

Amended Interim Industrial Wastewater Discharge Permit

For POUCHTEC INDUSTRIES

THIS AMENDED INTERIM PERMIT is made and entered into as of the ____ day of _____, 2016 by and between the City of Foley (hereinafter referred to as the “City”), a municipal corporation organized and existing under the laws of the State of Minnesota; and PouchTec Industries, LLC, a Delaware limited liability company with its headquarters at City of Foley, Benton County, Minnesota, (hereafter referred to in this Amended Interim Permit as “PouchTec”).

The City is the owner and operator of a municipal wastewater treatment facility located within the corporate city limits on property owned by the City in Benton County of the State of Minnesota, which has a controlled discharge to Stoney Brook. PouchTec is the owner and operator of a food products in flexible packaging plant within the Foley city limits, which discharges wastewater to the City’s municipal sanitary sewer system and ultimately to the wastewater treatment facility.

The City has a National Pollution Discharge Elimination System (NPDES) permit for the City’s municipal wastewater treatment facility, No. MN 0023451, as part of a National and State Disposal Permit Program administered by the Minnesota Pollution Control Agency under the Clean Water Act. Limitations on discharges from the Foley wastewater treatment plant are defined in the NPDES permit. The NPDES permit also requires the City to control users as set forth in Chapter 6, Part 1.13 of the NPDES permit.

The City issued PouchTec an interim discharge permit in 2011. PouchTec has continued to discharge wastewater since 2011, and no material issues have been identified with respect to such discharges since September, 2011. The 2011 permit adequately addressed the wastewater discharge concerns related to PouchTec’s current facility.

PouchTec wishes to expand its current facility, which necessitates this Amended Interim Permit with revised discharge limits. PouchTec proposes to develop the first phase as 10,800 square feet of material handling space (“Phase I”) and develop the second phase as 37,800 square feet of warehouse and production space (“Phase II”). The City and PouchTec acknowledge that the City’s NPDES permit for its wastewater treatment facility expires on February 28, 2017. The interim discharge limits and monitoring requirements imposed by this Amended Interim Permit may be altered as a consequence of the renewal of the City’s NPDES permit. The City believes that discharge limits imposed by this Amended Interim Permit will not cause pass-through or interference with the function of the City’s wastewater treatment facilities. The limits are derived from review of data for a two-week testing period, review of available historical data, review of the wastewater

treatment facility flow and loading design and permitted capacity, and anticipated flow estimates (after the Phase II expansion) provided by PouchTec.

The City hereby authorizes PouchTec to continue to discharge wastewater to the public sewer system from the PouchTec facility located at 347 Glen Street in Foley, Minnesota, in accordance with the amended interim discharge limits, monitoring requirements and other conditions set forth in this Amended Interim Permit. The conditions of this Amended Interim Permit supersede any previous arrangements, permits, or requirements of the City pertaining to discharges from PouchTec to the public sewer system for industrial wastewater.

As defined in the City's Ordinance, wastewater generated by PouchTec is Industrial Waste. The City has the authority to require pretreatment of such wastes and may require dischargers of such wastes to be responsible for costs incurred by the City as a result of their discharge.

A. Permit Term

This Amended Interim Permit shall be effective upon execution by both parties and shall continue until December 31, 2018 or until the NPDES permit is re-issued. The City, in its sole discretion, may amend or extend this Amended Interim Permit. The City, in its sole discretion, may also grant a more permanent permit to PouchTec prior to the expiration of this Amended Interim Permit. To the extent this Amended Interim Permit is not amended or revoked, or a permanent permit issued before December 31, 2018, the terms of this Amended Interim Permit shall control any discharge by PouchTec after December 31, 2018.

