

Sewer Use Ordinance

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA

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SECTION 1 - GENERAL PROVISIONS

1.1 Purpose and Policy

This Ordinance sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the **Metropolitan Sewerage District of Buncombe County**, hereinafter sometimes referred to as "the District," and enables the District to comply with applicable State and Federal law and regulation, including, the Clean Water Act (33 United States Code §1251 *et seq.*) and the General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this Ordinance are:

- (a) To prevent the introduction of pollutants into the District Wastewater System which will interfere with the operation of the system or contaminate the resulting sludge;
- (b) To prevent the introduction of pollutants into the District Wastewater System which will pass through the system, inadequately treated, into any waters of the State or otherwise be incompatible with the system;
- (c) To promote reuse and recycling of industrial wastewater and sludges from the District Wastewater System;
- (d) To protect both district personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;
- (e) To provide for equitable distribution of the cost of operation, maintenance and improvement of the District Wastewater System; and
- (f) To ensure that the District complies with its NPDES or Non-discharge Permit conditions, sludge use and disposal requirements and any other Federal or State law or regulation to which the District Wastewater System is subject.

This Ordinance provides for the regulation of direct and indirect contributors to The District Wastewater System, through the issuance of permits to certain non-domestic Users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This Ordinance shall apply to all Users of The District Wastewater System, as authorized by N.C.G.S. 162A-69(13a) and 162A-81. Except as otherwise provided herein, 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 by the General Manager to other District personnel.

By discharging wastewater into The District Wastewater System, Industrial Users located outside the boundaries of the District agree to comply with the terms and conditions established in this Ordinance, as well as any Permits, enforcement actions, or orders issued hereunder.

1.2 Definitions and Abbreviations

- (a) Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Ordinance, shall have the meanings hereinafter designated:
 - (1) **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.*
 - (2) **Approval Authority**: The Director of the Division of Water Resources of the North Carolina Department of Environment Quality or his designee.
 - (3) **Accidental Discharge**: Any release of Wastewater, which for any unforeseen reason, fails to comply with any prohibition or limitation of this Ordinance. ?
 - (4) **Authorized Representative of the Industrial User**:
 - (i) If the Industrial User is a corporation, Authorized Representative shall mean:

- (A) the president, secretary, or a vice-president of the corporation in charge 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 recommendations, 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.
- (ii) If the Industrial User is a partnership or sole proprietorship, an Authorized Representative shall mean a general partner or the proprietor, respectively.
 - (iii) 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, or their designee.
 - (iv) the individuals described in paragraphs i-iii above may designate another 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 The District.
 - v) 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.
- (5) **Best Management Practice (BMP):** Schedules of activities, prohibitions of practices, maintenance procedures, Pollutant Minimization Plans, and other management practices or combinations of practices to implement the prohibitions listed in Section 2.2 and to prevent or reduce the introduction of CEC's to the District Wastewater System or the pollution of surface waters. BMPs also include treatment requirements, operating procedures, material or product substitution, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
 - (6) **Biochemical Oxygen Demand (BOD):** The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g. mg/l).
 - (7) **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.
 - (8) **Bypass:** The intentional or unintentional diversion of waste streams from any portion of a User's treatment facility.
 - (9) **Categorical Standards:** National Categorical Pretreatment Standards or Pretreatment Standard.
 - (10) **Color:** Considered to be the true color of the light transmitted by a waste solution after removing suspended material including pseudo colloidal particles.

- (11) **Collection System Permit:** A Permit issued by DEQ to The District for the operation and maintenance of a wastewater collection system, in accordance with the provisions of N.C.G.S. 143-215.1, as the same may be amended from time to time.
- (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 may be either a:
- (i) 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.
 - (ii) 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.
- (13) **Combined Sewer:** A sewer receiving both surface runoff and wastewater.
- (14) **Contaminants of Emerging Concern (CECs):** Chemical and other waste contaminants posing unique issues and challenges to the environmental community as a result of:
- (A) the recent development of new chemicals or other products;
 - (B) new or recently identified byproducts or waste products;
 - (C) newly discovered or suspected adverse health or environmental impacts;
 - (D) physical or chemical properties that are not fully evaluated or understood;
 - (E) an absence or pending changes to fully defined risk levels, water quality standards or guidance or other environmental program levels of control
- Emerging contaminants include, but are not limited to, PFAS (polyfluoroalkyl substances), nanomaterials, pharmaceuticals and their constituents, and steroids and hormones.
- (15) **Constituents:** the specific compounds and components that comprise wastewater.
- (16) **Control Authority:** The Metropolitan Sewerage District of Buncombe County, North Carolina (The District).
- (17) **Cooling Water:** The wastewater discharged from any use such as air conditioning, cooling or refrigeration or to which the only pollutant added is heat.
- (18) **Direct Discharge:** The discharge of treated or untreated wastewater directly to the waters of the State of North Carolina.
- (19) **Domestic Waste:** All liquid and waterborne pollutants exclusive of unpolluted wastewater or wastewater/process wastes from operations of Industrial Users.
- (20) **The District:** The Metropolitan Sewerage District of Buncombe County, North Carolina.
- (21) **District Board:** The Governing Board of the Metropolitan Sewerage District of Buncombe County, North Carolina.
- (22) **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.
- (23) **FOG:** Fats, Oils, Grease and related substances of similar characteristics.
- (24) **Flammable:** Pollutants which have the potential to create a fire or explosive hazard in the WRF or District Wastewater System, including, but not limited to waste streams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21. 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, or combinations of any and all materials that can create fire or explosive hazard.

- (25) **Food Service Establishment:** A facility discharging kitchen or food preparation wastewaters such as restaurants, motels, 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.
- (26) **General Manager:** The Chief Administrative Officer of The District who is charged with administrative control of all operations of The District and is responsible directly to The District Board. As used herein, it may also include any other District employee delegated to act for The District by the General Manager or by The District Board.
- (27) **Grab Sample:** A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
- (28) **Grease Interceptor:** 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.
- (29) **Holding Tank Waste:** Any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, food trucks and vacuum-pump tank trucks.
- (30) **Indirect Discharge or Discharge:** The discharge or the introduction from any nondomestic source regulated under section 307(b), (c), or (d) of the Act, (33 U.S.C. 1317) into the WRF, including Holding Tank Waste discharged into the system.
- (31) **Industrial User or User:** Any entity or person authorized to discharge Industrial or domestic waste to the District Wastewater System.
- (32) **Industrial Wastewater:** The liquid and waterborne pollutants resulting from the processes or operations generated by industrial and commercial establishments.
- (33) **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 or building sewers. Infiltration does not include and is distinguished from Inflow.
- (34) **Inflow:** The water discharged into sanitary sewers and building sewers from such sources as downspouts, roof leaders, storm water drainage systems, cellar and yard area drains, foundation drains, commercial and industrial discharges of unpolluted wastewater, drains from springs and swampy areas, etc. Inflow does not include and is distinguished from Infiltration.
- (35) **Interference:** The inhibition, or disruption of The District Wastewater System, treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the Control Authority's NPDES, collection system, or Non-Discharge 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 District 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 District.
- (36) **Local Limit:** The District's specific limits for appropriate pollutants of concern based on the discharge or process from which a discharge can occur; any entity within The District that may cause harm to The District's Wastewater System or WRF must meet pretreatment requirements.
- (37) **Medical Waste:** Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, dialysis wastes, and other wastes that may cause Interference or a health risk to personnel working in the District Wastewater System.
- (38) **National Pollutant Discharge Elimination System or NPDES Permit:** A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

(39) **National Prohibitive Discharge Standard or Prohibitive Discharge Standard:** Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 2.2 of this Ordinance and are developed under the authority of 307(b) of the Act and 40 CFR, section 403.5.

(40) **New Source:**

- (i) Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed Categorical 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 section 307(c), provided that:
 - (A) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - (B) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (C) 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.
- (ii) 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 section (i) (B) or (C) above but otherwise alters, replaces, or adds to existing process or production equipment.
- (iii) For purposes of this definition, construction of a new source has commenced if the owner or operator has:
 - (A) Begun, or caused to begin, as part of a continuous on-site construction program:
 - 1. Any placement, assembly, or installation of facilities or equipment; or
 - 2. 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
 - (B) 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 definition.

(41) **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.

(42) **Non-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.

(43) **Pass Through:** A discharge which exits the Water Reclamation Facility 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 Control Authority's NPDES, collection system, Non-Discharge Permit, or a downstream water quality standard even if not included in the Permit.

