

**ORDINANCE AMENDING CHAPTER 26 OF THE
DURHAM COUNTY CODE OF ORDINANCES**

WHEREAS, the North Carolina Legislature has, through N.C.G.S. § 153A-275, vested counties with the authority to establish public enterprise systems, including wastewater collection, treatment, and disposal systems and to adopt adequate and reasonable rules to protect and regulate those systems owned or operated by it; and

WHEREAS, this ordinance sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for Durham County and enables the county to comply with all applicable state and federal laws, including the Clean Water Act and the General Pretreatment Regulations; and

WHEREAS, the County of Durham adopted a local ordinance, codified in Article IV of Chapter 26 of the Durham County Code of Ordinances, which sets forth the requirements for direct and indirect contributors into the wastewater collection and treatment system on September 26, 1994; and

WHEREAS, the North Carolina Legislature has, through N.C.G.S. §§ 153A-275, 153A-121, and 153A-123, vested the Board of County Commissioners with the authority to enact this Ordinance.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DOETH ORDAIN:

1) That Chapter 26, Article IV, section 26-81 (b)(1) and (b)(2) of the Durham County Code of Ordinances is hereby amended to read as follows:

(1) To prevent the introduction of pollutants and wastewater discharges into the county wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;

(2) To prevent the introduction of pollutants and wastewater discharges into the county wastewater system which will pass through the system, inadequately treated, into any waters of the state or otherwise be incompatible with the system;

2) That Chapter 26, Article IV, section 26-81(d) of the Durham County Code of Ordinances is hereby amended to read as follows:

(d) This article shall apply to all users of the county wastewater system as authorized by G.S. 160A-312 and/or 153A-275. Except as otherwise provided herein, the POTW Director shall administer, implement and enforce the provisions of this article. Any powers granted to or imposed upon the POTW Director may be delegated to a designee of the director. By discharging wastewater into the county wastewater system, users agree to comply with the terms and conditions established in this article, as well as any permits, enforcement actions or orders issued hereunder.

3) That Chapter 26, Article IV, section 26-82, Definitions and abbreviations, of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 26-82. Definitions and abbreviations.

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

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.

Approval Authority. The Director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources or his designee.

Authorized representative of the user.

- (1) If the 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.
- (2) If the user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.
- (3) If the 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.
- (4) The individuals described in subsections (1)--(3) 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 county.
- (5) 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 POTW Director prior to or together with any reports to be signed by an authorized representative.

Biochemical oxygen demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 degrees centigrade, usually expressed as a concentration (e.g. mg/l).

Building sewer. That part of the drainage system that extends from the end of the building drain and conveys the discharge to a public sewer, private sewer, individual sewage disposal system or other point of disposal.

Bypass. The intentional diversion of waste streams from any portion of a user's treatment facility.

Categorical standards. See national categorical pretreatment standards or pretreatment standard.

Composite Sample. A sample collected over a 24-hour period by continuous sampling or combining grab samples of at least 100 ml in such a manner as to result in a total sample representative of the wastewater discharge during the sample period.

Control Authority. The County of Durham.

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 such agency.

Existing source. Any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

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 15 minutes.

Holding tank waste. Any waste from holding tanks, including, but not limited to, such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

Indirect discharge or discharge. The discharge or the introduction of any substance(s) from any nondomestic source regulated under Section 307(b), (c) or (d) of the Act, (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).

Interference. The inhibition, or disruption of the POTW collection 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 (and/or POTW's, if different from the Control Authority) NPDES, collection system, or nondischarge permit or prevents sewage sludge use or disposal in compliance with specified applicable state and federal statutes, regulations or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with Section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines or regulations developed pursuant to the Solid Waste Disposal Act (SWDA) (42 U.S.C. § 6901, et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

Manhole. A structure through which a person can gain access to the Sanitary Sewer.

Medical waste. Isolation wastes, infectious agents, human blood and blood products, pathogenic wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

National categorical pretreatment standard or categorical standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which applies to a specific category of users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405--471.

National Prohibitive Discharge Standard or prohibitive discharge standard. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 26-96 of this article and are developed under the authority of 307(b) of the Act and 40 CFR, Section 403.5.

New source.

- (1) 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;
 - 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.
- (2) 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 subsection (1)b. or c. above, but otherwise alters, replaces or adds to existing process or production equipment.
- (3) 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.
 - b. Entered into a binding contractual obligation for the purchase of facilities or

equipment which is 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.

Noncontact cooling water. Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product or finished product.