B. Discharge Limits

1. Any discharge from PouchTec is subject to the following limitations where it enters the public sewer system.

<u>Discharge Parameter</u>	<u>Average Monthly Limit</u>	<u>Maximum Weekly Limit</u>
Total Daily Flow (Gal/day)	25,000	30,000
CBOD (lbs/day)	120	135
TSS (lbs/day)	84	94
TP (lbs/day)	1.5	1.7

2. In the event that PouchTec does not complete Phase II by December 31, 2018, discharge limitations shall be reduced to the following:

<u>Discharge Parameter</u>	<u>Average Monthly Limit</u>	<u>Maximum Weekly Limit</u>
Total Daily Flow (Gal/day)	22,000	28,000
CBOD (lbs/day)	98	124
TSS (lbs/day)	74	89
TP (lbs/day)	1.3	1.7

3. PouchTec has requested higher limits for CBOD (125 monthly and 180 weekly) and TSS (94 weekly and 110 monthly). However, the City is can only approve those higher limits once additional monitoring information has been collected and it has been determined that the City’s municipal sanitary sewer system can appropriately accommodate such increases. The City must ensure that any limit granted to PouchTec is consistent with the City’s NPDES permit and provides a margin of capacity for the rest of the City of Foley. The City agrees to revisit the limits with PouchTec after collecting six months of additional monitoring information in coordination with PouchTec.
4. pH shall not be less than 5.5 or more than 10.5 at any time.
5. Discharge shall be limited to process water. Non-contact cooling water shall not be discharged to the City sewer system. Discharge of excess clear water for the purpose of dilution is prohibited.
6. There shall be no discharge of visible foam in other than trace amounts.
7. The discharge shall not contain oil or other substances in amounts sufficient to create a visible color film on the surface of the wastewater.
8. PouchTec shall comply with all applicable Minnesota Pollution Control Agency and U. S. Environmental Protection Agency standards and requirements relating to the discharge, including the pretreatment requirements of 40 C.F.R. 403.5 (a) (1) and (b) which are summarized as follows:
 - a. PouchTec shall not introduce into the City’s municipal wastewater treatment facility any pollutant(s), which cause pass through or interference with the function of the City’s wastewater treatment facilities.
 - b. The following pollutants shall not be introduced into the City’s municipal wastewater collection system or wastewater treatment facility:
 - (1) Pollutants which create a fire or explosion hazard;

- (2) Pollutants which will cause corrosive structural damage to the municipal wastewater collection system or wastewater treatment facility, but in no case discharges with a pH lower than 5.5;
- (3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the municipal wastewater collection or wastewater treatment facility;
- (4) Any pollutant, including oxygen demanding pollutants (CBOD, etc.) released in discharge at a flow rate and/or pollutant concentration which will cause interference with the municipal wastewater treatment facility;
- (5) Heat in amounts which will inhibit biological activity in the municipal wastewater treatment facility resulting in interference, but in no case heat in such quantities that the temperature at the municipal wastewater treatment facility exceeds 40 degrees C (104 degrees F) unless the Minnesota Pollution Control Agency upon request of the City approves alternate temperature limits.

C. Variations

In the event that PouchTec increases its production or modifies its industrial process in such a way that the quantity or strength of its waste will exceed the discharge limitations of this Amended Interim Permit, PouchTec must apply for a discharge permit modification at least 60 days prior to the increased production or industrial process modification. PouchTec is prohibited from increasing production or modifying the industrial process until the modified discharge permit is issued. The City reserves the right to deny any such request if the City's infrastructure (wastewater treatment facility, water supply system, or wastewater collection system) does not have sufficient capacity for PouchTec's proposed production, or if necessary to ensure compliance with the City's NPDES permit.

D. Monitoring

1. The City shall monitor the discharge to the public sewer system from the PouchTec facility. PouchTec shall conduct 24-hour composite sampling of the wastewater from PouchTec's facility at a minimum frequency of once per week. Sampling shall test for flow, CBOD, TSS, TP, and pH. An independent laboratory shall perform sample analysis. In the event of a violation of a wastewater parameter established in this Amended Interim Permit, the City may increase the sampling frequency. Samples shall be sent to a certified independent laboratory for analysis for the parameters set forth in this Amended Interim Permit. **A copy of the results from the certified laboratory shall be electronically mailed directly to the City within 3 days of PouchTec receiving the data.** PouchTec shall maintain the sampling results on file for a minimum of three years. The sampling shall be conducted on random representative production days. Monitoring measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. PouchTec shall be responsible for all costs, whether incurred by the City or PouchTec, associated with the setup, purchase and maintenance of the equipment and laboratory costs as necessary to

ensure compliance with this requirement. The City, at its cost, may sample more frequently than once per week.

