

**BOARD OF THE METROPOLITAN SEWERAGE DISTRICT  
OCTOBER 21, 2009**

**1. Call to Order and Roll Call:**

The regular monthly meeting of the Metropolitan Sewerage District Board was held in the Boardroom of MSD's Administration Building at 2:00 P.M., Wednesday, October 21, 2009. Chairman Aceto presided with the following members present: Bellamy, Bissette, Bryson, Haner, Kelly, Metcalf, Russell, Sobol, Stanley and VeHaun. Mr. Creighton was absent.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Gary McGill with McGill Associates, Marcus Jones with Henderson County, Stan Boyd, John Kiviniemi, Ed Bradford, Jim Hemphill, Scott Powell, Barry Cook, Peter Weed, Angel Banks and Sondra Honeycutt, MSD.

**2. Inquiry as to Conflict of Interest:**

Mr. Aceto asked if there were any conflicts of interest with the agenda items. No conflicts were reported.

**3. Approval of Minutes of the September 16, 2009 Board Meeting:**

Mr. Aceto asked if there were any objections to approving the Minutes of the September 16, 2009 Board Meeting as presented. With no objections, the Minutes were approved by acclamation.

**4. Discussion and Adjustment of Agenda:**

None

**5. Informal Discussion and Public Comment:**

None

**6. Report of the General Manager:**

Mr. Hartye reported that under Old Business, Scott Powell will give a recap of MSD's Bond Issue.

Mr. Hartye reported that a call was received from Mr. Chester Pankowski of Marlowe Drive to let MSD know how much he appreciated the quickness and great customer service that Herman Shelton provided. In addition, he presented a letter from United Way in appreciation of District employee efforts with the Day of Caring. MSD had 19 employees involved in 2 projects for the day. Mr. Hartye expressed his thanks to all involved for helping to give back to the community.

Mr. Hartye reported that Gary McGill will give a presentation on background information about Cane Creek Water & Sewer District (CCWSD). Mr. Hartye stated that the District completed its Master Plan and the CCWSD has done its own planning effort to look into the future to see what type of capacity is needed in the southern end of the county. He further stated that CCWSD has come up with a proposed allocation of 3.0 mgd, which MSD has done some analysis on, and will likely enter into negotiations with regard to updating the current agreement, and would like to get the full Board up to a level of understanding of the CCWSD; what it is and how it works. Once staff gets further into negotiations with CCWSD, this will be brought to the Planning Committee to go over the details. Mr. Hartye called on Mr. McGill for a presentation.

Mr. McGill reported that the CCWSD was formed in 1981, and in March of 1988, MSD entered into an agreement to accept their wastewater flow of 0.55 mgd in order that it would not have to be treated within the CCWSD. During this time, MSD was laying its

South Buncombe interceptor from the plant into Henderson County. He stated that most important to the agreement, as it relates to where MSD is headed, is that it allocated 550,000 gpd to the CCWSD from the MSD. In March of 1989, the agreement was amended to increase the allocation from 0.55 mgd to 1.35 mgd. Ms. Bellamy asked if Henderson County and the CCWSD are the same entity. Mr. Clarke stated that CCWSD is a separate legal entity, but the Henderson County Board of Commissioners serves as the governing body. Mr. McGill further reported that in October of 1990, a second amendment was made that states CCWSD customers inside the original boundary would not pay MSD's new capacity depletion fee, currently called a facility fee.

Mr. McGill reported that the agreement with CCWSD remains in effect and the current flow is approximately 750,000 gpd; well below its current allocation. However, CCWSD wants to be sure if it came to MSD, it would have the capacity to go forward with its planning process; particularly in the north Henderson County area. Mr. McGill presented a map from the Henderson County 2020 Comprehensive Plan showing the sewer services areas and districts; areas currently served by sewer; wastewater treatment plants/discharges and sewer lines, including the MSD interceptor line. Mr. Bellamy asked how far the MSD interceptor is from the City's water plant at Mills River. Mr. Jones said approximately 10 miles. Ms. Bellamy asked if the interceptor runs along NC 191. Mr. McGill said it runs along the French Broad River. Mr. McGill further reported that CCWSD/Henderson County completed a Basin Study in 2009, which looks at the whole area of northern Henderson County, not just the current boundaries of the CCWSD, and as a result, is looking for a long-term allocation from MSD of 3.0 mgd.

Mr. McGill presented a map of the 2009 Basin Study showing CCWSD's existing service area and potential service area, which is outside the current boundary; thus the reason for a long-term allocation. He stated that MSD's interceptor system within Henderson County is very important in the future and can be merged into what Henderson County is planning.

Mr. McGill reported that the initial evaluation of the existing agreement and provisions of a new agreement began in June. He stated that considerable time was spent in review of the South French Broad Interceptor and the Carrier Bridge Pump Station capacity. In addition, there was a review of MSD's Master Plan as it relates to future consideration about the collection system down to the Henderson County line. Mr. McGill presented a map showing MSD's interceptors and pipe sizes along the 30-miles from the treatment plant to Cane Creek. He stated that MSD's interceptor system is monitored continuously with flow monitoring stations throughout the entire system and this data will help determine the impact Henderson County will have on the MSD system. Mr. Aceto recognized Marcus Jones with Henderson County. Mr. Jones stated that this is the logical way to move forward, and with Henderson County's basin study, hopefully they can move forward with contributing information and being an integral part of the planning process. Mr. Sobol asked what the current capacity of the interceptor is. Mr. McGill stated that flow monitoring shows a fair amount of fluctuation in each of the pipe segments. The most critical portion of the line is the 48" pipe above the Carrier Bridge Pump Station, because the land is very flat, meaning there is not as much capacity because of the slope. He further stated that System Services has trouble keeping this line clean because of the velocity of the flow due to the slope of the pipe being only .04%. However, none of the line segments are at capacity at this time. Mr. Hartye expressed his appreciation to System Services for work done on the 36" segment of line across the Biltmore Estate to bring the level of flow down, which was the critical portion of the interceptor for a long time. Ms. Bellamy asked how many flow monitoring stations there are. Mr. McGill stated that the two main stations are located across from the Lake Julian Power Plant and the other is located on Amboy Road. Also, there are stations located along the tributaries. The question is whether to construct other permanent stations. Mr. Aceto asked where MSD will go from here. Mr. McGill stated that once a bulk of information is established and there is an understanding, then this can be brought to the

Planning Committee. Mr. Aceto asked if there will be any impacts on the Bond Covenants or Bond Order. Mr. Clarke said no. He stated that although the District cannot own sewer lines outside the District, it can provide service outside the District. Mr. Hartye continued with his report.

Mr. Hartye presented a description of the UNC School of Government Course on Finance to be given in Asheville on February 24, 2010. He stated that the course will also include a 2-hour ethics segment which meets the new statutory requirement discussed at the last Board Meeting. Several members indicated a desire to attend.

Mr. Hartye called on Mr. Clarke for a report on a meeting held with Norfolk Southern Railroad. Mr. Clarke reported that a very productive meeting was held with two representatives from Norfolk Southern, himself, Angel Banks and Ed Bradford and Mike Stamey. He stated that they came up with the framework for an agreement on existing crossings and the replacement of crossings, and will report back to the Board next month. Ms. Banks stated that the meeting went very well and expressed her appreciation to Mr. Clarke for his input.

Mr. Hartye reported that the Right of Way Committee meeting scheduled for October 28<sup>th</sup> has been cancelled. The next regular meeting of the Board will be held November 18<sup>th</sup> at 2PM.

**7. Report of Committees:**

**Right of Way Committee**

Mr. Kelly reported that the Right of Way Committee met September 23<sup>rd</sup> to consider a Compensation Budget on the Town Mountain Road 4" Main Rehabilitation Project and Condemnations on the Gladstone Road 4" Main and Sycamore Terrace PRP Projects.

**8. Consolidated Motion Agenda:**

**a. Consideration of Compensation Budget – Town Mountain Road 4" Main:**

Mr. Hartye reported that the Right of Way Committee recommends approval of the Compensation Budget.

**b. Consideration of Condemnation – Gladstone Road 4" Main:**

Mr. Hartye reported that the Right of Way Committee recommends authority to obtain appraisal and proceed with condemnation.

**c. Consideration of Condemnation – Sycamore Terrace PRP:**

Mr. Hartye reported that the Right of Way Committee recommends authority to obtain appraisal and proceed with condemnation.

**d. Consideration of Adoption of Revised MSD Sewer Use Ordinance:**

Mr. Hartye reported that the Board at its April 2009 meeting adopted a declaration of intent to adopt the revised MSD Sewer Use Ordinance. The Ordinance was sent out to the local governing bodies within the District for review and comment. He stated that the State of North Carolina requires adoption of a Sewer Use Ordinance, and since last approval in 2003, the Ordinance has undergone two changes. First, the State required local Pretreatment Programs to have a maximum civil penalty authority equal to the Secretary of the Department of Natural Resources

(DENR). Secondly, The Streamlining Rule was published in the Federal Register by the EPA; designed to reduce the overall regulatory burden of both the Industrial User (IU) and the Control Authority (MSD), without adversely affecting the environmental protection. Mr. Hartye stated that only one comment was received from the City of Asheville, who had no concerns with the proposed changes. Staff recommends the Board adopt the revised MSD Sewer Use Ordinance.

**e. Cash Commitment/Investment Report – March Ended August 31, 2009:**

Mr. Powell reported that on page 2 of the report is an Investment Portfolio Analysis for five years as well as the last two months. He stated that when MSD makes investments, it holds that investment to maturity; therefore, not much fluctuation can be seen on a month to month basis. However, when looking at the investment portfolio in relation to the last five years, it shows a trend of what MSD invested in the past, which were predominately governmental agencies and treasuries. During the current year and last fiscal year, MSD invested in certificate of deposits. Page 3 shows the Annual Yield Comparison. He stated that in FY 06, investment yields were higher, and then in FY 09-10, yields are lower due to the type of investments MSD has that are mandated by State Statutes. Pages 4 and 5 is an Analysis of Cash Receipts; month to day and year to day showing MSD revenues trending down lower than in the past due to recessionary pressures and having a wet summer. Facility and tap fee percentages are higher than last year; this is in comparison to budget. When looking at the revenue numbers as of the end of August, facility and tap fee revenues year to day is \$269,000, and last year at that same time period for the first two months, there was approximately \$1 million in revenue. Although facility and tap fee revenue have declined from the previous year, they were budgeted conservatively; thus the decline does not have an impact on the current years' budget. Mr. Powell stated that expenditures are normally flat month to month and that debt service percentages have come down significantly due to the low rates on the variable rate debt. Page 6 shows the performance of variable rate debt, which is in line with budget. Mr. Aceto asked what MSD would do if anything happened to Bank of America. Mr. Powell stated that any monies invested in any banks are dealt with on the pooling method, which means they put money aside at the State Treasurer, so if something happens; MSD can go to the State Treasurer and receive those funds. Mr. Sobol asked how much money is put aside. Mr. Powell stated that Bank of America has securities pledged at the State Treasurer in the amount of \$16.5 million. If there is an issue, the State Treasurer takes control of those securities and MSD receives its funds.

Mr. Stanley moved that the Board adopt the Consolidated Motion Agenda as presented. Mr. Haner seconded the motion. Following a brief discussion, Mr. Aceto called for the question. Roll call vote was as follows: 11 Ayes; 0 Nays.

**9. Old Business:**

Mr. Powell presented pricing statistics for the 2009A and 2009B revenue bonds. He reported that MSD priced the bonds at exactly the right time in that the all-in true interest cost for the 2009A new money issues was at 4.13%. He stated that at the time of this process, staff was anticipating the rate to be 4.5%. The District will recognize \$65,000 in annual debt service savings for the life of the Bonds. On the refunding bonds, the all-in interest rate was 2.2%. Staff anticipated the net savings on this issue would be about 4%, but ended up being 6.34%, which amounted to \$51,000 annual savings in additional annual debt service. With regard to Subscriptions, which is how many bidders there are in relations to a specific maturity, Mr. Powell explained that a high subscription rate means the bonds were priced too rich, and a low subscription rate means the bonds were priced just right. He stated that the subscription rates at each maturity were 1 to 1.5 in relation to the amount of par value debt that was issued out. He further stated that Allotments were 70% institutional and 30% retail. Mr. Aceto asked whether a

subscription rate of 1 to 1.5 is too high or too low. Mr. Powell stated that this is where MSD wants to be. If the subscription rate was 3 to 4, this would mean the rate offering on the debt is high in relation to the rate of return. Mr. Aceto asked who made the decision that this turned out so well. Mr. Hartye stated that this was a lucky shot, in that MSD hit a 40-year low at the time of pricing, which is now going back up. He further stated that Scott and Billy worked very hard to keep the process going. Mr. Clarke stated that it was Wachovia personnel who pegged the price and that these are the lowest fixed rate bonds the District has ever had. Mr. Powell stated that the underwriters look at the Municipal Market Data (MMD), which is the baseline rate for fixed rate issues, and how MSD's rates are priced in relation to (MMD). He further stated that a week before, in pricing the bonds, MSD was looking at an issue that was 45 basis points higher than the MMD, and it was anticipated that MSD's bonds would be at this amount or higher. When the bonds were priced, the bonds were at 37 basis points of the MMD. Mr. Aceto asked Mr. Powell to discuss who the bond team was. Mr. Powell stated that there is a senior manager (Wachovia) and two (2) co-managers (BB&T & Citi). When looking at this issue, 15% went to BB&T and 15% went to Citi in relation to retail sales. When looking at the analysis at the end of the deal, BB&T had 11% and Citi had 2%. He further stated that when the idea of issuing debt was brought to the Board in May, a discussion was held regarding having more of a retail presence as opposed to an institutional presence, since an institutional buyer is more sophisticated and are asking for more basis points in relation to the deal. Due to a 40-year low in the municipal market, the higher institutional presence did not have an adverse effect on the pricing of the 2009A and 2009B revenue bonds.

**10. New Business:**

Ms. Bellamy asked for an update on the line going through the Livingston Street softball field. Ms. Banks reported that staff has been in conversation with Al Kopf and looked at the City's concerns in regard to future developments with the community center. She stated that because there have been some recent problems with this line, the line was TV'd and is in critical shape and will need to be replaced. She further stated that staff will meet with Mr. Kopf and his design team on site next week. Mr. Bradford stated that replacement of this line will be put in the budget for next year. Mr. Russell stated that it was his understanding that the current line was going to be abandoned and re-routed. Mr. Bradford stated that staff will be working closely with City staff on this issue.

Mr. Russell reported that the City is looking at a potential land purchase along Hominy Creek and asked if it would be inappropriate for MSD to give an opinion on any foreseeable problems with this tract of land, since an MSD line runs the length of the property. Mr. Hartye stated that Planning & Development will be happy to look at this. Mr. Russell stated that MSD has an easement throughout the entire piece of property, which is part of the Greenway Master Plan that the City is looking to acquire. Mr. Clarke stated that MSD has an easement for a sewer line, but not for anything else.

**11. Adjournment:**

With no further business, Mr. Aceto called for adjournment at 3:05 PM.

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Jackie W. Bryson, Secretary/Treasurer

<h1 style="margin: 0;">MSD</h1> <h2 style="margin: 0;">Regular Board Meeting</h2>
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Metropolitan Sewerage District  
of Buncombe County, NC

### AGENDA FOR 10/21/09

✓	Agenda Item	Presenter	Time	
	01. Call to Order and Roll Call	Aceto	2:00	
	02. Inquiry as to Conflict of Interest	Aceto	2:05	
	03. Approval of Minutes of the September 16, 2009 Board Meeting.	Aceto	2:10	
	04. Discussion and Adjustment of Agenda	Aceto	2:15	
	05. Informal Discussion and Public Comment	Aceto	2:20	
	06. Report of General Manager	Hartye	2:25	
	07. Report of Committees: a. Right of Way Committee – 9/23/09 - Kelly	Aceto	2:40	
	08. Consolidated Motion Agenda		2:50	
	a. Consideration of Compensation Budget – Town Mountain Road 4” Main.	Hartye		
	b. Consideration of Condemnation – Gladstone Road 4” main.	Hartye		
	c. Consideration of Condemnation – Sycamore Terrace PRP.	Hartye		
	d. Consideration of Adoption of Revised MSD Sewer Use Ordinance.	Hartye		
	e. Cash Commitment/Investment Report – Month Ended August 31, 2009.	Hartye		
	09. Old Business:	Aceto	3:05	
	10. New Business:	Aceto	3:10	
	11. Adjournment (Next Regular Meeting –11/18/09)	Aceto	3:15	

# **APPROVAL OF MINUTES**

**BOARD OF THE METROPOLITAN SEWERAGE DISTRICT  
SEPTEMBER 16, 2009**

**1. Call to Order and Roll Call:**

The regular monthly meeting of the Metropolitan Sewerage District Board was held in the Boardroom of MSD's Administration Building at 2:00 P.M., Wednesday, September 16, 2009. Chairman Aceto presided with the following members present: Bellamy, Bisette, Bryson, Creighton, Haner, Kelly, Sobol, Stanley and VeHaun. Mr. Metcalf and Mr. Russell were absent.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Gary McGill with McGill Associates, Joseph Martin with Woodfin Sanitary Water & Sewer District, Leah Karpen with the League of Women Voters, Marcus Jones with Henderson County, Keith Levi with Habitat for Humanity, Ed Bradford, John Kiviniemi, Peter Weed, Scott Powell, Ken Stines, Roger Watson, Angel Banks, Julie Willingham and Sondra Honeycutt, MSD.

**2. Inquiry as to Conflict of Interest:**

Mr. Aceto asked if there were any conflicts of interest with the agenda items. No conflicts were reported.

**3. Approval of Minutes of the August 19, 2009 Board Meeting:**

Mr. Aceto asked if there were any objections to approving the Minutes of the August 19, 2009 Board Meeting as presented. With no objections, the Minutes were approved by acclamation.

**4. Discussion and Adjustment of Agenda:**

None

**5. Informal Discussion and Public Comment:**

Mr. Aceto welcomed Ms. Karpen, Mr. Martin, Mr. Jones and Mr. Levi.

**6. Report of the General Manager:**

Mr. Hartye reported that Mr. Ed Calis of Mount Vernon Circle called to express his appreciation for the work MSD did in repairing a storm sewer that had created a sink hole and collapsed the sanitary sewer below it. He expressed his appreciation to Roy Lytle, Eric Dawson, Shane Meadows, Chris Johnson, Rick Bradley and Shaun Buckner.

Mr. Hartye reported that the Dingle Creek and Black Mountain annexation projects are examples of cooperative efforts with member agencies. He stated that the Capital Improvement Plan includes an interceptor replacement/upgrade along Dingle Creek as well as a small rehab project near Crowfields. These projects will cost over \$2 million and \$500,000 respectively and have been scheduled for FY 2011. However, the City of Asheville received stimulus funding for a drainage project in this area and MSD is working with the City to coordinate this effort. He further reported that another cooperative effort is the Black Mountain annexation projects. At the time of consolidation the District committed to financially participate in the extension of sewers to certain areas identified by its member agencies to be annexed. He stated that the member agency typically runs the sewer and MSD contributes 35% of the cost of the project. The last few such projects are planned to be accomplished this fiscal year in the area of Black Mountain. MSD is partnering with Black Mountain to get some state loan funds to be used for their part. In addition, MSD is partnering on another project with Black Mountain and the NCDOT on sidewalk improvements and, because of some low



bids received on the Collection System, MSD was able to move up two (2) projects, which Mr. Bradford will give a report on.

Mr. Bissette asked if the Swannanoa Incorporation will have an affect on MSD if approved. Mr. Clarke said it's possible, in that the Town of Swannanoa could get a seat on the MSD Board. He stated that since Swannanoa does not have a sewer system, its interest should be represented by Buncombe County. Ms. Bellamy asked about Leicester. Mr. Clarke said it's the same scenario, although most of Leicester is not within the MSD boundary and Swannanoa is. Mr. Sobol asked if the criteria are based on whether a town has a sewer system or not. Mr. Clarke said no, it's whether a town is within the boundary of the District. After some discussion on how this issue should be addressed, Mr. Clarke said he will look into it and report back to the General Manager. Mr. Bissette suggested that this issue be considered by the Planning Committee at its next meeting.

Mr. Bradford showed the location of the Dingle Creek projects. He reported that the Dingle Creek Interceptor consists of 7,189 LF at a cost of \$2.2 million, and during development of this project in 2005, representatives from The Ramble requested that MSD locate the new interceptor such that future City stormwater improvements could be made. The project was designed, and the easements for the new interceptor were obtained. The City is in the process of finalizing its stormwater project, and MSD staff proposes to accelerate this portion of the interceptor rehab to accommodate the City project. He further reported that Dingle Creek @ Crowfields project consists of 2,317 LF at a cost of \$524,000. Mr. Bradford presented pictures of where the City's stormwater project will take place, but noted the main creek channel is not shown. He stated that this portion of the project is currently scheduled for the next fiscal year at a cost to MSD of approximately \$200,000. He further stated that funds for this project are available considering low bid prices received on recent projects, and that MSD staff is working closely with City staff to coordinate this effort.

In conjunction with the Black Mountain/NCDOT Sidewalk Project, Mr. Bradford reported that when MSD learned that Ingles Warehouse planned to redo its trucking lanes, MSD proceeded with a portion of the US 70 @ Neil Price Avenue project through an informal bid in order not to disturb the structural pavement done by Ingles. He stated that because the Town of Black Mountain and the NCDOT are receiving stimulus funds for work along US 70, MSD proposes to construct this project early in order to avoid conflicts with new sidewalk installation by the Town along this corridor. He further stated that the cost of the project is estimated at \$520,000, and that staff is working closely with Town staff to coordinate this effort.

Mr. Bradford reported that the Town of Black Mountain has three (3) annexation projects left from the Consolidation Agreement, of which two (2), Blue Ridge Road and McCoy Avenue, will be constructed in FY 10. Mr. Bradford stated that since these projects are turned over to MSD after construction, Black Mountain would relinquish the asset value, which can pose difficulties in borrowing funds. Therefore, MSD & Black Mountain have an agreement whereby Black Mountain retains ownership for loan security and MSD will maintain the systems. The systems will be turned over to MSD after the loan is paid off, but MSD will still collect all fees, billing, etc.

Mr. Bradford reported that several other smaller projects are also being coordinated with the City of Asheville with paving projects and the NCDOT in widening a section of Sweeten Creek Road. He stated that MSD staff coordinates projects with agencies wherever possible through joint sharing of project lists, annual budgets, UCC meetings, etc. This coordination saves money, makes for better overall projects, and reduces disruption to neighborhoods. Ms. Karpen asked if the \$520,000 project cost along the US 70 corridor is capital funds. Mr. Bradford said yes. He stated that in preparing the budget, they use the previous year's actual bid amounts received. Mr. Hartye stated that the footage gained by these two projects getting moved up, will be

applied towards the footage required in MSD's permit. Mr. Haner questioned the lower bidding prices and if there is a large discrepancy between the bids Mr. Bradford stated the bidding prices are less than they were last year and MSD is seeing more bidders and the bids are not erratic.

Mr. Hartye presented an article on the City's Dingle Creek Project and an announcement from the UNC School of Government on education opportunities.

Mr. Hartye reported that the next Right of Way Committee meeting will be held September 23<sup>rd</sup> at 9 AM and the next regular Board Meeting will be held October 21<sup>st</sup> at 2PM.

**7. Report of Committees:**

**Right of Way Committee**

Mr. Kelly reported that the Right of Way Committee met August 26, 2009 to consider compensation budgets for the Forest Ridge GSR and Ruth Street Rehabilitation projects. In addition, the Committee considered condemnations on the US 70 @ Neil Price Avenue, Phase II project and the Rockdale Avenue PRP Project. Ms. Banks presented a report outlining condemnation statistics from July 1, 1991 to June 30, 2009.

**8. Consolidated Motion Agenda:**

**a. Consideration of Compensation Budgets – Forest Ridge Road GSR and Ruth Street Rehabilitation Projects:**

Mr. Hartye reported that the Right of Way Committee recommends approval of the Compensation Budgets. Ms. Bellamy asked if there are any plans to extend sewer in the Rock Hill Road area since there are several people still on septic. Mr. Hartye said no. Mr. Bellamy asked what these residents would have to do to get sewer. Mr. Hartye said it depends on where they are located and would get back to her with that information. Mr. Sobol suggested looking at other less expensive options. Ms. Bellamy asked if this could be brought up at the next Planning Committee Meeting. Mr. Hartye said yes.

**b. Consideration of Condemnation, US 70 @ Neil Price Avenue, Phase II:**

Mr. Hartye reported that this project involves replacement of the existing public sewer under rail tracks owned by Norfolk Southern Railroad. He stated that the Right of Way Committee held a long discussion regarding an easement from Norfolk Southern instead of a license agreement for this project. The Committee recommends authority to obtain an appraisal and proceed with condemnation. Mr. Sobol asked Mr. Clarke what the outcome of the meeting was. Mr. Clarke stated that following the meeting, he wrote a letter to Norfolk Southern and included information on the project, and explained that this project would come before the Board at its September meeting. He followed up with additional calls, but did not get a response.

**c. Consideration of Condemnation, Rockdale Avenue PRP:**

Mr. Hartye reported that the Right of Way Committee recommends authority to obtain appraisal and proceed with condemnation.

**d. Acceptance of Developer Constructed Sewer System – Hyannis Drive**

Mr. Hartye reported that this project included the installation of approximately 361 linear feet of 8" gravity sewer to serve a fourteen (14) unit residential

development. He stated that approximately 275 linear feet of existing 6" sewer line with related appurtenances and easement will be abandoned as part of the project and that staff recommends acceptance of the developer constructed sewer system. All MSD requirements have been met.

**e. Consideration of Sanitary Sewer Rehabilitation Project – Eastwood Avenue @ Old US 70:**

Mr. Hartye reported that this project is for the replacement of an eight-inch clay line, which was generated through MSD's Pipe Rating program. The following bids were received on September 3, 2009: Bolton Corporation with a total bid of \$462,371.00; DPI Construction with a total bid of \$364,849.16; Disaster Recovery Group with a total bid of \$324,395.00; Jones Brothers with a total bid of \$307,839.87; Iron Mountain Construction with a total bid of \$298,271.00; Bryants Land Development with a total bid of \$254,106.75; Spur Construction with a total bid of \$253,132.20; Moore & Son Site Construction with a total bid of \$242,906.00; Carolina Specialties, Inc. with a total bid of \$212,376.22; Buckeye Construction with a total bid of \$199,553.70; Terry Brothers Construction with a total bid of \$198,102.00; Huntley Construction with a total bid of \$189,047.00; Blythe Co. Construction, LLC with a total bid of \$189,000.00; T&K Utilities, Inc. with a total bid of \$165,330.00. Mr. Hartye stated that staff recommends award of the contract to T&K Utilities, Inc. in the amount of \$165,330.00, subject to review and approval by District Counsel.