National Pollutant Discharge Elimination System or NPDES permit. A permit issued pursuant to Section 402 of the Act (33 U.S.C. § 1342), or pursuant to G.S. 143-215.1 by the state under delegation from EPA.

Non-discharge permit. A disposal system permit issued by the state pursuant to G.S. 143-215.1

Pass through. A discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the Control Authority's (and/or POTW's, if different from the Control Authority) NPDES, collection system, or non-discharge permit.

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.

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.

Pollutant. Any "waste" as defined in G.S. 143-213(18), ~~and~~ dredged spoil, solid waste, incinerator residue, filter backwash, 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, metals, BOD, COD, toxicity, total nitrogen, total phosphorus, color and odor).

POTW collection system. That portion of the POTW that conveys wastewater to the POTW treatment plant.

POTW Director. The County Engineer or his designee.

POTW treatment plant. That portion of the POTW designed to provide treatment of wastewater.

Pretreatment or treatment. 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 pollution into a POTW collection system and/or POTW treatment plant. The reduction or alteration can be obtained by physical, chemical, or biological processes, or process changes or other means, except as prohibited by 40 CFR Part 403.6(d).

Pretreatment program. The program for the control of pollutants introduced into the POTW from

nondomestic sources which was developed by the county in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.

Pretreatment requirements. Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

Pretreatment standards. Any prohibited discharge standards, categorical standards, or local limits which apply to a user.

Process wastewater flow. That portion of the facility discharge that is attributable to any water which, during research, manufacturing or processing, comes in direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product or waste product.

Publicly owned treatment works (POTW) or county 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 County. 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 POTW treatment plant. For the purposes of this article, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the county who are, by contract or agreement with the county, or in any other way, users of the county's POTW, unless the sewers are the property of another unit of government.

Quarterly. For User permits, samples are to be collected in specific calendar quarters. (January to March, April to June, July to September, and October to December)

Sanitary Sewer. A sewer that carries sewage and excludes storm, surface and ground water.

Semi-annual. For User permits, samples are to be collected in specific semi-annual periods. (January to June and July to December)

Septic tank waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers and septic tanks.

Severe property damage. Substantial physical damage to property, damage to the user's treatment facilities which causes them to become operable, 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.

Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.)

Significant industrial users or SIU. Any user of the County wastewater system who:

- (1) Has an average daily process wastewater flow of 25,000 gallons or more unless otherwise designated by the Control Authority in accordance with 15A NCAC 02H .0907(b); or
- (2) Contributes process wastewater which makes up five percent or more of the NPDES or Non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS, and Ammonia,

unless otherwise designated by the Control Authority in accordance with 15A NCAC 02H .0907(b); or

(3) Is required to meet a national categorical pretreatment standard, unless otherwise designated by the Control Authority in accordance with 15A NCAC 02H .0907(b); or

(4) Is designated as such by the Control Authority on the basis that the User has a reasonable potential for adversely affecting the POTW's operation, or for violating any Pretreatment Standard or requirement, or for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or for limiting the POTW's sludge disposal options.

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 Parts 1(C), (D), or 5 shall also be in SNC.

- (1) Violations of wastewater discharge limits.
 - a. Chronic violations of wastewater discharge limits, defined 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 Semi-annual period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined in 40 CFR Part 403.3(1);
 - b. Technical Review Criteria (TRC) violations, defined as those in which thirty-three (33) percent or more of all the measurements taken for the same pollutant parameter during a Semi-annual period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(1) 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. Flow and pH do not have TRC criteria);
 - c. Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR part 403.3(1) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Control Authority and/or POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
 - d. 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 Control Authority's or the POTW's, if different from the Control Authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and Section 26-201(e) of this SUO to halt or prevent such a discharge;
- (2) Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction and attaining final compliance by 90 days or more after the schedule date.
- (3) Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports and periodic compliance reports within 30 days from the due date.
- (4) Failure to accurately report noncompliance.
- (5) Any other violation or group of violations that the Control Authority and/or POTW Director determines will adversely affect the operation or implementation of the local pretreatment program.

Slug Load or Slug Discharge. Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the POTW's regulations, local limits, or Significant Industrial User Permit conditions. 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 26-96 of this ordinance.

Standard Industrial Classification (SIC). A classification pursuant to the Standard Industrial Classification Manual issued by the executive office of the president, office of management and budget, 1987, as amended from time to time.

Stormwater. Any flow occurring during or following any form of natural precipitation and resulting therefrom.

Superintendent. The person designated by the county to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this article, or his duly authorized representative.