- (44) **Person:** Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, and Local government entities.
- (45) **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.
- (46) **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, metals, BOD, COD, toxicity, and odor).
- (47) **Pretreatment:** The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into the District Wastewater System. The reduction or alteration may be obtained by physical, chemical, or biological processes, or process changes or other means, except as prohibited by 40 CFR Part 403.6(d).
- (48) **Pretreatment Program:** The program for the control of pollutants introduced into the Water Reclamation Facility from non-domestic sources which was developed by the District 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
- (49) **Pretreatment Requirements:** Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.
- (50) **Pretreatment Standard.** Any prohibited discharge standard, Categorical Standard, or Local Limit which applies to an Industrial User.
- (51) **Private Wastewater Disposal System:** Any facilities for wastewater treatment and disposal not maintained and operated by The District.
- (52) **Properly Shredded Food Waste:** The organic waste resulting from the preparation, cooking and dispensing of foods that have been shredded to such a 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 (i.e. garbage disposals).
- (53) **Public Collection System:** A public sewer controlled by a governmental agency or entity, including the WRF, 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.
- (54) **Receiving Stream:** That body of water, stream, or watercourse receiving the discharge from a Water Reclamation Facility; or that body of water, stream or watercourse formed by the effluent from a Water Reclamation Facility.
- (55) **Septage:** Liquid and solid waste pumped from a sanitary sewage septic tank or cesspool.
- (56) **Severe Property Damage:** Substantial physical damage to property, damage to the User's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (57) **Significant Industrial User or SIU:** Any Industrial User discharging to the District Wastewater System who:
- (i) Discharges an average of 25,000 gallons per day or more of process wastewater to the WRF (excluding sanitary, non-contact cooling blowdown, and boiler blowdown wastewaters), or;

- (ii) Contributes process wastewater which makes up five percent (5%) or more of the NPDES or Non-Discharge Permitted flow limit or organic capacity of the WRF. In this context, organic capacity refers to BOD, TSS and Ammonia. Or;
- (iii) Is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter 1, Subchapter N, Parts 405-471. Or;
- (iv) Is designated as such by the District on the basis that the Industrial User has a reasonable potential for adversely affecting the WRF's operation or for violating any Pretreatment Standard or requirement, or for contributing to violations of the WRF's effluent limitations and conditions in its NPDES or Non-Discharge Permit, or for limiting the WRF's sludge disposal options, or contributing to violations of the WRF's generated air emissions.
- (v) Subject to Division approval under 15A NCAC 02H .0907(b), MSD may determine that an Industrial User meeting the criteria in paragraphs (i) and (ii) has no reasonable potential for adversely affecting the WRF's operations or for violating any Pretreatment Standards or Requirement, or for contributing to violations of the WRF's effluent limitations and conditions in its NPDES or Non-Discharge Permit or for limiting the WRF's sludge disposal options, and thus is not a Significant Industrial User.
- (vi) Subject to Division approval under 15A NCAC 02H .0907(b), The District may determine that an Industrial User meeting the criteria in paragraph (iii) above meets the requirements of 40 CFR Part 403.12(v)(2) and thus is a Non-Significant Categorical Industrial User.
- (vii) Subject to Division approval under 15A NCAC 02H .0907(b), The District may determine that an Industrial User meeting the criteria in paragraph (iii) above meets the requirements of 40 CFR Part 403.12(e)(3) and thus is a Middle Tier Significant Categorical Industrial User. Sampling and inspection requirements may be cut in half as per 40 CFR 403.8(f) (2) (v) (C) and 403.12(e) (3).

(58) **Significant Noncompliance or SNC:** is the status of noncompliance of a Significant Industrial User when one or more of the following criteria are met. Additionally, any Industrial User which meets the criteria in Subparagraph (a) (58), Parts (iii), (IV), or (viii) shall also be SNC.

- (i) Chronic violations of wastewater discharge limits, defined here as those in which sixty six (66) percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);
- (ii) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH);
- (iii) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR Part 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that The District and/or WRF determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of WRF personnel or the general public);
- (iv) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either The District's or the WRF's, if different from The District, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and Section 9.1(e) of this SUO to halt or prevent such a discharge;
- (v) Violations of compliance schedule milestones, contained in a Pretreatment Permit or enforcement order, for starting construction, completing construction, and attaining final compliance by ninety (90) days or more after the schedule date.

- (vi) Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, and compliance reports within thirty (30) days from the due date.
 - (vii) Failure to accurately report noncompliance.
 - (viii) Any other violation or group of violations that The District determines will adversely affect the operation or implementation of the local Pretreatment Program.
- (59) **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 WRF's Regulations, Local Limits, or Industrial User Permit conditions, adversely affects the operation of the District Wastewater System or the ability of the WRF 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 discharges that can cause a violation of the prohibited discharge standards in section 2.2 of this Ordinance.
- (60) **Spill Control Response Plan:** A written procedure adopted by the User to address accidental spills or leaks of chemicals.
- (61) **Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS):** 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 and 1997 respectively.
- (62) **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.
- (63) **State:** The State of North Carolina.
- (64) **Storm Drain:** A drainage system which carries storm and surface waters, but which excludes sanitary sewage and polluted industrial wastewater.
- (65) **Storm Water:** Any flow occurring during or following any form of natural precipitation and resulting there from.
- (66) **Strength of Wastewater:** The concentration of pollutants or substances contained in a wastewater.
- (67) **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.
- (68) **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.
- (69) **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:

- (i) BOD in excess of 10 mg/L, or;
- (ii) Total Suspended Solids in excess of 10 mg/L, or;
- (iii) Emulsified greases or oils, or;
- (iv) Acids or alkalies, or;
- (v) Phenols or other substances imparting taste or odor to Receiving Streams, or;

- (vi) Toxic or poisonous substances, or;
- (vii) Noxious or odorous gases, or;
- (viii) Temperature which exceeds 66 °C (151 °F) at its introduction into a sewer or which exceeds 40 °C (104 °F) at its introduction into a Receiving Stream.

(70) **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 preventative maintenance, or careless or improper operations.

(71) **User:** Any person or facility who discharges, causes or authorizes the discharge of wastewater into the District Wastewater System.

(72) **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.

(73) **Wastewater:** The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the WRF.

(74) **Water Reclamation Facility (WRF) or District Wastewater System:** A treatment works as defined by section 212 of the Act, (33 U.S.C. §1292) which is owned in this instance by the District. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the WRF. For the purposes of this Ordinance, WRF shall also include any sewers that convey wastewaters to the WRF from persons outside the District who are, by contract or agreement with the District, or in any other way, Users of the WRF of the District.

(75) **Waters of the State:** All streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs 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.

- (b) This Ordinance is gender neutral and the masculine gender shall include the feminine and vice-versa.
- (c) “Shall” is mandatory; “may” is permissive or discretionary.
- (d) The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.
- (e) The following abbreviations when used in this Ordinance, shall have the designated meanings:

(1)	BOD	Biochemical Oxygen Demand
(2)	CFR	Code of Federal Regulations
(3)	COD	Chemical Oxygen Demand
(4)	EPA	Environmental Protection Agency
(5)	gpd	Gallons per day
(6)	l	Liter
(7)	mg	Milligrams
(8)	mg/l	Milligrams per liter
(9)	N.C.G.S.	North Carolina General Statutes
(10)	NPDES	National Pollution Discharge Elimination System
(11)	O & M	Operation and Maintenance
(12)	RCRA	Resource Conservation and Recovery Act
(13)	SIC	Standard Industrial Classification
(14)	SWDA	Solid Waste Disposal Act
(15)	TSS	Total Suspended Solids

(16)	TKN	Total Kjeldahl Nitrogen
(17)	U.S.C	United States Code
(18)	WRF	Water Reclamation Facility
(19)	°C	Degrees Celsius
(20)	°F	Degrees Fahrenheit

SECTION 2 - GENERAL SEWER USE REQUIREMENTS

2.1 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 the District, 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:

- (a) 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;
- (b) Connection is technically unfeasible. Technical feasibility shall be determined by the District, or;
- (c) An existing, properly functioning septic tank system located on the property is being used by the owner to properly treat waste. The 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.

2.2 Prohibited Discharge Standards

- (a) **General Prohibitions.** No User shall contribute or cause to be contributed into the WRF, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all Users of the WRF whether the User is a Significant Industrial User or subject to any National, State, or Local Pretreatment Standards or requirements.
 - (1) 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.
 - (2) All Users shall comply with the general prohibitive discharge standards in 40 CFR Part 403.5(A) and (B) of the Federal Pretreatment Regulations.
- (b) **Specific Prohibitions.** No User shall contribute or cause to be contributed into the WRF the following pollutants, substances, or wastewater:
 - (1) Pollutants which create a fire or explosive hazard in the WRF, including, but not limited to, waste streams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.
 - (2) Any solid or viscous substances in quantity or character capable of causing obstruction to flow in sanitary sewers, interference with proper operation of the WRF, or substances that will solidify or become viscous at temperatures between 0°C (32°F) and 60°C (140°). Prohibited materials covered by this section include, but are not limited to, eggshells, ashes, cinders, ceramic waste, stone or marble dust, sand, mud, straw, metal shavings or sludge, grass clippings, glass, glass grinding or polishing wastes, fabric (woven and non-woven), rags, feathers, bones, tar, plastics, wood, paunch manure, insulation materials, stock or poultry feeds, processed grains, spent hops, animal tissues, hair, hides or fleshing, 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.

- (3) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
- (4) Any waste capable of causing abnormal corrosion, abnormal deterioration, damage to or hazard to structures or equipment of the District Wastewater System, or to humans or animals or interference with proper operation of the WRF. All waste discharged to the District Wastewater System must have a pH value in the range of 6.0 to 10.5 standard pH units. Prohibited materials include, but are not limited to, concentrated acids and alkalies, high concentrations of compounds such as sulfur, chlorine, fluorine, and substances which may react with water to form strongly acidic or basic products.
- (5) Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc.) in enough quantity, (flow or concentration) either alone or by interaction with other pollutants, to cause interference with the WRF.
- (6) Any wastewater having a temperature greater than 150° F (66° C), or which will inhibit biological activity in the WRF resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the District Wastewater System to exceed 104° F (40° C).
- (7) Any pollutants which result in the presence of toxic gases, vapors or fumes within the WRF in a quantity that may cause acute worker health and safety problems.
- (8) Any trucked or hauled pollutants, except at discharge points designated by the General Manager in accordance with section 2.10 of this Ordinance.
- (9) Any noxious or malodorous liquids, gases, or solids or other wastewater which, either alone or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
- (10) Any substance which may cause the WRF's effluent or any other product of the WRF 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 WRF cause the WRF to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.
- (11) Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
- (12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the General Manager in compliance with applicable State or Federal regulations.
- (13) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the General Manager.
- (14) Fats, oils, or greases of animal or vegetable origin in concentrations greater than 100 mg/l unless authorized by the General Manager.
- (15) Any sludges, screenings or other residues from the pretreatment of industrial wastes.
- (16) Any medical wastes, except as specifically authorized by the General Manager in a wastewater discharge permit.
- (17) Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the District Wastewater System.
- (18) Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the General Manager.
- (19) Any wastewater causing the WRF effluent to violate State Water Quality Standards for toxic substances as described in 15A NCAC 2B .0200.

