed by the User with the District within five (5) days, providing the following:

- (1) Description of the upset, the cause thereof and the upset's impact on a User's compliance status;
- (2) Duration of noncompliance, including exact dates and times of noncompliance, and if the noncompliance continues, the time by which compliance is reasonably expected to occur; and
- (3) All steps taken or to be taken to reduce, eliminate, and prevent reoccurrence of such an upset or other conditions of noncompliance.

### **SECTION 3**

#### **Capacity Allocation Permit**

##### **Section 3.1. Permit Required.**

All Users now existing, together with any person, firm, corporation or other entity, whether municipal or otherwise, which hereafter becomes a User, are required to obtain a Permit from the District.

##### **Section 3.2. Permit Provisions.**

A. The Permit shall be subject to all provisions of this Ordinance and all other regulations and applicable fees established by the District. Permits shall be made for a specified time period, not to exceed five (5) years.

B. The Permit shall specifically include the following conditions as applicable:

- (1) The User's Permitted Share of Flow and Load.
- (2) Requirements for notification to the Director of any substantial change in the volume or characteristics of the Wastewater constituents being introduced to the District Treatment Works;
- (3) Other conditions as deemed appropriate by the District to insure compliance with this Ordinance.

##### **Section 3.3. Permit Modifications.**

The terms and conditions of a Permit may be subject to modification by the Board pursuant to Section 2.2.

##### **Section 3.4. Permit Transfer.**

A. Permits are made with a specific User for a specific operation and are not assignable to another User or transferrable to any other entity or to any other location without prior written approval of the Board.

B. In the event there is a pending change in the ownership of the property, operations or premises for which a Permit applies, the owner shall notify the District of the pending change in ownership, and shall notify the expected owner of the provisions of the Permit and the rules and regulations contained herein.

C. A new owner shall petition the Board for a Permitted Share pursuant to Subsection 2.2.E. The Board may continue in effect the existing



Permit until its expiration date, subject to such modification as the Board determines to be required, or issue a new Permit.

## **SECTION 4 Enforcement**

### **Section 4.1 Suspension of Service.**

A. The Director may suspend or limit wastewater treatment service and the quantity of Flow and Load which may be discharged by a particular User or Users when the Director determines that such suspension or limitation is necessary in order to stop an actual or threatened discharge by the User which may present an endangerment to the health or welfare of persons, an endangerment to the environment, interfere with the operation of the Treatment Works, or cause the District to violate any condition of its NPDES Permit.

B. Any User notified of the suspension or reduction in wastewater treatment service or a reduction in the Flow and Load which may be discharged shall, within a reasonable period of time as determined by the Director, cease or reduce discharges to the Treatment Works. If determined to be necessary by the Director, the District may sever the sewer connection of the User to prevent or minimize damage to the Treatment Works or endangerment to any individuals.

C. The Director shall reinstate the wastewater treatment service or Permit upon proof by the User of the elimination of the non-complying discharge.

D. The provisions of Sections 4.3, 4.4 and 4.5 do not apply to a suspension of service under Section 4.1.

### **Section 4.2. Violation.**

A violation of this Ordinance occurs if the User:

- A. Fails to factually report the User's Flow or Load;
- B. Fails to report significant changes in the User's Flow or Load;
- C. Violates any conditions of the Permit; or
- D. Fails to comply with any of the provisions of this Ordinance, or applicable District, state and federal regulations.

### **Section 4.3. Notice of Violation.**

Whenever the Director finds that any User has violated this Ordinance, the Director shall serve or cause to be served upon such User a written notice stating

the nature of the alleged violation, any penalty to be imposed as a result of the violation, and any other proposed enforcement action. Service may be made on any agent, officer, or authorized representative of a User or by mail to the address of the User. Within thirty (30) days of the date of the notice, the User shall respond to the allegations in writing to the Director.

**Section 4.4. Order.**

After receipt of User's written response, the Director shall issue an administrative order ("Order") which shall include:

- A. a concise statement of the facts constituting the violation;
- B. reference to the provision of the Permit, this Ordinance, or applicable District, state and federal regulation that was violated;
- C. a statement of the amount of the civil penalty as provided in Section 5.2, any civil liability to be imposed as provided in Section 5.3, and any other enforcement action imposed as a result of the violation; and
- D. actions that must be taken by the User to comply with the Order.

**Section 4.5. Show Cause Hearing.**

If the Director's Order or a suspension of service under Section 4.1 requires the User to take an action, and the User does not timely comply, the Director may order any User which causes or allows such prohibited conduct to show cause before the Board why further enforcement action should not be taken. A written notice shall be served on the User specifying the time and place of a hearing to be held by the Board regarding the violation, the reasons why the enforcement action is being taken, and the proposed enforcement action. Notice of the hearing shall be served no less than ten (10) days before the hearing. Service may be made on any agent, officer, or authorized representative of a User or by mail to the address of the User. Proceedings of the hearing shall be considered by the Board which shall then issue a decision or order with respect to the alleged improper activities of the User. The decision or order of the Board shall be the final administrative determination.