**f. Consideration of Purchase of Vactor 2100 Plus Combination Sewer Cleaner:**

Mr. Hartye reported that System Services has an on-going preventative maintenance program and has cleaned in excess of 900,000 liner feet of sewer line utilizing combination trucks in 2008. He stated that the Vactor 2100 will replace a smaller 2001 combo truck and the fuel efficiency on the new truck has been significantly increased to reduce fuel consumption by 20 to 30 percent. The following bids were received and opened on August 24, 2009: Public Works Equipment with a total bid of \$317,023.28; Rodders and Jets Supply Co., with a total bid of \$319,110.47; Jet-Vac Sewer Equipment Co., with a total bid of \$319,760.00; Sansom Equipment Co., with a total bid of \$339,890.00; VA Public Works Equipment with a total bid of \$341,394.00 and Environmental Products of Florida with a total bid of \$344,780.00. Mr. Hartye stated that funds are available in the FY 2010 Fleet Replacement Fund and staff recommends award of the bid to Public Works Equipment in the amount of \$317,023.28. Mr. Hartye noted that MSD is phasing into a preventative maintenance mode and that all of this work is now being done in-house.

**g. Series Resolution Authorizing Issuance of Bonds:**

Mr. Hartye reported that on July 15<sup>th</sup>, the Board approved making an application to the Local Government Commission (LGC) to issue revenue bonds to provide funding for the CIP. The LGC approved the issuance on September 1<sup>st</sup>. Under its Bond Order, the District Board is required to adopt a Series Resolution authorizing issuance of the bonds and related actions necessary to sell the bonds. Mr. Hartye said this is the 2009A new money bonds in the amount of \$19,500,000. The business plan is attached to provide the financial impact of the debt issuance to the District. He further stated that staff recommends approval of the Series Resolution for the 2009A Bonds

**h. Series Resolution Authorizing Issuance of Bonds:**

Mr. Hartye reported that on July 15<sup>th</sup>, the Board approved submitting an application to the Local Government Commission (LGC) to issue revenue bonds to

refund the remaining maturities of the Series 1999 bonds. The LGC approved the issuance on September 1<sup>st</sup>. Under its Bond Order, the District Board is required to adopt a Series Resolution authorizing issuance of the bonds and related actions necessary to sell the bonds. Mr. Hartye stated that the resolution authorizes issuance of the Series 2009B Bonds in an amount not to exceed \$15,000,000. The business plan is attached to provide the financial impact of the debt refunding to the District. He further stated that based on interest rates as of September 1<sup>st</sup>, the District would achieve a net present value savings in excess of 4% or \$286,555 a year in interest expense over the remaining life of the debt. Staff recommends approval of the Series Resolution for the 2009BBonds.

Mr. Aceto called for further discussion on both the Series 2009A and 2009B Bonds. Mr. Clarke stated that the first Series Resolution is authorizing \$19,500,000 in Bonds, which is the maximum amount. He explained that the Series 2009A Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Series Resolution. The Depository Trust Company will keep a record of who owns the bonds. In addition, the Board is approving the Preliminary Official Statement, which will be distributed to investors to look at along with a history of the Metropolitan Sewerage District. The Bond Purchase Agreement is an agreement between the LGC, MSD and Wachovia Bank. Wachovia Bank buys the bonds from MSD for slightly less than the face amount then sells them for a profit. Mr. Clarke further stated that of the \$19,500,000 the District will actually get \$19,400,000, which is shown in the 2010 fiscal year as being added to the mix of pay-as-go and bond funds for the CIP. By approving the Series Resolution, the District is pledging to pay for these bonds out of its net revenues, excluding Facility and Tap Fees. Mr. Clarke noted that as of this date, all of the rating agencies (Standard & Poor's, Moody's & Fitch) have confirmed the District's AA rating.

Mr. Clarke reported that the 2009B Series Resolution is for the issuance of Bonds to refund the maturities of the remaining Series 1999 Bonds in an amount not to exceed \$15,000,000. Mr. Clarke stated that Mr. Hartye and Mr. Powell have done an outstanding job for meeting, with conference calls and preparation of the Preliminary Official Statement.

**i. Cash Commitment/Investment Report – Month Ended July 31, 2009:**

Mr. Hartye reported that in addition to typical investment information, Mr. Powell has added trend graphs of the District's operational revenues and expenditures. Mr. Aceto asked Mr. Powell to explain. Mr. Powell reported that on page four (4) is an analysis of cash receipts, which shows how the District is stacking up in relation to cash receipts on a monthly basis and a year to date basis. This information is used to do a snapshot, since most of MSD's billing is done by member agencies, to let the Board know where MSD stands. When looking at July's information in the domestic revenue area, MSD typically ranges in the 8.3% to 9% range, but this year at 6.7%. The reason for the disparity is MSD received a deposit on June 30th from the City of Asheville which is typically received on July 1st. Mr. Powell stated that the Industrial Revenue numbers are trending very similar, but in FY08, staff budgeted low because it expected industrial revenue to come out, but did not. When looking at Facility and Tap Fees, MSD is at 36% of budget in the first month. In looking back at the previous budget, staff budgeted ultra conservatively at approximately \$300,000.00 and, as of September 15th, MSD is at 95% of that budget. Ms. Bellamy asked what the fees consist of. Mr. Boyd said residential, commercial and institutional.

Mr. Powell reported that page five (5) shows an analysis of expenditures. He stated that monthly operations and maintenance expenditures are slightly higher due to three (3) pay periods occurring in July versus the typical two. Debt Service is down

due to the variable rate component as shown on page six (6). Ms. Bellamy said the graphs are excellent and are very helpful. Mr. Aceto expressed his appreciation to Mr. Powell for his effort in presenting this information to the Board. Mr. Powell stated that at the next Board meeting he will present a year-to-date trend in relation to investment runnings as well as a portfolio makeup.

Mr. Aceto called for a motion regarding the Consolidated Motion Agenda. Mr. VeHaun moved that the Board approve the Consolidated Motion Agenda as presented. Mr. Stanley seconded the motion. With no discussion, roll call vote was as follows: 10 Ayes; 0 Nays.

**9. House Bill 1452 – Ethics, Conduct and Attendance Policy for the MSD Board:**

Mr. Clarke reported that at the request of the Board, he has reviewed House Bill 1452 and the current MSD Board Policy on Ethics, Conduct and Attendance. He stated that although the Statute does not specifically mention the MSD, he felt the Board expressed a desire to comply with that Statute. He suggested the Board consider amending its current policy with his recommended changes. He stated that the only thing the current policy does not make reference to is open meeting and public record laws, which are now added under paragraphs III and VII of the policy, and the language now in the preamble comes from House Bill 1452. With these changes, MSD would be in compliance with what other local governments are doing. Regarding to the two-hour Ethics training, Mr. Clarke stated it would be best to sign up with the League of Municipalities or others who are offering such a course. Mr. Hartye said he will look into the options. Mr. Aceto suggested the School of Government course on Finance. Mr. Bissette moved that the Board adopt the amendments to the Ethics, Conduct and Attendance Policy as presented by Counsel. Ms. Bellamy seconded the motion. Ms. Karpen stated that she would be interested in attending an Ethics meeting if open to the public. With no further discussion, Mr. Aceto called for the question. Voice vote in favor of the motion was unanimous.

**10. Old Business:**

Ms. Bellamy announced that the City of Asheville has a new Public Works Director. Cathy Ball has accepted the position and will be moving from Engineering to Public Works. In addition, Ms. Bellamy extended an invitation to Board Members to attend an open house on September 25<sup>th</sup> for a one-stop-shop for Pubic Works.

**11. New Business:**

None

**12. Adjournment:**

With no further business, Mr. Aceto called for adjournment at 2:50 PM.

---

Jackie W. Bryson, Secretary/Treasurer



**REPORT OF GENERAL MANAGER**

## MEMORANDUM

TO: MSD Board  
 FROM: Thomas E. Hartye, P.E., General Manager  
 DATE: October 15, 2009  
 SUBJECT: Report from the General Manager

- Kudos

- Mr. Chester Pankowski of Marlowe Dr. called to let MSD know how much he appreciated the quickness and great customer service that Herman Shelton provided.
- Letter attached from United Way in appreciation of District employee efforts with the Day of Caring. MSD had 19 employees involved in 2 projects for that day. Thanks to all involved for helping to give back to the community.

- Cane Creek Water and Sewer District

MSD entered into an agreement with Cane Creek Water and Sewer District (CCWSD) in 1988 (which was amended in 1989) for the treatment of 1.35 MGD of wastewater. Gary McGill will give a short presentation on CCWSD and how both of our recent planning efforts may help shape a new more congruous agreement.

- Board Education and Training Opportunity

Attached is a course description of the UNC School of Government Course on Finance given in Asheville on February 24, 2010. This course will also include a 2 hour ethics segment which meets the new statutory requirements discussed at the last Board Meeting. Registration opens October 19<sup>th</sup> and is expected to fill up quickly. Please let Sondra know as soon as possible if you are interested.

- Reading

- Raleigh News and Observer and AP articles on sewage spill

- Board/Committee Meetings

The Right of Way Committee scheduled for October 28<sup>th</sup> has been cancelled. The next Regular Board Meeting will be held November 18<sup>th</sup> at 2pm.





October 1, 2009

Jim Hemphill  
Metropolitan Sewage District  
2028 Riverside Drive  
Asheville, NC 28804

Dear Jim,

On September 3rd, over 1300 volunteers from local businesses and schools put their hearts and hands to the task of supporting local nonprofits and schools with their labor. During Day of Caring, volunteers donated approximately 3922 hours to complete 92 projects, saving the nonprofits and schools over \$79,000 in labor.

On behalf of Hands On Asheville-Buncombe and United Way of Asheville and Buncombe County, we sincerely thank you for your leadership in coordinating your organization's participation in the 2009 Day of Caring.

Volunteer survey responses for Day of Caring were very positive this year:

- *90% of respondents reported that by participating in Day of Caring, they feel more connected to the work of United Way in the community.*
- *96% of respondents plan to participate in Day of Caring next year because of their positive experience this year.*

Because of the generosity of local businesses and employee volunteers, nonprofits and schools are able to accomplish large tasks that are too extensive for them to tackle with limited staff and budgets. Nonprofit coordinators have been saying things like:

- *"Volunteers were very friendly and ready to do what we needed!"*
- *"Everyone seemed genuinely eager to jump in and work."*

We appreciate your support of United Way's Day of Caring. Organizations like yours that make this powerful day of service possible.

Sincerely,

David D. Bailey  
President and CEO  
United Way of Asheville and Buncombe County

Sarah Catoe  
Director  
Hands On Asheville-Buncombe



United Way of Asheville  
and Buncombe County

Hands On Asheville-Buncombe  
50 South French Broad Avenue, Asheville, NC 28801  
Tel. (828) 255-0696 Fax. (828) 255-8004  
Email: [info@handonasheville.org](mailto:info@handonasheville.org)  
[www.handonasheville.org](http://www.handonasheville.org)





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## Leadership and Governance

### REGIONAL LEADERSHOP

#### Local Finance: Making Sense of Annual Financial Statements

As stewards of the public trust, local elected officials must put in place the funding and infrastructure their community needs to thrive. This engaging one-day workshop is designed to help city council members and county commissioners understand how to read annual financial statements. Elected officials will learn the right questions to ask and how the decisions they make impact their community's future. They are encouraged to invite their managers, administrators, and finance directors to join them.

This program will conclude with a 2 hour segment on ethics which meets the new statutory requirement for city and county elected officials.

This Regional LeaderShop is offered through the Local Elected Leaders Academy. In addition to attending the one-day LeaderShop, veteran municipal officials may also opt to attend the remaining two days of the Essentials of Municipal Government.

The programs are offered regionally to encourage participation and to minimize your travel time. You will be recognized for your participation through the NCACC and the NCLM. Scholarships are available through the Local Elected Leaders Academy.

**ATTENDEES** Veteran elected municipal and county officials are encouraged to invite managers, administrators and finance directors to join them for the workshop.

**DURATION** 1 Day

**FACULTY COORDINATOR** Donna Warner

**CANCELLATION POLICY** All cancellations must be submitted in writing, as outlined in the School's cancellation policy.

RETURN TO: [HOME](#) | [OTHER COURSES IN THIS CATEGORY](#)

Knapp-Sanders Building  
Campus Box 3330  
UNC-Chapel Hill, Chapel Hill, NC 27599-3330  
T: 919.966.5381 | F: 919.962.0654

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#### REGISTER

Registration available in October, 2009

#### DATE

December 2, 2009 Chapel Hill  
January 13, 2010 Wilmington  
January 29, 2010 Concord  
February 17, 2010 Greenville  
February 24, 2010 Asheville  
March 3, 2010 Kitty Hawk

#### FEE

\$175

#### CONTACT

Gail Wilkins  
T: 919.962.9754  
F: 919.962.2705  
wilkins@sog.unc.edu

Masthead

Published Thu, Sep 24, 2009 02:00 AM

Modified Wed, Sep 23, 2009 10:08 PM

## **Inquiry started into a huge sewage spill**

**RALEIGH** The largest sewage spill in North Carolina in at least a decade went unreported for about 20 days until an environmentalist notified federal investigators that millions of gallons of untreated wastewater had flowed into a tributary that feeds into a lake popular with boaters.

The Environmental Protection Agency is conducting a criminal investigation of the almost 16 million gallon Thomasville spill, which is thought to have begun July 16 at High Rock Lake and continued until Aug. 4. In addition, one employee of the city's wastewater treatment plant has resigned.

"We just want them to tell us the truth and tell us what their plans are to help," said Ronnie Lewis, 69, who has a house on the lake.

The city initially reported the spill Aug. 3, saying 385,000 gallons of untreated wastewater had been dumped. The estimate had jumped to 15.93 million gallons when the city submitted a revised estimate to state environmental officials in September. State records on spills date to 1998 and show the previous largest spill was 9 million gallons in December 2002 in Raleigh.

City Manager Kelly Craver said the sewage went into a tributary of North Hamby Creek, which feeds into the 15,000-acre High Rock Lake. The lake has hosted the Bassmasters Classic, most recently in 2007. But Yadkin River keeper Dean Naujoks (NOW-yuks) sent a report to the EPA's criminal investigation division in Charlotte on Aug. 27, saying an employee had told him that he thought the spill began in mid-July.

The state received the city's revised estimate earlier this month, said Steve Tedder, a regional supervisor with the state Division of Water Quality. The state originally fined the city about \$1,600 and is reconsidering its penalty in light of the new estimate, he said.

One employee has resigned because he didn't send crews to check out a report of a sewage smell July 31, Craver said.



## NC spill dumps almost 16 million gallons of sewage

The Associated Press

Wednesday, September 23, 2009

RALEIGH, N.C. — The largest sewage spill in North Carolina in at least a decade went unreported for about 20 days until an environmentalist notified federal investigators that millions of gallons of untreated wastewater had flowed into a tributary that feeds into a lake popular with boaters and fishermen.

The Environmental Protection Agency is conducting a criminal investigation of the almost 16-million gallon spill, which is believed to have begun July 16 at High Rock Lake and continued until Aug. 4. In addition, one employee of the city's wastewater treatment plant has resigned.

"We just want them to tell us the truth and tell us what their plans are to help," said Ronnie Lewis, 69, of Eden, who has a house on the lake at Abbotts Creek.

The city initially reported the spill on Aug. 3, saying 385,000 gallons of untreated wastewater had been dumped. City officials say they based that estimate on the belief that the spill had occurred for two days.

The estimate had jumped to 15.93 million gallons when the city submitted a revised estimate to state environmental officials in September. State records on spills date only to 1998 and show the previous largest spill was 9 million gallons in December 2002 in Raleigh.

City Manager Kelly Craver said the sewage went into a tributary of North Hamby Creek, which feeds into Abbotts Creek and into the more-than-15,000-acre High Rock Lake. The lake has hosted the Bassmasters Classic, most recently in 2007. The cause of the spill was traced to a collapsed pipe, he said.

But Yadkin Riverkeeper Dean Naujoks (NOW-yuks) sent a report to the EPA's criminal investigation division in Charlotte on Aug. 27, saying an employee had told him that he believed the spill began in mid-July.

The EPA agent in Charlotte investigating the allegations, Kevin LaPointe, did not return a phone call Wednesday from The Associated Press. However, Craver confirmed the investigation Wednesday.

Craver said a spill was reported Aug. 3, stopped Aug. 4 and then repaired Aug. 5. The public services director, Morgan Huffman, calculated the spill at 385,000 gallons based on a leak over those two days, Craver said. Huffman did not return a phone call Wednesday from the AP.

The EPA ordered the city to recalculate the amount of the spill based on creating a baseline over the past four months, Craver said. Beginning July 16, anything higher than that baseline was considered spilled, he said. City officials have reviewed plant logs and interviewed employees "and we can't find the red flag," he said. "There's nothing that says it happened here. There's some erratic data, but there isn't consistent data that shows low flow to the plant."

Naujoks' report to the EPA says an operator responsible in charge at the Thomasville Sewage Treatment Plant reported a drop in flow around July 13, from an average of 2 million gallons a day to 1.2 million gallons a day. The employee said this occurred on a rainy day when flow should have increased.

When the employee returned from vacation, he again noticed a drop in flow, according to Naujoks' report. "Based on his estimation, approximately 600,000 to 700,000 gallons a day of raw sewage over the course of 10-12 days entered the receiving stream," Naujoks wrote.

Steve Tedder, a regional supervisor with the Division of Water Quality, confirmed that the city used its own data to come up with the new estimate. "As they looked at that situation, they went back and backtracked and looked at these differences," he said. "I don't think it popped out at them the day they found the spill."

The state received the city's revised spill estimate of 15.93 million gallons earlier this month, Tedder said. The state originally fined the city about \$1,600 and is reconsidering its penalty in light of the new estimate, he said.

In addition, one employee has resigned because he didn't send crews to check out a report of a sewage smell on July 31, Craver said. The employee is eligible for retirement after working 32 years with the city, he said.

Craver said he's confused as to why residents didn't smell or see sewage. "I find it really strange that we spilled sewage at the rate of 800,000 gallons a day and nobody saw it, nobody smelled it and no fish died," he said.

But Naujoks said he got calls in July from lake residents who said they smelled sewage. "But it's hard to determine where it's coming from when it's coming in from miles upstream and it's a lower amount over a longer duration," he said.

As for a fish kill, he said it can take months for algae blooms to grow, deprive the water of oxygen and kill fish.

Lewis said the water near his house has been a grayish-green color for more than a year and that he's smelled sewage over that time, but he didn't report his observations to anyone.

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Sept 23, 2009 - 3:29 p.m. EDT

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# **COMMITTEE REPORTS**

**RIGHT OF WAY  
COMMITTEE RECOMMENDATIONS  
AND MINUTES  
September 23, 2009**

**I. Call To Order**

The regular monthly meeting of the Right of Way Committee was held in the Boardroom of the William H. Mull Building and called to order at approximately 9:00 a.m. on Wednesday, September 23, 2009. The following Right of Way Committee members were present: Glenn Kelly, Jackie Bryson and Mike Sobol.

Others present were: Steven Aceto, Chairman of the Board; Max Haner and Bill Stanley, Board members; Ellen McKinnon, Martin/McGill; Tom Hartye, Angel Banks, Mike Stamey, Jim Hemphill, Wesley Banner and Pam Nolan, M.S.D.

**II. Inquiry as to Conflict of Interest**

Mr. Kelly inquired if anyone had a conflict of interest with Agenda items. There was none.

**III. Consideration of Compensation Budget –**

**Town Mountain Road 4" Main Rehabilitation, Project No. 2008012**

The attached Compensation Budget is based on current ad valorem tax values and follows the MSD approved formula.

**STAFF RECOMMENDATION: Approval of Compensation Budget.**

Ms. Banks explained the location of the project and that it consists of approximately 1700 lf of 8" DIP to replace existing 6" and 8" clay pipe which is undersized and in poor condition. Ms. Banks stated that there is less than 100 feet of pipe crossing private properties and the remainder is in the road, crossing through Town Mountain Road, Cogswood Road, Westview Road and Oak Park Road. There was no discussion. Mrs. Bryson made the motion to accept Staff's recommendation. Mr. Kelly seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION: Approval of Compensation Budget.**

**IV. Consideration of Condemnation - Gladstone Road 4" Main, Project No. 2007010**

**PIN 9658.16-83-1371** – This property is an improved residential property. The owner's major concern is loss of buildable area on the property due to possible future plans for the addition of a garage. The sewer cannot be replaced in the same alignment due to a retaining wall. The proposed sewer was shifted to a clear area along the driveway.

The owner requested that the proposed sewer alignment be shifted further out of the driveway and closer toward the side property boundary. The engineer has shifted the alignment as much as possible toward the side property line also making efforts to preserve several large trees on the adjacent property.

The property is currently on the market and has a potential buyer. A meeting was held on site with the property owner, the buyer and our engineer to discuss the realignment of sewer. All parties are aware that the engineer has shifted the proposed alignment as far as possible. Additionally, the owner was ok with the original compensation being offered (\$2781) and understands that compensation will be adjusted according to the change in square footage if he agrees to the shifted alignment he requested. However, despite multiple contacts the owner has been non-responsive.

Total Contacts: 9

**STAFF RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation.**

Ms. Banks explained the above situation and further stated that owner will have plenty enough room to add a garage. Mr. Haner asked how many feet of sewerline was to be replaced on the property. Ms. Banks stated there was about 350-400 feet. There was some further discussion regarding the difficulty in further relocating the easement area. Mr. Haner asked when the project would begin. Ms. Banks stated that it would begin in 2013. Mr. Kelly made the motion to accept staff's recommendation. Mr. Sobol seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation.**

**V. Consideration of Condemnation – Sycamore Terrace PRP, Project No. 2007014**

**PIN 9654.10-35-4931** – This property is located along Sweeten Creek Road and is currently unimproved. The property owner's major concern is the loss of potential buildable area on the property due to the proposed permanent sewer easement area. The existing sewer is located along the northern boundary of this property within the NCDOT right of way and the proposed alignment had to be shifted further into the subject property due to utility conflicts in the road.

To lessen the impact of our easement the owner has been working with the adjacent owners to petition the city for rezoning of this corridor. The current commercial business zoning requires building along the road frontage, which is also the area of the proposed pipeline. Rezoning to highway business would allow building toward the rear of the lot with parking in front, which is a permitted use over MSD pipelines and easements. However, the property owner has yet to submit any zoning proposal to the city over the past 5 months of our negotiations.



The property owner was very pleased with the compensation being offered (\$7119) for the proposed easement areas on his property, so money is not the issue. Despite multiple contacts the owner has not moved forward to resolve the issues preventing him from signing.

Total Contacts: 9

**STAFF RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation.**

Ms. Banks reviewed the above. There was some discussion regarding the purposes of B2 Zoning. There was no further discussion. Mr. Kelly made the motion to accept staff's recommendation. Mr. Sobol seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation.**

There being no further business the meeting adjourned at approximately 9:14 am.

# **CONSOLIDATED MOTION AGENDA**

# Metropolitan Sewerage District of Buncombe County Board Action Item - Right-of-Way Committee

COMMITTEE MEETING DATE: 9/23/2009

BOARD MEETING DATE: 10/21/2009

SUBMITTED BY: Tom Hartye, PE, General Manager  
PREPARED BY: Angel Banks, Right of Way Manager  
REVIEWED BY: Ed Bradford, PE, Director of CIP

**SUBJECT: Consideration of Compensation Budget –**

**Town Mountain Road 4" Main Rehabilitation, Project No. 2008012**

The attached Compensation Budget is based on current ad valorem tax values and follows the MSD approved formula.

**STAFF RECOMMENDATION: Approval of Compensation Budget.**

Ms. Banks explained the location of the project and that it consists of approximately 1700 lf of 8" DIP to replace existing 6" and 8" clay pipe which is undersized and in poor condition. Ms. Banks stated that there is less than 100 feet of pipe crossing private properties and the remainder is in the road, crossing through Town Mountain Road, Cogswood Road, Westview Road and Oak Park Road. There was no discussion. Mrs. Bryson made the motion to accept Staff's recommendation. Mr. Kelly seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION: Approval of Compensation Budget.**

COMMITTEE ACTION TAKEN	
Motion by: Jackie Bryson	To: XX Approve <input type="checkbox"/> Disapprove
Second by: Glenn Kelly	<input type="checkbox"/> Table <input type="checkbox"/> Send back to Staff
	<input type="checkbox"/> Other
BOARD ACTION TAKEN	
Motion by:	To: <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove
Second by:	<input type="checkbox"/> Table <input type="checkbox"/> Send back to Staff

**Town Mountain Road 4" Main Rehabilitation**

Project Number 2008182

**Compensation Budget**

09-Sep-09

Pin Number and Name

27 Pin	83 Pin	Acres	Parcel SF	Land Value	LV/SF	PE	PE Assd. Value	50% PE Assd. Value	TCE SF	TCE Assd. Return	10% Annl Return	Proj Time (Months)	TCE Rent Value	Total Comp. (Rounded)
	9649733057	0.06	2,613.60	\$11,900.00	\$4.55	188.00	\$855.40	\$427.70	427.00	\$1,942.85	\$194.29	4	\$64.76	\$492
	9649733095	0.09	3,920.40	\$12,100.00	\$3.09	585.00	\$1,807.65	\$903.83	394.00	\$1,217.46	\$121.75	4	\$40.58	\$944
	9649734021	0.09	3,920.40	\$48,200.00	\$12.29	553.00	\$6,796.37	\$3,398.19	384.00	\$4,719.36	\$471.94	4	\$157.31	\$3,555

<b>TOTALS:</b>	\$4,992
<b>Staff Contingency:</b>	\$5,000
<b>GM's Contingency</b>	\$5,000
<b>Amendment</b>	
<b>Total Budget:</b>	\$14,992

# Metropolitan Sewerage District of Buncombe County

## Board Action Item - Right-of-Way Committee

COMMITTEE MEETING DATE: 9/23/2009

BOARD MEETING DATE: 10/21/2009

SUBMITTED BY: Tom Hartye, PE, General Manager  
 PREPARED BY: Angel Banks, Right of Way Manager  
 REVIEWED BY: Ed Bradford, PE, Director of CIP

**SUBJECT: Consideration of Condemnation - Gladstone Road 4" Main, Project No. 2007010**

**PIN 9658.16-83-1371** – This property is an improved residential property. The owner's major concern is loss of buildable area on the property due to possible future plans for the addition of a garage. The sewer cannot be replaced in the same alignment due to a retaining wall. The proposed sewer was shifted to a clear area along the driveway.