- (20) Wastewater causing, alone or in conjunction with other sources, the WRF's effluent to fail a toxicity test. Any waste which, by interaction with other waste in the District Wastewater System, may release obnoxious gases or form suspended solids, which interfere with operation of the District Wastewater System or create conditions deleterious to the WRF.
- (21) Recognizable portions of the human or animal anatomy.
- (22) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the District Wastewater System.
- (23) At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%) nor any single reading over ten percent (10%) of the lower explosive limit (LEL) of the meter.

Pollutants, substances, wastewater, or other wastes prohibited by this Section shall not be processed or stored in such a manner that they could be discharged to the District Wastewater System. All floor drains located in process or materials storage areas must discharge to the Industrial User's Pretreatment Facility before connecting with the system.

When the General Manager determines that a User(s) is contributing to the WRF, any of the above enumerated substances in such amounts which may cause or contribute to interference of WRF operation or pass through, the General Manager shall:

- (1) advise the User(s) of the potential impact of the contribution on the WRF in accordance with Section 8.1; and
- (2) take appropriate actions in accordance with Section 4 for such User to protect the WRF from interference or pass through.

2.3 National Categorical Pretreatment Standards

Users subject to Categorical Pretreatment Standards are required to comply with applicable standards as set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471, including part 441 Dental Effluent Guidelines, and incorporated herein.

- (a) Where a Categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the General Manager may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- (b) When wastewater subject to a Categorical Pretreatment Standard is mixed with wastewater not regulated by the same standard, the General Manager shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e).
- (c) A User may obtain a variance from a Categorical Pretreatment Standard if the User can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the Categorical Pretreatment Standard.
- (d) A User may obtain a net gross adjustment to a Categorical Standard in accordance with 40 CFR 403.15.

2.4 Measurement of Flow

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

- (a) 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.
- (b) 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 District Wastewater System, the quantity of waste shall be determined by one or more of the following methods:
 - (1) By a flow meter(s) on the water supply line(s) to a process operation(s) or use; or
 - (2) By a flow meter(s) on the waste line(s) from an operation(s); or

- (3) If flow meters as required under subsections (1) and (2) above shall not have been installed, the volume of water purchased shall be considered the volume of waste discharged unless the District approves an alternate method of determining the amount of water not discharged to the District Wastewater System.
- (c) If any User, now discharging or proposing to discharge waste into the District Wastewater 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 District Wastewater System from all sources under procedures comparable to paragraph (a) and (b) above.

2.5 Provision, Calibration, and Certification of Flow Meters

If flow meter(s) are installed to fulfill requirements of Section 2.4 above:

- (a) Such flow meters shall be installed at the User's expense.
 - (1) The location of such flow meter(s) shall be approved by MSD prior to installation.
 - (2) Such flow meter(s) are to be of the non-resettable style.
- (b) Such flow meter(s) shall be calibrated by the supplier at the time of installation and thereafter at the discretion of the General Manager.
- (c) Annual Certification of calibration shall be provided to the District within fifteen (15) days of each calibration for effluent Flow Meters.
- (d) The General Manager, at his discretion, may require calibration by an independent testing laboratory.

2.6 Identification of All Flows Required

All sources of water supply and all discharges of wastewater into the District Wastewater System must be identified in accordance with the provisions of Section 2.4. Any omissions shall be considered as unauthorized use of the District Wastewater System.

2.7 Local Limits

No User shall discharge into any District Wastewater System any of the following materials in concentrations exceeding the limits stated below:

- (a) Any waste that contains more than ten (10) mg/L of hydrogen sulfide, sulfur dioxide, or nitrous oxide.
- (b) The admission into the District Wastewater System of any waste having a Biochemical Oxygen Demand (BOD) concentration in excess of three hundred (300) mg/L on a composite sample 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.
- (c) The admission into the District Wastewater System of any waste having a Total Suspended Solids (TSS) concentration in excess of three hundred (300) mg/L on a composite sample, 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 TSS content to meet requirements specified by the General Manager.
- (d) The admission into the District Wastewater System of waste having a Total Oil & Grease (combined polar and non-polar) content in excess of one hundred and twenty-five (125) 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 Total Oil & Grease content to meet requirements specified by the General Manager.
- (e) No person shall discharge wastewater containing concentrations of the constituents listed below in excess of the upper limits.

- (1) 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 District 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, mg/L)

	Maximum Instantaneous Concentration (Grab sample) *	Maximum Daily Average (Composite Samples) *
Arsenic	2.0	1.50
Cadmium	1.2	0.75
Chromium, T	2.5	2.00
Copper	2.5	2.00
Lead	0.6	0.40
Mercury	0.2	0.10
Nickel	2.5	2.00
Silver	0.43	0.43
Tin	2.5	1.00
Zinc	2.5	2.00
Cyanide	1.9	-
Phenol	2.5	-

- (f) Upon the promulgation of Federal Categorical Pretreatment Standards, if more stringent limitations are imposed, 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.
- (g) 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 District Wastewater System.

2.8 State Requirements

State requirements and limitations on discharges shall apply in any case where they are more stringent than Federal requirements and limitations or those in this Ordinance.

2.9 Right of Revision

The District reserves the right to establish limitations and requirements which are more stringent than those required by either State or Federal regulation if deemed necessary to comply with the objectives presented in Section 1.1 of this Ordinance or the general and specific prohibitions in Section 2.2 of this Ordinance, as is allowed by 40 CFR 403.4.

2.10 Dilution

No User shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the National Categorical Pretreatment Standards, unless expressly authorized by an applicable Pretreatment Standard, or in any other pollutant-specific limitation developed by the District or State.

2.11 Pretreatment of Wastewater

(a) Pretreatment Facilities

- (1) Users shall provide wastewater treatment as necessary to comply with this Ordinance and Wastewater Permits issued under Section 5.2 of this Ordinance and shall achieve compliance with all National Categorical Pretreatment Standards, Local Limits, and the prohibitions set out in Section 2.2 of this Ordinance within the 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. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the District for review and shall be approved by the General Manager before construction of the facility. 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 acceptable to the District under the provisions of this Ordinance. 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.

(b) Additional Pretreatment Measures

- (1) Whenever deemed necessary, the General Manager may require Users to restrict their 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 stream from industrial waste stream, and such other conditions as may be necessary to protect the WRF and determine the User's compliance with the requirements of this Ordinance.
- (2) The General Manager may require any person discharging into the WRF 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.
- (3) Grease, oil, and sand interceptors shall be provided when, in the opinion 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 interception units 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.
- (4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

2.12 Accidental Discharge/Slug Control Plans

- (a) The General Manager shall evaluate whether each Significant Industrial User needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in Section 1.2(a) (59). All SIUs must be evaluated within one year of being designated as a SIU. The General Manager may require any User to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the General Manager may develop such a plan for any User.
- (b) All SIUs are required to notify the WRF immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see Sections 6.6 and 6.7.
- (c) An accidental discharge/slug control plan shall address, at a minimum, the following:
 - (1) Description of discharge practices, including non-routine batch discharges;
 - (2) Description of stored chemicals;

- (3) The telephone numbers, personnel and agencies to be contacted during any accidental or slug discharge.
- (4) Procedures for immediately notifying the General Manager of any accidental or slug discharge, as required by Section 6.7 of this Ordinance; and
- (5) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not 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.

2.13 Standards and Requirements for Food Service Establishments

Food Service Establishments shall provide means of preventing grease and oil discharges to the District Wastewater System. Where a grease and oil interceptor currently exists, or is required by The District; it shall be maintained for continuous, satisfactory, and effective operation by the owner, leaseholder, or operator at its expense.

- (a) All Food Service Establishments shall have grease-handling apparatuses of a type and capacity approved by The District. The grease-handling apparatuses shall be properly maintained to prevent fats, oils or grease (FOG) from entering the District Wastewater System.
- (b) All Food Service Establishments grease-handling apparatuses shall be subject to evaluation and inspection by District representatives during normal working hours. Any noncompliant issue(s) or recommendations for correction for improvement resulting from the inspection will be made available to the owner, or operator in writing.
- (c) 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.
- (d) Food Service Establishments whose operations cause or allow excessive FOG to discharge or accumulate in the District Wastewater System may be liable to the District for costs related to District 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 the District is penalized for the SSO, the penalty may be passed along to the Food Service Establishment.
- (e) Regularly scheduled maintenance of grease-handling apparatuses is required by a state permitted service provider to ensure 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.
- (f) The User shall maintain a written record of grease interceptor maintenance for three years. All such records will always be available for inspection by The District. Service vehicles and equipment used in onsite Grease Interceptor servicing shall be registered as required by the North Carolina Division of Waste Management. These records shall include:
 - (1) FSE name and physical location;
 - (2) Date of grease interceptor service;
 - (3) Time of grease interceptor service;
 - (4) Name of grease interceptor service company;
 - (5) Name and signature of grease interceptor service company agent performing said service;
 - (6) Established service frequency and type of service: full pump-out, partial pump-out, on-site treatment;
 - (7) Number and size of each grease interceptor service at FSE location;
 - (8) Approximated numerical percentage of FOG and settleable solids provided by the state permitted service provider;
 - (9) Total volume of waste removed from each grease interceptor;
 - (10) Destination of removed wastes, food solids and wastewater disposal;
 - (11) Signature and date of FSE personnel confirming service completion, if available;
 - (12) Such other information as required by the General Manager;
- (g) All grease traps and/or grease interceptors shall be cleaned based on the 25% Rule. Provide for a minimum hydraulic retention time at actual peak flow between the influent and effluent baffles, with twenty-five percent (25%) of the total volume of the grease interceptor being allowed for any food-derived solids to settle or accumulate and floatable grease-derived materials to rise or accumulate, identified hereafter as settleable solids and FOG.