**Section 4.6. Judicial Enforcement Proceedings.**

Following the entry of a decision or order by the Director under Sections 4.1 or 4.4, or the Board under Section 4.5, the attorney for the District may, following authorization of such action by the Board, commence an action for appropriate legal and/or equitable relief.

#### **Section 4.7. Appeals.**

Any person affected by any decision or order made by the Director in interpreting or administering the provisions of this Ordinance may file with the Director a written notice of appeal within ten (10) days after receipt of the decision or order of the Director. The appeal shall be heard and considered by the Board utilizing such procedure as the Board may establish. Notice of a scheduled hearing before the Board shall be mailed to the appealing User by the Director. The decision by the Board on such appeal shall be the final administrative determination.

#### **Section 4.8. Performance Bond.**

The Director may decline to reissue a Permit to any User which has failed to comply with the provisions of this Ordinance, any District orders, or a previous Capacity Allocation Agreement or Permit, unless such User first deposits a satisfactory bond, in a form acceptable by the District, payable to the District, in an amount determined by the Director to be necessary to achieve consistent compliance.

### **SECTION 5 Penalties**

#### **Section 5.1. Remedies Nonexclusive.**

The remedies provided for in this Ordinance are not exclusive. The Director may take any, all, or any combination of these actions against any User that is in violation of the Ordinance. However, the Director may take other action against any User when the circumstances warrant such action.

#### **Section 5.2. Civil Penalties.**

A. Any person who willfully or negligently violates any provision of this Ordinance or any provision of a Permit shall be subject to a civil penalty in an amount to be determined in the discretion of the Director but not more than \$1,000 for each violation.

B. Any person who continues any violation of any provision of this Ordinance or any provisions of a Permit beyond the time limit provided for in the Director's written notice of violation shall be subject to payment of a civil penalty in an amount to be determined in the discretion of the Director but not more than \$1,000 for each violation.

C. Each day in which a violation referred to in either Subsections 5.2 A. or B. continues shall be deemed a separate offense.

D. The civil penalty provided for hereunder may be recovered by the District in a civil proceeding in the State District Court.

**Section 5.3. Civil Liability.**

Any person discharging waste in violation of this Ordinance or of any provision or condition of a Permit shall be subject to civil liability to the District for any or all of the following:

- (1) The added costs to the District of handling the improper discharge;
- (2) The costs incurred by the District in correcting the violation, in repairing damage to the Treatment Works, and in cleanup of the unauthorized discharge; or
- (3) Any costs or penalties imposed upon the District by regulatory authorities by reason of the violating discharge.

The civil liability provided for hereunder may be recovered by the District in a civil proceeding in the State District Court.

**Section 5.4. Injunctions.**

Any violation of this Ordinance or any provision or condition of any Permit which causes, or threatens to cause, an imminent endangerment to the health or welfare of a person, an endangerment to the environment, or interference with the operation of the District's Treatment Works may be enjoined by the District as provided by law.

**Section 5.5. Interest.**

Interest at the rate established in Minn. Stat. § 549.09 begins to accrue on penalties under Section 5 of this Ordinance on the 31st day after the Order with the penalty was mailed or delivered to the User.

**SECTION 6  
Charges and Fees**

The District may adopt charges and fees to be imposed upon Users which may include:

- (1) Fees to recover costs incurred by the Board in establishing and maintaining the Capacity Allocation System and in issuing the Permits or renewals;

- (2) Fees for appeals; and
- (3) Other charges the District may deem necessary to carry out the requirements contained herein.

## **SECTION 7**

### **Effective Date and Severability**

#### **Section 7.1. Severability.**

If any provision, paragraph, word, or section of this Ordinance is invalidated or held to be unconstitutional by a court of competent jurisdiction, the remaining provisions, paragraphs, words, or sections shall not be affected and shall continue in full force and effect.

#### **Section 7.2. Conflicts.**

All other ordinances and parts of other ordinances previously adopted by the District that are inconsistent or conflicting with any part of this Ordinance are hereby repealed to the extent of such inconsistency or conflict, except that nothing herein is intended to repeal or in any way modify the requirements of the Industrial Pretreatment Ordinance originally adopted by the Board on June 17, 1985, and revised and amended from time to time thereafter.

#### **Section 7.3. Adoption and Effective Date.**

This Capacity Allocation Ordinance was originally approved and adopted by the Western Lake Superior Sanitary District on the 30th day of October, 1995 and revised and amended from time to time thereafter. This Amended Ordinance shall be effective upon publication in a newspaper of general circulation in the District.

### **WESTERN LAKE SUPERIOR SANITARY DISTRICT**

By:   
Ruth Janke

Its: Chair

By:   
Dave Manderfeld

Its: Secretary