The owner requested that the proposed sewer alignment be shifted further out of the driveway and closer toward the side property boundary. The engineer has shifted the alignment as much as possible toward the side property line also making efforts to preserve several large trees on the adjacent property.

The property is currently on the market and has a potential buyer. A meeting was held on site with the property owner, the buyer and our engineer to discuss the realignment of sewer. All parties are aware that the engineer has shifted the proposed alignment as far as possible. Additionally, the owner was ok with the original compensation being offered (\$2781) and understands that compensation will be adjusted according to the change in square footage if he agrees to the shifted alignment he requested. However, despite multiple contacts the owner has been non-responsive.

Total Contacts: 9

**STAFF RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation.**

Ms. Banks explained the above situation and further stated that owner will have plenty enough room to add a garage. Mr. Haner asked how many feet of sewerline was to be replaced on the property. Ms. Banks stated there was about 350-400 feet. There was some further discussion regarding the difficulty in further relocating the easement area. Mr. Haner asked when the project would begin. Ms. Banks stated that it would begin in 2013. Mr. Kelly made the motion to accept staff's recommendation. Mr. Sobol seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation.**

<b>COMMITTEE ACTION TAKEN</b>	
Motion by: Glenn Kelly	To: <input checked="" type="checkbox"/> Approve <input type="checkbox"/> Disapprove
Second by: Mike Sobol	<input type="checkbox"/> Table <input type="checkbox"/> Send back to Staff
	<input type="checkbox"/> Other
<b>BOARD ACTION TAKEN</b>	
Motion by:	To: <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove
Second by:	<input type="checkbox"/> Table <input type="checkbox"/> Send back to Staff
	<input type="checkbox"/> Other

# Metropolitan Sewerage District of Buncombe County

## Board Action Item - Right-of-Way Committee

COMMITTEE MEETING DATE: 9/23/2009

BOARD MEETING DATE: 10/21/2009

SUBMITTED BY: Tom Hartye, PE, General Manager  
 PREPARED BY: Angel Banks, Right of Way Manager  
 REVIEWED BY: Ed Bradford, PE, Director of CIP

**SUBJECT: Consideration of Condemnation – Sycamore Terrace PRP  
 Project No. 2007014**

**PIN 9654.10-35-4931** – This property is located along Sweeten Creek Road and is currently unimproved. The property owner's major concern is the loss of potential buildable area on the property due to the proposed permanent sewer easement area. The existing sewer is located along the northern boundary of this property within the NCDOT right of way and the proposed alignment had to be shifted further into the subject property due to utility conflicts in the road.

To lessen the impact of our easement the owner has been working with the adjacent owners to petition the city for rezoning of this corridor. The current commercial business zoning requires building along the road frontage, which is also the area of the proposed pipeline. Rezoning to highway business would allow building toward the rear of the lot with parking in front, which is a permitted use over MSD pipelines and easements. However, the property owner has yet to submit any zoning proposal to the city over the past 5 months of our negotiations.

The property owner was very pleased with the compensation being offered (\$7119) for the proposed easement areas on his property, so money is not the issue. Despite multiple contacts the owner has not moved forward to resolve the issues preventing him from signing.

Total Contacts: 9

**STAFF RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation.**

Ms. Banks reviewed the above. There was some discussion regarding the purposes of B2 Zoning. There was no further discussion. Mr. Kelly made the motion to accept staff's recommendation. Mr. Sobol seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation.**

<b>COMMITTEE ACTION TAKEN</b>	
Motion by: Glenn Kelly	To: XX Approve <input type="checkbox"/> Disapprove
Second by: Mike Sobol	<input type="checkbox"/> Table <input type="checkbox"/> Send back to Staff
	<input type="checkbox"/> Other
<b>BOARD ACTION TAKEN</b>	
Motion by:	To: <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove
Second by:	<input type="checkbox"/> Table <input type="checkbox"/> Send back to Staff
	<input type="checkbox"/> Other

## Metropolitan Sewerage District of Buncombe County

### BOARD ACTION ITEM

**BOARD MEETING DATE:** October 21, 2009

**SUBMITTED BY:** Tom Hartye, P.E. - General Manager

**PREPARED BY:** John Kiviniemi, Director of Water Reclamation

**SUBJECT: Adoption of Revised MSD Sewer Use Ordinance**

**BACKGROUND:** At the April 2009 meeting the MSD Board adopted a declaration of intent to adopt the revised MSD Sewer Use Ordinance. The Ordinance was sent out to the local governing bodies within the District for review & comment. Only one comment was received, from the City Of Asheville; the City had no concerns with the changes proposed for the SUO. In review, the Sewer Use Ordinance was last adopted in May of 2003. Since last approval of the Board, the Ordinance has undergone two changes. First, the State required local Pretreatment Programs to have a maximum civil penalty authority equal to the Secretary of the Department of Natural Resources (DENR). This change allowed Pretreatment Programs to issue civil penalties up to \$25,000 per violation per day. Secondly, The Streamlining Rule was published in the Federal Register by the EPA. This rule revised parts of the General Pretreatment Regulations (40 CFR Part 403). Streamlining was designed to reduce the overall regulatory burden of both the Industrial User (IU) and the Control Authority (MSD), without adversely affecting the environmental protection.

The changes, listed below, allow the Control Authority to focus oversight resources on IUs with the greatest potential for affecting MSD and the environment.

- Control Authorities may authorize an IU subject to categorical Pretreatment Standards to reduce sampling of a pollutant if the IU demonstrates that a given pollutant is neither present nor expected to be present in the discharge. [§§ 403.8(f)(2)(v) and 403.12]
- Control Authorities may authorize the use of equivalent concentration limits in lieu of mass limits for Categorical Industrial Users (CIUs) in certain industrial categories. [§ 403.6(c)(6)]
- Control Authorities may issue general control mechanisms to groups of Significant Industrial Users (SIUs) that are substantially similar. [§ 403.8(f)(1)(iii)]
- Control Authorities may reduce oversight of certain Categorical Industrial Users based on percentage of contribution to the POTW.
- Control Authorities may reduce oversight of certain Industrial Users that may be reclassified as Non-Significant Categorical Industrial Users (NCSIUs).

In addition to reducing the regulatory burden, Streamlining worked to improve the effectiveness of Pretreatment Programs. This was accomplished through:

- Providing greater flexibility in the use of certain sampling techniques.
- Allows in certain circumstances for CIUs' concentration-based categorical Pretreatment Standards to be expressed in equivalent mass limits. [§ 403.6(c)(5)]
- Clarifies that POTWs may use Best Management Practices (BMPs) as alternatives to numeric limits that are developed to protect the POTW, water quality, and sewage sludge.
- Clarifies the definition of significant noncompliance (SNC) as it applies to violations of instantaneous and narrative requirements, and late reports.
- Makes other miscellaneous changes designed to maintain consistency with the NPDES

regulations or to correct typographical errors.

**FISCAL IMPACT:** Limited to reproduction and postage costs.

**STAFF RECOMMENDATION:** For the MSD Board to adopt the revised MSD Sewer Use Ordinance.

BOARD ACTION TAKEN	
Motion by:	To: <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove
Second by:	<input type="checkbox"/> Table <input type="checkbox"/> Send back to staff
<input type="checkbox"/> Other:	



# Sewer Use Ordinance

Metropolitan Sewerage District  
of  
Buncombe County, North Carolina



THOMAS E. HARTYE, P.E.  
GENERAL MANAGER

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A RESOLUTION ADOPTING AN ORDINANCE FOR  
THE METROPOLITAN SEWERAGE DISTRICT  
OF BUNCOMBE COUNTY, NORTH CAROLINA  
TO REGULATE AND CONTROL  
DISCHARGE OF WASTEWATER INTO THE  
SEWERAGE SYSTEM AND ISSUANCE OF SEWER EXTENSION PERMITS  
BY THE METROPOLITAN SEWERAGE DISTRICT  
OF BUNCOMBE COUNTY, NORTH CAROLINA

BE IT RESOLVED BY THE DISTRICT BOARD OF THE METROPOLITAN SEWERAGE DISTRICT OF  
BUNCOMBE COUNTY, NORTH CAROLINA:

**That the District Board of the Metropolitan Sewerage District of Buncombe County, North  
Carolina does hereby adopt the following Ordinance:**

SEWER USE ORDINANCE  
OF THE  
METROPOLITAN SEWERAGE DISTRICT  
OF  
BUNCOMBE COUNTY, NORTH CAROLINA

## SECTION 1 GENERAL PROVISIONS

### Section 1.01 Purpose and Policy

This Sewer Use Ordinance is adopted pursuant to provisions of North Carolina General Statutes, Section 162 A-69, and Section 162 A-81. This Ordinance enables the Metropolitan Sewerage District (MSD) to comply with applicable State and Federal laws, including the Clean Water Act (33 United States Code §1251 et seq.), the General Pretreatment Regulations (40 CFR, Part 403) and North Carolina General Statutes, Chapter 143, Article 21. This Ordinance shall apply to all persons who are users or may become users of the sewerage system of the Metropolitan Sewerage District of Buncombe County, North Carolina. It is the purpose of this Ordinance to protect, preserve, and promote the public health and environment of the District.

The objectives of this Ordinance are:

- 1.01.01 To prevent the introduction of pollutants into the sewerage system that will interfere with the operation of the system or contaminate the resulting sludge;
- 1.01.02 To prevent the introduction of pollutants into the sewerage system, which will pass through the system, inadequately treated, into any waters of the State or otherwise, be incompatible with the sewerage system;
- 1.01.03 To promote reuse and recycling of industrial wastewater and sludges from the sewerage system;
- 1.01.04 To protect both sewerage system personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;
- 1.01.05 To provide for equitable distribution of the cost of operation, maintenance and improvement of the sewerage system; and
- 1.01.06 To ensure that the sewerage system complies with its NPDES or Collection System Permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the sewerage system is subject.
- 1.01.07 This Ordinance provides for the regulation of direct and indirect contributors to the sewerage system, through the issuance of permits to certain non-domestic users and through enforcement of general requirements for other users. Any user located outside the boundaries of MSD agrees to comply with the terms and conditions established in this Ordinance, as well as any permits, enforcement actions or orders issued hereunder.

The General Manager shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or imposed upon the General Manager may be delegated to other MSD personnel. By discharging wastewater into the municipal wastewater system, users located outside the District boundaries agree to comply with the terms, and conditions established in this Ordinance, as well as any permits, enforcement actions, or orders issued hereunder.

### Section 1.02 Abbreviations

The following abbreviations shall have the designated meanings:

- 1.02.01 **BOD** - Biochemical Oxygen Demand
- 1.02.02 **CFR** - Code of Federal Regulations
- 1.02.03 **COD** - Chemical Oxygen Demand
- 1.02.04 **°C** - Degrees Celsius
- 1.02.05 **°F** - Degrees Fahrenheit

1.02.06	<b>DENR</b>	-	(The) North Carolina Department of Environment and Natural Resources, Division of Water Quality
1.02.07	<b>EPA</b>	-	(The) U. S. Environmental Protection Agency
1.02.08	<b>l</b>	-	Liter.
1.02.09	<b>mg</b>	-	Milligram(s)
1.02.10	<b>mg/l</b>	-	Milligram(s) per Liter
1.02.11	<b>MSD</b>	-	(The) Metropolitan Sewerage District of Buncombe County, North Carolina
1.02.12	<b>NPDES</b>	-	National Pollutant Discharge Elimination System
1.02.13	<b>POTW</b>	-	Publicly Owned Treatment Works
1.02.14	<b>RCRA</b>	-	Resource Conservation and Recovery Act of 1976 as amended
1.02.15	<b>SIU</b>	-	Significant Industrial User
1.02.16	<b>TSS</b>	-	Total Suspended Solids
1.02.17	<b>U.S.C.</b>	-	United States Code

### Section 1.03 Definitions

The following words, terms and phrases, wherever used in this Ordinance, shall have the meanings respectively ascribed to them in this section unless the context plainly indicates otherwise or that a more restricted or extended meaning is intended.

- 1.03.01 **Act or "the Act"**: The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251, et seq.
- 1.03.02 **Accidental Discharge**: Any release of Wastewater, which, for any unforeseen reason, fails to comply with any prohibition or limitation in this Ordinance.
- 1.03.03 **Approval Authority**: The Director, the Division of Water Quality of North Carolina Department of Environment and Natural Resources or his designee (DENR).
- 1.03.04 **Authorized Representative of the Industrial User**: If the industrial user is a corporation, Authorized Representative shall mean:
- A. The president, secretary, or a vice-president of the corporation in charged of a principal business function, or any other person who performs similar policy or decision making functions for the corporation., or
  - B. The manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment decisions, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - C. A general partner or proprietor if the Industrial User is a partnership or proprietorship, respectively.
  - D. If the Industrial User is a Federal, State, or local government facility, an Authorized Representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility.
  - E. The individuals described in paragraphs (A) through (D) above may designate another person to be an Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to MSD.

- F. If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to the General Manager prior to or together with any reports to be signed by an Authorized Representative.
- 1.03.05 **Best Management Practice (BMP):** A practice or combination of practices that are determined to be the most effective and practicable means of reducing/controlling pollutants (including treatment requirements, operating procedures, schedules of activities, prohibition of practices, maintenance procedures, or other management practices).
- 1.03.06 **Biochemical Oxygen Demand or BOD:** The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five (5) days at 20°C (68°F) expressed in terms of weight and volume (mg/L).
- 1.03.07 **Building Sewer or House Connection:** The connecting pipe from a building, beginning five (5) feet outside the inner face of the building wall, to a sanitary sewer.
- 1.03.08 **Bypass:** The intentional or unintentional diversion of waste streams from any portion of a user's facility.
- 1.03.09 **Categorical Standard:** National Categorical Pretreatment Standard or Pretreatment Standard as defined in Subsection 1.03.39.
- 1.03.10 **Color:** Considered to be the true color of the light transmitted by a waste solution after removing suspended material including pseudocolloidal particles.
- 1.03.11 **Collection System Permit:** A permit issued by DENR to MSD for the operation and maintenance of a wastewater collection system, in accordance with the provisions of Article 21 of N.C.G.S. 143, as amended.
- 1.03.12 **Composite Sample or Twenty-Four Hour Sample:** A sample made by combining a number of grab samples collected over a defined period of time. A composite sample may be either a:
- A. **Flow Proportional Composite Sample:** A sample composed of sample aliquots combined in proportion to the amount of flow occurring at the time of their collection. Such samples may be composed of equal aliquots being collected after equal predetermined volumes of flow pass the sample point or of flow proportional grab sample aliquots being collected at predetermined time intervals so that at least eight (8) aliquots are collected per twenty-four (24) hours. The General Manager, or his designee, shall determine the number of samples necessary to ensure representative sampling.
- B. **Time Proportional Composite Sample:** A sample composed of equal sample aliquots taken at equal time intervals of not more than two hours over a defined period of time. Samples taken in accordance with the requirements of (A) or (B) above shall be taken in number sufficient to ensure representative sampling. The General Manager, or his designee, shall determine the number of samples necessary to ensure representative sampling.
- 1.03.13 **Combined Sewer:** A sewer receiving both surface runoff and wastewater.
- 1.03.14 **Constituents:** The specific compounds and components that comprise a wastewater.
- 1.03.15 **Control Authority:** The Metropolitan Sewerage District of Buncombe County, North Carolina.



- 1.03.16 **Cooling Water:** The wastewater discharged from any use such as air conditioning, cooling or refrigeration or to which the only Pollutant added is heat.
- 1.03.17 **Direct Discharge:** The discharge of treated or untreated wastewater directly to the waters of the State of North Carolina.
- 1.03.18 **Domestic Waste:** All liquid and waterborne pollutants as defined in Subsection 1.03.50 exclusive of unpolluted wastewater as defined in Subsection 1.03.80 or wastewater or process wastes from operations of Industrial Users as defined in Subsection 1.03.32.
- 1.03.19 **The District:** The Metropolitan Sewerage District of Buncombe County, North Carolina (MSD).
- 1.03.20 **District Board:** The District Board of the Metropolitan Sewerage District of Buncombe County, North Carolina.
- 1.03.21 **Environmental Protection Agency or EPA:** The U. S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Administrator or other duly authorized official of said Agency.
- 1.03.22 **Fact Sheet:** Permit Synopsis as defined in Subsection 1.03.46.
- 1.03.23 **FOG:** Fats, Oils, Grease and related substances of similar characteristics.
- 1.03.24 **Flammable:** Shall be as defined in Subsection 5.03.01 and 02.
- 1.03.25 **Food Service Establishment:** A facility discharging kitchen or food preparation wastewaters such as restaurants, motel, hotels, cafeterias, delicatessen, meat cutting-preparation, bakeries, hospitals, schools, bars, or any other facility which in the District's discretion, may require a grease trap installation by virtue of its operation.
- 1.03.26 **General Manager:** The Chief Administrative Officer of MSD who is charged with administrative control of all operations of MSD and is responsible directly to the District Board. As used herein, it may also include any other MSD employee delegated to act for MSD by the General Manager or by the District Board.
- 1.03.27 **Grab Sample:** A sample which is taken from a Waste stream on a one-time basis and collected over a period of time not to exceed fifteen (15) minutes with no regard to the flow in the Waste stream and without consideration of time.
- 1.03.28 **Grease Interceptor:** A device utilized to effect the separation of grease and oils in wastewater effluent from a food service establishment. An interceptor is a vessel of the outdoor or underground type normally of the 1,000-gallon capacity or more, constructed of concrete, steel, or fiberglass.
- 1.03.29 **Grease Trap:** A device utilized to effect the separation of grease and oils in wastewater effluent from a food service establishment. A trap is an under-the-counter" or floor package unit, which is typically less than 100-gallons, constructed of steel or fiberglass.
- 1.03.30 **Holding Tank Waste:** Any waste from holding tanks, including by way of example but not limitation, vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.
- 1.03.31 **Indirect Discharge or Discharge:** The discharge or the introduction from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act, (33 U.S.C. 1317), into the sewerage system (including holding tank waste discharged into the sewerage system).

- 1.03.32 **Industrial User:** Any user of the sewerage system who discharges industrial waste, as that term is defined in Subsection 1.03.33, into the sewerage system.
- 1.03.33 **Industrial Waste:** The liquid and waterborne pollutants resulting from processes or operations generated by industrial and commercial establishments.
- 1.03.34 **Infiltration:** The water entering sanitary sewers and building sewers from the soil through defective joints, broken or cracked pipe, improper connections, manhole walls or other defects in sanitary sewers as defined in Subsection 1.03.62 or building sewers as defined in Subsection 1.03.07. Infiltration does not include and is distinguished from Inflow.
- 1.03.35 **Inflow:** The water discharged into sanitary sewers and building sewers from such sources as down spouts, roof leaders, stormwater drainage systems, cellar and yard area drains, foundation drains, commercial and industrial discharges of unpolluted wastewater as defined in Subsection 1.03.80, drains from springs and swampy areas, etc. it does not include and is distinguished from Infiltration.
- 1.03.36 **Interference:** The inhibition or disruption of the wastewater treatment processes, operations, or its sludge process, use or disposal which causes or contributes to a violation of any requirement of a POTW's NPDES Permit or Collection System Permit, or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with Section 405 of the Act (33 U.S.C. 1345) or any criteria, guidelines or regulations developed pursuant to the Solid Waste Disposal Act (SWDA, 42 U.S.C. 6901 et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any State sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.
- 1.03.37 **Local Limit:** MSD's specific limits for appropriate pollutants of concern for pretreatment requirement as defined in Subsection 1.03.53.
- 1.03.38 **Medical Waste:** Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and other wastes that may cause Interference.
- 1.03.39 **National Categorical Pretreatment Standard, Categorical Pretreatment Standard or Pretreatment Standard:** Regulations containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. §1317) which apply to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.
- 1.03.40 **National Pollutant Discharge Elimination System Permit or NPDES Permit:** A permit issued pursuant to Section 402 of the Act (33 U.S.C. §1342), or pursuant to N.C.G.S. 143-215.1 by the state under delegation from EPA.
- 1.03.41 **New Source:**
- A. Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
- (i) The building, structure, facility or installation is constructed at a site at which no other source is located; or

- (ii) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - (iii) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
- B. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (A)(ii) or (A)(iii) of this section, but otherwise alters, replaces, or adds to existing process or production equipment.
- C. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
- (i) Begun, or caused to begin as part of a continuous onsite construction program:
    - a. Any placement, assembly, or installation of facilities or equipment; or
    - b. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - (ii) Entered into a binding contractual obligation for the purchase of facilities or equipment, which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.
- 1.03.42 **Non-contact cooling water:** Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- 1.03.43 **Discharge Permit:** A permit issued by the State pursuant to G.S. 143-215.1(d) for a waste, which is not discharged directly to surface waters of the State, or for a wastewater treatment works, which does not discharge directly to surface waters of the State.
- 1.03.44 **Normal Waste:** A waste having average concentrations of 300 mg/L of BOD or less and 300 mg/L of Total Suspended Solids or less as determined by samples taken before entering the sewerage system.
- 1.03.45 **Pass Through:** A discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the POTW's NPDES Permit or Non-Discharge Permit or a water quality standard.
- 1.03.46 **Permit Synopsis:** A brief summary of an application and permit containing the following:
- A. Quantitative description of discharge, and;
  - B. Basis of Pretreatment limitations.
- 1.03.47 **Person:** Any individual, firm, company, association, corporation, governmental agency, board, commission, or municipal corporation other than MSD.

- 1.03.48 **pH:** A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- 1.03.49 **Pollution:** The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of water, land, or air.
- 1.03.50 **Pollutant:** Any "waste" as defined in N.C.G.S. 143-213 (18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).
- 1.03.51 **Pretreatment:** The lawful reduction in the amounts of pollutants, the elimination of pollutants, the alteration of the nature of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to discharging or otherwise introducing such pollutants into the sewerage system.
- 1.03.52 **Pretreatment Program:** The program for the control of pollutants introduced into the POTW from non-domestic sources developed by the MSD in compliance with 40 CFR 403.8 and approved by the Approval Authority as authorized by N.C.G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.
- 1.03.53 **Pretreatment Requirement:** Any substantive or procedural requirement related to Pretreatment other than a National Categorical Pretreatment Standard imposed on an Industrial User.
- 1.03.54 **Pretreatment Standard:** Prohibited discharge standards, Categorical Standards, and Local Limits.
- 1.03.55 **Private Wastewater Disposal System:** Any facilities for wastewater treatment and disposal not maintained and operated by MSD.
- 1.03.56 **Process Waste:** Waste resulting from or as a result of any industrial process or operation.
- 1.03.57 **Properly Shredded Garbage:** The organic waste resulting from the preparation, cooking and dispensing of foods that have been shredded to such degree that all particles will be carried freely under flow conditions normally prevailing in Sanitary Sewers with no particle being greater than ½ inch in any dimension.
- 1.03.58 **Public Sewer:** A sewer, which is controlled by a governmental agency or entity or public utility.
- 1.03.59 **Publicly Owned Treatment Works (POTW) or Sewerage System:** A treatment works as defined by Section 212 of the Act, (33 U.S.C. §1292). This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this Ordinance, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the MSD who are, by contract or agreement with the MSD, or in any other way, Users of the MSD's POTW.
- 1.03.60 **Receiving Stream:** That body of water, stream, or watercourse receiving the discharge from a Wastewater Treatment Plant or that body of water, stream, or watercourse formed by the effluent from a Wastewater Treatment Plant.
- 1.03.61 **Sanitary Sewage:** Sewage excluding process waste from industrial users and not exceeding the constituent levels established in Subsection 5.04.05(A).

- 1.03.62 **Sanitary Sewer:** A public sewer controlled by a governmental agency or entity including MSD that carries liquid and waterborne waste from residences, commercial buildings, industrial plants or institutions; together with minor quantities of ground and surface waters that are not intentionally admitted.
- 1.03.63 **Septage:** Liquid and solid waste pumped from a sanitary sewage septic tank or cesspool.
- 1.03.64 **Sewage:** A combination of water-carried waste from residences, commercial buildings, and Industrial Users.
- 1.03.65 **Sewer:** A pipe or conduit for carrying wastewater.
- 1.03.66 **Sewerage System:** All facilities for collecting, pumping, transporting, treating and disposing of wastewater.
- 1.03.67 **Significant Industrial User or SIU:** Any industrial user discharging to the sewerage system who:
- A. Has an average daily process wastewater flow of 25,000 gallons or more, or;
  - B. Has a wastewater discharge which is greater than five percent (5%) of the capacity (i.e.; allowable load) of the MSD Wastewater Treatment Plant, or;
  - C. Is required to meet a National categorical pretreatment standard, or;
  - D. Is found by MSD, the Approval Authority, or EPA to have significant impact, either singly or in combination with other contributing industries, on the sewerage system, the quality of sludge, the system's effluent quality, or air emissions generated by the sewerage system or compliance with any pretreatment standards or requirements.
- 1.03.68 **Significant Noncompliance or Reportable Noncompliance:**
- A. Chronic violations defined as sixty-six percent or more (66%) of measurements exceeding the same daily maximum limit or the same average limit by any amount in a six (6) month period, or;
  - B. Technical review criteria violations for BOD, TSS, fats, oil and grease defined as thirty-three percent (33%) or more of measurements equal to or exceeding the same daily maximum limit, or the same average limit by a factor of 1.4 times the same daily maximum limit in a six (6) month period, or;
  - C. Technical review criteria violations for all pollutants other than those listed in Subsection 1.03.68(B) defined as thirty-three percent (33%) or more of measurements equal to or exceeding the same daily maximum limit, or the same average limit by a factor of 1.2 times the same daily maximum limit in a six (6) month period, or;
  - D. Interference with wastewater treatment processes or Wastewater Treatment Plant performance or which endangers the health of Wastewater Treatment Plant personnel or the public. Such interference shall be considered to be in Significant Noncompliance whether caused alone or in combination with other discharges, or;
  - E. Imminent endangerment to human health or welfare or to the environment or has resulted in Emergency Enforcement Actions being initiated in accordance with provisions of Subsection 14.01.04, or;
  - F. Violations of compliance schedule milestones contained in a local control mechanism or enforcement order, for starting construction, completing construction, or attaining final compliance by ninety (90) days or more after the schedule date, or;
  - G. Failure to provide reports for compliance schedules, self-monitoring data, baseline monitoring reports, ninety (90) day compliance reports or any other report which

may be required under the Ordinance, Federal or State law or regulations, within thirty (30) days from the due date, or;

H. Failure to accurately report noncompliance, or;

I. Any other violation or group of violations that the Control Authority considers to be significant.

1.03.69 **Slug Load or Discharge:** Any discharge at a flow rate or concentration which has a reasonable potential to cause interference or pass-through, or in any other way violates the POTW's regulations, local limits, Industrial User Permit conditions, adversely affects the operation of the sewerage system or the ability of the POTW to meet applicable water quality objectives. This can include, but is not limited to, spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharge that can cause a violation of the prohibited discharge standards in Section 5 of this Ordinance.

