



INDUSTRIAL WASTE SURCHARGE AGREEMENT

IN ACCORDANCE WITH BY-LAW 46 OF 2014

DELMAR FOODS WITHIN THE TOWN OF ST. MARYS, ONTARIO

**Authorizing By-Law No: XX of 2017
Effective Date: September 12, 2017**

This Agreement has been printed under and by authority of the Council of the TOWN of St. Marys, Ontario, Canada.

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Industrial Waste Surcharge Agreement Form

This Agreement made this _____ day of _____, 2017.

BETWEEN:

The TOWN of St. Marys
Hereinafter called the "TOWN"

OF THE FIRST PART

And

Delmar Foods
Hereinafter called the "COMPANY"

OF THE SECOND PART

BEING an Agreement to regulate the discharge of wastewater (sewage) from the COMPANY to the municipal wastewater collection system as per By-Law 46 of 2014.

WHEREAS the COMPANY agrees to compensate the TOWN for extra strength effluent loadings as per this Agreement, and,

WHEREAS the current sewage discharge from the COMPANY to the TOWN of St. Marys Sewage Treatment Plant can no longer be sustained and the situation requires an emergency solution;

AND WHEREAS the COMPANY is required to take immediate action to remedy the sewage discharge problems that have been created by this situation;

WHEREAS the TOWN of St. Marys enacted By-law No. 46 of 2014 on the 21 day of October, A.D., 2014, and any revisions to the bylaw hereafter, relating to the discharge of sewage and land drainage in the TOWN of St. Marys, hereinafter referred to as "the By-law"; and

WHEREAS the said By-law prohibits the discharge or deposit of sewage containing certain substances in quantities in excess of the limits set by the By-law but provided that the TOWN may permit the discharge of sewage which would otherwise be prohibited by the said By-laws to an extent fixed by agreement with the TOWN under such conditions with respect to payment or otherwise as may be necessary to compensate for any additional costs of treatment; and

WHEREAS a person who has entered into such an agreement shall not be prosecuted under the By-laws for discharge or deposit of sewage in accordance with the terms of the agreement; and

WHEREAS the COMPANY carries on an industrial activity within the TOWN at premises known as 25 South Service Road which activity produces a sewage discharge in which the quantity of one or more of Suspended Solids, Biochemical Oxygen Demand (hereinafter referred to as B.O.D.), or Phenolic Compounds is above the permissible limits set out in said By-law which results in materially adding to the cost of treatment at the municipal sewage works.

NOW THEREFORE THIS INDENTURE WITNESSETH that the parties hereto mutually covenant and agrees as follows:

INDUSTRIAL WASTE SURCHARGE AGREEMENT

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Section 1

Covenants of the TOWN

1.1 Phased-In Conditions

The TOWN agrees to provide a phased in Agreement as follows:

- 1.1.1** For the first phase of the Agreement, commencing September 12, 2017 to October 31, 2017, a discount of 100 percent (100%) of the current Rn value will be applied when calculating the surcharge.
 - 1.1.1.1** For the currency of the above phase (Phase 1), the quantity of sewage discharged by the COMPANY from its premises at 25 South Service Road shall not exceed 500 cubic metres per month; and,
 - 1.1.1.2** The quality of sewage discharged shall not exceed the parameters as outlined in "Schedule A" of this Agreement.
- 1.1.2** For the second Phase of the Agreement, commencing on November 1, 2017 to January 31, 2018, a discount of seventy-five percent (75%) of the current Rn value will be applied when calculating the surcharge.
 - 1.1.2.1** For the currency of the above phase (Phase 2), the quantity of sewage discharged by the COMPANY from its premises at 25 South Service Road shall not exceed 750 cubic metres per month; and,
 - 1.1.2.2** The quality of sewage discharged shall not exceed the parameters as outlined in "Schedule A" of this Agreement.
- 1.1.3** For the third Phase of the Agreement, commencing on February 1, 2018 to April 30, 2018, a discount of fifty percent (50%) of the current Rn value will be applied when calculating the surcharge.
 - 1.1.3.1** For the currency of the above phase (Phase 3), the quantity of sewage discharged by the COMPANY from its premises at 25 South Service Road shall not exceed 1,000 cubic metres per month; and,
 - 1.1.3.2** The quality of sewage discharged shall not exceed the parameters as outlined in "Schedule A" of this Agreement.
- 1.1.4** For the fourth Phase of the Agreement, commencing on May 1, 2018 to July 31, 2018, a discount of twenty-five percent (25%) of the current Rn value will be applied when calculating the surcharge.
 - 1.1.4.1** For the currency of the above phase (Phase 3), the quantity of sewage discharged by the COMPANY from its premises at 25 South Service Road shall not exceed 1,250 cubic metres per month; and,
 - 1.1.4.2** The quality of sewage discharged shall not exceed the parameters as outlined in "Schedule A" of this Agreement.
- 1.1.5** Commencing August 1, 2018, full surcharge rates will apply.
- 1.1.6** Upon written approval by the Manager of Water and Wastewater, or designate, the TOWN may agree to amend portions of the Phased-in approach as outlined in Section 1.1, provided the COMPANY applies for an amendment, in writing to the Manager of Water and Wastewater and the COMPANY provides a detailed explanation for the request for