- (h) The use of biological or other additives as a grease degradation or conditioning agent is permissible only upon prior written approval of the General Manager. Any User using biological or other additives shall maintain the trap or interceptor in such a manner that attainment of any grease wastewater, action level, solids level, solids blanket or grease cap criteria, goal or directive, as measured from the grease interceptor outlet or interior is consistently achieved.
- (i) The exclusive use of enzymes, bacteria, grease solvents, emulsifiers, etc. is not considered acceptable grease trap maintenance practice.
- (j) Any Food Service Establishment whose effluent discharge to the District Wastewater System is determined by The District to cause interference in the conveyance or operation of the District Wastewater 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 The District.
- (k) 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. Access to these chambers shall not be physically obstructed with soil, mulch, floorings, or any permeable or semi-permeable substance.
- (l) Food Service Establishments shall adopt Best Management Practices (BMP's) for handling sources of floatable oils, fats 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. The District may render advice regarding the minimization of waste.
- (m) Food Service Establishments shall develop and implement a waste minimization plan pertaining to the disposal of grease, oils, and food particles. The District may render advice or make suggestions regarding the minimization of waste.

2.14 Construction Standards for New Food Service Establishments

- (a) New Food Service Establishments shall not be allowed to initiate operations until all grease-handling apparatuses are approved prior to installation and inspected after installation by The District.
- (b) New Food Service Establishments shall be required to install an "outdoor" grease interceptor, whose design and location must be approved in writing by The District prior to installation.
 - (1) Grease interceptors shall be adequately sized, with no interceptor less than 1,000 gallons total capacity unless otherwise approved by The District.
 - (2) 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 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.
 - (3) 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.
 - (4) The following shall discharge into the grease interceptor before entering the building drainage system:
 - i. Pot and pan wash sinks
 - ii. Pre-rinse sinks, including pre-rinse sinks to automatic dishwashers
 - iii. Scullery
 - iv. Kitchen floor drains
 - v. Automatic dishwasher
 - vi. Meat preparation sink
 - (5) Where food-waste grinders are installed, the waste from those units shall discharge directly into the grease interceptor.
 - (6) The grease interceptor shall be installed at least fifteen (15) feet from the last drainage fixture, unless otherwise directed by The District.
 - (7) When the grease interceptor is installed in a parking lot, access ports to the interceptor shall be blocked off from parking or otherwise designated as a "No Park" area.
- (c) New Food Service Establishments where conditions prohibit the installation of an "outdoor" grease interceptor, may install an "indoor" grease trap, whose design and location must be approved in writing by The District prior to installation.
 - (1) Conditions for "indoor" grease interceptors shall follow the same conditions as that of "outdoor" grease interceptors with regard to Section 2.14 of this Ordinance.

- (2) Fixtures and other potentially grease-containing drains connecting to the grease trap will be evaluated by The District in writing prior to installation.
- (3) The following shall discharge directly into the grease trap before entering the building drainage system:
 - i. Pot and pan wash sinks
 - ii. Pre-rinse sinks, including pre-rinse sinks to automatic dishwasher
 - iii. Scullery
 - iv. Meat preparation sink
- (4) Where automatic dishwashers are installed, the discharge from those units will discharge directly into the building drainage system and not into the grease trap.
- (5) All grease traps must be easily accessible for servicing and maintaining the trap in working and operating condition, and for inspecting.
- (d) 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.
- (e) Factory-installed flow control fitting 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.

2.15 Construction Standards for Existing Food Service Establishments

All existing Food Service Establishments shall have grease-handling apparatuses.

- (a) In the event an existing Food Service Establishment’s grease-handling apparatus is 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.
- (b) Existing Food Service Establishments without any grease-handling apparatuses must adhere to the conditions under Section 2.13 of this Ordinance. Such facilities will be given a compliance schedule to submit the design and location of the grease-handling facilities and, after receiving approval from The District, the installation of the apparatus.

2.16 Fermented Beverage Manufacturers

Fermented Beverage Manufacturers (FBMs) must follow the guidelines below according to production rates. FBMs must implement and maintain appropriate Best Management Practices (BPMs). Average flows for FBMs will be determined from The Alcohol and Tobacco Tax and Trade Bureau records that will be submitted to MSD quarterly. FBMs with average flows greater than 2,000 gallons per day (GPD), based on a monthly average, must continuously monitor process flow as outlined in subsection b. MSD reserves the right to require flow monitoring equipment for FBMs less than 2,000 GPD. MSD reserves the right to impose discharge limits when necessary. Fermented Beverage Manufacturers may also be required to sample and/or meet NH3 or TKN limits.

(a) Less Than 2,000 GPD (average flow)

- (1) Must implement and maintain appropriate Best Management Practices (BPMs).
- (2) No solids greater than ¼ inch can be discharged to MSD.
- (3) Must meet the pH limits of 6.0 to 10.5 s.u.
- (4) Wastewater must not exceed 60°C (140 degrees F) at the discharge point to MSD.
- (5) Must fill out Brewery Survey and update with any changes not less than once every 5 years (completed with IWS).
- (6) Must create and maintain a slug/spill plan
- (7) Must request and receive prior authorization from MSD prior to disposal of any off spec product over 500 gallons.

(b) Greater Than 2,000 GPD (average flow)

- (1) No solids greater than ¼ inch can be discharged to MSD.
- (2) Must not exceed TSS limit of 4,000mg/L, unless otherwise specified on an Industrial User Permit.
- (3) Must meet the pH limits of 6.0 to 10.5 s.u.
- (4) Wastewater must not exceed 60°C (140 degrees F) at the discharge point to MSD.
- (5) Must fill out Brewery Survey and update with any changes not less than once every 5 years (completed with IWS).
- (6) Must submit an Industrial User Permit Application not less than once every 5 years.
- (7) Must create and maintain a slug/spill plan.

- (8) Must request and receive prior authorization from MSD prior to disposal of any off spec product over 500 gallons.
- (9) Must complete and submit composite sampling for BOD and TSS at a minimum monthly.
- (10) Must continuously monitor effluent process flow and pH. Must have an accessible sampling point where the wastewater is well mixed and representative of all process wastewater.
- (11) Must report monthly flow readings and pH meter readings.

Any Fermented Beverage Manufacturer above 25,000 GPD will be issued a Permit with specific discharge limitations. Installation of pretreatment equipment must not occur until an Authorization to Construct has been received from MSD.

2.17 Holding Tank Waste

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

- (a) 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 District Wastewater System unless such persons shall first have applied for and received permits from the District. All applicants for such permits shall complete such forms as required by the District, 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. The owners or operators of such vehicles shall affix and display their permit numbers on the sides on the 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 the District for violation of any provision of this Ordinance or reasonable regulation established by the District. 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 WRF.
- (b) No person shall discharge any other holding tank waste or any other waste, including industrial waste, into the District Wastewater System unless he shall have applied for and has been issued a permit by the District. 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 issue by The District. The discharge of hazardous waste, as defined in section 1004 of RCRA as codified in 40 CFR Part 261, into the District Wastewater System or to the headworks of the WRF by truck, rail or vessel is prohibited.
- (c) 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 District Wastewater 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 Section 2.17 (b).
- (d) No person shall operate a dumping station for the discharge of sanitary sewage from recreation vehicles into the District Wastewater System unless the User of the dumping station shall have first applied for and received a permit from the District. All applicants for such permits shall complete such forms required by the District, 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.

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.

2.18 Hauled Wastewater

- (a) Septic tank waste may be introduced into the WRF only at locations designated by the General Manager, and at such times as are established by the General Manager. Such waste shall not violate Section 2 of this Ordinance or any other requirements established by the District. The General Manager may require septic tank waste haulers to obtain Wastewater Discharge Permits.
- (b) The General Manager shall require haulers of industrial waste to obtain Wastewater Discharge Permits. The General Manager may require generators of hauled industrial waste to obtain wastewater discharge permits. The General Manager also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this Ordinance.
- (c) Industrial waste haulers may discharge loads only at locations designated by the General Manager. No load may be discharged without prior consent of the General Manager. The General Manager may collect samples of each hauled load to ensure compliance with applicable standards. The General Manager may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- (d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

2.19 Control of Contaminants of Emerging Concern:

The District has determined that the discharge by Users, management within the WRF, discharge to receiving waters, and presence within biosolids of Contaminants of Emerging Concern (CEC's) pose potential risks to the WRF, and human health or pass-through or other environmental impacts addressed by this Ordinance and the Pretreatment Program. The District shall address CEC's in the following manner when and if the General Manager determines it necessary for the purposes of this Ordinance.

- (a) **Information:** The District may require Users to provide specified information on the User's purchase, use, manufacture (intentional or incidental), discharge as a wastewater or other waste constituent, or other information or data on specified CECs; and specified information on Users' products and processes that may contribute to the creation of discharge or CECs.
- (b) **Data:** The District may require Users to provide specified wastewater discharge or other data on any CECs identified by either the District or the User consistent with paragraph (a) above or otherwise determined by the General Manager to be potentially discharged by the User as a wastewater or other waste constituent. Such data shall include any existing data in the possession or control of the User and may include requirements for the User to sample and generate at its cost such data. The District may also itself sample and generate such data, and the District's costs therefore shall be billed to the User as an additional service associated with sewered wastes.
- (c) **User Management Requirements:** When the General Manager determines it necessary for the purpose of this Ordinance, he may require by Pretreatment Permit (through either a new permit, reissuance or amendment), by General Permit issued to IU's with common characteristics, by Administrative Order, or otherwise pursuant to the terms of this Ordinance actions by a User to address CECs. Such actions may include: additional or periodic monitoring requirements, numeric effluent limits adopted as Local Limits or calculated as either generally applicable or User-specific technology-based limits, or requirements for Best Management Practices. Any such requirements may be based on the District's determination of CEC numeric criteria based on available toxicity or other data, U.S. or North Carolina standard or criteria, or generally accepted criteria determinations by recognized national scientific entities.