1.03.70 **Spill Control Response Plan:** A written procedure adopted by the User to address accidental spills or leaks of chemicals.

1.03.71 **Standard Industrial Classification or SIC:** A classification of an industry based on its product or service as defined in the Standard Industrial Classification Manual, Executive Office of the President, Office of Management and Budget, 1987.

1.03.72 **Standard Methods:** The analytical procedures set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater published by the American Public Health Association or "EPA Methods for Chemical Analysis of Water and Wastes." All procedures must conform to 40 CFR Part 136.

1.03.73 **State:** (The) State of North Carolina.

1.03.74 **Storm Sewer or Storm Drain:** A sewer which carries storm and surface waters and drainage but which excludes sanitary sewage and polluted industrial wastewater.

1.03.75 **Storm Water:** Any flow occurring during or following any form of natural precipitation and resulting there from.

1.03.76 **Strength of Waste:** The concentration of pollutants or substances contained in a wastewater.

1.03.77 **Total Suspended Solids or TSS:** The total solid matter that either floats on the surface of or is suspended in wastewater and which is removable by laboratory filtration.

1.03.78 **Toxic Pollutant:** Any pollutant or combination of pollutants listed as toxic in Federal or State law or regulations promulgated by EPA or the State of North Carolina.

1.03.79 **Twenty-Five Percent Rule:** All grease traps and grease interceptors shall be cleaned when the accumulation of floatable FOG has reached a depth equal to and no greater than 25% of the total operating vessel depth.

**FOR EXAMPLE:** If the total depth (TD) of your GI is 40 inches, the maximum allowable depth (d) of floatable grease equals 40 inches multiplied by 0.25 or  $d = TD \times 0.25 = 10$  inches. Therefore, the maximum allowable depth of floatable grease in your vessel should not exceed ten (10) inches.

1.03.80 **Unpolluted Wastewater:** Any wastewater, which is substantially free of pollutants and is discharged from the following:

A. Rain downspouts and drains, or;

- B. Footing drains, or;
- C. Storm Drains, or;
- D. Cooling Water systems, or;
- E. Aquifer restoration or well development activities.

Unpolluted Wastewater shall contain, by definition, **none** of the following:

- A. BOD in excess of 10 mg/L, or;
- B. Total Suspended Solids in excess of 10 mg/L, or;
- C. Free or emulsified greases or oils, or;
- D. Acids or alkalies, or;
- E. Phenols or other substances imparting taste or odor to Receiving Stream, or;
- F. Toxic or poisonous substances, or;
- G. Noxious or odorous gases, or;
- H. Temperature which exceeds 66°C (151°F) at its introduction into a storm sewer or which exceeds 40°C (104°F) at its introduction into a receiving stream.
- I. Unpolluted wastewater shall also mean any wastewaters judged by DENR to be admissible to Watercourses under the jurisdiction of DENR and in accordance with the standards of water quality established by DENR for the particular watercourse into which such unpolluted wastewater is to be discharged.

- 1.03.81 **Upset of Pretreatment Facilities:** An exceptional incident in which there is an unintentional and temporary noncompliance with the effluent limitations of the user's permit because of factors beyond the reasonable control of the User. An upset does not include noncompliance caused by operational error, improper design or inadequate treatment facilities, lack of preventive maintenance, or careless or improper operations.
- 1.03.82 **User:** Any person or facility who discharges, causes or permits the discharge of wastewater into the sewerage system.
- 1.03.83 **Waste:** Any physical, chemical, biological, radioactive or thermal material which may be a solid, liquid or gas and which may be discarded from any industrial, municipal, agricultural, commercial or domestic activity.
- 1.03.84 **Wastewater:** Sewage.
- 1.03.85 **Wastewater Treatment Plant:** The facilities of the District for treating and disposing of wastewater.
- 1.03.86 **Watercourse:** A channel in which a flow of water occurs either continuously or intermittently.
- 1.03.87 **Waters of the State:** All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.

#### Section 1.04 Inclusion in Definitions

Definitions include both the singular and the plural and all pronouns include both the singular and the plural and cover all genders.

**SECTION 2****USE OF PUBLIC SEWERS REQUIRED****Section 2.01 Discharge of Untreated Wastewater Prohibited**

Within the boundaries of the District, it shall be unlawful for any person to discharge to any outlet, other than a sanitary sewer or approved septic system, any domestic or industrial waste except where suitable treatment has been provided in accordance with provisions of this Ordinance or where an appropriate NPDES Permit has been obtained.

**Section 2.02 Use of Sanitary Sewers**

The owner(s) of all houses, buildings or properties situated within the District and abutting on any street, alley or right-of-way in which there is now located or may in the future be located abutting said property a sanitary sewer of the District is hereby required at the owner(s)' expense to connect such facilities directly with the sanitary sewer in accordance with provisions of this Ordinance within ninety (90) days after being directed to do so by MSD provided that said sanitary sewer abuts the property; and the connection of such facilities is maintained in accordance with the provisions of this Ordinance. The owner is not required to connect such facilities directly with the sanitary sewer if:

- 2.02.01 The house, building or property in which the toilet or other facilities necessary for the discharge of Domestic or Industrial Waste is farther than 300 feet from the sanitary sewer, or;
- 2.02.02 Connection is technically unfeasible. Technical feasibility shall be determined by MSD, or;
- 2.02.03 An existing, properly functioning septic tank system located on the property is being used by the owner to properly treat waste. This exclusion shall not be available if, in order to obtain or keep valid Health Department approval, it becomes necessary to install a new septic tank or field or perform major repair to the existing tank or field in order to maintain a properly functioning system.



**SECTION 3****PRIVATE WASTEWATER DISPOSAL****Section 3.01 Holding Tank Waste**

Holding Tank Waste, Septage, and any other waste from Private Wastewater Disposal Systems within the District shall be discharged into the sewerage system only under the following conditions:

- 3.01.01 Persons owning or operating vacuum-pump trucks or trucks hauling septage or other liquid waste transport trucks shall not discharge wastewater directly or indirectly from such trucks into the sewerage system unless such persons shall first have applied for and received permits from MSD. All applicants for such permits shall complete such forms as required by MSD, pay appropriate fees and agree in writing to abide by the provisions of this Ordinance and any special conditions or regulations established by MSD. The owners or operators of such vehicles shall affix and display their permit numbers on the sides of vehicles used for such purposes. Such permits shall be valid for a period of five (5) years from date of issuance, provided that such permits shall be subject to revocation by MSD for violation of any provision of this Ordinance or reasonable regulation established by MSD. Such permits shall be limited to the discharge of sanitary sewage containing no waste from commercial grease traps or industrial waste. The General Manager shall designate the locations and times where such trucks may discharge, and may refuse to accept any truckload of waste in his absolute discretion where he determines that the waste could interfere with the effective operation of the sewerage system.
- 3.01.02 No person shall discharge any other holding tank waste or any other waste, including industrial waste, into the sewerage system unless he shall have applied for and has been issued a permit by MSD. Unless otherwise allowed under the terms and conditions of the permit, a separate permit must be secured for each separate discharge. The permit shall state the specific location of discharge, the time of day the discharge is to occur, the volume of the discharge, and shall limit the wastewater constituents and characteristics of the discharge. Such User shall pay any applicable charges or fees and shall comply with all conditions of the Permit issued by MSD. The discharge of hazardous waste, as defined in Section 1004 of RCRA as codified in 40 CFR Part 261, into a public sewer or to the headworks of a MSD Wastewater Treatment Plant by truck, rail or vessel is prohibited.
- 3.01.03 Notwithstanding any of the foregoing, no holding tank waste, septage or any other waste from outside the District shall be discharged directly or indirectly into the sewerage system from vacuum-pump, septage hauling trucks or other liquid waste transport trucks, provided, however, that the General Manager may, in his absolute discretion, permit the discharge of such waste by agreement and in accordance with Subsections 3.01.01 or 3.01.02.
- 3.01.04 No person shall operate a dumping station for the discharge of sanitary sewage from recreation vehicles into the sewerage system unless the User of the dumping station shall have first applied for and received a permit from MSD. All applicants for such permits shall complete such forms as required by MSD, pay appropriate fees and agree in writing to abide by the provisions of this Ordinance and any special conditions or regulations established by the District Board. These permits shall be issued only for approved facilities designed to receive sanitary sewage only.

**Section 3.02 Additional Requirements**

Nothing in this section shall be construed to free waste haulers from additional requirements that may be imposed by other municipal or state agencies.

**SECTION 4****WASTEWATER DISCHARGE PERMITS****Section 4.01 Unauthorized Connections to Sewerage System**

No person(s), shall uncover, make any type of connection with or opening into, use, alter, or disturb the sewerage system without first obtaining written approval from MSD.

**Section 4.02 Permits to Discharge Industrial Waste for New Sources**

Any person who proposes to originate the discharge of any industrial waste for the first time into the sewerage system or who proposes to make a significant change in the character or volume of any industrial waste theretofore discharged into the sewerage system:

- 4.02.01 Shall apply to MSD for a Permit to Discharge Industrial Waste on a form furnished by MSD a minimum of one hundred and eighty (180) days prior to the proposed date to originate this discharge into the MSD Sewerage System. The application shall include at least the following information:
- A. Name, mailing address, and location address;
  - B. Standard Industrial Classification (SIC) codes for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated;
  - C. Analytical data on wastewater constituents and characteristics including but not limited to those mentioned in Section 5 of this Ordinance, any of the priority pollutants (Section 307(a) of the Act) which the applicant knows or suspects are present in the discharge as determined by a reliable analytical laboratory, and any other pollutant of concern to the POTW; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to Section 304(g) of the Act and contained in 40 CFR, Part 136, as amended and as required in Section 10.09;
  - D. Time and duration of the indirect discharge;
  - E. Average daily and 30-minute peak wastewater flow rates, including daily, monthly and seasonal variations if any;
  - F. Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow and appurtenances by the size, location and elevation;
  - G. Description of activities, facilities and plant processes on the premises including all materials which are or could be accidentally or intentionally discharged;
  - H. Where known, the nature and concentration of any pollutants in the discharge which are limited by local, State, or Federal Pretreatment Standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the User to meet applicable pretreatment standards;
  - I. If additional pretreatment and/or operation/maintenance will be required to meet the pretreatment standards, the shortest schedule by which the User will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
    - (i) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the

applicable pretreatment standards. No increment in the schedule shall exceed nine (9) months.

(ii) No later than 14 days following each date in the schedule and the final date for compliance, the User shall submit a progress report to the General Manager including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the User to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the General Manager.

- J. Each product produced by type, amount, process or processes and rate of production;
- K. Type and amount of raw materials processed (average and maximum per day);
- L. Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
- M. If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H .0908(a), as outlined in Section 10.02 of this Ordinance.
- N. Any other information as may be deemed by the General Manager to be necessary to evaluate the permit application.

4.02.02 The application shall be signed by the current Authorized Representative as defined in Subsection 1.03.04, with any information, which may have been furnished by the applicant to any other governmental agency and by such other plans or other data as the General Manager, may require for purposes of determining whether conditions are met as specified in Section 4.06. and shall contain the following statement:

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for violations."*

4.02.03 **Application Review and Evaluation**

- A. The General Manager will evaluate the data furnished by the User and may require additional information.
- B. The General Manager is authorized to accept applications for MSD and shall refer all applications to pretreatment staff for review and evaluation.
- C. Within thirty days of receipt, the General Manager or pretreatment staff shall acknowledge and accept the complete application, or if not complete, return the application with a request for the additional information necessary to evaluate the application.

4.02.04 **Tentative Determination and Draft Permit**

- A. The General Manager or Pretreatment staff will review the application, conduct an on-site inspection of the significant industrial User, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial User permit.
- B. If pretreatment staff decides to issue a permit, the permit shall include the following in writing
  - (i) proposed discharge limitations for pollutants proposed to be discharged;

- (ii) a proposed schedule of compliance including interim dates and requirements for meeting the proposed limits; and
- (iii) a brief description of any other proposed special conditions, which will have significant impact upon the discharge

4.02.05 **Permit Synopsis**

A fact sheet providing a brief synopsis of the application shall be prepared by the POTW staff for submission to the applicant and the approval authority and shall be made available to the public upon request. The contents of such fact sheets shall include at least the following information:

- A. a sketch and detailed description of the industrial facilities and pretreatment facilities including the location of all points of discharge to the POTW and all established compliance monitoring points.
- B. a quantitative description of the discharge described in the application, which includes at least the following:
  - (i) the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
  - (ii) the actual average daily discharge in pounds per day of any limited pollutant and any pollutant identified in the application as known or suspected present; and,
  - (iii) the basis for the pretreatment limitations including the documentation of any calculations in applying categorical pretreatment standards.

4.02.06 **Final Action on Significant Industrial User Application**

- A. The General Manager shall take final action on all applications no later than 90 days following receipt of a complete application.
- B. The General Manager is authorized to:
  - (i) issue a Significant Industrial User permit containing such conditions as are necessary to effectuate the purposes of this Ordinance and N.C.G.S. 143-215.1;
  - (ii) issue a Significant Industrial User permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
  - (iii) modify any permit upon not less than 60 days notice and pursuant to Section 4.10 of this Ordinance;
  - (iv) revoke any permit pursuant to Subsection 14.01.05 of this Ordinance;
  - (v) suspend a permit pursuant to Subsection 14.01.05 of this Ordinance;
  - (vi) deny a permit application when in the opinion of the General Manager such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.

4.02.07 **Hearings**

An applicant whose permit is denied, or is granted subject to conditions the applicant deems unacceptable, shall have the right to an adjudicatory before a Hearing Officer designated by the General Manager. The applicant must make written demand to the General Manager within thirty days of receipt of Significant Industrial User permit. The written demand must identify the specific provisions in the permit to be contested and must be mailed or delivered to MSD. Unless such written demand is made within thirty days of receipt of the proposed permit, the permit shall be final. Any hearing will be held in accordance with the procedures set forth in Section 14.03 of this Ordinance.

4.02.08 **Permit Conditions**

The General Manager shall have the authority to grant a permit with such conditions, as he believes necessary to achieve the purposes of this Ordinance and N. C. Gen. Stats. 143-215.1 Wastewater permits shall contain at least the following;

- A. a statement of duration (in no case more than five years);
- B. a statement of non-transferability;
- C. applicable effluent limits based on categorical standards or local limits or both;
- D. applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type.
- E. requirements for notifying the POTW in the event of an accidental discharge or slug load pursuant to Section 6 and 7 of this Ordinance;
- F. requirements to implement a Plan or other controls for prevention of accidental discharges and/or slug loads if determined by the General Manager to be necessary for the User
- G. requirements for immediately notifying MSD of any changes at the User's facility affecting the potential for spills and other accidental discharges, or slug load;
- H. a statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.
- I. Limits on average and maximum wastewater constituents and characteristics. The General Manager may impose mass limitations on Users who are using dilution to meet applicable Pretreatment Standards or requirements or in other cases where the imposition of mass limitations is appropriate.
- J. Limits on average and maximum rates and time of discharge or requirements for flow regulation and equalization.
- K. Requirements for installing and maintaining inspection and sampling facilities.
- L. Compliance schedule (if applicable).
- M. Requirements for submitting technical reports or discharge reports to MSD pursuant to Section 10 of this Ordinance.
- N. Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by MSD and affording MSD access thereto.
- O. Requirements for notifying MSD of any new introduction of wastewater constituents or any significant change in the volume or character of the wastewater constituents being introduced into the sewerage system.
- P. Other conditions as deemed appropriate by MSD to ensure compliance with this Ordinance and applicable law and regulations.

The Industrial User shall not discharge into the sewerage system until a Permit to Discharge Industrial Waste has been issued by MSD.

**Section 4.03 Significant Changes in Waste Discharge**

A significant change in the character or volume of waste, for purposes of Section 4.02, shall be deemed to be proposed if:

- 4.03.01 Substances, compounds and elements not previously constituting any part of a user's waste are to be introduced into such Waste, or;
- 4.03.02 If the average concentration of any substance, compound or element in the waste or average volume proposed to be discharged will increase by twenty-five percent (25%) or more over that for which the permit had been issued, or;

- 4.03.03 If the change in character or volume of the waste will change the user's classification from Industrial User to Significant Industrial User as defined in Subsection 1.03.67.

#### **Section 4.04 Permits to Discharge Industrial Waste for Existing Industrial User**

Any User, who is operating within the District and is classified as an Industrial User within the meaning of Subsection 1.03.32 may continue such discharge until notified by the General Manager in writing that a permit will be required and until an application has been submitted to and denied by the General Manager in accordance with the provisions of Section 4.02.

- 4.04.01 The General Manager shall issue written notices to existing industrial users specifying the time within which an existing industrial user shall file an Application for a Permit.
- 4.04.02 Within the time limit specified in Subsection 4.04.01, the existing industrial user shall file the required application, signed by the current Authorized Representative as specified in Subsection 1.03.04, together with any other information as described in Section 4.06. The Application shall contain the following statement:

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for violations." and;*

*Failure to file within the specified time shall constitute an unauthorized use of the sewerage system. The General Manager, within one hundred and eighty (180) days, must deny the required application or issue a draft of the proposed permit.*

- 4.04.03 The existing industrial user shall have thirty (30) days in which to comment on the draft permit after which the permit will be issued or denied.
- 4.04.04 An existing industrial user may continue to discharge, only after complying with the requirement to file an Application for a Permit, unless and until receipt by the applicant of a written notice specifying the reasons for denial of a permit and specifying what remedial action, if any, must be taken to qualify the applicant for a permit. The denial of a permit may be appealed in accordance with Subsection 14.03.01 of this Ordinance
- 4.04.05 In the event that the applicant is denied a Permit or feels that the conditions of a Permit are unacceptable, the applicant shall have the right to contest the denial or the conditions of the Permit in accordance with the provisions of Section 14.03 of this Ordinance.

#### **Section 4.05 Discharge Prohibited Where Permits Denied**

In any case where a final determination has been made denying a permit, it shall be unlawful for any person so denied a permit to discharge industrial waste into the sewerage system.

**Section 4.06 Conditions for Issuing or Renewing Permits**

A Permit to Discharge Industrial Waste will be issued or renewed by MSD only when it has been determined that:

- 4.06.01 Sewer capacity is available at the proposed point of discharge for receiving the industrial waste, and;
- 4.06.02 The waste being discharged or proposed to be discharged is amenable to treatment by the processes employed in the District's Wastewater Treatment Plant(s) and will not impair the ability of MSD to comply with the water quality standards and effluent limitations established by the State or Federal regulatory agencies, and;
- 4.06.03 The waste being discharged or proposed to be discharged will not cause damage to the sewerage system or create a public nuisance or threaten public health and;
- 4.06.04 The concentrations of substances, compounds and elements in the waste being discharged or proposed to be discharged do not exceed the limits established by MSD or State or Federal authorities, and;
- 4.06.05 Where the wastewater contains or may contain any substances, compounds or elements controlled or limited by this Ordinance, an adequate program of self-monitoring of flow and wastewater characteristics will be established and maintained by the user affected by this Ordinance to assure that the discharge meets the requirements of this Ordinance and any permit conditions. The frequency and nature of the analyses shall be commensurate with the nature and volume of the waste discharged, and shall be as specified in the Permit to Discharge Industrial Waste.

**Section 4.07 Permits for Industries Subject to National Categorical Pretreatment Standards**

Any User subject to a newly promulgated National Categorical Pretreatment Standard shall reapply for a Permit to Discharge Industrial Waste within one hundred eighty (180) days after the effective date of the applicable National Categorical Pretreatment Standard. Permits to Discharge Industrial Waste of users subject to such standards shall be issued or reissued in compliance with such standards within the time frames prescribed by such standards.

**Section 4.08 Permit Conditions and Duration**

A Permit to Discharge Industrial Waste shall be issued as follows:

- 4.08.01 An Application for Permit to Discharge Industrial Waste and all reports or information submitted pursuant to the requirements of such permit must be signed and certified by an Authorized Representative of the User.
- 4.08.02 A Permit to Discharge Industrial Waste for an industrial user, not classified as a SIU in accordance with Subsection 1.03.67, shall remain in effect for a specified time period, not to exceed five (5) years.
- 4.08.03 A Permit to Discharge Industrial Waste for a SIU shall be issued for a specified time period, not to exceed five (5) years. The User shall apply for permit re-issuance a minimum of one hundred and eighty days (180) days prior to the expiration of the user's existing permit.
- 4.08.04 The terms and conditions of a permit may be modified by MSD during the term of the Permit. A User shall be informed of any modifications in his permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

- 4.08.05 A Permit to Discharge Industrial Waste does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.
- 4.08.06 The provisions of a Permit to Discharge Industrial Waste are severable and, if any provision of such permit or the application of any provision of such permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of such permit shall not be affected thereby.

#### **Section 4.09 Permit Transfers**

A Permit to Discharge Industrial Waste is issued to a specified user for a specific operation. A permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation without the written approval of MSD. Any User proposing to transfer a permit must apply to MSD, in writing, at least forty-five days prior to the effective date of the proposed transfer. The application must include the reason for the transfer and the name, address and contact information of the proposed transferee. If the proposed transfer is "Confidential Trade Secret," it shall be so marked on the application, and MSD shall keep the information confidential pending the transfer. MSD may ask any succeeding User to agree in writing to comply with the terms and conditions of the existing Permit. The written notification must include the following:

- 4.09.01 States that the new owner and/or operator have no immediate intent to change the facility's operations and processes;
- 4.09.02 Identifies the specific date on which the transfer is to occur; and
- 4.09.03 Acknowledges full responsibility for complying with the existing industrial wastewater discharge permit.

Failure to provide advance notice of a transfer, in accordance with this section, renders the industrial wastewater discharge permit void as of the date of facility transfer.

#### **Section 4.10 Permit Modification**

Modifications of Permits shall be subject to the same procedural requirements as the issuance of permits except as listed herein. Changes or new conditions in the permit shall include a reasonable time schedule for compliance. The following changes may be done administratively by the General Manager:

- 4.10.01 Change in ownership of the discharge when no other change in the permit is indicated;
- 4.10.02 A single modification of any compliance schedule where the compliance schedule itself is not in excess of four months and
- 4.10.03 Modifications of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.

Within (9) nine months of the promulgation of a National Categorical Pretreatment Standard, the Permit to Discharge Industrial Waste of such user shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for wastewater discharge permit as required by Section 4.02 of this Ordinance, the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable National Categorical Pretreatment Standard.

A request for a permit modification by the permittee shall constitute a waiver of the 60 day notice required by N.C. Gen. Stats. 143-215.1(b).



**SECTION 5****EXCLUDED WASTES****Section 5.01 General Prohibitions**

The following general prohibitions apply to all users of the sewerage system:

- 5.01.01 All users shall take all reasonable steps to prevent any discharge in violation of the user's permit and this Ordinance. Pollutants, substances, wastewater, or other wastes prohibited by this Ordinance shall not be processed or stored in such a manner that they could be discharged to the sewerage system.
- 5.01.02 No user shall increase the use of potable or process water or in any other way attempt to dilute the discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the user's permit.
- 5.01.03 No user shall contribute or cause to be contributed, directly or indirectly, any pollutant, or wastewater, which causes interference or pass through with the operation or performance of the sewerage system.
- 5.01.04 All users operating food service establishments may, in the discretion of the General Manager be required to provide fats, oils & grease (FOG) interceptors or traps for the proper handling of liquid waste containing FOG, or other harmful constituents. All interceptors or traps shall be of a type and capacity approved by MSD, and shall be located so as to be readily and easily accessible for cleaning and inspection. All interceptors or traps shall be supplied and properly maintained for continuous, satisfactory, and effective operation by the User at his expense.
- 5.01.05 The discharge of any hazardous material, listed in 40 CFR Part 261.
- 5.01.06 All users shall comply with the general prohibitive discharge standards in 40 CFR Part 403.5(A) and (B) of the Federal Pretreatment Regulations.

**Section 5.02 Prohibited Wastes**

No user shall discharge or deposit any of the following materials, waste materials, waste gases, or liquids into any sanitary sewer forming a part of the MSD Sewerage System except where these may constitute occasional, intermittent inclusions in the wastewater discharged from residential premises:

- 5.02.01 Any wastewater having a temperature which will inhibit biological activity in a Wastewater Treatment Plant or result in other Interference with the treatment process but in no case wastewater with a temperature which exceeds 66°C (150°F) at its introduction into a sanitary sewer or exceeding 40°C (104°F) at its introduction into a Wastewater Treatment Plant.
- 5.02.02 Visible floatable fats, oils, or grease of animal or vegetable origin in amounts that, in the discretion of the General Manager, may cause interference or pass-through.
- 5.02.03 Petroleum oil, cutting oil, or products of mineral origin in amounts that, in the discretion of the General Manager, may cause interference or pass-through.
- 5.02.04 Substances that will solidify or become viscous at temperatures between 0°C (32°F) and 60°C (140°F).
- 5.02.05 Any garbage that has not been properly shredded so that no particles are any greater than one-half inch (½") in any dimension.
- 5.02.06 Any waste capable of causing abnormal corrosion, abnormal deterioration, damage to or hazard to structures or equipment of the sewerage system, or to humans or

animals or interference with proper operation of a MSD Wastewater Treatment Plant. All waste discharged to the sewerage system must have a pH value in the range of 6 to 10.5 standard pH units. Prohibited materials include but are not limited to concentrated acids and alkalis and high concentrations of compounds of sulfur, chlorine, fluorine, and substances, which may react with water to form strongly acidic or basic products.

- 5.02.07 Any waste having a color, which is not removable by the existing wastewater treatment processes, and which would cause the plant effluent to exceed color requirements of the State of North Carolina for discharge to a receiving stream.