amendment. Acceptance of the request for amendment shall be at the sole discretion of the Manager of Water and Wastewater.

1.2 Responsibility

The TOWN shall not be responsible for the removal or treatment of any non-biodegradable or other priority pollutants contributed by the COMPANY that may pass through the treatment plant and their subsequent discharge to the receiving stream. If such discharge is in violation of any existing or future requirements of the Canadian Environmental Protection Act, Federal Fisheries Act, Ontario Water Resources Act, or any other applicable Act or Regulation, the COMPANY shall be responsible for the removal or treatment of said pollutants prior to their discharge to the TOWN of St. Marys wastewater collection (sewer) system.

1.3 Care and Control

The TOWN agrees to use reasonable care and control to regulate the industrial waste discharge from the COMPANY in a manner similar to any other industrial user and in accordance with the provisions of the TOWN of St. Marys current “water systems” By-law (46 of 2014), however, cannot be held liable for any discharge above and beyond those limits expressed herein and within the By-Law due to failure to comply by the COMPANY.

Section 2 Covenants of the COMPANY

2.1 By-Law Conformity

Except as herein otherwise expressly provided, the COMPANY shall conform to the provisions of the said by-law of the TOWN relating to the discharge of sewage and in the event of termination of this agreement the COMPANY shall conform to the provisions of the said By-law.

2.2 Compensation Requirements

The COMPANY agrees to pay to the TOWN the Surcharge fee, as determined by the TOWN in Section 6.1 of this Surcharge Agreement, quarterly within 30 days following the last days of March, June, September and December, until terminated as herein provided.

2.3 Reporting Requirements

The COMPANY agrees to provide to the TOWN a monthly flow statement for every month within 15 days of the succeeding month. If the COMPANY fails to provide the requisite flow data to the TOWN within the stipulated time, then the TOWN shall estimate the flows based on the usage data as provided from the water supply meter for the TOWN, towards calculation of the surcharge fee. For more information, please refer to Section 5.5 herein.

Section 3 Discharge Limitations

3.1 Maximum Allowable Concentrations (MAC)

During the currency of this agreement only, the Quality of the Sewage discharged by the COMPANY from the said premises to the sanitary sewer or combined sewer system may exceed the limits set by the by-law with respect to the quantity of Suspended Solids (TSS), Biochemical Oxygen Demand (B.O.D.), Phenolic Compounds, Grease, Phosphorus, and Kjeldahl Nitrogen, provided that they shall not exceed the limits as stipulated in “Schedule A” herein.

3.2 Contravention of Agreement – Discharge Limits

The Discharge of Sewage by the COMPANY from the said premises containing Suspended Solids, B.O.D, Phenolic Compounds, Grease, Phosphorus, etc. in excess of the limits expressed in Schedule A shall constitute a contravention of this agreement and thus a contravention of the By-law.