2.20 Protection of Equipment

No person shall maliciously, willfully, or negligently break, damage, destroy, deface, tamper with or remove any equipment or materials which are part of the District Wastewater System or which are used by the District 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 3 – FEES

3.1 Purpose

It is the purpose of this chapter to provide the recovery costs from users of the wastewater disposal system of the District for the implementation of the program established herein. The applicable charges or fees shall be set forth in a schedule of sewer use charges and fees by the General Manager and approved by the District Board. A copy of these charges and fees will be made available from the General Manager.

3.2 User Charges

A User charge shall be levied on all Users including, but not limited to, persons, firms, corporations or governmental entities that discharge, cause or permit the discharge of sewage into the District Wastewater System.

- (a) The User charge shall reflect, at least, the cost of debt service, operation and maintenance (including replacement) of the WRF.
- (b) Each User shall pay its proportionate cost based on volume of flow.
- (c) The Manager of the District shall review annually the sewage contributions of Users, the total costs of debt service, operation and maintenance of the WRF and will make recommendations to the Council or Board serving the District for adjustments in the schedule of charges and fees as necessary.
- (d) Charges for flow to the WRF not directly attributable to the Users shall be distributed among all Users of the WRF based upon the volume of flow of the users.

3.3 Surcharges

The amount of the surcharges will be based upon the volume of flow and the character and concentration of the constituents of the wastewater:

- (a) The volume of flow used in determining the total discharge of wastewater for payment of User charges and surcharges will be based on the following:
 - (1) Metered water consumption as shown in the records of meter readings maintained by the District;
or
 - (2) If required by the District or at the individual discharger's option, other flow monitoring devices which measure the actual volume of wastewater discharges to the sewer. Such devices shall be accessible and safely located, and the measuring system shall be installed in accordance with plans approved by the District. The metering system shall be installed and maintained at the User's expense according to arrangements that may be made with the District.
 - (3) Where the user procures all or part of his or her water supply from sources other than the District, the User shall install and maintain at his or her own expense a flow measuring device of a type approved by the District.
- (b) The character and concentration of the constituents of the wastewater used in determining the surcharges shall be determined by samples collected and analyzed by the District. Samples shall be collected in such a manner as to be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR Part 136.
- (c) The determination of the character and concentration of the constituents of the wastewater discharged by the General Manager or his duly appointed representatives shall be binding as a basis for charges.

3.4 Pretreatment Program Administration Charges

The schedule of charges and fees adopted by the District may include charges and fees for:

- (a) Reimbursement costs of setting up and operating the Pretreatment Program;
- (b) Monitoring, inspections and surveillance procedures;
- (c) Reviewing slug control plans, including accidental and/or slug load discharge procedures and construction plans and specifications;
- (d) Permitting
- (e) Other fees as the District may deem necessary to carry out the requirements of the Pretreatment Program.

SECTION 4- THE SEWER EXTENSION PERMIT PROGRAM

4.1 Purpose

Pursuant to N.C. Gen. Stats. 143-215.1, permitting for extensions or modifications to the District Wastewater System has been delegated to the District in its service area. Section 4 of this Ordinance deals only with Permits for Extension or Modification to the District Wastewater System. The provisions of the Section 4 regarding hearings are applicable only to actions dealing with permits issued, denied, or revoked pursuant to this section.

4.2 Definitions

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

- (a) **The District 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.
- (b) **District Standards:** shall mean those standards set forth in a document entitled "SEWER EXTENSION MANUAL" as approved by NCDEQ.
- (c) **Director:** refers to the Director of Engineering at The District.
- (d) **Commission:** means the North Carolina Environmental Management Commission.
- (e) **DEQ:** means the North Carolina Department of Environmental Quality.
- (f) **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.
- (g) **District:** shall refer to the Metropolitan Sewerage District of Buncombe County, North Carolina.

4.3 Permit for Extension of Modification of the Sewer System

- (a) 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 District Sewer System or modify any existing portion of The District Sewer System unless such person shall have applied for and received from The District a permit for such extension or modification and shall have complied with the conditions, if any, prescribed in such permit:
 - (1) Construct any sewer facility;
 - (2) Alter, extend, or change the construction or method of construction of any sewer facility; or
 - (3) Enter into a contract for the construction and installation of any sewer facility for the alternation of extension of such facility.
- (b) Any person proposing to undertake anything, or activity described in The District Sewer System 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. The District shall not undertake anything, or activity described in The District Sewer System unless The District 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 The District) shall be provided to the North Carolina Department of Environmental Quality.
- (c) All sewer facilities proposed for inclusion in The District Sewer System and all proposed modifications to any existing portion of The District Sewer System shall be designed, constructed, and installed in accordance with applicable provisions of The District 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 or modification to the Sewer System shall become a part of the Sewerage System unless and until it is accepted by action of The District Board. The Director shall maintain a copy of the current District Standards for public inspection.
- (d) No modifications to The District Standards shall be effective until approved in writing by the DEQ. Connection to The District Sewer System by a system that will not be maintained by the District shall not be

subject to the provisions of the section; however, The District reserves the right to regulate the wastewater flows from such systems and to prohibit the connection of such system.

- (e) 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 The District from denying a permit, which incorporates such changes, based upon changed circumstance or information not previously known by The District.

4.4 Processing of Applications

- (a) 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 DEQ under such schedule or fees as it may establish. A copy of the current fee schedule for DEQ 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.
- (b) The District 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 The District. The District shall acknowledge receipt of a complete application.
- (c) 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.
- (d) If the application is not complete, the application shall be returned to the applicant. The District shall advise the applicant in writing:
 - (1) How the application can be modified to make it complete and acceptable; and
 - (2) That the time for The District to take final action on an application does not begin until receipt of a complete, corrected application.
- (e) Any permit issued by The District pursuant to this section is subject to revocation or modification upon 30 days written notice by the Director in whole or part for good cause including, but not limited to:
 - (1) Violation of any term or condition of the permit;
 - (2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
 - (3) Refusal of the permittee or its contractors, agents or employees to allow authorized employees or agents of The District, upon presentation of credentials, to inspect or observe any activity, facility or other work required by the permittee's permit.
- (f) A notice of revocation or modification issued pursuant to Subsection 4.3(e) shall contain each reason for the revocation or modification.

4.5 Enforcement

- (a) 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 District 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 District 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 District, whether the violation was committed willfully or intentionally, and any other factor which The District, in its own discretion, believes is appropriate.
- (b) The District shall provide written notification to any person assessed a civil penalty of the assessment and the reasons therefore.
- (c) If any person violates the provisions of Section 3 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 legal and equitable relief.

- (d) The remedies provided herein are not exclusive. The District 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.

4.6 The Sewer Extension Permit Hearings

- (a) The following persons are entitled to a hearing pursuant to this Section:
 - (1) Any person whose application for a permit under Section 4 is denied or granted subject to conditions unacceptable to such person.
 - (2) Any person to whom a permit has been issued and which is revoked or modified pursuant to this Section.
 - (3) Any person who is assessed a civil penalty pursuant to Subsection 4.5(a) or is issued an administrative order.
- (b) Any person making a demand for a hearing shall deliver the demand to the Director within the following applicable time limits.
 - (1) 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 unacceptable to the person applying for the permit;
 - (2) 30 days for the assessment of a civil penalty; and
 - (3) 10 days for the modification or revocation of a permit by this Section.
- (c) In the demand for a hearing, in order to consider:
 - (1) The denial of a permit: the application must identify separately each reason for denying the permit, which the applicant contends to be improper, and every basis for such contention.
 - (2) A permit granted subject to unacceptable conditions: the applicant must identify separately each unacceptable condition and every basis for such contention.
 - (3) 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.
 - (4) A civil penalty assessment: the person to whom such a penalty was assessed must state separately each reason why such a 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.
- (d) 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 fails to comply with any 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 ninety (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 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 certified mail. No further review of the General Manager's final order or decision will be allowed, except as set forth in Subsection 4.6(h).
- (e) The General Manager or his designee shall conduct the hearing. The General Manager may ask the person requesting the hearing ("Appellant") and District staff to provide a written summary of their respective 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 District staff to present sworn testimony and offer documentary and other tangible evidence at the hearing. The Appellant and the District 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, the General Manager may require the payment of said penalty within the 10 days or such additional time as the General Manager may specify.

- (f) 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 the General Manager.
- (g) 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.
- (h) 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 District or such other time as may be ordered by the court, The District 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:
 - (1) All notices, motions and other similar documents;
 - (2) All documentary and tangible evidence tendered at the hearing; and
 - (3) 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.
- (i) 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:
 - (1) Whether one or more of the factors concerning the assessment of the civil penalty in Subsection 4.5(a) were wrongly applied to the detriment of the petitioner;
 - (2) Whether the petitioner promptly abated continuing environmental damage resulting from the violation giving rise to the assessment;
 - (3) Whether the violation giving rise to the assessment was inadvertent or the result of an accident;
 - (4) Whether the petition has been assessed civil penalties for any prior violations pursuant to this Section or by any State or Federal authority enforcing substantially similar provisions;
 - (5) Whether payment of the civil penalty by the petitioner will prevent payment for any remaining, necessary remedial action.
- (j) 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.

4.7 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 5 - WASTEWATER DISCHARGE PERMIT APPLICATION AND ISSUANCE

5.1 Wastewater Dischargers

It shall be unlawful for any person to connect or discharge to the WRF without first obtaining the permission of the District. When requested by the General Manager, a User must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The General Manager is authorized to prepare a form for this purpose and may periodically require Users to update this information.

5.2 Wastewater Permits

All Significant Industrial Users shall obtain a Significant Industrial User Permit prior to the commencement of discharge to the WRF. Existing Industrial Users who are determined by the General Manager to be Significant Industrial Users shall obtain a Significant Industrial User Permit within 180 days of receiving notification of the General Manager's determination. Industrial Users who do not fit the Significant Industrial User criteria may at the discretion of the General Manager be required to obtain a Wastewater Discharge Permit for Non-Significant Industrial Users.

