

# POTENTIAL PROBLEM, UPSET, OR BYPASS REPORT

## A. REQUIREMENTS FOR A POTENTIAL PROBLEM, UPSET, OR BYPASS REPORT

### 1. Communique Specifics

- a. Telephone Notification: In the event of any telephone notification required by items # 2, 3, or 4. below, the Muskegon County Wastewater Management System (MCWMS) may be reached by calling 724-3440 or 722-6575. Use 724-3440 between the hours of 8:00 a.m. and 5:00 p.m. during normal working days Monday through Friday. During weekends, holidays, and off duty hours use 722-6575.
- b. Report Submission: When a copy of the report is faxed to the Director (fax # 724-3588) prior to the original being sent, the date of the fax shall qualify as the submission date. For reports that are mailed only, the U.S. postmark is considered the submission date. If a dated postmark is unavailable, the dated, postal meter, validation strip will be used if available. If both a dated postmark and validation strip are unavailable, the day prior to the day of receipt will be used. For reports that are sent by express delivery, the transmittal date is considered as the submission date. For express delivery where the transmittal date is unavailable and for hand-delivered reports, the date of receipt will be used. When being mailed, the report is to be sent to the MCWMS Director using the following address:

Muskegon County Wastewater Management System  
Industrial Pretreatment Program  
8301 White Road  
Muskegon, MI 49442-9414

### 2. Reports of Potential Problems

- a. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load, the user shall immediately telephone and notify the Director of the incident. This notification shall include the location of the discharge, date and time thereof, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- b. Within five (5) days following such discharge, the user shall submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this regulation.
- c. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph a, above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

### 3. Upsets

- a. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards or local limits because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- b. Affirmative Defense:
  - (1) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards or local limits if the requirements of paragraph c, below, are met.
  - (2) Pursuant to the Rules of the State of Michigan, the permittee does not have an affirmative defense for the discharge of pollutants that result in the presence of toxic gases, vapors, or fumes within the publicly owned treatment works in a quantity that may cause acute worker health or safety problems.

- c. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (1) An upset occurred and the user can identify the cause(s) of the upset;
  - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - (3) The user has submitted the following information to the Director within twenty-four (24) hours of becoming aware of the upset; however, if this information is provided orally, a written submission must be provided within five days:
    - (a) A description of the indirect discharge and cause of noncompliance;
    - (b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
    - (c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- d. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- e. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards or local limits upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided.

#### 4. Bypasses

- a. For the purposes of this section,
  - (1) "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.
  - (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities of a user 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.
- b.
  - (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the Director, at least ten (10) days before the date of the bypass, if possible.
  - (2) A user shall submit oral notice to the Director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- c.
  - (1) Bypass is prohibited, and the Director 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 reduction of production, use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
    - (c) The user submitted notices as required under paragraph 4.b.
  - (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in paragraph 4.c.(1).

**B. FORM FOR A POTENTIAL PROBLEM, UPSET, OR BYPASS REPORT**

1. Facility Name: \_\_\_\_\_ Permit #: \_\_\_\_\_  
 Division / Plant: \_\_\_\_\_ FID #: \_\_\_\_\_  
 Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: MI  
 Mailing Address: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Ext: \_\_\_\_\_  
 Incident Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Ext: \_\_\_\_\_ Fax #: \_\_\_\_\_

2. Incident Started: Date: \_\_\_\_\_ Time: \_\_\_\_\_ [ ] a.m. [ ] p.m.  
 Incident Ended: \*1 Date: \_\_\_\_\_ Time: \_\_\_\_\_ [ ] a.m. [ ] p.m.  
 Incident Discovered: Date: \_\_\_\_\_ Time: \_\_\_\_\_ [ ] a.m. [ ] p.m.  
 Phone Notification: \*2 Date: \_\_\_\_\_ Time: \_\_\_\_\_ [ ] a.m. [ ] p.m.  
 Notified Person (MCWMS): Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Other Agencies Notified: \_\_\_\_\_

Note: \*1 - Either actual or anticipated. \*2 - Immediate notification is required but not more than 24 hours.

3. Check all that apply:

<input type="checkbox"/> Accidental Discharge	<input type="checkbox"/> Emergency Release	<input type="checkbox"/> Operator Error
<input type="checkbox"/> Bypass (anticipated)	<input type="checkbox"/> Maintenance Oversight	<input type="checkbox"/> Potential Upset
<input type="checkbox"/> Bypass (unanticipated)	<input type="checkbox"/> Mechanical Failure	<input type="checkbox"/> Pretreatment Malfunction
<input type="checkbox"/> Confinement Breach	<input type="checkbox"/> Noncustomomary Batch	<input type="checkbox"/> Slug Loading Event
<input type="checkbox"/> Electrical Failure	<input type="checkbox"/> Nonroutine Discharge	<input type="checkbox"/> System Overloaded
<input type="checkbox"/> Other - Explain:	_____	

4. Total amount of material or wastewater discharged: \_\_\_\_\_ gallons [ ] or pounds [ ]

Components of Discharge

Concentration or Quantity

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

5. What corrective actions were taken to minimize or eliminate potentially harmful effects due to the discharge?

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6. What process or operation uses or produces the material discharged?

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7. Give a detailed description of the cause of the incident:

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Attach a drawing indicating the source of the material and its route of entry into the sewer system (tank location, spill site, drain location, etc.).