3.3 Right to Revise – Discharge Limits

The COMPANY agrees that the TOWN shall have the right to revise these discharge limitations or requirements at any time during the term of this Agreement. Written notice of any proposed

changes or modifications shall be issued to the COMPANY by the TOWN at least 90 days prior to the effective date of the change.

3.4 Calculation of Surcharge Fee

The COMPANY agrees that for every quarterly period the TOWN shall calculate the actual surcharge fee based on the actual flow submitted by the COMPANY on a monthly basis and analytical results received from the lab for the parameters as set in the agreement, unless flow data is not received in the time period detailed herein, at which point the flow data will be estimated based on data obtained from the water supply meter for said property.

3.4.1 Payable – Surcharge Fee

The fee payable for each quarterly period shall be based on the actual (if provided) or estimated flow and maximum concentration of the parameters set out in the Agreement and the COMPANY agrees to pay this fee to the TOWN.

3.5 Federal and Provincial Limitations – Discharge Limits

In the event that any applicable Federal or Provincial limitations shall be promulgated that are more stringent than the discharge limitations imposed by the TOWN, the TOWN shall notify the COMPANY of the more stringent standards and modify this Agreement to require the COMPANY to achieve compliance with the more stringent standards within the time period specified in the compliance schedule for the applicable standards. The TOWN will make all reasonable effort to notify the COMPANY of any changes to Federal or Provincial limitations that may promulgated, within 12 months of the compliance date.

Section 4 Pre-Treatment Requirements

4.1 Requirement - Pre-Treatment

The COMPANY agrees to provide necessary wastewater treatment facilities as required so that the user's discharge will comply with the discharge limitations specified in this Agreement and the St. Marys Water Systems By-Law (No. 46 of 2014), and any more stringent Federal or Provincial standards that may be applicable to the COMPANY.

4.2 Installation - Pre-Treatment

In the event that discharge limits from the COMPANY are deemed to be in contravention of this Agreement, the TOWN will inform the COMPANY of the need for additional pre-treatment facilities, and the COMPANY agrees to purchase and install, at their own expense, pre-treatment facilities as required for the user's discharge to comply with this Agreement.

4.3 Maintenance - Pre-Treatment

The COMPANY agrees to provide the necessary maintenance on any Pre-Treatment facility, as documented on the manufacturer's specifications. Maintenance documents, work orders, etc. shall be available to the TOWN, within 15-days upon request.

4.4 Record Retention - Pre-Treatment

The COMPANY agrees to maintain records pertaining to the pre-treatment facility for a period of no less than 5-years. Records shall be made available to the TOWN, within 15-days upon request.

Section 5 Monitoring and Reporting

5.1 Monitoring Access Location(s)

The COMPANY agrees to install and maintain, at the user's own expense, sampling, measuring, monitoring and observation facilities, in accordance with plans approved by the TOWN, consisting of, a suitable control manhole (or manholes) designated as "Control Manhole No. 1" (etc.), located on the COMPANY's property which connects to the TOWN's sanitary collection system. Such manhole(s) shall provide suitable access to the user's wastewater stream for collecting representative samples of discharge flow.

5.2 Monitoring Equipment

The COMPANY agrees to install and maintain, at the user’s own expense, sampling, measuring, monitoring and observation equipment, in accordance with plans approved by the TOWN, consisting of, equipment capable of continuously monitoring and recording the COMPANY discharge flow. Should the COMPANY decide not to install continuous monitoring and recording equipment to monitor discharge flow, the TOWN will base the surcharge on 100% of the incoming flow of water to the premises. Total flow will be obtained from water meter(s) readings, on a bi-monthly basis.

5.3 Monitoring Equipment – Maintenance and Calibration(s)

The COMPANY shall arrange to have any flow metering equipment or other required monitoring instruments inspected and calibrated at the Companies own expense, on an annual basis by a person or persons qualified in the calibration of such meters and approved by the TOWN. A copy of the inspection and calibration service, or work order, certified by such person or persons, shall be forwarded to the TOWN. The TOWN or their designate shall have access to and the right to inspect such meters at their discretion while being accompanied by a representative of the COMPANY.