- (a) **Significant Industrial User Determination:** All persons proposing to discharge non-domestic wastewater or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater shall request from the General Manager a Significant Industrial User determination. If the General Manager determines or suspects that the proposed discharge fits the Significant Industrial User criteria, he will require that a Significant Industrial User Permit application be filed.
- (b) **Significant Industrial User Permit Application:** Users required to obtain a Significant Industrial User permit shall complete and file with The District, an application in the form prescribed by the General Manager and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant Industrial Users shall apply for Significant Industrial User permit within ninety (90) days after notification of the General Manager's determination in Section 5.2(a) above. The application shall include at a minimum:
 - (1) Name of Industrial User;
 - (2) Address of Industrial User;
 - (3) Standard Industrial Classification (SIC) Code(s) or expected classification, North American Industry Classification System (NAICS) for pretreatment, Industrial User Category, and any processes for which Categorical Pretreatment Standards have been promulgated;
 - (4) Wastewater daily average and maximum flow rates, including daily, monthly and seasonal variations if any;
 - (5) Types and concentrations (or mass) of pollutants contained in the discharge, including but not limited to those mentioned in Section 2 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, and any other pollutant of concern to the WRF; 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 6.11 and 6.12;
 - (6) Major products manufactured, or services supplied; Description of activities, facilities and plant processes on the premises including all materials which are or could be accidentally or intentionally discharged, each product produced by type, amount, process or processes and rate of production.

- (7) Description of existing on-site pretreatment facilities and practices; Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow, appurtenances by the size, location and elevation, and locations of discharge points.
 - (8) Raw materials used or stored at the site, including type and amount of raw materials processed (average and maximum per day);
 - (9) Flow diagram or sewer map for the Industrial User;
 - (10) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
 - (11) Operation and production schedules; 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 will be in effect. 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:
 - (A) 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 applicable pretreatment standards. No increment in the schedule shall exceed nine (9) months.
 - (B) No later than fourteen (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 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.
 - (12) Description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g).
 - (13) 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;
 - (14) If subject to a Categorical Standard, a baseline monitoring report in accordance with 40 CRF 403.12(b) and 15A NCAC 2H .0908(a), as outlined in Section 6 of this Ordinance.
 - (15) Any other information as may be deemed by the General Manager to be necessary to evaluate the permit application.
- (c) **Application Signatories and Certification:** All Wastewater Discharge Permit applications and User Reports must be signed by the current Authorized Representative of the User on file with The District as defined in Section 1.2(a)(4) and contain the following certification 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 knowing violations.”*
- (d) **Application Review and Evaluation:** The General Manager will evaluate the data furnished by the User and may require additional information.
- (1) The General Manager is authorized to accept applications for The District and shall refer all applications to the WRF staff for review and evaluation.
 - (2) Industries submitting an application for discharge wastewater for new sources: within thirty (30) days of receipt the General Manager shall acknowledge and accept the complete application; or

if not complete, shall return the application to the applicant with a statement of additional information required to evaluate the application.

- (3) Industries submitting an application for renewal of permit: The General Manager or pretreatment staff shall, within ninety (90) days, acknowledge and accept the completed application, or if not completed, return the application with a statement of additional information required to evaluate the application.

(e) Tentative Determination and Draft Permit:

- (1) The WRF staff shall conduct a review of the application and 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.
- (2) If the staff's tentative determination in Paragraph (1) above is to issue the Permit, the following additional determinations shall be made in writing:
 - (A) Proposed discharge limitations for those pollutants proposed to be limited;
 - (B) A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
 - (C) A brief description of any other proposed special conditions which will have a significant impact upon the discharge described in the application.
- (3) The staff shall organize the determinations made pursuant to Paragraphs (1) and (2) above and the general permit conditions of The District into a Significant Industrial User Permit.

(f) Permit Supporting Documentation: The District staff shall prepare the following documents for all Significant Industrial User Permits.

- (1) An Allocation Table (AT) listing permit information for all Significant Industrial Users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with DWR approved maximum allowable loadings of the WRF, including flow, on forms or in a format approved by the Division of Water Resources. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.
- (2) The basis, or rationale, for the pretreatment limitations, including the following:
 - (A) documentation of categorical determination, including documentation of any calculations used in applying Categorical Pretreatment Standards; and
 - (B) documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).

(g) Final Action on Significant Industrial User Application:

- (1) The General Manager shall take final action on all applications not later than ninety (90) days following receipt of a complete application.
- (2) The General Manager is authorized to:
 - (A) 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;
 - (B) issue a Significant Industrial User Permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
 - (C) modify any permit upon not less than sixty (60) days' notice and pursuant to Section 5.2(i) of this Ordinance;
 - (D) revoke any permit pursuant to Section 9.1 of this Ordinance;
 - (E) suspend a permit pursuant to Section 9.1 of this Ordinance;
 - (F) 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 WRF or where necessary to effectuate the purposes of G.S. 143-215.1.

(h) Permit Modification:

- (1) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed below. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
 - (A) changes in the ownership of the discharge when no other change in the permit is indicated;
 - (B) a single modification of any compliance schedule not in excess of four (4) months;
 - (C) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.
- (2) Within 9 months of the promulgation of a National Categorical Pretreatment Standard, the Wastewater Discharge Permit of Users subject to such standards 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 a Wastewater Discharge Permit as required by Section 5.2(b), the User shall apply for a Wastewater Discharge Permit within one hundred eighty (180) days after the promulgation of the applicable National Categorical Pretreatment Standard.
- (3) A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. 143-215.1(b) for modifications.

(i) Permit Conditions: The Industrial User shall not discharge into the District Wastewater System until a Permit to Discharge Industrial Waste has been issued by the District.

- (1) The General Manager shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this Ordinance and N.C.G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, 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 based on Federal, State and local law;
 - (E) requirements for notifying the WRF in the event of an accidental discharge or slug load as defined in Section 1.2(a)(59);
 - (F) requirements to implement a Plan or other controls for prevention of accidental discharges and/or slug loads as defined in Section 1.2(a)(59), if determined by the General Manager to be necessary for the User;
 - (G) requirements for immediately notifying the WRF of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in Section 1.2(a)(59). Also see Sections 6.6 and 6.7;
 - (H) a statement of applicable civil and/or criminal penalties for violation of Pretreatment Standards and requirements and any applicable compliance schedule;
- (2) In addition, permits may contain, but are not limited to, the following:
 - (A) Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
 - (B) Limits on the instantaneous, daily and/or monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties. 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.

- (C) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the District Wastewater System.
 - (D) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the District Wastewater System.
 - (E) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
 - (F) Requirements for installation and maintenance of inspection and sampling facilities and equipment.
 - (G) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
 - (H) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).
 - (I) Compliance schedules for meeting Pretreatment Standards and Requirements.
 - (J) Requirements for submission of periodic self-monitoring, special notification reports, technical reports or discharge reports to The District pursuant to Section 5 of this Ordinance.
 - (K) Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in Section 6.14 and affording the General Manager, or his representatives, access thereto.
 - (L) Requirements for prior notification and approval by the General Manager of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system.
 - (M) Requirements for the prior notification and approval by the General Manager of any change in the manufacturing and/or pretreatment process used by the permittee.
 - (N) A statement that compliance with the Permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the terms of the Permit.
 - (O) Other conditions as deemed appropriate by the General Manager to ensure compliance with this Ordinance, and State and Federal laws, rules, and regulations.
- (j) **Permit Transfer:** Wastewater Permits are issued to a specific User for a specific operation. A Wastewater Discharge 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 consent of the District?
 - (k) **Permit Reissuance:** A Significant Industrial User shall apply for permit reissuance by submitting a complete permit application in accordance with Section 5.2 a minimum of 180 days prior to the expiration of the existing permit.
 - (l) **Significant Changes in Industrial Waste Discharge:** A significant change in the character or volume of waste, for purposes of Section 5.2, shall be deemed if:
 - (1) Substances, compounds, and elements not previously constituting any part of a User's waste are to be introduced into such waste, or;
 - (2) Increases in flow or pollutant(s), for which the Permit has been issued, by twenty-five (25) percent or more, or;
 - (3) If the changes in character or volume of the waste will change the User's classification from Industrial User to Significant Industrial User.
 - (m) **Permits to Discharge Industrial Waste for Existing Industrial User:** Any User, who is operating within The District and is classified as an Industrial User may continue to 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.

- (1) 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.
- (2) Within the time limit specified, the existing Industrial User shall file the required application, signed by the current Authorized Representative together with any other information as described in Section 5.2(o) and 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 knowing violations.”

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

- (3) 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) An existing Industrial User may continue to discharge, only after complying with the requirement to file an application for a permit, unless and until the 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 Section 11 of this Ordinance.
 - (5) 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 11 of this Ordinance.
- (n) **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 District Wastewater System.
- (o) **Conditions for Issuing or Renewing Permits:** A permit to Discharge Industrial Waste will be issued or renewed by The District only when it has been determined that:
- (1) Sewer capacity is available at the proposed point of discharge for receiving the industrial waste, and;
 - (2) The waste being discharged or proposed to be discharged is amenable to treatment by the processes employed by the District WRF and will not impair the ability of The District to comply with the water quality standards and effluent limitations established by the State or Federal regulatory agencies, and;
 - (3) The waste being discharged or proposed to be discharged will not cause damage to the District Wastewater System or create a public nuisance or threaten public health and;
 - (4) The concentrations of substances, compounds and elements in the waste being discharged or proposed to be discharged do not exceed the limits established by The District or State or Federal Authorities, and;
 - (5) 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.

- (p) **Permits for Industries Subject to National Categorical Pretreatment Standards:** Any User subject to 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.
- (q) **Permit Conditions and Duration: A Permit to Discharge Industrial Waste shall be as follows:**
- (1) An application for a 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.
 - (2) A Permit to Discharge Industrial Waste for an Industrial User, not classified as a SIU, shall remain in effect for a specified period, not to exceed five (5) years.
 - (3) A Permit to Discharge Industrial Waste for a SIU shall be issued for a specified period, not to exceed five (5) years. The User shall apply for permit re-issuance a minimum of one hundred eighty (180) days prior to the expiration of the User's existing permit.
 - (4) The terms and conditions of a permit may be modified by The District 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.

