

DAVIS & DAVIS
Law Offices PLC
535 Fountain Street NE
Grand Rapids, Michigan 49503-3421

George B. Davis

Telephone: (616) 459-6129
Fax: (616) 458-8638
Email: georgebd@legislex.com

IPP 2007: Standard and Emerging Issues

FOG Sewer Use Ordinance Provisions

*East Lansing, Michigan
October 24, 2007*

I. Regulatory Authority and Requirements

A. Clean Water Act > NREPA > Michigan Part 23 Pretreatment Rules > SUO

B. R 323.2303 Pretreatment standards:

Prohibition against discharges (by “non-domestic” users):

That cause “pass through” or “interference”...

Of “solid or viscous pollutants in amounts that will cause obstruction to the flow in the publicly owned treatment works [or] resulting in interference.”

C. State and Federal efforts to identify and eliminate SSOs:

NREPA notification and testing requirements for SSOs (MCL 324.3112a).

SWQD SSO Strategy (May 2000).

CMOM (proposed federal rule).

II. Implementation of Regulatory Authority – Recommended SUO Provisions

A. Who required to install (who subject to regulations)?

Keep broad definitions and leave discretion in POTW to include potentially ANY user, as warranted by potential for adverse FOG discharges.

Consider not expressly excluding single family dwelling units.

“Grandfathering” not required.

Davis & Davis Law Offices PLC

FOG Sewer Use Ordinance Provisions

IPP 2007: Standard and Emerging Issues
East Lansing, Michigan - October 24, 2007

- B. Require installation of interceptors.
- C. Establish interceptor and/or trap design and construction standards.

Require adequate sizing and minimum capacity.

Require devices to be located for easy cleaning and inspection.
- D. Require review and approval of installation by POTW.
- E. Establish inspection standards and require regular inspection.
- F. Require regular and proper maintenance by user.

At a minimum, require maintenance per manufacturer's specifications.

Also, establish minimum time between cleanouts and also cleanouts based on performance related standards.

Require the user to be present and witness all clean out and maintenance activities.
- G. Require continuous operation.
- H. Provide for and require use of (minimum) BMPs.
BMPs should be in ordinance (not incorporated by reference).
- I. Establish documentation, record keeping, and reporting requirements.

Written logs, hauler's manifests, etc., must be retained for specified periods.

Require that documentation be provided upon demand.

Require an immediate report to the POTW of any problems with, or damage to, an interceptor.
- J. Prohibit discharge of clean out material to the sewer.
- K. Prohibit use of chemical/biological treatment by users in maintenance of interceptors (at least without prior approval).

Davis & Davis Law Offices PLC

FOG Sewer Use Ordinance Provisions

IPP 2007: Standard and Emerging Issues
East Lansing, Michigan - October 24, 2007

- L. Establish broad authority for POTW right of entry and right to inspect interceptor, take samples, look at records, etc., without delay. Refusal to allow timely entry is a violation of the SUO.
- M. Require proper disposal of FOG removed from grease traps and interceptors.
- N. Control through use of discharge permits (SIU or General).

Failure to comply with a permit term or condition is a violation of the SUO.
- O. Who pays? User pays.

User should pay all costs of installation, inspection, and maintenance of interceptor; removal of obstructions, cleanup and repair costs.

Make sure SUO provides that if a user fails to provide or maintain a required interceptor, the Township may do so (or cause the same to be done) and charge the costs to the user.
- P. Enforcement.

Civil fines (MCI), with escalating fines for repeat offenses.

Make failure to act or meet requirements a violation.

Have authority to terminate service.

Davis & Davis Law Offices PLC

FOG Sewer Use Ordinance Provisions

IPP 2007: Standard and Emerging Issues
East Lansing, Michigan - October 24, 2007

GEORGE DAVIS

George is a partner at Davis & Davis Law Offices PLC in Grand Rapids, Michigan. He specializes in municipal, environmental, and land use law matters on behalf of public clients throughout the State, with particular emphasis on Clean Water Act, NPDES, POTW and industrial pretreatment program (IPP) issues. He also has significant experience involving zoning, land use and municipal civil infractions.

George's statewide recognized expertise includes the review and custom drafting of local ordinances (including sewer use and storm water ordinances, IPP regulations, and municipal civil infraction provisions, as well as other types of regulatory ordinances and zoning regulations) and assisting with the administration and enforcement of those regulations. He often serves as special legal counsel to local governments for those types of projects, coordinating his efforts with a municipality's existing legal counsel on an as-needed basis.

Prior to joining Davis & Davis, George was a partner with Varnum, Riddering, Schmidt & Howlett LLP where he practiced municipal and environmental law for 12 years. He is now able to offer clients the benefits of his "big firm" expertise at very reasonable prices and with more personalized and efficient service.

George received his J.D. from McGeorge School of Law, University of the Pacific; an LL.M. in Land Use and Environmental Law, *summa cum laude*, from The National Law Center, George Washington University; a Masters degree in Urban Planning from the University of Michigan; and he studied in the Ph.D. Program in Urban Technological, and Environmental Planning at the University of Michigan. He is a member of the State Bars of Michigan and California.

George served on the Civil Infractions Committee of the Public Corporation Law Section of the State Bar of Michigan and helped draft the original bills leading to enactment of the state legislation authorizing enforcement of local ordinance violations as municipal civil infractions. He has served as chairperson of the Publications Committee of the Public Corporation Law Section, and prior to that was chairperson of the Zoning and Land Use Committee, also of the Public Corporation Law Section.

"Drafting, Enacting and Maintaining Local Ordinances," authored by Mr. Davis, has been published as a new chapter in the Michigan Municipal League's two-volume reference set entitled Local Government Law and Practice in Michigan.

George also writes the "Clean Water Law Alert," a regular column in the Michigan Water Environment Association's "Matters" newsletter.

In 1994, George was awarded the Michigan Municipal League's Distinguished Achievement Award for his work regarding municipal civil infractions. In 2000, he was awarded the Year 2000 Excellence in Service Award by the Michigan Water Environment Association for his work in the areas of local, state and federal clean water laws and regulations.

George served as a member of the MDEQ Phase II Storm Water Advisory Team formed to assist the State in its approach to permitting municipalities under the State's Phase II Water Program. He also served as a member of the MDEQ's Water Quality Trading Workgroup established by the Surface Water Quality Division to provide MDEQ with recommendations and draft rules for a voluntary effluent trading program.