5.4 Reporting Requirements

The COMPANY agrees to submit to the TOWN the self-monitoring data as required as a condition of this Agreement. Monitoring data shall be summarized on a monthly basis, in the form of a monthly discharge monitoring report, as approved by the TOWN. Monitoring data shall be presented daily within the report. A discharge monitoring report, properly completed and signed by an authorized representative of the COMPANY, must be submitted within 15 days after the end of each monthly reporting period.

Section 6
Surcharge Calculation

6.1 Surcharge Calculation

The COMPANY agrees to pay to the municipality a fee based on the following formula:

C = QRi

Where Ri =

Rn x (fs [Si - Sn] / Sn) + fB [Bi - Bn] / Bn + fph [Phi - Phn] / Phn + fp [Pi - Pn] / Pn + fg [Gi - Gn] / Gn + fk [Ki - Kn] / Kn)

Where:

C = Surcharge in Cents

Q = Quantity of Sewage in thousands of imperial gallons

Formula Notes:

Ri:	Excess costs of treatment per thousand imperial gallons, in cents.	
Rn:	Operating, maintenance and replacement costs of the sewage treatment plant in cents per thousand imperial gallons of sewage to be applied each year based on the basis of the previous three years’ average experience.	
fs:	Cost allocation factor for suspended solids	0.5
fB:	Cost allocation factor for Biological Oxygen Demand	0.5
fph:	Cost allocation factor for Phenols	0.15
fp:	Cost allocation factor for phosphorus	0.1
fg:	Cost allocation factor for Grease	0.2
fk:	Cost allocation factor for Kjeldahl Nitrogen	0.2
Si:	Suspended solids in mg/L	
Bi:	Biochemical Oxygen Demand (BOD) in mg/L	
Phi:	Phenol equivalent in mg/L	
Pi:	Total phosphorus in mg/L	
G:	Grease in mg/L	
Ki:	Kjeldahl Nitrogen in mg/L	
Sn:	By-Law limit for Total Suspended Solids	300 mg/L
Bn:	By-Law limit for BOD	300 mg/L
Phn:	By-Law limit for Phenolic Equivalent	1 mg/L
Pn:	By-Law limit for Phosphorus	10 mg/L
Gn:	By-Law limit for Grease	150 mg/L

6.2 Assurances - Surcharge Calculation

The Targets and subsequent calculations provided herein are standard in nature, and as such, apply to any and all industrial premises, within the TOWN, with a signed Industrial Waste Surcharge Agreement.

Section 7 Inspection, Sampling and Non-Compliance

7.1 Authority of the TOWN - Inspection and Sampling

The COMPANY agrees that the TOWN, or their designate shall reserve the rights to obtain a composite (or grab) sample, at their discretion from the monitoring manhole in order to determine the actual quality of the sewage discharged into the wastewater collection system of the TOWN for estimation of the surcharge fee. The TOWN shall calculate the actual surcharge fee based on the maximum concentration of the parameters from the weekly sample test results as set in the Agreement obtained during the bi-monthly period.

7.2 Analytical Results - COMPANY

In the event that the COMPANY also submits analytical reports for parameters set out in this Agreement on a frequent basis, the estimation of surcharge will be based on the maximum concentration indicated by the test results for sampled collected by the TOWN and the COMPANY.

Section 8 Agreement Duration, Renewal, Transferability and Termination

8.1 Effective Date – IWSA

This Agreement shall remain in force from September 12, 2017 until December 31, 2018. Following the duration of this Agreement, it is understood that the TOWN will complete a thorough and complete review of the IWSA program, and loading allocations to ensure the program remains current and sustainable.