SECTION 6 - REPORTING REQUIREMENTS

6.1 Baseline Monitoring Reports

- (a) 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 District shall submit to the General Manager a report which contains the information listed in paragraph (b) below. 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 paragraph (b), below. 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.
- (b) Users described above shall submit the information set forth below.
- (1) **Identifying Information:** The name and address of the facility, including the name of the operator and owner.
 - (2) **Environmental Permits:** A list of any Environmental Control Permits held by or for the facility.
 - (3) **Description of Operations:** A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such User. This description should include a schematic process diagram which indicates points of discharge to the WRF from the regulated processes.
 - (4) **Flow Measurement:** Information showing the measured average daily and maximum daily flow, in gallons per day, to the District Wastewater System from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
 - (5) **Measurement of Pollutants:**
 - (A) The Categorical Pretreatment Standards applicable to each regulated process.
 - (B) 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 6.11 and 6.12 of this Ordinance.

(C) Sampling must be performed in accordance with procedures set out in Section 6.11 and 6.12 of this Ordinance and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).

- (6) Certification: A statement, reviewed by the User's current Authorized Representative as defined in Section 1.2(a)(4) 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.
- (7) Compliance Schedule: If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards, the shortest schedule by which the User will provide such additional pretreatment and/or O&M. 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 6.2 of this Ordinance.
- (8) Signature and Certification: All baseline monitoring reports must be signed and certified in accordance with Section 5.2(c) of this Ordinance.

6.2 Compliance Schedule Progress Reports

The following conditions shall apply to the compliance schedule required by Section 6.1(b) (7) of this Ordinance:

- (a) 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);
- (b) No increment referred to above shall exceed nine (9) months;
- (c) 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, 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; and
- (d) In no event shall more than nine (9) months elapse between such progress reports to the General Manager.

6.3 Reports on Compliance with Categorical Pretreatment Standard, 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 District Wastewater System, any User subject to such Pretreatment Standards and Requirements shall submit to the General Manager a report containing the information described in Section 6.1(b) (4-6) 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 include the User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 5.2(c) of this Ordinance.

6.4 Periodic Compliance Reports

The District may sample and analyze User discharges in lieu of requiring the Users to conduct sampling and analysis.

- (a) All Significant Industrial Users shall, at a frequency determined by the General Manager but in no case less than once every six months, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by Pretreatment Standards and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in Section 6.11

and 6.12 of this Ordinance. All periodic compliance reports must be signed and certified in accordance with Section 5.2(c) of this Ordinance.

- (1) The General Manager may develop procedures for receipt of electronic reports for any reporting requirements of this Ordinance. Such procedures will comply with 40 CFR Part 3. These procedures shall be enforceable under Section 9 of this Ordinance.
- (b) 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 facilities in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.
- (c) If a User subject to the reporting requirement in this Section monitors any pollutant(s) more frequently than required by the General Manager, using the procedures prescribed in Section 6.11 and 6.12 of this Ordinance, the results of this monitoring shall be included in the report.

6.5 Reports of Changed Conditions

Each User must notify the General Manager of any planned significant changes to the User's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change. The permittee shall not begin the changes until receiving written approval from the District. See Section 6.7(d) for other reporting requirements.

- (a) The General Manager may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a Wastewater Discharge Permit application under Section 5.2 of this Ordinance.
- (b) The General Manager may issue a Wastewater Discharge Permit under Section 5.2 of this Ordinance or modify an existing Wastewater Discharge Permit under Section 5.2 of this Ordinance in response to changed conditions or anticipated changed conditions.
- (c) For purposes of this requirement, significant changes, as defined in Section 5.2(l) of this Ordinance, include but are not limited to, flow or pollutant increases and the discharge of any previously unreported pollutants.

6.6 Reports of Potential Problems

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section 1.2(a)(59), that may cause potential problems for the District Wastewater System, the User shall immediately telephone and notify the District 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.
- (b) Within five (5) days following such discharge, the User shall, unless 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 District Wastewater System, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to this Ordinance.
- (c) A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph (a) above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
- (d) All SIUs are required to notify the District immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section 1.2(a) (59).

6.7 Reports from Unpermitted Users

All Users not required to obtain a wastewater discharge permit shall provide appropriate reports as required by the General Manager. All Users classified as Non-Significant Categorical Industrial Users under Section 1.2(a) 57(vi) shall provide appropriate reports to the General Manager as the General Manager may require.

At a minimum, this shall include the Annual Certification of continuing to meet the Non-Significant Categorical Industrial User criteria as required under 40 CFR 403.12(q).

6.8 Notice of Violation/Repeat Sampling and Reporting

- (a) If sampling performed by a User indicates a violation, the User must notify the District 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 District within thirty (30) days after becoming aware of the violation. If allowed by the General Manager, the User is not required to resample:
 - (1) if the General Manager monitors at the User's facility at least once a month; or
 - (2) if the General Manager samples between the User's initial sampling and when the User receives the results of this sampling.
- (b) If the General Manager has performed the sampling and analysis in lieu of the Industrial User and the District sampling of the User indicates a violation, the General Manager 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:
 - (1) the General Manager monitors at the User's facility at least once a month; or
 - (2) the General Manager samples the User between their initial sampling and when the District receives the results of this initial sampling; or
 - (3) the General Manager requires the User to perform sampling and submit the results to the General Manager within the 30 day deadline of the District becoming aware of the violation.

6.9 Notification of the Discharge of Hazardous Waste

- (a) Section 2.2 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.
- (b) 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.
- (c) 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.

6.10 Analytical Requirements

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed by a laboratory certified by the state to perform the wastewater analyses in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard or unless otherwise performed in accordance with procedures approved by EPA or The District. 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 and The District. Analyses must be performed by a State certified lab for each parameter analyzed, if such certification exists for that parameter.

6.11 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 District 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 with a minimum of hourly aliquots or grabs for each hour that there is a discharge. 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.

- (d) Splitting of Samples: When requested by the Industrial User, samples collected by The District will be split with the Industrial User for verification of analytical results. Valid results from an Industrial User's split must be averaged with The District's results and the average used for limit compliance. However, the determination of the character, strength or quality of the waste as made by the General Manager or his authorized representatives, shall be conclusive for the computation of sewer charges.

6.12 Date of Submittal

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

6.13 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 the District, or where the User has been specifically notified of a longer retention period by the General Manager.

6.14 Electronic Reporting

The General Manager may develop procedures for receipt of electronic reports for any reporting requirements of this Ordinance. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under Section 8 of this Ordinance.

6.15 Special Reporting Requirements for IUs in Satellite Systems

In the case of Industrial User located in a Satellite Systems organization's jurisdiction, all information required to be reported to the Industrial User's Pretreatment Program Control Authority by this Ordinance shall also be reported to the District.

SECTION 7 - COMPLIANCE MONITORING

7.1 Monitoring Facilities

- (a) The District requires the User to provide and operate at the User's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the User's premises, but the District may, when such a location would be impractical or cause undue hardship on the User, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.
- (b) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the User.
- (c) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the requirements of the District and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the District.
- (d) The General Manager shall review monitoring facilities of present Users and may require additional monitoring facilities as required for compliance with sections (a) – (c) above.
- (e) New Users may be required to provide monitoring facilities as specified in their Permits to Discharge Waste prior to start up.

7.2 Inspection and Sampling

The District will inspect the facilities of any User to ascertain whether the purpose of this Ordinance is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the District, Approval Authority and EPA or their representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. The District, 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/or metering operations. Where a User has security measures in force which would require proper identification and clearance before entry into their premises, the User shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the District, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the District's approval authority's, or EPA's access to the User's premises shall be a violation of this Ordinance. Unreasonable delays may constitute denial of access.

7.3 Right to Entry

If the District Staff, Approval Authority or EPA, has been refused entry to a building, structure, or property, or any part thereof, the District may seek an order from a court of competent jurisdiction authorizing District Staff, the Approval Authority or EPA to go onto and into the User's property and make such investigation as it deems necessary to carry out the purposes of this Ordinance.

SECTION 8 - 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 agency 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. Any such request must be asserted at the time of 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, Non-discharge permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for 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 9 - ENFORCEMENT

9.1 Administrative Remedies

- (a) **Notification of Violation.** Whenever the General Manager finds that any Industrial User has violated or is violating this Ordinance, wastewater permit, or any prohibition, limitation or requirement contained therein or any other pretreatment requirement the General Manager may serve upon such a person a written notice stating the nature of the violation. Within 30 days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the District by the User. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.
- (b) **Consent Orders.** The General Manager is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to Section 9.1(d), below.
- (c) **Show Cause Hearing.** The General Manager may order any Industrial 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 that a 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 reasons for such action, and a request that the User show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) 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 Section 9.2 nor is any action or inaction taken by the General Manager under this section subject to an administrative appeal under Section 11.

- (d) **Administrative Orders.** When the General Manager finds that an Industrial User has violated or continues to violate this Ordinance, permits or orders issued hereunder, or any other pretreatment requirement the General Manager may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:
- (1) Immediately comply with all requirements;
 - (2) Comply in accordance with a compliance time schedule set forth in the order;
 - (3) Take appropriate remedial or preventive action in the event of a continuing or threatened violation;
 - (4) Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.
- (e) **Emergency Suspensions.**
- (1) The General Manager may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the District Wastewater System or causes the WRF to violate any condition of its NPDES or Non-discharge permit.
 - (2) Any User notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the User's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the General Manager shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the District Wastewater System or endangerment to any individuals. The General Manager shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The Industrial User shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the General Manager prior to the date of the above-described hearing.
 - (3) Within 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 rights to discharge to the District Wastewater 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 Officer's decision. The appeal to the District Board shall be conducted in accordance with the procedures in Section 11.
 - (4) 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 District Wastewater System or endangerment to any individuals. Such steps may include immediate severance of the User's connection to the District Wastewater System and injunctive relief in the General Court of Justice.
 - (5) The General Manager may reissue a Permit to Discharge Industrial Waste and allow reconnection to the District Wastewater 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.