2. A City water meter shall measure the total water volume used by PouchTec. PouchTec shall employ water meters to measure the water volume used by PouchTec in its products which is not discharged to the wastewater system. PouchTec shall be responsible for the maintenance, repair, and replacement of all such water meters. The volume of wastewater shall be based on the city water meter reading for the total volume less the volume used in products as measured by PouchTec's meters. The wastewater discharged, as determined from weekly readings of the water meters, shall be used for determining the billing quantities and the loading parameters as detailed in the discharge limitations section of this Amended Interim Permit, in addition to monitoring compliance with the flow limitation to the City sewer system.
3. The City shall have the authority to enter the PouchTec facility for the purpose of inspection, observation, sampling, measurement, testing, without prior notification. In addition the City personnel shall have complete access to the sampling equipment without prior notification.

E. Charges and Responsibilities

1. PouchTec shall be responsible for the following:
 - a. Costs for monitoring equipment necessary to comply with the City Ordinances or this Amended Interim Permit.
 - b. The costs associated with sampling and analysis of PouchTec's discharge.
 - c. The costs for additional sampling and analysis required due to violations.
 - d. All costs associated with the sewer service charges and fines as outlined in this Amended Interim Permit.
 - e. Costs for labor, materials, equipment and operation and maintenance of such equipment required to monitor, handle and treat wastewater discharged by PouchTec that is outside the discharge limits defined within this Amended Interim Permit or the limits defined by City Ordinance. Such costs shall be approved after notice to PouchTec and a hearing before the City Council.
2. The City will use operational means to get parameters as low as possible, but if chemical is needed for phosphorus removal ***and*** PouchTec has a material TP violation since the last discharge of the City's ponds, PouchTec shall reimburse the City for a reasonable and proportionate share of the costs incurred by the City to purchase and use chemicals for phosphorus removal.
3. The City shall invoice PouchTec for all charges and costs incurred by the City described in Section E.1 above. PouchTec shall pay all invoices within 30 days of

the invoice date unless another arrangement has been approved in writing by the City.

F. Violation and Violation Procedures

1. A discharge limit violation under this Amended Interim Permit is any composite sample that exceeds the maximum weekly limit or any four week average of composite samples that exceeds the average monthly limit. Each parameter that is exceeded shall be a separate violation.
2. The discharge of a waste not in compliance with the discharge limitations set forth in this Amended Interim Permit shall be considered a violation subject to the violation procedures and fines described herein. Exceedance of each parameter shall be considered a separate violation and subject to a separate fine. Each separate composite sample shall be evaluated for compliance with this Amended Interim Permit. Composite sampling shall be at a rate of no more than one per day. If any CBOD, TSS, or TP concentrations, flow volume, or pH exceeds the discharge limitations set forth in this Amended Interim Permit, PouchTec shall be subject to fines as outlined in this Amended Interim Permit.
3. In the event the flow meter or any of the sampling equipment is out of service for any length of time, once PouchTec is aware of the condition, PouchTec shall report the condition to the City immediately via telephone. If the sampling equipment remains out of service for longer than 24 hours, the City may elect to install temporary equipment, at PouchTec's cost, until the corrections have been made.
4. PouchTec agrees to indemnify the City for any fines or assessments made to or paid by the City of Foley to the MPCA or any other regulatory agency as a result of flows or loads from PouchTec in excess of the limits of this Amended Interim Permit, and such fines or assessments shall be assessed by the City against PouchTec. This provision does not prevent the City from collecting additional fines for violations of this Amended Interim Permit pursuant to City Ordinance.

G. Accidental Discharges

PouchTec shall notify the City immediately upon having a slug or accidental discharge of substances or wastewater in violation of this Amended Interim Permit in order to enable counter measures to be taken by the City to minimize damage to the treatment system and receiving waters. Such notification shall not relieve PouchTec of liability for any expense, loss or damage to the treatment system or treatment process, or for any imposed action by the MPCA or EPA for such discharge. A detailed written statement by PouchTec describing the causes of the accidental discharge and the measures taken to prevent any further occurrence shall be submitted to the City within (15) days of the date of occurrence.

The City shall notify PouchTec promptly upon learning of a violation of the City's NPDES Permit.