### Section 5.03 Specific Prohibited Wastes

No user shall discharge or deposit any of the following materials, waste materials, waste gases, or liquids into any sanitary sewer forming part of the MSD Sewerage System:

- 5.03.01 Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to wastestreams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.
- 5.03.02 Any liquids, solids or gases which by reason of their nature or quantity are or may be sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any way to the sewerage system or to the operation of the sewerage system. At no time shall two successive readings (15 to 30 minutes between readings) on an explosion hazard meter at the point of discharge into the sewerage system be more than five percent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (L.E.L.) of the meter. Prohibited materials covered by this subsection include, but are not limited to, gasoline, diesel, kerosene, naphtha, benzene, fuel oil, motor oil, heating oil, mineral spirits, commercial solvents, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides and hydrides.
- 5.03.03 Any trucked or hauled pollutants, except at discharge point(s) designated by the General Manager in accordance with Section 3.0 of this Ordinance.
- 5.03.04 Any solid or viscous substances in quantity or character capable of causing obstruction to flow in sanitary sewers or interference with proper operation of a Wastewater Treatment Plant. Prohibited materials covered by this subsection include, but are not limited to, eggshells from egg processors, ashes, cinders, ceramic waste, stone or marble dust, sand, mud, straw, shavings, grass clippings, thread, glass, glass grinding or polishing wastes, rags, metal, feathers, bones, tar, plastics, wood, paunch manure, insulation materials, fibers of any kind, stock or poultry feeds, processed grains, spent hops, animal tissues, hair, hides, or fleshings, entrails, whole blood, viscera or other fleshy particles from processing or packing plants, lime or similar sludges, residues from refining or processing of fuel or lubricating oils.
- 5.03.05 Any noxious or malodorous solids, liquids or gases which, either singly or by interaction with other waste, are capable of creating a public nuisance or hazard to life or are or may be sufficient to prevent entry into a sewer for maintenance and repair.
- 5.03.06 Any pollutants which result in the presence of toxic gases, vapors, or fumes within the sewerage system in a quantity that may cause worker health and safety problems.
- 5.03.07 Any substances which may cause Wastewater Treatment Plant effluent or any other products of the sewerage system such as residues, sludges or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the sewerage system cause the

sewerage system to be in non-compliance with sludge use or disposal criteria, guidelines, ordinances or regulations developed by local, State or Federal authorities.

- 5.03.08 Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc) in sufficient quantity, flow or concentration (either singly or by interaction with other pollutants) to cause Interference with the POTW.
- 5.03.09 Any substance which will cause the sewerage system to violate its NPDES Permit, Collection System Permit, or water quality standards of the receiving stream.
- 5.03.10 Any waste which, by interaction with other waste in the sewerage system, may release obnoxious gases, form suspended solids, which interfere with operation of the sanitary sewers or create conditions deleterious to structures and wastewater treatment processes.
- 5.03.11 Any form of inflow as defined by Subsection 1.03.35 including storm water.
- 5.03.12 Infiltration as defined by Subsection 1.03.34 in excess of 300 gallons per inch of pipe diameter per mile of pipe per day.
- 5.03.13 Any unpolluted wastewater as defined in Subsection 1.03.80 except as specifically permitted by the General Manager.

#### **Section 5.04 Specific Pollutant Limitations**

No User shall discharge into any Sanitary Sewer forming part of the MSD Sewerage System any of the following materials in concentrations exceeding the limits stated below:

- 5.04.01 Any waste that contain more than ten (10) mg/L of hydrogen sulphide, sulphur dioxide, or nitrous oxide.
- 5.04.02 Any toxic or poisonous substance or any other materials in sufficient quantity to interfere with the operation of a Wastewater Treatment Plant or to constitute a hazard to humans or animals, or to cause a violation of the water quality standards or effluent standards for the watercourse receiving the effluent from a MSD Wastewater Treatment Plant or to exceed limitations established by the General Manager or set forth in applicable Categorical Pretreatment Standards.
- 5.04.03 Any waste containing suspended solids of such character and quantity that unusual provisions, attention, or expense is required to handle such materials at a Wastewater Treatment Plant.
- 5.04.04 Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the General Manager in compliance with applicable State or Federal regulations.
- 5.04.05 No person shall discharge wastewater containing concentrations of the constituents listed below in excess of the upper limits listed below.
  - A. No person with a Permit to Discharge Industrial Waste shall discharge in excess of the following limits unless such discharge is specifically authorized in a duly issued Permit to Discharge Industrial Waste. If more stringent standards are established in a MSD Permit to Discharge Industrial Waste or have been promulgated by the State or EPA in applicable Categorical Pretreatment Standards, those standards shall supersede the following standards.

**Fixed Upper Limits for Constituents (Milligrams per Liter)**

	Maximum Instantaneous Concentration (Grab Sample)*	Maximum Daily Average (Based on 24 Hour Composite Samples)*	Maximum Monthly Average (Based on 24 Hour Composite Samples)*
Arsenic	2.0	1.00	1.00
Cadmium	1.2	0.69	0.69
Chromium, T	2.5	1.00	1.00
Copper	2.5	1.00	1.00
Cyanide*	1.9	1.00	1.00
Lead	0.6	0.40	0.40
Mercury	0.2	0.10	0.10
Nickel	2.5	1.00	1.00
Silver	1.0	0.43	0.43
Tin	2.5	1.00	1.00
Zinc	2.5	1.00	1.00
Phenol*	2.5	0.50	0.50

Grab and Composite Samples are defined in Section 1.03 of this Ordinance.

\*The maximum daily average is to be considered either the average of four (4) Grab Samples taken at equally spaced intervals during the start-up, operations, and clean up period for the day being sampled or a single Composite Sample may be composed of the four sample aliquots as described above.

B. Unless specifically authorized by a Permit to Discharge Industrial Waste, no person shall discharge wastewater containing concentrations of the constituents listed in Subsection 5.04.05 in excess of levels currently established for sanitary sewage in the District. Such levels shall be established by the General Manager.

5.04.06 The admission into the sewerage system of any waste having a Biochemical Oxygen Demand (BOD) concentration in excess of three hundred (300) mg/L on a twenty-four hour composite basis or for any single grab sample having a BOD concentration in excess of thirteen hundred (1300) mg/L may be subject to review by the General Manager. Where necessary in the discretion of the General Manager, the user shall provide and operate, at his own expense, such pretreatment facilities as may be required to reduce the BOD to meet requirements specified by the General Manager.

5.04.07 The admission into the sewerage system of any waste having a Total Suspended Solids (TSS) concentration in excess of three hundred (300) mg/L on a twenty-four hour composite basis or for any single grab sample having a TSS concentration in excess of thirteen hundred (1300) mg/L may be subject to review by the General Manager. Where necessary, in the discretion of the General Manager, the User shall provide and operate, at his own expense, such pretreatment facilities as may be required to reduce the total suspended solids content to meet requirements specified by the General Manager.

5.04.08 The admission into the sewerage system of any waste having a Total Oil & Grease (combined polar and non-polar) content in excess of one hundred & twenty-five (125) mg/L. If the waste stream is of mineral hydrocarbons (non-polar) the content shall not exceed one hundred (100) mg/L unless otherwise prohibited by Subsection 5.02.03. If the waste stream is of biological lipids (polar) the content shall not exceed one hundred & fifty (150) mg/L. Where necessary, in the discretion of the General Manager, the User shall provide and operate, at his own expense, such pretreatment facilities as may be required to reduce the oil & grease

(polar and non-polar) content to meet requirements specified by the General Manager.

- 5.04.09 The admission, into the sewerage system of any waste in volumes or with constituents such that existing conditions in the sanitary sewers or at the Wastewater Treatment Plant would be affected to the detriment of the sewerage system, will be subject to review by the General Manager. Where necessary, in the discretion of the General Manager, Pretreatment or equalizing units may be required to bring constituents or volumes of flow within the limits previously prescribed or to an otherwise acceptable level and to hold or equalize flows so that no peak flow conditions may hamper the operation of any unit of the sewerage system. Said equalization or holding unit shall have a capacity suitable to serve its intended purpose and be equipped with acceptable outlet control facilities to provide flexibility in operation and accommodate changing conditions in the waste flow.
- 5.04.10 Upon the promulgation of Federal Categorical Pretreatment Standards, if more stringent than limitations imposed by this Ordinance, the new Federal Categorical Pretreatment Standards shall immediately supersede the limitations imposed under this Ordinance. All affected users shall notify the General Manager of the applicable reporting and monitoring requirements imposed by the new federal law within thirty (30) days of passage.
- 5.04.11 State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those of this Ordinance.
- 5.04.12 The District Board of the Metropolitan Sewerage District of Buncombe County, North Carolina reserves the right to establish more stringent limitations or requirements on discharges to the sewerage system.

#### **Section 5.05 Standards and Requirements for Food Service Establishments**

Food Service Establishments shall provide means of preventing grease and oil discharges to the sewerage system. Where a grease and oil interceptor currently exists or is required by the Metropolitan Sewerage District of Buncombe County (MSD), it shall be maintained for continuous, satisfactory, and effective operation by the owner, leaseholder, or operator at his expense. Grease and oil interceptors shall be of a type and capacity approved by MSD and shall be located as to be readily accessible for cleaning and inspection.

- 5.05.01 All Food Service Establishments shall have grease-handling facilities approved by MSD. Establishments whose grease-handling facilities or methods are not adequately maintained to prevent fats, oils or grease (FOG) from entering the sewerage system shall be notified in writing of any noncompliance and required to provide a schedule whereby corrections will be accomplished.
- 5.05.02 All Food Service Establishments grease-handling facilities shall be subject to review, evaluation, and inspection by MSD representatives during normal working hours. Results of inspections will be made available to the owner, or operator. MSD may make recommendations for correction and improvement.
- 5.05.03 Each facility will be issued a Grease Interceptor/Trap Maintenance Log upon initial inspection. This log shall be kept up-to-date and shall be available during each inspection. Failure to maintain a log may constitute a violation of this Ordinance
- 5.05.04 Food Service Establishments receiving two (2) consecutive unsatisfactory evaluations or inspections may be subject to penalties or other corrective actions as provided for in this Ordinance. Food Service Establishments shall not be considered in compliance until two (2) consecutive satisfactory inspections have been conducted.

- 5.05.05 Food Service Establishments that continue to violate MSD's Grease Standards and Requirements may be subject to additional enforcement action including termination of services.
- 5.05.06 Food Service Establishments whose operations cause or allow excessive FOG to discharged or accumulate in the MSD collection system may be liable to MSD for costs related to MSD service calls for line blockages, line cleanings, line and pump repairs, etc. including all labor, materials, and equipment. If the blockage results in a Sanitary Sewer Overflow (SSO) and MSD is penalized for the SSO, the penalty may be passed along to the Food Service Establishment.
- 5.05.07 Regularly scheduled maintenance of grease-handling facilities is required to insure adequate operation. In maintaining the grease interceptors and/or grease traps, the owner, leaseholder, or operator shall be responsible for the proper removal and disposal of grease by appropriate means and shall maintain an on-site record of dates, and means of disposal.
- 5.05.08 All grease traps and/or grease interceptors shall be cleaned based on the 25% Rule.  
*FOR EXAMPLE: If the total depth (TD) of the GI is 40 inches, the maximum allowable depth (d) of floatable grease equals 40 inches multiplied by 0.25 or  $d=TD \times 0.25 = 10$  inches. Therefore, the maximum allowable depth of floatable grease of the vessel should not exceed ten (10) inches.*
- 5.05.09 The exclusive use of enzymes, grease solvents, emulsifiers, etc. is not considered acceptable grease trap maintenance practice.
- 5.05.10 Any Food Service Establishment whose effluent discharge to the sewerage system is determined by MSD to cause interference in the conveyance or operation of the sewerage system may be required to sample the grease interceptor and/or grease trap discharge and have it analyzed for FOG at the expense of the owner, leaseholder, or operator. Results of such analyses shall be reported to MSD.
- 5.05.11 All grease interceptors and/or grease traps shall be designed and installed to allow for complete access for inspection and maintenance of the inner chamber(s) and viewing and sampling of effluent wastewater discharged to the sewer. These chambers shall not be visually obscured with soil, mulch, floorings, or pavement of any substance.
- 5.05.12 Food Service Establishments shall adopt Best Management Practices (BMP's) for handling sources of floatable oils, fat or grease originating within their facility. A notice shall be permanently posted at a prominent place in the facility-advising employees of the BMP's procedures to be followed. MSD may render advice regarding the minimization of waste.
- 5.05.13 Food Services Establishments shall develop and implement a waste minimization plan pertaining to the disposal of grease, oils, and food particles. MSD may render advice or make suggestions regarding the minimization of waste.

### Section 5.06 Construction Standards for New Food Service Establishments

New Food Service Establishments shall be required to install an "outdoor" grease interceptor, whose design and location must be approved in writing prior to installation by MSD.

- 5.06.01 Grease interceptors shall be adequately sized, with no interceptor less than 1,000 gallons total capacity unless otherwise approved by MSD.
- 5.06.02 The inlet chamber of the vessel will incorporate a PVC open sanitary-tee, which extends equal to or greater than 12 inches below the water surface. The outlet

chamber of the vessel will incorporate a PVC open sanitary-tee that extends two-thirds below the water surface. The sanitary-tees (both inlet and outlet) will not be capped but opened for visual inspection of the waste stream.

- 5.06.03 All grease interceptors, whether singular or two tanks in series, must have each chamber directly accessible from the surface to provide means for servicing and maintaining the interceptor in working and operating condition.
- 5.06.04 All pot & pan wash, pre-rinse sinks, scullery and floor drains will connect and discharge to the grease interceptor.
- 5.06.05 Where automatic dishwashers are installed, the discharge from those units will discharge directly into the building drainage system without passing through a grease trap, unless other wise directed by MSD.
- 5.06.06 Where automatic dishwashers are installed, the discharge from those units will discharge directly into the grease interceptor, before entering the building drainage system.
- 5.06.07 The pre-rinse sink of the automatic dishwasher will discharge directly into the grease interceptor and /or grease traps.
- 5.06.08 Where food-waste grinders are installed, the waste from those units shall discharge directly into the building drainage system without passing through grease interceptor and /or grease traps.
- 5.06.09 The grease interceptor shall be installed at least fifteen (15) feet from the last drainage fixture.
- 5.06.10 The grease interceptor shall be installed at least nine (9) feet from the exterior wall.
- 5.06.11 The grease interceptor shall not to be installed within a drive-thru pick-up area or underneath menu boards, or in the vicinity of menu boards.
- 5.06.12 A grease trap may be allowed in lieu of a grease interceptor, at the discretion of MSD. This determination will be based on standard engineering practice, which may determine that the grease interceptor installation is not feasible. The design and location of the grease trap must be approved in writing by MSD prior to installation.
- 5.06.13 The gallonage capacity of a grease trap shall be equal to or greater than double the gallonage capacity of all drainage fixtures discharging to the grease trap. These fixtures and other potentially grease-containing drains connecting to the grease trap will be determined and approved by MSD in writing prior to installation.
- 5.06.14 New Food Service Establishments shall not be allowed to initiate operations until all grease-handling facilities are approved, installed, and inspected by MSD.
- 5.06.15 A basket, screen or other intercepting device shall be installed to prevent passage into the drainage system of solids ½ inch or larger in size. The basket or device shall be removable for cleaning purposes.

### **Section 5.07 Construction Standards for Existing Food Service Establishments**

All existing Food Service Establishments shall have grease-handling facilities. Food Service Establishments without any grease-handling facilities will be given a compliance schedule to have grease-handling equipment installed. Failure to do so will be considered a violation of this Ordinance and may subject the facility to penalties and/or corrective actions.

- 5.07.01 In the event an existing Food Service Establishment's grease-handling facilities are either under-designed or substandard in accordance with this Ordinance, the owner(s) will be notified in writing of the deficiencies and required improvements, and given a compliance schedule.
- 5.07.02 For cases in which "outdoor" grease interceptors are infeasible to install, existing Food Service Establishments will be required to install approved "under-the-counter" grease traps.
- 5.07.03 Factory-installed flow control fittings must be provided to the inlet side of all "under-the-counter" grease traps to prevent overloading of the grease trap and to allow for proper operation.
- 5.07.04 MSD approval of grease trap design shall be obtained prior to installation.
- 5.07.05 The location of "under-the-counter" units shall be determined and approved by MSD prior to installation.
- 5.07.06 Wastewater from garbage grinders should not be discharged to grease interceptors.
- 5.07.07 Wastewater from automatic dishwashers should be discharged to grease interceptors.
- 5.07.08 Wastewater from the pre-rinse sink of the automatic dishwasher shall discharge directly into grease interceptors.
- 5.07.09 In maintaining grease interceptors, the owner(s) shall be responsible for the proper removal and disposal of captured material and shall maintain records of the dates and means of disposal.
- 5.07.10 The exclusive use of enzymes, grease solvents, emulsifiers, etc. is not considered acceptable grease trap maintenance practice. All grease interceptors must be cleaned based on the 25% Rule as directed in Subsection 5.05.08.

### **Section 5.08 New Food Service Establishments in Existing Buildings**

Where practical, new food service establishments locating in existing buildings will be required to comply with the standards applicable to new facilities as directed in Section 5.06 of this Ordinance.

- 5.08.01 Where physically impossible to install "outdoor" units (grease interceptor), "under-the-counter" units (grease trap) may be allowed as directed in Section 5.07 of this Ordinance, provided prior approval of unit type, size and location is obtained from MSD.



**SECTION 6****PRETREATMENT****Section 6.01 Responsibility for Pretreatment**

Each User shall provide wastewater treatment as necessary to comply with this Ordinance and wastewater permits issued under Section 4 of this Ordinance and shall achieve compliance with all National Categorical Pretreatment Standards, Local Limits, and the prohibitions set out in Section 5 of this Ordinance within time limitations as specified by EPA, the State, or the General Manager, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense.

**Section 6.02 Authorization to Construct**

Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the General Manager for review, and shall be approved by the General Manager before construction of the facility.

- 6.02.01 Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the General Manager prior to the User's initiation of the changes.
- 6.02.02 The review of such plans and operating procedures shall in no way relieve the User from the responsibility of modifying the facility as necessary to produce an effluent discharge acceptable to the General Manager under the provisions of this Ordinance.

**Section 6.03 Maintenance of Pretreatment Facilities**

If pretreatment or control of industrial wastewater is required, such pretreatment or control facilities shall be constructed, maintained in good working order and properly operated as efficiently as possible by the owner or User at his cost and expense, subject to the requirements of this Ordinance and all other applicable codes, ordinances, regulations and laws.

**Section 6.04 Additional Pretreatment Measures**

Whenever deemed necessary, the General Manager may require users to restrict their wastewater discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the sewerage system and determine the user's compliance with the requirements of this Ordinance. Additionally:

- 6.04.01 The General Manager may require any person discharging into the sewerage system to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
- 6.04.02 Grease, oil, and sand interceptors shall be provided when, in the discretion of the General Manager, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interceptors or traps shall be of type and capacity approved by the General Manager and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.
- 6.04.03 Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

**Section 6.05 Pretreatment for Accidental Discharge**

To provide protection from Accidental Discharges as defined in Subsection 1.03.02:

- 6.05.01 Pollutants, substances, wastewater, or waste prohibited by this Ordinance shall not be stored in such a manner that they could be discharged to the sewerage system.
- 6.05.02 Each Commercial and Industrial User shall provide protection from accidental discharge of prohibited materials or other waste regulated by this Ordinance. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner's or User's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection may be required to be submitted to the General Manager upon request for review and approval. Review and approval of such plans and operating procedures shall not relieve the User of the responsibility to modify his facility as necessary to meet the requirements of this Ordinance.
- 6.05.03 An accidental discharge plan shall address, at a minimum, the following:
- A. Description of discharge practices, including non-routine batch discharges;
  - B. Description of stored chemicals;
  - C. The telephone numbers, personnel and agencies to be contacted during any accidental or slug discharge;
  - D. Procedures for immediately notifying the General Manager of any accidental or slug discharge, as required by Subsection 6.05.04 of this Ordinance; and
  - E. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures shall include, but not be limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.
- 6.05.04 If, after taking action as provided in Subsection 6.05.01, an Industrial User fails to comply with any prohibition or limitation in this Ordinance, the User responsible for such accidental discharge shall immediately notify the General Manager in accordance with Section 10.07 so that any feasible corrective action may be taken to protect the sewerage system or to minimize adverse effects thereon. In addition, a written report, addressed to the General Manager, shall be filed by an Authorized Representative of the User within five (5) days of the occurrence of the accidental discharge detailing the date, time and cause of the accidental discharge, the quantity and characteristics of the Accidental Discharge and corrective action taken to prevent future accidental discharges.
- 6.05.05 A notice shall be permanently posted at a prominent place in the facility for which the permit has been issued advising employees whom to call in the event of an accidental discharge. The notice shall include at least the notification requirements set forth in Subsection 10.07.04 of this Ordinance. Users shall ensure that all employees who observe or who may cause or suffer such an accidental discharge to occur are advised of the emergency notification procedure.

**SECTION 7****FLOW AND CONCENTRATION CONTROL****Section 7.01 Discharge of Slugs Prohibited**

No User shall discharge into the MSD Sewerage System any waste or wastewater, which constitutes a slug as, defined in Subsection 1.03.69.

**Section 7.02 Control of Discharge Rates**

Any User now discharging or proposing to discharge waste, which may include slugs, may be required to provide facilities or adopt procedures for regulating, controlling or equalizing the concentrations of any constituents or the rate of waste discharge.

**Section 7.03 Spill Control Response Plan/Slug Discharge Plan**

At least once every three (3) years, MSD shall evaluate whether each Commercial or Industrial User needs a Spill Control Response Plan or a Slug Discharge Plan. MSD may require any User to develop, submit for approval, and implement such a plan. Each plan shall include, at least, a minimum of the items outlined in Subsection 6.05.03:

**Section 7.04 Reporting of Spills/Slug Discharges**

Spills and slug discharges shall be immediately reported to the General Manager in accordance with the requirements of Subsection 6.05.04 and Section 10.07 of this Ordinance.

**SECTION 8****MEASUREMENT OF FLOW****Section 8.01 Determination of Wastewater Volumes**

The volume or quantity of waste discharged by any User into the MSD Sewerage System shall be measured by one or more of the following methods:

- 8.01.01 If the volume of water used by any User in industrial or process operations is substantially the same as the volume secured from the municipal waterworks system, then the volume of water purchased shall be considered to be the volume of waste discharged.
- 8.01.02 If a substantial portion of the water secured from the municipal waterworks system is not used in a user's facility or is not returned to the sewerage system, the quantity of waste shall be determined by one or more of the following methods:
- A. By a flow meter(s) on the water supply line(s) to a process operation(s) or use, or;
  - B. By a flow meter(s) on the Waste line(s) from an operation(s), or;
  - C. If flow meters as required under Subsection 8.01.02(A) and 8.01.02(B) above shall not have been installed, the volume of water purchased shall be considered to be the volume of waste discharged unless MSD approves an alternate method of determining the amount of water not discharged to the sewerage system.
- 8.01.03 If any User, now discharging or proposing to discharge waste into the sewerage system does not secure the entire water supply from the municipal waterworks system, such User shall install and maintain a flow meter(s) on the waste line(s) from process operations or shall install such additional flow meters on the private water supply as required to permit determination of the total quantity discharged to the sewerage system from all sources under procedures comparable to Subsection 8.01.01 or 8.01.02 above.

**Section 8.02 Provision, Calibration, and Certification of Flow Meters**

If flow meter(s) are installed to fulfill requirements of Subsection 8.01.02 or 8.01.03 above:

- 8.02.01 Such flow meter(s) shall be installed at User's expense, and;
- A. The location of such flow meter(s) shall be approved by MSD prior to installation, and;
  - B. Such flow meter(s) are to be of the non-resettable style, and;
- 8.02.02 Such flow meter(s) shall be calibrated by the supplier at the time of installation and thereafter at the discretion of the General Manager, and;
- 8.02.03 Annual certification of calibration shall be provided to MSD within fifteen (15) days of each calibration for effluent Flow Meters, and;
- 8.02.04 The General Manager, at his discretion, may require calibration by an independent testing laboratory. If the meter is found to be in calibration, MSD will pay for testing service. However, if the meter is found to be out of calibration the User shall be required to pay for this.

**Section 8.03 Identification of All Flows Required**

All sources of water supply and all discharges of wastewater into the sewerage system must be identified in accordance with the provisions of Section 8.01. Any omissions shall be considered as unauthorized use of the MSD Sewerage System.

**SECTION 9****MONITORING FACILITIES****Section 9.01 General Requirements for Monitoring Facilities**

Any User who is discharging or proposes to discharge waste into the MSD Sewerage System may be required to provide, operate, and maintain at the User's expense monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and internal drainage systems. These monitoring facilities shall be as specified in the User's Permit to Discharge Waste. The monitoring facilities should normally be situated on the User's premises but MSD may, when such a location would be impractical or cause undue hardship on the User, allow the facilities to be constructed in a public street or sidewalk area and located so that they will not be obstructed.

**Section 9.02 Maintenance of Monitoring Facilities**

There shall be ample room in or near such monitoring facilities to allow accurate sampling and preparation of samples for analysis. The monitoring facilities shall be maintained at all times in a safe, accurate, and proper operating condition at the expense of the User.

**Section 9.03 Continuous Recording and Sampling Equipment**

When deemed necessary by the General Manager, continuous recording, and sampling equipment shall be installed and maintained.

**Section 9.04 Construction Periods**

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with MSD requirements and all applicable local construction standards and specifications. Construction of said facilities shall be completed within ninety (90) days following written notification by MSD. Additional construction time may be granted in the discretion of the General Manager.

**Section 9.05 Additional Facilities for Present Users**

The General Manager shall review monitoring facilities of present users and may require additional monitoring facilities as required for compliance with Sections 9.01, 9.02, and 9.03 above.

**Section 9.06 Monitoring Facilities for New Users**

New Users may be required to provide monitoring facilities as specified in their Permits to Discharge Waste prior to start up.

## SECTION 10 INSPECTIONS, MONITORING REPORTING AND RECORDS

### Section 10.01 Periodic Inspections

The waste and other pollutants being discharged into the MSD Sewerage System by Users shall be subject to periodic inspection, sampling, records examination, and copying. Determinations of character and strengths of said waste may be made annually or more often as may be deemed necessary by the General Manager or his authorized representatives and as indicated in the User's Permit to Discharge Waste to ascertain whether the purposes of this Ordinance are being met, all requirements are being complied with and to determine strength of waste.

### Section 10.02 Reporting Requirements for Applicable Categorical Standards

Pretreatment Standards as defined in Subsection 1.03.39 are as follows:

#### 10.02.01 Baseline Monitoring Reports

Within either one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard, or the final administrative decision on a category determination under 40 CFR 403.6(a) (4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the General Manager a report which contains the information listed in Subsection 10.02.02. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable Categorical Standard, shall submit to the General Manager a report, which contains the information listed in Subsection 10.02.02. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

#### 10.02.02 Baseline Monitoring Reports shall include:

- A. The name and address of the facility, including the name of the operator and owner;
- B. A list of any environmental control permits held by or for the facility;
- C. A brief description of the nature, average rate of production, and Standard Industrial Classifications of the operation(s) carried out by a User. This description should include a schematic process diagram which indicates points of discharge to the sewerage system from the regulated processes;
- D. Information showing the measured average daily and maximum daily flow, in gallons per day, to the sewerage system from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(c);
- E. The Categorical Pretreatment Standards applicable to each regulated process;
- F. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the General Manager, of regulated Pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 10.09 of this Ordinance;
- G. Sampling must be performed in accordance with procedures set out in Section 10 of this Ordinance and 40 CFR 403.12(b) and (g), including 40CFR 403.12(g)(4);
- H. A certification statement, reviewed by the current User's Authorized Representative as defined in Subsection 1.03.04 and certified by a qualified professional, indicating whether pretreatment standards are being met on a

consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and requirements;

- I. Compliance schedule. If additional pretreatment and/or operation/maintenance will be required to meet the pretreatment standards, the shortest schedule by which the User will provide such additional pretreatment and/or operation/maintenance. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 10.03 of this Ordinance; and
- J. All Baseline Monitoring Reports must be signed and certified by the current Authorized Representative of an Industrial User as defined in Subsection 1.03.04 of this Ordinance.