(f) Termination of Permit or Permission to Discharge. The General Manager may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:

- (1) Failure to accurately report the wastewater constituents and characteristics of his discharge;
- (2) Failure to report significant changes in operations, or wastewater constituents and characteristics;
- (3) Refusal of reasonable access to the User's premises for the purpose of inspection or monitoring; or,
- (4) Violation of conditions of the permit or permission to discharge, conditions of this Ordinance, or any applicable State and Federal regulations.

Noncompliant Industrial Users will be notified of the proposed termination of their Wastewater Permit and will be offered an opportunity to show cause under Section 9.1 of this Ordinance why the proposed action should not be taken.

9.2 Civil Penalties

(a) Any User who is found to have failed to comply with any provision of this Ordinance, or the orders, rules, regulations and permits issued hereunder, may be assessed a civil penalty consistent with the guidelines and criteria in this section.

(1) Penalties between \$10,000 and \$25,000 per day per violation may be assessed against a violator only if:

(A) For any class of violation, only if a civil penalty has been imposed against the violator within the five years preceding the violation, or

(B) In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this Ordinance, or the orders, rules, regulations and permits issued hereunder, only if the General Manager determines that the violation was intentional and a civil penalty has been imposed against the violator within the five years preceding the violation.

(b) Each day the violation continues may be considered a separate violation.

(c) In determining the amount of the civil penalty, the General Manager shall consider the following:

- (1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The effect on ground or surface water quantity or quality or on-air quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money saved by noncompliance;
- (6) Whether the violation was committed willfully or intentionally;
- (7) The prior record of the violator in complying or failing to comply with the pretreatment program;
- (8) The costs of enforcement to the District.

(d) Appeals of civil penalties assessed in accordance with this section shall be as provided in Section 11.

9.3 Other Available Remedies

Remedies, in addition to those previously mentioned in this Ordinance, are available to the General Manager who may use any single one or combination against a noncompliant User. Additional available remedies include, but are not limited to:

(a) **Criminal Violations.**

The District may refer a violation of this Ordinance or a permit issued hereunder to the District Attorney for the applicable Judicial District for criminal prosecution under N.C.G.S. 143-215.6B. [Note: Under North Carolina law, it is a crime to negligently violate any term, condition, or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition, or requirement of a pretreatment permit, or knowingly

and willfully fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(g)), to knowingly violate any term, condition, or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time that a person is placed in imminent danger of death or serious bodily injury, (G.S. 143-215.6B(h)), and to falsify information required under Article 21 of Chapter 143 of the General Statutes (G.S. 143-215.6B(i)).

(b) Injunctive Relief

Whenever a User is in violation of the provisions of this Ordinance or an order or Permit issued hereunder, the District may petition the Superior Court for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.

(c) Water Supply Severance

Whenever an Industrial User is in violation of the provisions of this Ordinance or an order or Permit issued hereunder, water service to the Industrial User may be severed and service will only recommence, at the User's expense, after it has satisfactorily demonstrated ability to comply.

(d) Public Nuisances

If any violation of the prohibitions or effluent limitations of this Ordinance or of a Permit or order issued hereunder, is declared a public nuisance by judicial determination, such public nuisance shall be corrected or abated as directed by the General Manager. The District shall be entitled to recover its costs incurred in having a violation declared a public nuisance and in abating, removing, correcting or remedying any such nuisance.

9.4 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 noncompliant User. Enforcement of pretreatment violations will generally be in accordance with the District's enforcement response plan. However, the General Manager may take other action against any User when the circumstances warrant. Further, the General Manager is empowered to take more than one enforcement action against any noncompliant User.

SECTION 10 - ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE

At least annually, the General Manager shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the District, 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) (34), with applicable pretreatment standards and requirements, during the previous 12 months.

SECTION 11 – ADJUDICATORY HEARINGS

(a) **Initial Adjudicatory Hearing:** An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, a permittee/User assessed a civil penalty under section 9.2, or one issued an administrative order under section 9.1 shall have the right to an adjudicatory hearing before a hearing officer designated by the General Manager upon making written demand, identifying the specific issues to be contested, to the General Manager within 30 days following receipt of the Significant Industrial User Permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding and further appeal is barred. For modified permits, only those parts of the permit being modified may be adjudicated. The hearing officer shall make a final decision on the contested permit, penalty, or order within 45 days of the receipt of the written demand for a hearing. The General Manager shall transmit a copy of the hearing officer's decision by certified mail as described in paragraph (c) below. The terms and conditions of a permit under appeal shall be as follows:

- (1) **New Permits:** Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution;
- (2) **Renewed Permits:** Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit

remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution;

- (3) **Terminated Permits:** Upon appeal, including judicial review in the General Courts of Justice, of a terminated permit, no permit is in effect, and the User shall not discharge to the District Sewerage System until either the conclusion of judicial review or until the parties reach a mutual resolution;
- (b) **Final Appeal Hearing:** Any decision of a hearing officer made as a result of an adjudicatory hearing held under paragraph (A) above may be appealed to the District Board by filing a written demand within 10 days of receipt of notice of the decision. Failure to make written demand within the time specified herein shall bar further appeal. The District Board shall make a final decision on the appeal within 90 days of the date the appeal was filed, (a) and shall transmit a written copy of its decision by certified mail as described in paragraph (c) below. The decision is a final decision for the purposes of seeking judicial review.
- (c) **Official record:** When a final decision is issued, the District Board shall prepare an official record of the case that includes:
 - (1) All notices, motions, and other like pleadings;
 - (2) A copy of all documentary evidence introduced;
 - (3) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.
 - (4) A copy of the final decision of the Board serving the District.
- (d) **Judicial Review:** Any person against whom a final order or decision of the Board serving the District is entered, pursuant to the hearing conducted, may seek judicial review of the order or decision by filing a written petition request for review by the Superior Court of Buncombe County within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter with the Superior Court of Buncombe County along with a copy to the District. Within 30 days after receipt of the copy of the petition of judicial review written request for review by the Court, the Board serving the District shall transmit to the reviewing court the original or a certified copy of the official record.

SECTION 12 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

12.1 Upset

- (a) An upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of paragraph (b) below, are met.
- (b) A User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and the User can identify the cause(s) of the upset;
 - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
 - (3) The User has submitted the following information to the General Manager within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days:]
 - (A) A description of the indirect discharge and cause of noncompliance;
 - (B) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - (C) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (c) In any enforcement proceeding, the User seeking to establish the occurrence of an upset shall have the burden of proof.
- (d) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.
- (e) Users shall control production of all discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

12.2 Prohibited Discharge Standards Defense

A User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2.2 (a) of this Ordinance or the specific prohibitions in Sections 2.2 (b) of this Ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- (a) A local limit exists for each pollutant discharged and the User was in compliance with each limit directly prior to, and during, the pass through or interference; or
- (b) No local limit exists, but the discharge did not change substantially in nature or constituents from the User's prior discharge when the District was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

12.3 Bypass

- (a) A User may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (b) and (c) of this section.
- (b)
 - (1) If a User knows in advance of the need for a bypass, it shall submit prior notice to the General Manager, at least ten (10) days before the date of the bypass, if possible.
 - (2) A User shall submit oral notice to the General Manager of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of this time the User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The General Manager may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- (c)
 - (1) Bypass is prohibited, and the General Manager may take an enforcement action against a User for a bypass, unless
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (C) The User submitted notices as required under paragraph (b) of this section.
 - (2) The General Manager may approve an anticipated bypass, after considering its adverse effects, if the General Manager determines that it will meet the three conditions listed in paragraph (c)(1) of this section.

SECTION 13 - SEVERABILITY

If any provision, paragraph, word, section or article of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

SECTION 14- CONFLICT

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this Ordinance are hereby repealed to the extent of such inconsistency or conflict.

SECTION 15 – 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 District Wastewater System upon such terms and conditions, and the District Board deems appropriate.

SECTION 16 – AMMENDMENTS

The District reserves the right to amend this Ordinance.

SECTION 17 - EFFECTIVE DATE

16.1 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 Feb. 19, 2020

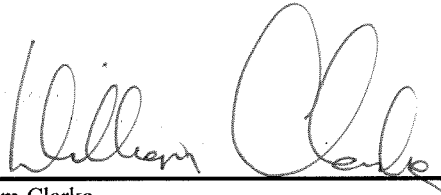
16.2 Consideration of Comments and Suggestions

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 April 29, 2020

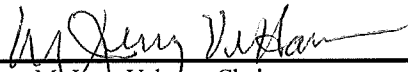
16.3 Adoption and Effective Date

- (a) Sewer Use Ordinance adopted on May 20, 2020
- (b) Effective Date: May 21, 2020

Approved as to form:

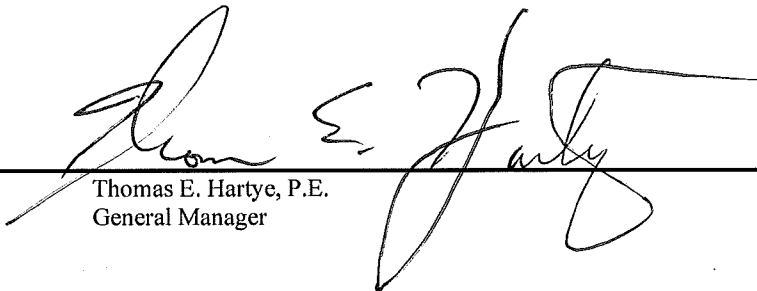


William Clarke
General Counsel



M. Jerry Vehlman, Chairman
Board of the Metropolitan Sewerage District
of Buncombe County, North Carolina

Attest:



Thomas E. Hartye, P.E.
General Manager