Suspended solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids and which is removable by laboratory filtering.

TAG Research Triangle Owners and Tenants Association Technical Advisory Group. An organization formed under the Research Triangle Owners and Tenants Association to assist the county on technical and regulatory issues associated with the sewer use ordinance and industrial pretreatment program. The TAG has no adjudicatory power nor responsibility. The TAG will monitor the success of the program and advise at the request of users or the county.

Upset. An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

User. Any person who contributes, causes or permits the contribution of wastewater into the county's POTW.

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 stormwater that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW.

Wastewater permit. As set forth in section 26-132 of this article.

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 continued within, flow through, or border upon the state or any portion thereof.

This article is gender neutral and the masculine gender shall include the feminine and vice-versa. Shall is mandatory; and may is permissive. 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 uses.

The following abbreviations when used in this article, 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) IPP - Industrial pretreatment program
- (7) l - Liter
- (8) mg - Milligrams
- (9) mg/l - Milligrams per liter
- (10) N.C.G.S. - North Carolina General Statutes
- (11) NPDES - National Pollutant Discharge Elimination System
- (12) O & M - Operation and maintenance
- (13) POTW - Publicly owned treatment works
- (14) RCRA - Resource Conservation and Recovery Act
- (15) SIC - Standard industrial classification
- (16) SOP - Standard operating procedure
- (17) SWDA - Solid Waste Disposal Act
- (18) TSS - Total suspended solids
- (19) TKN - Total Kjeldahl Nitrogen
- (20) U.S.C. - United States Code.

4) That Chapter 26, Article IV, section Sec. 26-96 entitled “Prohibited discharge standards” subsection (b)(8), of the Durham County Code of Ordinances is hereby amended to read as follows:

(8) Any trucked or hauled pollutants, except at discharge points designated by the POTW Director in accordance with section 26-104 of this article.

5) That Chapter 26, Article IV, section Sec. 26-96 entitled “Prohibited discharge standards” subsection (b)(12), of the Durham County Code of Ordinances is hereby amended to read as follows:

(12) Any wastewater containing any radioactive wastes or isotopes, except those specifically approved by the POTW Director and in compliance with applicable state or federal regulations.

6) That Chapter 26, Article IV, section Sec. 26-96 entitled “Prohibited discharge standards” subsection (b)(18), of the Durham County Code of Ordinances is hereby amended to read as follows:

(18) Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer, unless specifically authorized by the POTW Director.

7) That Chapter 26, Article IV, section Sec. 26-96 entitled “Prohibited discharge standards” subsection (e), of the Durham County Code of Ordinances is hereby amended to read as follows:

(e) *Contributing to the POTW.* When the POTW Director determines that a user(s) is contributing to the POTW, any of the above enumerated substances in such amounts which may cause or contribute to interference of POTW operation or pass-through, the POTW Director shall:

(1) Advise the user(s) of the potential impact of the contribution on the POTW in accordance

with section 26-201; and

- (2) Take appropriate actions in accordance with Division 4 of this Article for such user to protect the POTW from interference or pass-through.

8) That Chapter 26, Article IV, section Sec. 26-97 entitled “National categorical pretreatment standards” of the Durham County Code of Ordinances is hereby amended to read as follows:

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 and incorporated herein.

- (1) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the POTW Director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- (2) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the POTW Director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.5(e).
- (3) 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.
- (4) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.
- (5) A user may request a removal credit adjustment to a categorical standard in accordance with 40 CFR 403.7.

9) That Chapter 26, Article IV, section Sec. 26-98, entitled “Industrial waste survey and local limits”, of the Durham County Code of Ordinances is hereby amended to read as follows:

- (a) An industrial waste survey and POTW Director approval is required prior to a user discharging wastewater containing in excess of the following average discharge limits.

BOD	250	mg/l	
TSS	250	mg/l	
NH ₃	25	mg/l	
Arsenic	0.003	mg/l	
Cadmium	0.003	mg/l	
Chromium	0.05	mg/l	(total chromium)
Copper	0.061	mg/l	
Cyanide	0.015	mg/l	
Lead	0.049	mg/l	
Mercury	142.	ng/l	
Nickel	0.021	mg/l	
Silver	0.005	mg/l	
Zinc	0.175	mg/l	

(b) Industrial Waste Survey information will be used to develop user-specific local limits when necessary to ensure that the POTW's maximum allowable headworks loading are not exceeded for particular pollutants of concern. User-specific local limits for appropriate pollutants of concern shall be included in wastewater permits.