### **Section 10.03 Compliance Schedule Progress Reports**

- 10.03.01 The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation).
- 10.03.02 No increment referred to above shall exceed nine (9) months;
- 10.03.03 The User shall submit a progress report to the General Manager no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the User to return to the established schedule; and
- 10.03.04 In no event shall more than nine (9) months elapse between such progress reports to the General Manager.

### **Section 10.04 Reports on Compliance with Categorical Pretreatment Standards Deadline**

Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards, or in the case of a New Source following commencement of the introduction of Wastewater into the POTW, any User subject to such Pretreatment Standards and requirements shall submit to the General Manager a report containing the information described in Subsection 10.02.02 of this Ordinance. For Users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the User's long-term production rate. For all other Users subject to Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall included the User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Subsection 1.03.04 of this Ordinance.

### **Section 10.05 Periodic Compliance Reports for Significant Industrial Users**

- 10.05.01 Significant Industrial Users may, at a frequency determined by the General Manager, but in no case less than once every six (6) months, submit a report indicating the nature and concentration of Pollutants in the discharge, which are limited by Pretreatment Standards, and applicable daily flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in Section 10.09. All periodic compliance reports must be signed and certified in accordance with Subsection 1.03.04 of this Ordinance;



- 10.05.02 Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge; and
- 10.05.03 If a User subject to the reporting requirement in this section monitors any Pollutant more frequently than required by the General Manager, using the procedures prescribed in Section 10.09 of this Ordinance, the results of this monitoring shall be included in the report.

### **Section 10.06 Reports of Changed Conditions**

In accordance with the requirements of Section 4.03 and Subsection 10.07.04 of this Ordinance, each User must notify the General Manager of any planned significant changes to the User's operation or system, which might alter the nature, quality, or volume of its Wastewater at least ninety (90) days before the change. The General Manager may require the User to submit such information as may be deemed necessary to evaluate the changed condition.

### **Section 10.07 Reports of Potential Problems**

- 10.07.01 In the case of any discharge, including, but not limited to, Accidental Discharge as defined in Subsection 1.03.02, discharge of a non-routine, episodic nature, a non-customary batch discharge, a Slug load as defined in Subsection 1.03.69, a discharge of any prohibited wastes as defined in Section 5.03 that may cause potential problems for the POTW, the User shall immediately telephone and notify the General Manager of the incident. This notification shall include the location of the discharge, type of Waste, concentration and volume, if known, and corrective actions taken by the User;
- 10.07.02 Within five (5) days following such discharge, the User shall, unless the requirement is waived by the General Manager, 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 other person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to this Ordinance;
- 10.07.03 A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in Subsection 10.07.01, above. Users shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
- 10.07.04 All SIUs are required to notify the General Manager immediately of any changes at the facility affecting the potential for spills and other accidental discharge, as defined in Subsection 1.03.02.

### **Section 10.08 Notice of Violation/Repeat Sampling and Reporting**

- 10.08.01 If sampling performed by a User indicates a violation, the User must notify the General Manager within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the General Manager within thirty (30) days after becoming aware of the violation. The User is not required to resample:

- A. If the General Manager or his designee conducts monitoring at the user's facility at least once a month; or

- B. If the General Manager or his designee samples between the users' initial sampling and when the User receives the results of this sampling.
- 10.08.02 If the General Manager does not require the User to perform any self-monitoring and the POTW sampling of the User indicates a violation, the industrial user shall repeat the sampling and obtain the results of the repeat analysis within thirty (30) days after becoming aware of the violations, unless one of the following occurs:
- A. The General Manager or his designee conducts monitoring at the user's facility at least once a month; or
- B. The General Manager or his designee samples the User between their initial sampling and when the POTW receives the results of this initial sampling; or
- C. The General Manager or his designee requires the User to perform sampling and submit the results to the General Manager within the 30 day deadline of the POTW becoming aware of the violation.

### Section 10.09 Sampling, Analyses and Reporting for All Users

Samples shall be collected manually or mechanically over such periods of time and composited in such a manner as to be representative of the waste being discharged in accordance with requirements specified in the User's Permit to Discharge Waste. Sampling techniques and laboratory methods followed in the examination of said Waste shall be in accordance with those as set forth in 40 CFR Part 136, unless otherwise specified in applicable Categorical Pretreatment Standard. Reports of the analyses shall be submitted in accordance with requirements specified in the User's Permit to Discharge Waste. If 40 CFR Part 136 does not contain sampling or analytical techniques for the Pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA.

#### 10.09.01 **Grab and Composite Sample Collection**

- A. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
- B. Grab Samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The General Manager shall determine the number of grabs necessary to be representative of the User's discharge. See 40 CFR 403.12(g) (5) for additional grab sample number requirements for BMR and 90 Day Compliance Reports. Additionally, the General Manager may allow collection of multiple grabs during a 24 hour period which are composited prior to analysis as allowed under 40 CFR 136.
- C. **Composite Samples:** All wastewater composite samples shall be collected in accordance with Subsection 1.03.12. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the General Manager. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

#### 10.09.02 **Splitting of Samples**

When requested by the Industrial User, samples collected by MSD will be split with the Industrial User for verification of analytical results. Valid results from an Industrial User's split must be averaged with MSD's results and the average used for limit compliance judgment. However, determination of the character, strength or quantity of the Waste as made by the General Manager or his authorized representatives, shall be conclusive for the computation of sewer charges.

- 10.09.03 **Date of Submittal**  
Written reports received via the United States Postal Service will be deemed to have been submitted on the date postmarked. For reports not submitted via the United States Postal Service, (e.g. courier service, electronic mail, facsimile) the date of receipt shall be the submittal date.
- 10.09.04 **Record Keeping**  
Users subject to the reporting requirements of this Ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the User or MSD, or where the User has been specifically notified of a longer retention period by the General Manager.

#### **Section 10.10 Notification of Discharge of Hazardous Material**

- 10.10.01 Subsection 5.01.05 of this Ordinance prohibits the discharge of hazardous material. Any User who may accidentally discharge hazardous material shall immediately notify the General Manager, the EPA Regional Waste Management Division Director, and the State Division of Solid Waste Management.
- 10.10.02 The use of any new hazardous materials or hazardous Waste in a User's facility must be immediately reported to the General Manager, the EPA Regional Waste Management Division Director, and the State Division of Solid Waste Management.
- 10.10.03 In the case of any notification made under this section, the User shall certify that it has a program in place to prevent the discharge of a toxic or hazardous material.

**SECTION 11****AUTHORITY FOR INSPECTION****Section 11.01 Right of Entry**

The General Manager or his duly authorized representatives shall be permitted to enter upon the property of the User for the purpose of inspection, observation, flow measurement, sampling, and testing of industrial waste and other pollutants in accordance with this Ordinance.

**Section 11.02 Ready Access**

Any User shall allow MSD or their representative immediate access to all points on their premises for the purposes of inspection, sampling, records examination, or for the performance of any MSD related duties.

**Section 11.03 Monitoring Access**

MSD, the Approval Authority, and EPA shall have the right to set up on the User's property such devices as are necessary to conduct sampling, inspection, compliance monitoring, and flow metering operations.

**Section 11.04 Security Arrangements**

Where a User has security measures in force which would require proper identification and clearance before entry onto the user's premises, the User shall make necessary arrangements with the User's security guards so that upon presentation of suitable identification, personnel from MSD, the Approval Authority and EPA will be permitted to enter without delay for the purposes of performing their specific responsibilities. Unreasonable delays may constitute denial of access.

**Section 11.05 Search Warrants**

If the General Manager, pretreatment staff, or EPA has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect or sample as part of a routine inspection and sampling program of MSD designed to verify compliance with this Ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then MSD or EPA may seek issuance of a search warrant from a court of competent jurisdiction.

**SECTION 12****CONFIDENTIAL INFORMATION****Section 12.01 Confidential Information**

Information and data on a User obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agencies without restriction unless the User specifically requests and is able to demonstrate to the satisfaction of the General Manager that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the User. Such request must be asserted, in writing, at the time of the submission of the information or data. When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this Ordinance, the National Pollutant Discharge Elimination System (NPDES) Permit; provided, however, that such portions of a report shall be available for the use by the State or any state agency in judicial review or enforcement proceedings involving the Person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

All records relating to compliance with pretreatment standards shall be made available to officials of the Approval Authority and EPA upon request.

**SECTION 13****PROTECTION OF EQUIPMENT****Section 13.01 Protection of Equipment**

No person shall maliciously, willfully or negligently break, damage, destroy, deface, tamper with or remove any equipment or materials which are a part of the MSD Sewerage System or which are used by MSD for the purposes of making waste examinations and waste flow measurements or monitoring. Only persons authorized by the General Manager will be allowed to uncover, adjust, maintain, and remove such equipment and materials.

## SECTION 14 ENFORCEMENT, PENALTIES AND COSTS

### Section 14.01 Enforcement Action

Any User, who violates any provision of this Ordinance, a condition of a permit, or applicable State or Federal laws or regulations, may be subject to enforcement action by the General Manager of MSD as follows:

#### 14.01.01 Notice of Violation

Whenever the General Manager determines that a User has violated or is violating this Ordinance, a Permit, or any prohibition, limitation or requirement contained in this Ordinance, a Permit or any other Pretreatment Requirement, the General Manager may serve upon the User a written Notice of Violation which shall be addressed to the Authorized Representative of the User and shall set forth the date and the nature of the violation. Within thirty (30) days of the date of the Notice of Violation, the User shall submit a written account of the reason for the violation and a plan for the satisfactory correction thereof to the General Manager, and shall schedule a meeting with the General Manager or his designee. Submission of the plan does not relieve the User from liability for any violations occurring either before or after receipt of the Notice of Violation.

#### 14.01.02 Show Cause Hearing

The General Manager may order any User who causes or is responsible for an unauthorized discharge, has violated this Ordinance or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. In the event the General Manager determines the Show Cause order should be issued, a notice shall be served on the User specifying the time and place for the hearing, the proposed enforcement action, the reason(s) for such action, and a request that the User show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail at least ten days before the hearing. Service may be made on any agent or officer of a corporation. The General Manager shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate. A Show Cause hearing under this section is not a prerequisite to the assessment of a civil penalty under this Ordinance, nor is any action or inaction taken by the General Manager under this section subject to appear.

#### 14.01.02 Consent Agreements

The General Manager is authorized to enter into consent agreements or other similar documents establishing agreements with Users not in compliance. Such agreements or documents will include specific actions to be taken by a User to correct noncompliance within a specific time period and may be titled "Consent Order" or "Consent Agreement". Similar documents shall have the same force and effect as Consent Orders and Administrative Orders issued pursuant to Subsection 14.01.03 of this Ordinance.

#### 14.01.03 Administrative Order

If the General Manager finds that a User has violated or continues to violate this Ordinance, a Permit, or other applicable State or Federal law or regulation, the General Manager may issue an Administrative Order to Cease and Desist all such violations and direct the User to do any or all of the following:

- A. Immediately comply with all Pretreatment Requirements
- B. Comply with all Pretreatment Requirements in accordance with a time schedule set forth in the Administrative Order.
- C. Take appropriate action to prevent a continuing or threatened violation.

- D. Disconnect the User's connection to the sewerage system unless the User's discharge can be adequately treated to bring it into compliance.

## 14.01.04

**Emergency Suspension**

- A. The General Manager may revoke a User's Permit or right to discharge to the Sewerage System if, in the discretion of the General Manager, such a revocation or suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the public health and welfare or to the environment, or which interferes or may interfere with the operation of the POTW or which causes or may cause the POTW to violate any condition of its NPDES Permit or its permit to incinerate or chemically stabilize sludge for land application.
- B. A notice of suspension shall be sent to an Authorized Representative of the User by certified and regular mail or may be hand delivered to the User's facility. A User so notified shall immediately stop or eliminate the discharge. Within fifteen (15) days of the notice of suspension or revocation, a hearing will be held to determine whether the suspension may be lifted or the Permit terminated. The hearing will be conducted by a Hearing Officer or Officers appointed by the District Board. At the hearing the General Manager, or his designee, shall present evidence as to the Revocation of the User's Permit or right to discharge to the Sewerage System. The User may present evidence showing why the revocation or suspension should not be upheld. Both the User and the General Manager have the right to be represented by counsel and the right to cross-examine witnesses testifying for the opposing party. The Hearing Officer(s) is authorized to require testimony under oath or affirmation. The Hearing Officer(s) may require the General Manager and the User to present a written summary of the evidence to be presented at the hearing and may limit the hearing to the specific issues surrounding the revocation or suspension. The Hearing Officer may continue the hearing from day to day as necessary to complete the hearing.
- C. Within fifteen (15) days of the hearing, the Hearing Officer(s) shall make a determination as to whether or not the revocation of the Permit or suspension of User's right to discharge to the District Sewerage System shall be upheld. The Hearing Officer's Decision shall be transmitted in writing to the User, the General Manager and to the District Board of the Metropolitan Sewerage District. The Hearing Officer's Decision may be appealed to the District Board of the Metropolitan Sewerage District. The appeal must be in writing, must be made within fifteen (15) days of the date of the Hearing Officer's Decision, and must state specifically what exceptions are taken to the Hearing Officers Decision. The appeal to the District Board shall be conducted in accordance with the procedures in Subsection 14.03.05.
- D. If a User fails to comply voluntarily with a Suspension Order or Revocation of Permit, the General Manager shall take such steps as, in his discretion, are necessary to prevent or minimize damage to the POTW or endangerment to any individuals. Such steps may include immediate severance of the User's connection to the Sewerage System and injunctive relief in the General Court of Justice.

The General Manager may reissue a Permit to Discharge Industrial Waste and allow re-connection to the Sewerage System upon satisfactory proof of the elimination of the non-compliant discharge. The General Manager may require sampling and analysis of the discharge prior to any re-issuance or any re-connection. The User shall submit a detailed written statement describing the causes of the non-compliant discharge and the measures taken to prevent any future occurrence.



**14.01.05 Termination of Permits or Permission to Discharge**

The General Manager may revoke a wastewater discharge permit or permission to discharge for good cause, which may include, but shall not be limited to, the following:

- A. Failure to accurately monitor and report the wastewater constituents and characteristics of the discharge;
- B. Failure to report significant changes in operations, or wastewater constituents;
- C. Refusal of reasonable access to the Users premises for the purpose of inspection or monitoring; or
- D. Violation of conditions of the Permit or permission to discharge, conditions of this Ordinance, or any applicable State and Federal regulations.

Users whose permits are subject to revocation under this section may be notified of the proposed termination and may be offered an opportunity to show cause why the proposed action should not be taken.

**Section 14.02 Civil Penalties**

14.02.01 Any User who is in violation of any provision of this Ordinance, a Consent Agreement, Administrative Order, a Rule, Regulation, Law or Permit condition may be fined up to Twenty-five Thousand Dollars (\$25,000.00) per day per violation, provided, however, any penalty assessed against a User for a violation must be assessed in accordance with the requirements of N. C. Gen. Stats. 143-215.6A.

14.02.02 Each day the violation continues may be considered a separate violation.

14.02.03 In determining the amount of a Civil Penalty, the General Manager may consider the following:

- A. The degree and extent of the harm done to the natural resources of the State, to the public health, or to public or private property as a result of the violation;
- B. The duration and severity of the violation;
- C. The effect on ground or surface water quality, or on air quality;
- D. The cost of repairing the damage to the sewerage system, to property and to the natural resources of the State;
- E. The amount of money saved, if any, by noncompliance, including the cost of continuing to discharge in noncompliance instead of stopping operations;
- F. Whether the violation was committed negligently, grossly negligently, recklessly negligently, willfully, or intentionally;
- G. The prior record of the User in complying or failing to comply with the conditions of its permit, this Ordinance, or other environmental laws and regulations, with respect to the Metropolitan Sewerage District, other parts of North Carolina or other states in the United States;
- H. The cost to the POTW, including attorney's fees, sampling costs, cost of additional laboratory analysis, cost of engineering and consulting fees necessary, in the discretion of the District, to determine the nature and extent of damage, prevent further damage and repair any damage.

**14.02.04 Notice of Civil Penalty**

An assessment of Civil Penalty ("the Civil Penalty Assessment") shall be made by written notice from the General Manager to the Authorized Representative of the User. The notice shall be sent by certified and regular mail to the address of the User's facility.

**Section 14.03 Hearing****14.03.01 Request for Hearing**

A User whose Permit has been terminated pursuant to this Ordinance, an Applicant for Permit whose application has been denied or whose Permit has been issued with conditions the User deems unacceptable, or a User who has been assessed a Civil Penalty or issued an Administrative Order shall have the right to an adjudicatory hearing before a Hearing Officer(s) appointed by the Chairman of the District Board of the Metropolitan Sewerage District. A request for hearing must be made in writing to the General Manager within thirty (30) days of the date of the Civil Penalty, Administrative Order, or denial or issuance of the Permit and must identify specific issues to be considered at the hearing. If no such demand is made within thirty (30) days of the date of the Civil Penalty Assessment, Notice of Termination, or Administrative Order, or if specific issues to be considered at the hearing are not identified, the District action shall be final and binding. Within thirty (30) days of the receipt of a Request for Hearing, The Hearing Officer(s) will schedule a hearing and issue a Notice of Hearing to the General Manager and to the User; unless the User and the General Manager mutually agree the hearing may be held at a later date. Upon timely filing of an appeal, including an appeal from a decision of the District Board to the Superior Court of the General Court of Justice, of the terms and conditions of a renewed permit or the denial of an application for permit, the User shall be allowed to discharge in accordance with the terms and conditions of the prior permit, or if there were no permit, in accordance with the requirements of this Ordinance, until either the conclusion of the Appeal or until resolved by mutual agreement of MSD and the applicant.

**14.03.02 Hearing Procedures**

The hearing shall be conducted by a Hearing Officer or Officers who shall have the power to regulate the conduct of the hearing. Such power shall include the right to require testimony be given under oath or affirmation; the right to ask questions of the User and the General Manager, the right to adjourn the hearing from day to day to facilitate its completion; the right to require the User or the General Manager to make available for testimony and questioning Employees and agents. The General Manager and the User shall have the right to be represented by counsel; the right to present evidence in the form of testimony and documentary evidence; and the right to cross-examine witnesses. Testimony at the hearing may be recorded stenographically in the discretion of the Hearing Officer(s). If testimony is recorded stenographically, a transcript of the testimony will be made available to the User or the General Manager upon payment of the usual charges therefore.

**14.03.03 A Record of Hearing shall be maintained by the Hearing Officer and shall include:**

- A. A copy of the Civil Penalty Assessment;
- B. Notice of Termination of Permit or Administrative Order;
- C. Notice of Request for Adjudicatory Hearing;
- D. Transcript of testimony at the hearing, if any;
- E. Documents presented by User or General Manager;
- F. Decision by Hearing Officer(s).
- G. Additional material in the discretion of the Hearing Officer(s).

**14.03.04 Within sixty (60) days of the receipt of the Request for Hearing, unless the time therefore is extended by mutual agreement of the General Manager and the User, the Hearing Officer(s) shall hold a hearing and make a Decision. A copy of the Hearing Officer's Decision shall be transmitted by certified and regular mail to the User and to the General Manager.**

**14.03.05 Final Appeal Hearing**

Any decision of the Hearing Officer(s) made as a result of the Adjudicatory Hearing may be appealed to the District Board by filing a written request for appeal within ten (10) days of receipt of the Hearing Officer's Decision. Upon the filing of an appeal, the Hearing Officer(s) shall provide the District Board with a Record of the Adjudicatory Hearing. The District Board, or a committee consisting of two or more of its members appointed by the Chairman, shall review the Record and the Hearing Officer's Decision and make a recommendation to the District Board. The District Board shall consider the matter no later than its second regularly scheduled meeting following the date the appeal was filed. The District Board shall transmit a written copy of its Final Order by certified and regular mail to the User and to the General Manager.

**14.03.06 Judicial Review**

A User against whom a Final Order or Decision of the District Board has been entered may seek judicial review of the order or decision by filing a written petition within thirty (30) days of receipt of the Final Order with the Superior Court of Buncombe County. A copy of the petition must be served on the General Manager and the Chairman of the District Board. Within thirty (30) days of the receipt of the Petition for Judicial Review, the District Board shall transmit to the Superior Court of Buncombe County a certified copy of the official record of the proceedings before the District Board.

**Section 14.04 Other Remedies**

The General Manager may use other available remedies to attempt to bring users into compliance including but not limited to:

**14.04.01 Criminal Violations**

Upon recommendation of the District Board, the General Manager may request that the District Attorney for the 28th Judicial District prosecute users not in compliance with the provisions of North Carolina General Statutes 143-215.6B, or that the United States Attorney prosecute users not in compliance with the Clean Water Act and regulations promulgated thereunder.

**14.04.02 Injunctive Relief**

Whenever a User is in violation of the provisions of this Ordinance, a permit issued hereunder or any provision thereof, or applicable law or regulation, the General Manager, may file a lawsuit in the Superior Court of Buncombe County for the issuance of a restraining order, preliminary or permanent injunction restraining the activity by the User in violation of the permit or ordinance.

**14.04.03 Water Supply Severance**

Whenever a User is in violation of the provisions of this Ordinance, a permit issued hereunder, or provision thereof or applicable law or regulation, the General Manager may request that the respective county, district, city, town, or other entity providing water to the User, sever the user's water supply and re-connect the water supply only after satisfactory compliance with the user's permit or the provisions of this Ordinance.

**Section 14.05 Remedies Nonexclusive**

The remedies provided for in this Ordinance are not exclusive. The General Manager may take any, all, or any combination of these actions against a User not in compliance. The General Manager is specifically empowered to take more than one enforcement action against any non-compliant user.

**Section 14.06 Affirmative Defenses to Discharge Violations**

- 14.06.01 An upset shall constitute an Affirmative Defense to an action brought for noncompliance with this Ordinance, a Permit to Discharge Industrial Waste, or any other Pretreatment Standard, if the requirements set forth below are met.
- 14.06.02 A User wishing to establish the Affirmative Defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
- A. An upset occurred and the User can identify the cause of the upset;
  - B. The facility was, at the time, being operated in a prudent and workmanlike manner and in compliance with applicable operating and maintenance procedures; and;
  - C. The User has submitted the following information to the General Manager within twenty-four (24) hours of becoming aware of the Upset:
    - (i) Description of the discharge and cause of noncompliance;
    - (ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
    - (iii) Steps being taken and planned to reduce, eliminate, and prevent recurrence of the non-compliant discharge.
- 14.06.03 In any enforcement proceeding, the User seeking to establish the affirmative defense of an upset shall have the burden of proving an upset by the greater weight of the evidence.
- 14.06.04 Users will have an opportunity for an Adjudicatory Hearing in accordance with Section 14.03 of this Ordinance on any claim of upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.
- 14.06.05 Whenever there is a loss of power to a facility, the User shall control production of all discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of power at a facility until power is restored to the facility or an alternative method of treatment is provided.
- 14.06.06 Bypass is prohibited and the General Manager may take an enforcement action against the User for bypass, unless:
- A. Bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;
  - B. There were no feasible alternatives to the Bypass, such as the use of auxiliary treatment facilities, auxiliary power sources, retention of untreated Wastes, cessation of operations at the facility, 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 notice of the bypass to the General Manager.
  - D. The General Manager may approve an unanticipated bypass, after considering its adverse effects, if the General Manager determines that it will meet the conditions listed in (A), (B) and (C) of this Subsection 14.06.06.
- 14.06.07 In an enforcement proceeding, the User seeking to establish the defense of bypass will have the burden of proof.

**Section 14.07 Annual Publication of Significant Noncompliance**

At least annually, the General Manager, or his designee shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of those industrial users which were found to be in significant noncompliance, also referred to as reportable noncompliance, in 15A NCAC 2H .0903(b)(10), with applicable pretreatment standards and requirements, during the previous 12 months.

**SECTION 15****FEES****Section 15.01 User Charges and Fees**

It is the purpose of this section to provide for the recovery, from users of the MSD Sewerage System, of the cost of regulating and controlling the discharge of sewage and other pollutants into the sewerage system. MSD may adopt charges and fees including:

- 15.01.01 Fees for operating the District Pretreatment Program.
- 15.01.02 Fees for issuing permits under this Ordinance.
- 15.01.03 Fees for monitoring, inspections, and surveillance procedures.
- 15.01.04 Fees for reviewing accidental discharge procedures and construction.
- 15.01.05 Fees for filing appeals.
- 15.01.06 Such other fees as MSD may deem necessary to regulate and control the discharge of sewage and other pollutants to the Sewerage System.

**Section 15.02 User Charge and Fee Schedules**

MSD has the right, under North Carolina General Statute, 162A-9, to establish rates, fees and charges for the use of its sewerage systems. MSD shall adopt and maintain user fees and charges and modify such charges from time, as it sees fit. Neither the establishment of user fees and charges or payment of user fees and charges shall be subject to review under this Ordinance.

**SECTION 16****THE SEWER EXTENSION PERMIT PROGRAM**

## PERMITS FOR EXTENSIONS OR MODIFICATIONS OF THE SEWER SYSTEM

**Section 16.01 Purpose**

Pursuant to N.C. Gen. Stats. 143-215.1, permitting for extensions or modifications to the Sewerage System has been delegated to MSD in its service area. Section 16 of this Ordinance deals only with Permits for Extension or Modification to the Sewerage System. The provisions of this Section 16 regarding hearings are applicable only to actions dealing with permits issued, denied, or revoked pursuant to this section.