8.2 Renewal – IWSA

In the event of a renewal, if the TOWN gives written notice sent by registered mail to the COMPANY as aforesaid at any time within thirty (30) days before or after the start of each calendar year, that the amount of the fee or any of the limits hereinbefore set out are to be changed and no new Agreement can be reached between the TOWN and the COMPANY, this Agreement may be terminated at the option of the TOWN

8.3 Non-Transferability - IWSA

The COMPANY agrees not to assign or transfer this Service Agreement to any new owner, new user, different premises, or a new or changed operation or process without written approval from the TOWN. In the event of a change in control or ownership of the facilities from which the authorized industrial discharges emanates, the COMPANY shall notify the succeeding owner or user of the existence of this Agreement by letter and forward a copy of the letter to the TOWN. Any succeeding owner or user shall comply with the terms and conditions of this Agreement until such time as a new Agreement is executed between the TOWN and the new user.

8.4 Termination - IWSA

This Agreement may be terminated by the TOWN at any time on thirty (30) days written notice sent by registered mail addressed to the COMPANY of said premises, if:

- 8.4.1 The Sewage is causing a health or safety hazard to a sewage works employee;
- 8.4.2 The Sewage is causing damage to the sewers, materially increasing their maintenance costs or causing a dangerous condition;
- 8.4.3 The Sewage is causing damage to the sewage treatment process or causing a dangerous condition in the treatment works;

- 8.4.4 The Sewage is causing the sludge from the sewage works to fail to meet criteria relating to contaminants for spreading the sludge on agricultural lands under the current applicable regulations;
- 8.4.5 The Sewage is causing the sewage works effluent to contravene any requirements by or under the Ontario Water Resources Act, R.S.O. 1990, C. 0.40, as amended, repealed or replaced from time to time, or the Environmental Protection Act (Ontario), R.S.O. 1900, c.E.19 as amended, repealed or replaced from time to time;
- 8.4.6 The Sewage is causing a hazard to any person, animal, property or vegetation;
- 8.4.7 The Sewage is contrary to the said By-Laws in any way other than as provided herein
- 8.4.8 The TOWN no longer has the ability to affectively treat the Sewage as provided.
- 8.4.9 The COMPANY is no longer operating from the facility.

8.5 Termination via Emergency - IWSA

This Agreement may be terminated by the TOWN as any time where there is an emergency situation of immediate threat or danger to any person, property, plant or animal life, or waters.

8.6 Termination via COMPANY - IWSA

This Agreement may be terminated by the COMPANY at any time on three (3) months written notice sent by registered mail addressed to the TOWN.

8.7 Termination via Failure of Payment - IWSA

The TOWN may terminate this Agreement at its option without notice if the COMPANY fails for more than two months to pay an overdue amount but such termination shall not relieve the COMPANY from its liability to make such payment.

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THIS AGREEMENT shall ensure to the benefit of, and be binding upon heirs, administrators, successors and assigns of the parties hereto.

THIS AGREEMENT has been reviewed and is acceptable to the Corporation of the TOWN of St. Marys.

THIS AGREEMENT has been reviewed and is acceptable to Delmar Foods.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals attested to by the hands of their respective proper officers in that behalf duly authorized.

SIGNED, SEALED AND DELIVERED
in the presence of:

THE CORPORATION OF THE TOWN OF ST. MARYS

Al Stratthdee, Mayor

Brent Kittmer, CAO/Clerk

DELMAR FOODS

By: _____

Position: _____

By: _____

Position: _____

I/We have authority to bind the corporation

Schedule A
Industrial Waste Surcharge Agreement

Discharge Limitations

During the currency of this Agreement only, the Quality of the Sewage discharged by the COMPANY from the said premises to the sanitary collection system may exceed the limits set by by-law with respect to the quantity of Suspended Solids, B.O.D., Phenolic Compounds, Grease, Phosphorus and Kjeldahl Nitrogen, provided that they shall not exceed the following limits at any time:

Parameter	Unit	Concentration (MAC)
Biochemical Oxygen Demand (BOD)	mg/L	1,200
Total Suspended Solids (TSS)	mg/L	1,200
Phenolic Compounds	mg/L	1
Oil / Grease *	mg/L	150
Phosphorus	mg/L	10
Kjeldahl Nitrogen	mg/L	100

MAC – Maximum Allowable Concentration

mg/L – Milligrams per litre

The Quantity of swage discharged by the COMPANY from its premises at 25 South Service Road shall not exceed 1,550 cubic metres per month.