H. Suspension or Revocation of Permit

1. The City may instruct PouchTec to proportionally reduce their wastewater discharge to the City system when such suspension is deemed necessary in order to keep the wastewater treatment facility in compliance with their NPDES permit, to protect the wastewater treatment facility, or to protect the wastewater collection system. Any such instruction shall be in writing. During this non-use or partial use period, the payments to the City shall be pro-rated based on the actual use.
2. The City may suspend this Amended Interim Permit and wastewater service when PouchTec's discharge violates this Amended Interim Permit and such action is deemed necessary by the City in order to keep the wastewater treatment facility in compliance with their NPDES permit, to protect the wastewater treatment facility, or to protect the wastewater collection system, or as described in City Ordinance. Suspension shall take effect upon written notice by the City.
3. The City may revoke this Amended Interim Permit and discontinue wastewater treatment service, if after a prior suspension, PouchTec fails to meet discharge limits as follows:
 - a. A violation of any discharge in six consecutive weeks; the violations need not be for the same parameter to be considered consecutive.
 - b. Two consecutive weeks with a violation that exceeds 150% of any discharge limit; the violations need not be for the same parameter to be considered consecutive.
4. The City may revoke this Amended Interim Permit and discontinue wastewater treatment service if PouchTec fails to factually report the wastewater constituents and characteristics of its discharge; fails to report process changes that may result in an increase in the volume of wastewater, an increase in the pollutant loadings, or a change in characteristics (such as pH), where such change may result in parameters being outside the limits set forth herein; refuses reasonable access to its premises for the purpose of inspection or monitoring; or violates conditions of this Amended Interim Permit, City Ordinance, or applicable State and Federal regulations. This Amended Interim Permit may be revoked by the City upon written notice to PouchTec and a hearing before the Foley City Council. A written report from City staff and consultants shall be provided to the City Council and PouchTec prior to any termination hearing. At any termination hearing, PouchTec shall have the right to address the City Council.

I. Notification of Violation

In the event of a violation of this Amended Interim Permit and upon determination of the violation by the City, the City shall notify PouchTec by email or telephone, and in writing, stating the nature of the violation. The written notification shall include the amount of the fine for the violation. Failure to provide notice does not absolve PouchTec of liability or penalties.

J. Modification

The terms and conditions of this Amended Interim Permit may be subject to modification by the City, in its sole discretion, during the term of this Amended Interim Permit. The City shall notify PouchTec of any change in this Amended Interim Permit at least 30 days prior to the effective date of change.

K. Severability

If any provision, paragraph, work, section, or article of this Amended Interim Permit is held unconstitutional or invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, works, sections, and articles shall not be affected and shall continue in full force and effect.

L. General Conditions

1. PouchTec shall not knowingly make any false statement, representation or certification in any record, report, or plan required to be submitted to the City under this Amended Interim Permit.
2. This Amended Interim Permit shall not release PouchTec from any liability, or duty or penalty imposed by Minnesota or federal statutes, regulations rules or ordinances. PouchTec is required to comply with the general pretreatment regulations identified in 40 C.F.R. Part 403. Nothing in this Amended Interim Permit waives the right of the U.S. EPA or the State of Minnesota from commencing appropriate enforcement action to correct any violation of the general pretreatment regulations or of this Amended Interim Permit.
3. This Amended Interim Permit shall transfer in its entirety to any individual or entity upon purchase of PouchTec by said individual or entity.

M. Sewer Service Charges

Wastewater Volume Charge:	Per City Ordinance (Currently \$5.70/1000 gals)
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Surcharges:
PouchTec shall not be subject to surcharges under this Amended Interim Permit, but the City reserves the right to impose waste surcharges in subsequent permits.

N. Fines For Violations

For each separate violation of this Amended Interim Permit, PouchTec may be fined by the City an amount up to \$100 for the first violation of a Maximum Weekly Limit parameter and \$250 for a second violation of a Maximum Weekly Limit parameter in a consecutive week and all subsequent consecutive weeks of such violation. Violations need not be for the same parameter to be considered consecutive. In addition, PouchTec may be fined \$500 for a violation of the Average Monthly Limit parameters set forth in this Amended Interim Permit.

O. State/Federal Enforcement

1. Nothing in this Amended Interim Permit prevents the U.S. Environmental Protection Agency or the State of Minnesota from taking appropriate enforcement action against PouchTec if the City fails to commence appropriate enforcement of Amended Interim Permit, interference or pass through violations.

Dated: _____, 2016

CITY OF FOLEY, MN

POUCHTEC INDUSTRIES, LLC

Authorized Signature

Authorized Signature

Name

Name

Title

Title