**Section 16.02 Definitions**

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Section, shall have the meanings hereinafter designated:

- 16.02.01 "MSD Sewer System" shall mean the portion of the facilities owned by the District, which is used to collect and carry wastewater to a Publicly Owned Treatment Plant, but does not include such plant, pumping stations and force mains.
- 16.02.02 "MSD Standards" shall mean those standards set forth in a document entitled "SEWER EXTENSION MANUAL" dated January 19, 2000, and as the same may be amended from time to time, provided, however, any amendment of such standards shall be subject to the approval of NCDENR.
- 16.02.03 "Director" refers to the Director of Engineering, MSD.
- 16.02.04 "Commission" means the North Carolina Environmental Management Commission
- 16.02.05 "DENR" means the North Carolina Department of Environment and Natural Resources.
- 16.02.06 "Documents" means writings, drawings, maps, graphs, charts, photographs, and other data compilations, from which information can be obtained, translated if necessary through detection devices into reasonably usable form. The verb "to include" in all its forms is used without limitation.
- 16.02.07 "District" shall refer to the Metropolitan Sewerage District of Buncombe County, North Carolina.

**Section 16.03 Permit for Extension or Modification of the Sewer System**

- 16.03.01 No person shall do any of the following things or carry out any of the following activities concerning a sewer facility which is proposed to become a part of the MSD sewer system or modify any existing portion of the MSD sewer system unless such person shall have applied for and received from MSD a permit for such extension or modification and shall have complied with the conditions, if any, prescribed in such permit:
- A. Construct any sewer facility;
  - B. Alter, extend, or change the construction or method of construction of any sewer facility; or
  - C. Enter into a contract for the construction and installation of any sewer facility or for the alteration or extension of such facility.

- 16.03.02 Any person proposing to undertake anything or activity described in Subsection 16.02.01 shall make timely and proper application on such form(s) as may be prescribed by the Director and provide such information as may be required by the Director. MSD shall not undertake anything or activity described in Subsection 16.02.01 unless MSD first complies with the provisions of this section. A copy of all applications for permits and approved permits and plans (including applications and related documents submitted by MSD) shall be provided to the North Carolina Department of Environment and Natural Resources ("DENR")
- 16.03.03 All sewer facilities proposed for inclusion in the MSD sewer system and all proposed modifications to any existing portion of the MSD sewer system shall be designed, constructed, and installed in accordance with applicable provisions of the MSD Standards and in accordance with the Sewer Extension Policy. The plans and specifications for such facilities and modifications shall be prepared by or under the direct supervision of an engineer licensed to practice in the State of North Carolina. No extension to or modification of the Sewer System shall become a part of the Sewerage System unless and until if is accepted by action of the MSD Board. The Director shall maintain a copy of the current MSD Standards for public inspection.
- 16.03.04 No modifications to the MSD standards shall be effective until approved in writing by DENR. Connection to the MSD sewer system by a system that will not be maintained by the District shall not be subject to the provisions of this section; however, the District reserves the right to regulate the wastewater flows from such systems and to prohibit the connection of such system.
- 16.03.05 The denial of an application for a permit subject to the provisions of this section shall be made in writing and shall contain each reason for the denial and a statement of the changes in the applicant's proposed activities or plan, which will be required in order that the applicant may obtain a permit. Nothing in such statement shall preclude or otherwise bar MSD from denying a permit, which incorporates such changes, based upon changed circumstance or information not previously known by MSD.

#### **Section 16.04 Processing of Applications**

- 16.04.01 Each application subject to this section shall be accompanied by a fee in the amount that would apply, if the application were being submitted to DENR under such schedule or fees as it may establish. A copy of the current fee schedule for DENR shall be maintained by the Director and made available for inspection upon request. Any application, which is not accompanied by a fee in the proper amount, may be considered incomplete.
- 16.04.02 MSD shall review the fee, plans, specifications and other project data accompanying an application and shall determine if the application and accompanying material are complete and in a form acceptable to MSD. MSD shall acknowledge receipt of a complete application.
- 16.04.03 The Director shall take final action on all applications no later than 90 days following receipt of a complete application. All permits shall be issued in writing. A permit may contain such conditions as the Director determines to be reasonably necessary, considering the factors on which final action on a permit can be based.
- 16.04.04 If the application is not complete, the application shall be returned to the applicant. MSD shall advise the applicant in writing:
- A. How the application can be modified to make it complete and acceptable; and
  - B. That the time for MSD to take final action on an application does not begin until receipt of a complete, corrected application.



- 16.04.05 Any permit issued by MSD pursuant to this section is subject to revocation or modification upon 30 days written notice by the Director in whole or in part for good cause including, but not limited to:
- A. Violation or any term or condition of the permit;
  - B. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
  - C. Refusal of the permittee or its contractors, agents or employees to allow authorized employees or agents of MSD, upon presentation of credentials, to inspect or observe any activity, facility or other work required by the permittee's permit.
- 16.04.06 A notice of revocation or modification issued pursuant to Subsection 16.03.05 shall contain each reason for the revocation or modification.

### Section 16.05 Enforcement

- 16.05.01 Any person that violates, fails to comply with, or continues to violate any provision of this Section or a permit issued thereunder may be liable to the MSD for a maximum civil penalty of Twenty-five Thousand Dollars (\$25,000), per violation. Each day during which a violation continues shall be deemed a separate and distinct offense. In determining the amount of the civil penalty, the MSD may take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the person's violation, the person's efforts to correct the violation, the compliance history of the person against whom the violation is assessed, cost of enforcement to the MSD, whether the violation was committed willfully or intentionally, and any other factor which MSD, in its discretion, believes is appropriate.
- 16.05.02 MSD shall provide written notification to any person assessed a civil penalty of the assessment and the reasons therefore.
- 16.05.03 If any person violates the provisions of Section 16.02 or the terms or conditions of any permit issued pursuant thereto, a civil action may be commenced in the General Court of Justice in the name of the District for such legal and equitable relief.
- 16.05.04 The remedies provided herein are not exclusive. MSD may take any one or any combination of the actions listed herein against any person in violation of the provisions of this Section or permit issued hereunder.

### Section 16.06 Hearing

- 16.06.01 The following persons are entitled to hearing pursuant to this Section:
- A. Any person whose application for a permit under Section 16.02 is denied or granted subject to conditions, which are unacceptable to such person.
  - B. Any person to whom a permit has been issued and which is revoked or modified pursuant to this Section.
  - C. Any person who is assessed a civil penalty pursuant to Subsection 16.04.01.
- 16.06.02 Any person making a demand for a hearing shall deliver the demand to the Director within the following applicable time limits after receipt of notice of the action to be heard:

- A. 30 days for the denial of a permit required by this Section or for the grant of a permit required by this Section subject to conditions, which are unacceptable to the person applying for the permit;
- B. 30 days for the assessment of a civil penalty; and
- C. 10 days for the modification or revocation of a permit required by this Section.

16.06.03 In the demand for a hearing, in order to consider:

- A. The denial of a permit, the applicant must identify separately each reason for denying the permit, which the applicant contends to be improper, and every basis for such contention.
- B. A permit granted subject to unacceptable conditions, the applicant must identify separately each unacceptable condition and every basis for such contention.
- C. The modification or revocation of a permit, the person to whom such permit was issued must state separately each reason for modifying or revoking the permit which such person contends to be improper and every basis for such contention;
- D. A civil penalty assessment, the person to whom such penalty was assessed must state separately each reason why such penalty should not be assessed or, if the person contends that, the civil penalty was assessed in an improper amount, each reason why the amount of the penalty is improper.

16.06.04 The hearing shall be conducted by the General Manager or his designee. If the demand for a hearing is not made in accordance with the provisions of this section, the General Manager may reject the demand and any right to a hearing shall be terminated. If any person demanding a hearing may fail to comply with an order of the General Manager or with any rules issued by the General Manager or approved by the District Board concerning the conduct of the hearing, the General Manager may reject the demand and any right to a hearing shall be terminated. Within 90 days of the receipt of the written demand for a hearing, the General Manager shall conduct a hearing and issue a final order or decision; provided that, a hearing to consider the modification or revocation of a permit shall be held and a final order or decision issued within ten (10) days of the receipt of the written demand for a hearing. The General Manager shall transmit a copy of the final order or decision to the person demanding the hearing by registered or certified mail. No further review of the General Manager's final order or decision will be allowed, except as set forth in Subsection 16.05.10.

16.06.05 The General Manager or his designee shall conduct the hearing. The General Manager may ask the appellant and MSD staff to provide a written summary of their positions, and the General Manager may decide the appeal based on a review of the written material, provided however, any decision of the General Manager shall contain findings of facts. The General Manager may allow the appellant and MSD staff to present sworn testimony and offer documentary and other tangible evidence at the hearing. The appellant and MSD may be represented by counsel and may present witnesses for their respective positions. The General Manager shall have the right to ask questions of witnesses and to limit testimony to those matters relevant to the determination. Witnesses may be subject to cross examination, but the General Manager shall have the right to limit the scope of such cross examination to matters relevant to the inquiry. Each assessment of a civil penalty which has been included in a demand for a hearing in accordance with the provisions of this section is stayed and shall not take effect until the earliest occurrence of any one of the following circumstances: the assessment of the civil penalty is approved or is modified at a hearing conducted pursuant to this section; or the person who is assessed the civil penalty and the General Manager agree on the assessment. If the assessment of a civil penalty against any person is approved or modified by the General Manager at a hearing conducted pursuant to this section, the General Manager may require the payment of said penalty within the (10) days or such additional time as the General Manager may specify.

- 16.06.06 The General Manager may appoint a hearing officer to conduct any hearing authorized by this section. A hearing officer shall have the same authority to conduct a hearing and reach a decision as is provided to the General Manager; provided that, the decision of the hearing officer shall not be final but shall be a recommended decision for consideration by the General Manager. The General Manager may approve such decision without change, reject the decision and require a new or continued hearing, or issue a different or revised decision, which is supported by evidence presented at the hearing. The General Manager shall make a recommended decision to the Board. The District Board shall consider the matter no later than its second regularly scheduled meeting following the date the appeal was filed. The District Board shall transmit a written copy of its Final Order by certified and regular mail to the User and to the General Manager.
- 16.06.07 The General Manager may provide for any part of the hearing to be recorded by any reasonable means, including but not limited to, audio and/or video recording, stenographer, or court reporter. A transcript of any hearing, or part thereof, which is recorded need not be prepared unless requested. The original of a requested transcript shall be filed with the General Manager. Each person shall bear the cost of the transcript, which said person requests, including any copy thereof.
- 16.06.08 Any person against whom a final order or decision of the General Manager is made pursuant to a hearing conducted under this section, may seek judicial review of the order or decision by filing a written petition within thirty (30) days after receipt of notice of the order or decision, with the Superior Court of Buncombe County. Within thirty (30) days after service of a copy of the petition upon the MSD or such other time as may be ordered by the court, the MSD shall prepare and transmit to the court the original or a certified copy of the official record of the hearing as hereinafter set forth. The official record of the hearing shall consist of:
- A. All notices, motions and other similar documents;
  - B. All documentary and tangible evidence tendered at the hearing; and
  - C. The final order or decision. A transcript of each part of the hearing that was recorded shall be included in the official record as an exhibit, if available at the time the remaining portion of the official record is transmitted to the Court. If the transcript is not available at that time, it shall be transmitted to the Court as soon as reasonably possible after the transcript has been prepared. If testimony is taken and not recorded, a narrative summary of any testimony taken shall be prepared and transmitted to the court as an exhibit to the official record.
- 16.06.09 The General Manager may consider petitions for remission of civil penalties assessed pursuant to this section. A petition for remission shall be in writing and shall be signed by the person against whom the civil penalty was assessed. The petition shall include: a waiver of any and all rights of the petitioner to a hearing and judicial review of the assessment; and a stipulation that the facts are correct as set forth in the documents assessing the civil penalty. The decision of the General Manager on the petition shall be final and shall not be subject to further administrative or judicial review. In determining whether a petition for remission will be approved, the General Manager shall consider the following factors:
- A. whether one or more of the factors concerning the assessment of a civil penalty in Subsection 16.04.01 were wrongly applied to the detriment of the petitioner;
  - B. whether the petitioner promptly abated continuing environmental damage resulting from the violation giving rise to the assessment;
  - C. whether the violation giving rise to the assessment was inadvertent or the result of an accident;

- D. whether the petitioner has been assessed civil penalties for any prior violations pursuant to this section or by any State or Federal authority enforcing substantially similar provisions;
- E. Whether payment of the civil penalty by the petitioner will prevent payment for any remaining, necessary remedial action.

16.06.10 After submitting a petition for remission, the petitioner shall provide such additional information and records as may be reasonably necessary or convenient to the General Manager's consideration of the petition. The General Manager may remit the entire amount of a civil penalty only when the petitioner has not been assessed civil penalties for any prior violation of this section or by State or Federal authority, enforcing substantially similar provisions and the payment of the civil penalty will prevent payment of any remaining, necessary remedial action.

#### **Section 16.07 Permits Not Transferable**

Permits issued pursuant to this section are issued to a specific applicant. A permittee may not assign, transfer, or sell a permit, or any right or obligation in a permit, to another person.

**SECTION 17****SPECIAL ARRANGEMENTS****Section 17.01 Special Arrangements**

Nothing contained in this Ordinance shall be construed as preventing the execution of a contract, special agreement, or arrangement between the District Board and any User whereby wastewater of unusual strength, character or quantity may be admitted into the sewerage system upon such terms and conditions, as the District Board deems appropriate.

**SECTION 18****SEVERABILITY****Section 18.01 Severability**

If any section, clause, provision or portion of this Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, provision, or portion of this Ordinance.

**SECTION 19****CONFLICT****Section 19.01 Conflict with Other Ordinances and Regulations**

All other ordinances and regulations and parts of other ordinances and regulations inconsistent or conflicting with any part of this Ordinance are hereby repealed to the extent of such inconsistency or conflict. This Ordinance shall not affect any litigation or other proceedings pending at the time of its adoption.

**Section 19.02 Conflict with Federal, State, or Local Law**

Nothing in this Ordinance is intended to affect any requirements including standards or prohibitions established by Federal, State or local law so long as Federal, State, or local requirements are not less stringent than the requirements set forth in this Ordinance.

**SECTION 20**

**AMENDMENTS**

**Section 20.01 Amendments**

The District reserves the right to amend the Ordinance.



**SECTION 21**

**ADOPTION AND EFFECTIVE DATE**

**Section 21.01 Declaration of Intent to Adopt**

Declaration of Intent to adopt this Sewer Use Ordinance was introduced to the District Board of the Metropolitan Sewerage District of Buncombe County, North Carolina and passed on April 15, 2009.

**Section 21.02 Consideration of Comments and Suggestions**

Comments and suggestions from governing bodies within the District with respect to this Ordinance were considered by the District Board of the Metropolitan Sewerage District of Buncombe County, North Carolina on October 21, 2009.

**Section 21.03 Adoption and Effective Date**

21.03.01 Sewer Use Ordinance adopted on October 21, 2009.

21.03.02 Effective Date: October 21, 2009.

This Ordinance shall take effect on October 21, 2009 provided that prior to said date this Ordinance shall have been approved by the North Carolina Environmental Management

Approved as to form:

\_\_\_\_\_  
William Clark  
General Counsel

\_\_\_\_\_  
Steven T. Aceto, Chairman  
Board of the Metropolitan Sewerage District North  
Carolina of Buncombe County,

Attest:

\_\_\_\_\_  
Thomas E. Hartye, P.E.  
General Manager

# Metropolitan Sewerage District of Buncombe County

## BOARD INFORMATIONAL ITEM

**Meeting Date:** October 21, 2009  
**Submitted By:** Thomas E. Hartye, PE., General Manager  
**Prepared By:** W. Scott Powell, Director of Finance  
**Subject:** Cash Commitment/Investment Report-Month Ended August 31, 2009

### Background

Each month staff presents to the Board an investment report for all monies in bank accounts and specific investment instruments. The total investments as of August 31, 2009 were \$31,889,115. The detailed listing of accounts is available upon request. The average rate of return for all investments is 2.736%. These investments comply with North Carolina General Statutes, Board written investment policies and the District's Bond Order.

The attached investment report represents cash and cash equivalents as of August 31, 2009 does not reflect contractual commitments or encumbrances against said funds. Shown below are the total investments as of August 31, 2009 reduced by contractual commitments, bond funds, and District reserve funds. The balance available for future capital outlay is (\$13,968,817).

<b>Total Cash &amp; Investments as of 08/31/2009</b>	31,889,115
<b>Less:</b>	
Budgeted Commitments (Required to pay remaining FY10 budgeted expenditures from unrestricted cash)	
Construction Funds	(19,097,120)
Operations & Maintenance Fund	(11,580,106)
	(30,677,226)
Bond Restricted Funds	
Bond Service (Funds held by trustee):	
Funds in Principal & Interest Accounts	(66,761)
Debt Service Reserve	(4,420,814)
Remaining Principal & Interest Due	(7,092,904)
	(11,580,479)
District Reserve Funds	
Fleet Replacement	(983,312)
WWTP Replacement	(909,963)
Maintenance Reserve	(805,720)
	(2,698,995)
Post-Retirement Benefit	(212,936)
Self-Funded Employee Medical	(688,296)
<b>Designated for Capital Outlay</b>	<b>(13,968,817)</b>

### Staff Recommendation

None. Information Only.

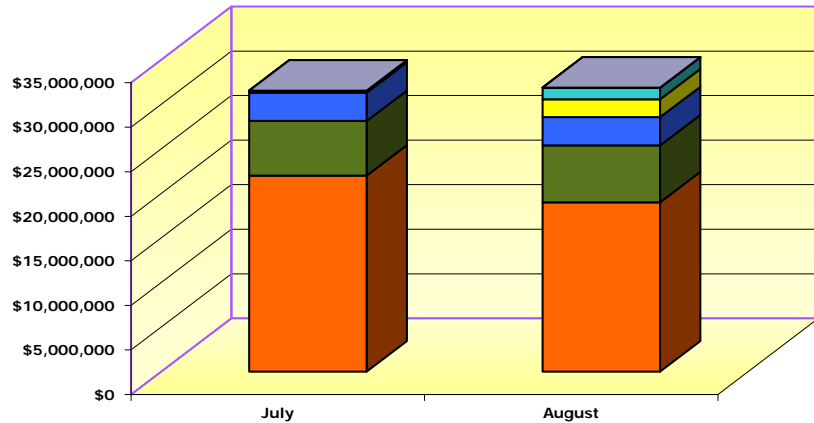
### Action Taken

<b>Motion by:</b>	to	Approve	Disapprove
<b>Second by:</b>		Table	Send to Committee
<b>Other:</b>			
<b>Follow-up required:</b>			
<b>Person responsible:</b>			<b>Deadline:</b>

## Metropolitan Sewerage District of Buncombe County Investment Portfolio

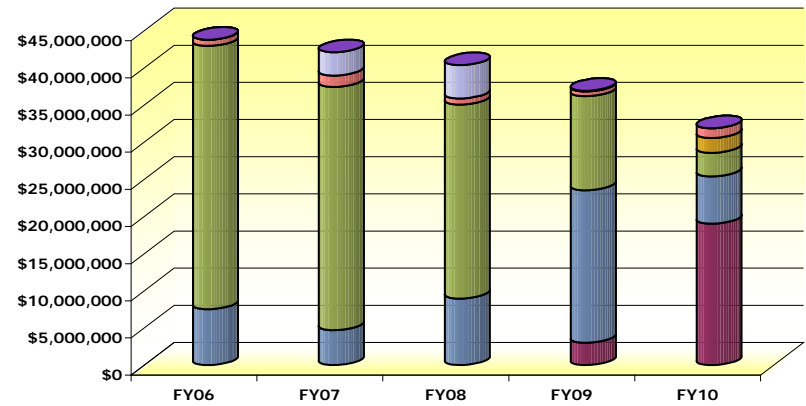
	Cash in Operating Checking Accounts	Bank of America Gov't Advantage	NCCMT (Money Market)	Certificate of Deposit	Commercial Paper	Municipal Bonds	Cash Reserve	Gov't Agencies & Treasuries	Total
<b>Held with Bond Trustee</b>	\$ -		\$ 3,366,217				\$ -	\$ 1,121,357	\$ 4,487,574
<b>Held by MSD</b>	1,325,206	2,000,336	3,016,443	19,015,796	-	-		2,043,760	27,401,541
	<u>\$ 1,325,206</u>	<u>\$ 2,000,336</u>	<u>\$ 6,382,660</u>	<u>\$ 19,015,796</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 3,165,117</u>	<u>\$ 31,889,115</u>

MSD of Buncombe County  
Investment Portfolio - FY10



- Certificate of Deposit
- Gov't Agencies & Treasuries
- NCCMT (Money Market)
- Bank of America Gov't Advantage
- Operating Checking Accts
- Commerical Paper
- Municipal Bonds
- Cash Reserve

MSD of Buncombe County  
Investment Portfolio  
As of August 31



- Certificate of Deposit
- NCCMT (Money Market)
- Gov't Agencies & Treasuries
- Bank of America Gov't Advantage
- Operating Checking Accts
- Commerical Paper
- Municipal Bonds
- Cash Reserve

**Board Meeting**

October 21, 2009

**Subject:** Cash Commitment/Investment Report-Month Ended August 31, 2009

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## MSD Investment Managers' Report at August 31, 2009

### Summary of Asset Transactions

	Original Cost	Market	Interest Receivable
Beginning Balance	\$ 25,179,153	\$ 25,225,413	\$ 310,498
Capital Contributed (Withdrawn)	(825,007)	(825,007)	-
Realized Income	75,058	75,058	(74,021)
Unrealized/Accrued Income	-	(2,500)	47,027
Ending Balance	<u>\$ 24,429,204</u>	<u>\$ 24,472,964</u>	<u>\$ 283,504</u>

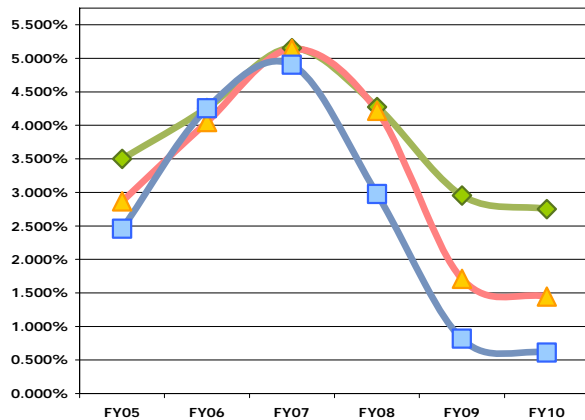
### Value and Income by Maturity

	Original Cost	Income
Cash Equivalents <91 Days	\$ 3,413,408	\$ 6,367
Securities/CD's 91 to 365 Days	19,015,796	\$ 35,467
Securities/CD's > 1 Year	2,000,000	\$ 3,730
	<u>\$ 24,429,204</u>	<u>\$ 45,564</u>

### Month End Portfolio Information

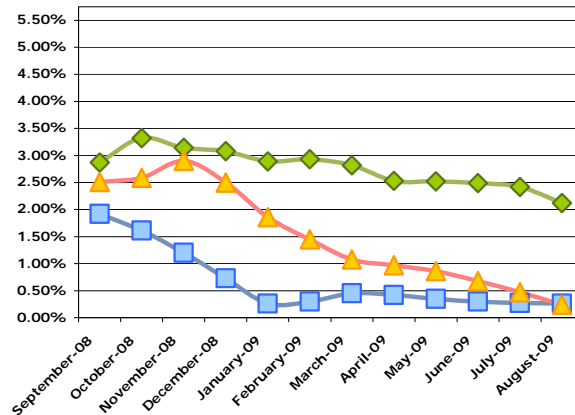
Weighted Average Maturity	121.58
Yield to Maturity	2.42%
6 Month T-Bill Secondary Market	0.27%
NCCMT Cash Portfolio	0.47%

Metropolitan Sewerage District  
Annual Yield Comparison



◆ MSD Yield to Maturity  
▲ NCCMT Cash Portfolio  
■ 6 Month - T Bill Secondary Market

Metropolitan Sewerage District  
Yield Comparison  
August 31, 2009



◆ Yield to Maturity  
■ 6 Month T-Bill Secondary Market  
▲ NCCMT Cash Portfolio

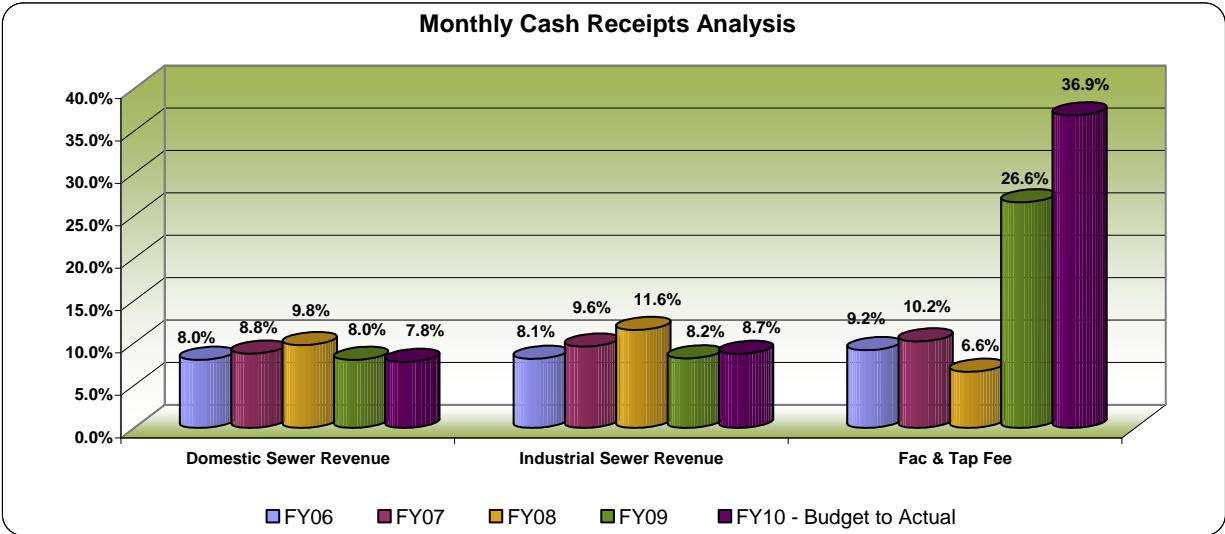
**Board Meeting**

October 21, 2009

**Subject:** Cash Commitment/Investment Report-Month Ended August 31, 2009

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**METROPOLITAN SEWERAGE DISTRICT  
ANALYSIS OF CASH RECEIPTS  
AS OF 08/31/09**

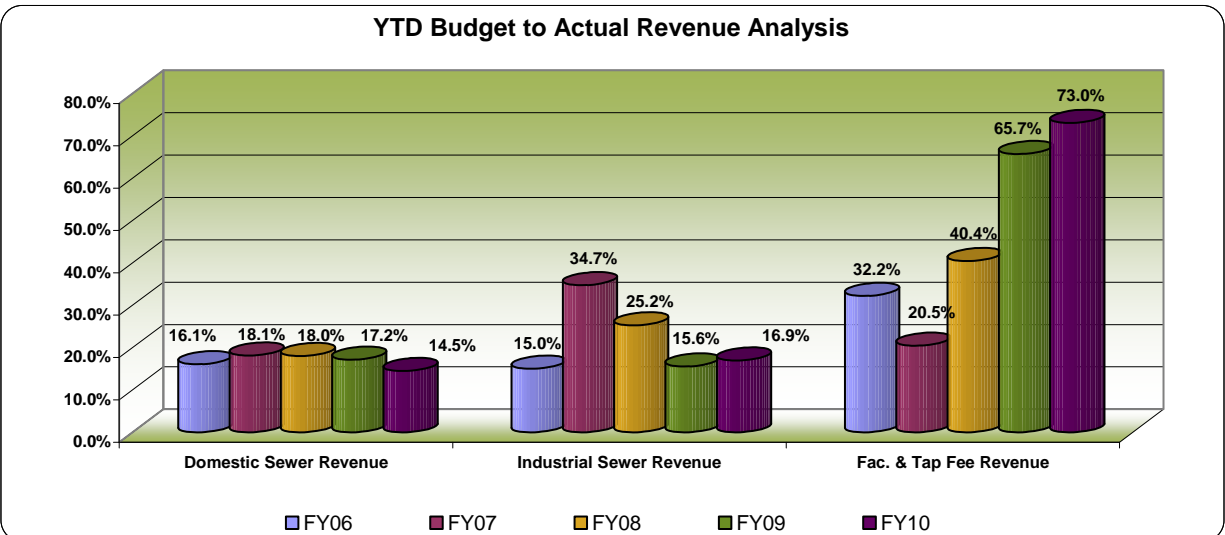


**Monthly Cash Receipts Analysis:**

Monthly Domestic Sewer Revenue is considered reasonable based on historical trends.

Monthly Industrial Sewer Revenue is considered reasonable based on historical trends.

Due to the unpredictable nature of facility and tap fee revenue, staff budgets this revenue stream conservatively. Based on that facility and tap fee revenue is considered reasonable.



**YTD Budget to Actual Revenue Analysis:**

YTD Domestic Sewer Revenue is lower due to timing of one cash receipt as well as continuing recessionary pressures.

YTD Industrial Sewer Revenue is considered reasonable based on historical trends.

Due to the unpredictable nature of facility and tap fee revenue, staff budgets this revenue stream conservatively. Based on that facility and tap fee revenue is considered reasonable.

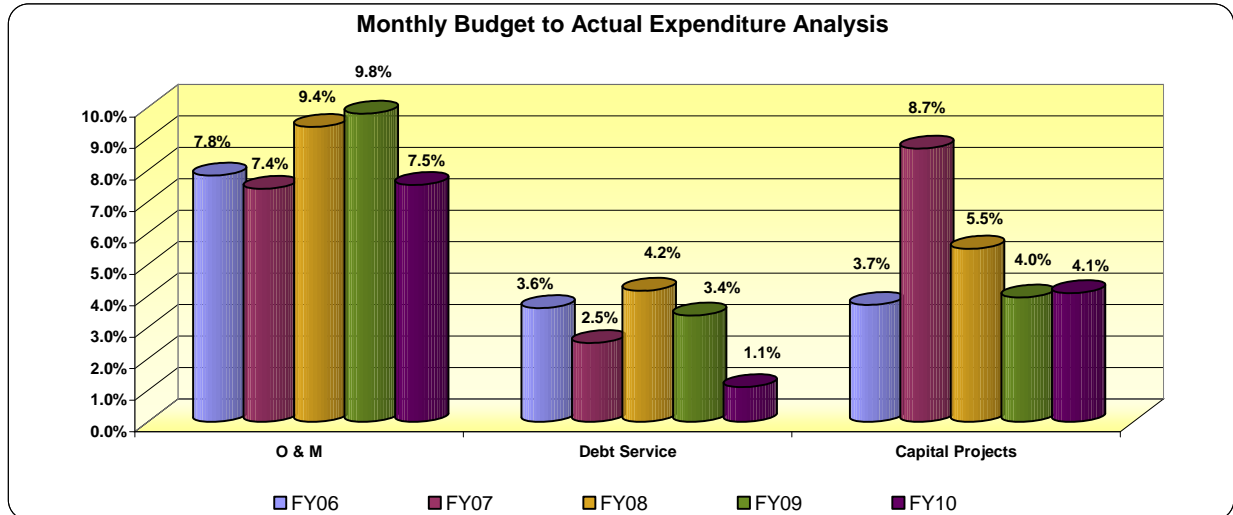
# Board Meeting

October 21, 2009

Subject: Cash Commitment/Investment Report-Month Ended August 31, 2009

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## METROPOLITAN SEWERAGE DISTRICT ANALYSIS OF EXPENDITURES AS OF AUGUST 31, 2009

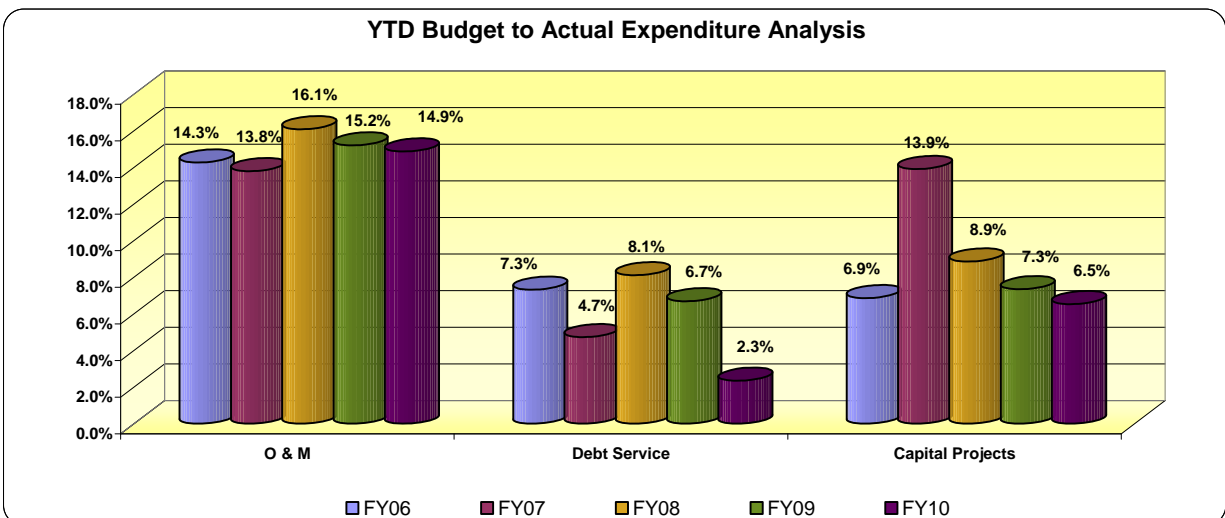


### Monthly Budget to Actual Expenditure Analysis:

In FY07 & FY08, August O&M expenditures contained three payperiods. August 09 O&M expenditures are considered reasonable taken this into consideration.

Due to the the nature of the variable rate bond market, monthly expenditures can vary year to year. Based on current variable interest rates monthly debt service expenditures are consider reasonable.

Due to nature and timing of capital projects, monthly expenditures can vary from year to year. Based on the current outstanding capital projects, monthly capital project expenditures are consider reasonable.



### YTD Budget to Actual Expenditure Analysis:

YTD O&M expenditures are considered reasonable based on historical trends.

Due to the the nature of the variable rate bond market, YTD expenditures can vary year to year. Based on current variable interest rates YTD debt service expenditures are consider reasonable.

Due to nature and timing of capital projects, YTD expenditures can vary from year to year. Based on the current outstanding capital projects, YTD capital project expenditures are consider reasonable.

**Board Meeting**

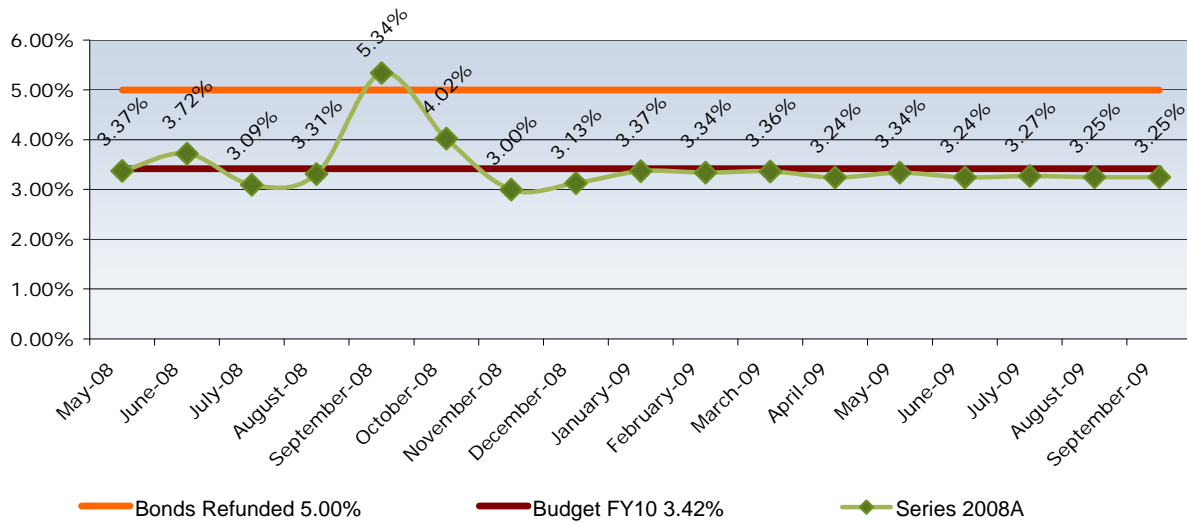
October 21, 2009

**Subject:** Cash Commitment/Investment Report-Month Ended August 31, 2009

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**MSD Variable Debt Service Report  
As of September 30, 2009**

**Series 2008A Synthetic Fixed Rate Bonds Performance History**



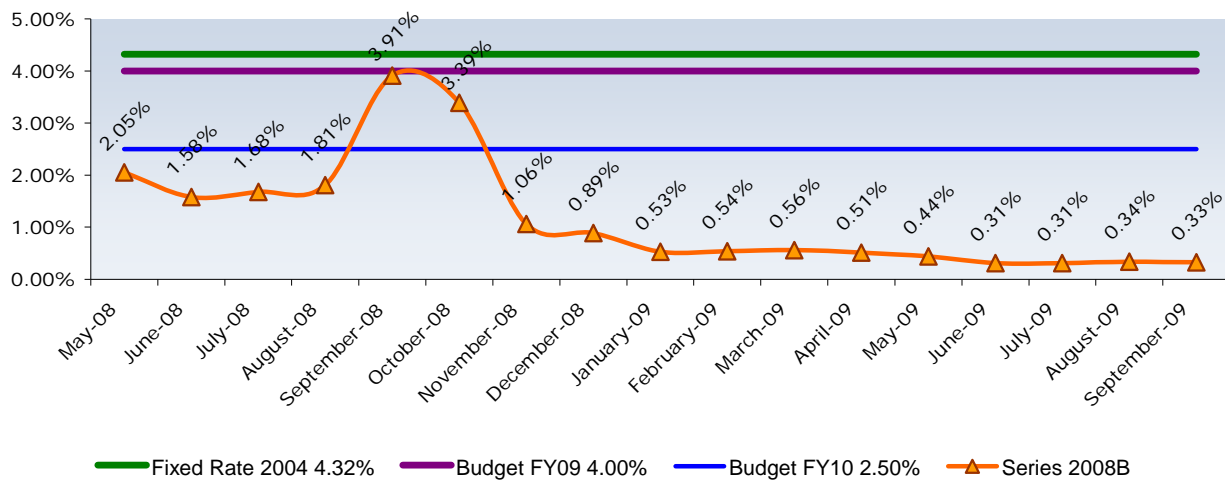
**Series 2008A:**

Savings to date on the Series 2008A Synthetic Fixed Rate Bonds is \$700,165 as compared to 4/1 fixed rate of 4.83%.

Assuming that the rate on the Series 2008A Bonds continue at the current all-in rate of 4.1675%. MSD will achieve cash savings of \$3,502,000 over the life of the bonds.

MSD would pay \$3,253,500 to terminate the existing Bank of America Swap Agreement.

**2008B Variable Rate Bond Performance History**



**Series 2008B:**

Saving to date on the 2008B Variable Rate Bonds is \$958,917 as compared to 5/1 fixed rate of 4.32%

Since May 1, 2008, the Series 2008B Bonds average variable rate has been 1.22% .

MSD will achieve \$6,727,000 in cash savings over the life of the bonds at the current average variable rate.

# **STATUS REPORTS**



## CAPITAL IMPROVEMENT PROGRAM

## STATUS REPORT SUMMARY

Current as of October 13, 2009

PROJECT	AWARD DATE	NOTICE TO PROCEED	*COMPLETION DATE	*CONTRACT AMOUNT	*COMPLETION STATUS (WORK)	COMMENTS
BALLANTREE ROAD (NCDOT)	9/3/2009	9/8/2009	10/7/2009	\$12,280.00	95%	<b>Informal</b> Pipeline is complete and awaiting final inspection.
BILTMORE AVENUE BRIDGE REPLACEMENT (NCDOT) / THOMPSON STREET SEWER	9/8/2009	TBA	TBA	TBA	0%	<b>Informal</b> Bids were opened on September 1, 2009. Tarheel Paving Company is the low bidder.
EASTWOOD AVENUE @ OLD U.S. 70	9/16/2009	TBA	TBA	TBA	0%	<b>Informal</b> Contract was awarded to T & K Utilities, Inc. No work has begun yet.
GLEN BRIDGE ROAD (PRP 47006)	6/10/2009	7/6/2009	2/1/2010	\$227,967.50	90%	<b>Formal - ARRA project</b> Mainline construction is complete. Asphalt resurfacing is nearing completion then the project will be ready for final inspection. ARRA inspection this was held this week, and the State Inspector was very pleased with the project.
LONG SHOALS ROAD (PRP 48002)	6/10/2009	7/6/2009	2/1/2010	\$365,024.50	90%	<b>Formal - ARRA project</b> Mainline construction is complete. Asphalt resurfacing is nearing completion then the project will be ready for final inspection. ARRA inspection was held this week, and the State Inspector was very pleased with the project.
MIDDLE BEAVERDAM CREEK INTERCEPTOR	7/15/2009	8/31/2009	2/27/2010	\$736,476.00	25%	<b>Formal</b> Work is progressing well. Crews working upstream of Woodfin Avenue.
REEMS CREEK INTERCEPTOR	9/17/2008	10/9/2008	6/30/2010	\$3,549,320.00	98%	<b>Formal</b> Contractor is working on punch list.
TOWN BRANCH INTERCEPTOR	8/19/2009	9/21/2009	2/18/2010	\$726,875.00	0%	<b>Formal</b> Project was awarded to B C & D Associates. Construction survey has started and mobilization is expected next week.
WRF - INTERMEDIATE PUMPING REPLACEMENT	7/15/2009	8/19/2009	8/19/2010	\$1,690,788.00	5%	<b>Formal</b> Shop submittal review is in progress. It has been determined to use the alternate route/plan for the primary electrical feed. The Microscreen building is being dewatered and cleaned.

\*Updated to reflect approved Change Orders and Time Extensions

Planning and Development Projects  
Status Report October 14, 2009

Status	Project Name	Project Number	Work Location	Units	LF	Pre-Construction Conference Date	Comments
	Gene Bradley Subdivision	2004022	Fletcher	9	420	3/3/2005	Complete-Waiting on final documents
	Davidson Road Sewer Extension	2004154	Asheville	3	109	12/15/2004	Complete-Waiting on final documents
	Reynolds Mountain Phase IV	1995126	Asheville	37	2,036	7/6/2005	Complete-Waiting on final documents
	Riverbend Urban Village	2004206	Asheville	260	1250	8/29/2006	Complete-Waiting on final documents
	N. Bear Creek Road Subdivision	2005137	Asheville	20	127	7/11/2006	Complete - Waiting on final documents
	Woodfin Manor	2003154	Woodfin	60	575	10/11/2006	Complete - Waiting on final documents
	Willowcreek Village Ph.3	2003110	Asheville	26	597	4/21/2006	Complete - Waiting on final documents
	Westmore Subdivision	2003003	West Asheville	92	1163	8/29/2006	Complete - Waiting on final documents
	Rock Hill Road Subdivision	2005153	Asheville	2	277	8/7/2006	Complete - Waiting on final documents
	Ken Higgins	1999153	Asheville	-	240	6/15/2007	Complete - Waiting on final documents
	Jim Beck	2003003	West Asheville	future	75	12/12/2000	Complete - Waiting on final documents
	Holiday Inn	2001068	Asheville	1	474	8/11/2003	Complete - Waiting on final documents
	Bitmore Park Town Square II-4	2007079	Arden	-	481	6/21/2007	Complete - Waiting on final documents
	Byrd Street Condos	2007085	Asheville	14	300	7/31/2007	Complete - Pending punchlist/ final docs
	MWB Sewer Extension	2008046	Asheville	Comm.	285	5/12/2008	Complete - Waiting on final documents
	The Cottages on Liberty Green	2007297	Asheville	7	124	5/30/2008	Complete - Waiting on final documents
	Haw Creek Tract	2006267	Asheville	49	1,817	10/16/2007	Complete - Waiting on final documents
	Haywood Village	2007172	Asheville	55	749	7/15/2008	Complete - Waiting on final documents
	Oak Crest Place	2004056	West Asheville	27	791	12/3/2004	Ready for final inspection
	Buncombe County Animal Shelter	2007216	Asheville	Comm.	78	5/1/2008	Complete - Waiting on final documents
	Oak Crest Drive	2008138	Asheville	5	290	1/14/2009	Complete - Waiting on final documents
	Lodging at Farm (Gottfried)	2008169	Candler	20	45	6/2/2009	Complete - Waiting on final documents
	Camp Dorothy Walls - Ph. 1	2007294	Black Mtn.	Comm.	593	6/16/2009	Complete - Waiting on final documents
	Leicester Village Townhomes	2007291	Weaverville	56	427	4/15/2008	Complete - Waiting on final documents
	Honeysuckle Breeze	2007246	Asheville	5	70	9/22/2009	Complete - Waiting on final documents
	Ridgefield Business Park	2004188	Asheville	18	758	2/16/2005	Complete-Waiting on final documents
			<b>Subtotal</b>	<b>766</b>	<b>14,151</b>		

Planning and Development Projects  
Status Report October 14, 2009

Status	Project Name	Project Number	Work Location	Units	LF	Pre-Construction Conference Date	Comments
Under Construction	Buchanan Road	2009005	Asheville	3	392	5/19/2009	Ready for final inspection
	Crayton Creek Green	2006282	Asheville	10	482	3/15/2007	New developer & Engineer, ready for final
	Grove Park Cove Subdivision	2004101	Asheville	14	1122	6/28/2006	Pre-con held ready for construction
	The Settings (6 Acre Outparcel)	2004192	Black Mountain	21	623	3/15/2006	Ready for final inspection
	Asheville Ford	2008083	Asheville	Comm.	243	2/16/2009	Ready for final inspection
	McGinnis Sewer Extension	2004225	Asheville	9	48	5/19/2005	In redesign.
	Falcon Ridge	2004240	Asheville	38	3,279	10/11/2006	Ready for final inspection
	Waightstill Mountain PH-8	2006277	Arden	66	3,387	7/26/2007	testing
	Artisan Park	1998125	West Asheville	133	4,529	4/26/2001	Changed Engineer - work to restart soon
	Brookside Road Relocation	2008189	Black Mtn	n/A	346	1/14/2009	Pre-con held, ready for construction
	Scenic View	2006194	Asheville	48	534	11/15/2006	Ready for final inspection
	Ingles	2007214	Black Mtn.	Comm.	594	3/4/2008	Ready for final inspection
	Bartram's Walk	2007065	Asheville	100	10,077	7/28/2008	testing
	Morgan Property	2008007	Candler	10	1,721	8/11/2008	Pre-con held, ready for construction
	Village at Bradley Branch - Ph. III	2008076	Asheville	44	783	8/8/2008	Ready for final inspection
	Versant Phase I	2007008	Woodfin	64	12,837	2/14/2007	Ready for final inspection
	Canoe Landing	2007137	Woodfin	4	303	5/12/2008	Ready for construction
	Central Valley	2006166	Black Mtn	12	472	8/8/2007	Punchlist pending
	Hominy Valley Center	2005010	Candler	5	433	8/9/2005	Punchlist pending
	Kenilworth Cottages	2008031	Asheville	11	177	5/12/2008	Ready for construction
	CVS-Acton Circle	2005163	Asheville	4	557	5/3/2006	Ready for final inspection
	Hamburg Mountain Phase 3	2004086	Weaverville	13	844	11/10/2005	Ready for final inspection
	UNCA New Science Building	2005039	Asheville	5	538	10/28/2005	Ready for final inspection
	Bostic Place Sewer Relocation	2005102	Asheville	3	88	8/25/2005	Ready for final inspection
	Kyfields	2003100	Weaverville	35	1,118	5/10/2004	Ready for final inspection
	Brotherton Co-Housing	1999162	West Asheville	32	152	1/24/2003	Ready for final inspection
	Teems Road Subdivision	2007143	Asheville	40	1,308	5/27/2008	Ready for construction
	Thom's Estate	2006309	Asheville	40	3,422	1/24/2008	testing
	Thom's Estate - Phase II	2008071	Asheville	40	3,701	6/10/2008	testing
	Rockwood Apartments	2008109	Asheville	256	4072	1/27/2009	Pre-con held, ready for construction
	Skyland Apartments	2007117	Arden	63	96	4/23/2008	Pre-con held, ready for construction
	Berrington Village Apartments	2008164	Asheville	308	4,690	5/5/2009	Installing
	Momentum Health Adventure	2008097	Asheville	Comm.	184	8/19/2009	Pre-con held, ready for construction
	North Point Baptist Church	2008105	Weaverville	Comm.	723	5/20/2009	Ready for final inspection
The Villages at Crest Mountain	2009049	Asheville	63	1,364	9/9/2009	Pre-con held, ready for construction	
CVS- Weaverville Hwy	2006301	Woodfin	Comm.	59	8/18/2009	Pre-con held, ready for construction	
Camp Dorothy Walls - Ph. 2	2007294	Black Mtn.	Comm.	593	6/16/2009	Pre-con held, ready for construction	
Forest Manor Complex	2088050	Asheville	Comm.	96	12/4/2008	Ready for final inspection	
Subtotal				2517	87,420		
Total Units:				3,283			
Total LF:					101,571		

***Right of Way Section  
1st Quarter Summary  
Open Projects***

<b><i>Project</i></b>	<b><i>Total ROW Budget</i></b>	<b><i>Total Expends to Date</i></b>	<b><i>Comment</i></b>
Charland Forest GSR	\$34,906	\$15,852	Access 90% complete with 45% of Total Budget expended to date.
Crockett Road PRP	\$17,109	\$26,878	Access 100% complete with 157% of Total Budget expended to date. One condemnation filed with judgment pending. Appraisal reflects higher market values than tax values. Additionally, existing trench could not be used due to structures, thereby encumbering new area.
Dingle Creek Interceptor (formerly Ph II)	\$64,657	\$48,004	Access 100% complete with 74% of Total Budget expended to date. One condemnation filed with judgment pending.
Evergreen Avenue Four Inch Main	\$10,971	\$838	Access 100% complete with 8% of Total Budget expended to date. One condemnation filed with judgment pending.
Forest Hill Drive #2 PRP	\$85,404	\$70,376	Access 100% complete with 82% of Total Budget expended to date. Two condemnations filed with judgments pending.
Forest Ridge Road GSR	\$16,045		Negotiations begun - intro letters sent 9/2/09.
Gladstone Road 4" Main	\$14,624	\$2,569	Access 85% complete with 18% of Total Budget expended to date.
Heywood Rd Interceptor Ph 2	\$26,419	\$31,863	Access 34% complete with 120% of Total Budget expended to date. Appraisals reflect higher market values than tax values.
Inglewood Road	\$43,990	\$43,394	Project 100% complete with 99% of Total Budget expended. One condemnation filed and settled prior to trial.
Laurel Road Phase II Rehabilitation	\$13,737	\$4,800	Access 75 % complete with 35% of Total Budget expended to date.
Long Shoals Road PRP	\$340,584	\$213,591	Access 100% complete with 63% of Total Budget expended to date. Three condemnations filed; one settled prior to trial and two are pending judgments.
Lower Smith Mill Creek Rehabilitation	\$295,324	\$265,443	Access 100% complete with 90% of Total Budget expended to date. Ten condemnations filed; two have been dismissed, three settled prior to trial and five are pending judgments.
Merrimon Ave @ Ottari Rd GSR	\$221,473	\$148,280	Project 100% complete with 67% Total Budget expended. One condemnation filed and settled prior to trial. Sky King easement partially executed & compensation held until resolution.
Merrimon Avenue @ Stratford Road GSR	\$55,854	\$44,030	Access 100% complete with 79% of Total Budget expended to date. One condemnation filed with judgment pending.

<i>Project</i>	<i>Total ROW Budget</i>	<i>Total Expends to Date</i>	<i>Comment</i>
Old Home @ Weaverville Highway PRP	\$100,394	\$99,277	Access 100% complete with 99% of Total Budget expended to date. Market values much greater than tax values in this corridor and appraised damages were high. One condemnation filed with judgment pending.
Reems Creek Master Plan Extension	\$84,130	\$61,320	Access 92% complete with 73% of Total Budget expended and no condemnations. Original alignment was revised due to trout buffer restrictions and permitting requirements, deleting four of the original parcels, adding three new parcels and modifying one easement already acquired. Still awaiting easement from developer who initiated project.
Riverside Drive/Westover Drive	\$19,322	\$13,895	Access 100% complete with 72% of Total Budget expended to date. Two condemnations filed with judgments pending.
Rockdale Ave PRP	\$24,000	\$4,869	Access 90% complete with 20% of Total Budget expended to date.
Short Coxe @ Southside GSR	\$133,906		Consultant mailed intro letters to owners 4/27/09. On 5/4/09 engineer contacted consultant stating he was making design adjustments that would affect project alignment. As of 6/26/09 ROW was notified that construction conflicts were still not resolved and it would be several more weeks before resolution. Therefore, negotiations are on hold until design is revised.
Sycamore Terrace PRP	\$17,817	\$1,000	Access 50% complete with 6% of Total Budget expended to date.
US 70 @ Neil Price Avenue Phase II	\$17,890	\$4,133	Access 80% complete with 23% of Total Budget expended to date.