10) That Chapter 26, Article IV, section Sec. 26-102 of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) *Pretreatment facilities.* Users shall provide wastewater treatment as necessary to comply with this article and wastewater permits issued under section 26-132 of this article and shall achieve compliance with all national categorical pretreatment standards, local limits and the prohibitions set out in section 26-96 of this article within the time limitations as specified by EPA, the state or the POTW Director, 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 county for review, and shall be approved by the POTW Director 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 county under the provisions of this article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the POTW Director prior to the user's initiation of the changes.

(b) *Additional pretreatment measures.* The POTW Director may require additional measures described below when necessary to ensure compliance with this article and waste water permits issued under section 26-132 of this article.

(1) The POTW Director 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 wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this article.

(2) The POTW Director may require any person discharging into the POTW 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) Users with the potential to discharge flammable substances that are not water soluble may be required to install and maintain an approved combustible gas detection meter. If the concentration of water soluble substances is great enough to be combustible, the user may be required to install and maintain an approved combustible gas detection meter.

(c) *Fats, Oil, and Grease Removal Systems.*

(1). *When Removal Systems are Required.* Certain establishments that prepare, process, or serve food shall install a removal system meeting approved standards that removes and collects fat, oil, and grease (FOG) from wastewater and shall establish acceptable standard operating procedures for grease disposal. Such establishments include but are not limited to grocery stores, restaurants, bakeries, and companies, schools, and institutions with on-site cafeterias. Establishments that must meet this

requirement include all new establishments, all existing establishments with a monthly average water consumption greater than 1000 cubic feet, and establishments which monitoring has shown discharge more than 200 mg/liter of fat, oil, and grease.

Establishments subject to this section shall be grouped into the following four categories:

- (i) Existing establishments with an outside grease trap
- (ii) Existing establishments with in-floor grease interceptor, under the following conditions:
 - A. The establishment is limited by space and cannot install an outside grease trap, and
 - B. The establishment is in compliance with the 200 mg/L FOG limit set forth herein, and
 - C. The establishment maintains a standard operating procedure regarding maintenance of the interceptor and proper FOG disposal.
- (iii) Existing establishments with no grease trap or interceptor, under the following conditions:
 - A. Monthly water consumption is below 1000 cubic feet, and
 - B. The establishment maintains a standard operating procedure regarding spill prevention and dry clean-up, including scraping, sweeping, or wiping methods, and
 - C. The establishment is in compliance with the 200 mg/L FOG limit set forth herein.
- (iv) New establishments under construction, including any increase to the food service capacity of an existing establishment.

(2) Requirements for New Establishments under Construction. All new establishments subject to this section shall comply with the following:

- (i) An outside grease trap shall be installed.
- (ii) A monitoring manhole shall be installed downstream of the grease trap and prior to joining the sanitary waste line.
- (iii) The grease trap shall be plumbed to receive wastes associated with food handling and no toilet waste, subject to sec. 26-102(b)(3)(c).

The grease trap liquid capacity shall provide for:

- At least five gallons of storage per meal served,
- 25 gallons per 15 square feet of dining area or 25 gallons per seat, whichever is greater, OR
- A capacity as determined in accordance with the following formula:

$$LC = D \times GL \times HR \times 1.25$$

where

LC = grease trap liquid capacity (gallons)

D = number of seats in dining area

GL = gallons of wastewater per meal
(1.5 single service; 2.5 full service)

HR = number of hours open per day.

- (iv) Two or more chambers shall be provided with total length-to-width ratio at least 2:1. Chamber inlet and outlet sanitary tees shall extend down at least 50 percent of the liquid depth.
- (v) Access manholes, with a minimum diameter of 24 inches, shall be provided over each chamber and sanitary tee. The access manholes shall extend at least to finished grade and be designed and maintained to prevent surface water infiltration. The manholes shall also have readily removable covers to facilitate inspection and grease removal.
- (vi) The grease trap liquid capacity may be provided by up to two tanks in a series.
- (vii) Where it has been demonstrated that a specially designed grease trap or interceptor will provide improved performance, an alternative design may be approved by the POTW Director.
- (viii) A minimum 1,000 gallon grease trap for all new food establishments.

(3) Prohibited Discharges into any Fats, Oil and Grease Removal System. The following shall not be discharged into any fats, oil, and grease removal system, unless specifically authorized in writing by the POTW Director:

- (i) Waste that does not contain fats, oil, grease, and that otherwise does not require treatment;
- (ii) Wastewater from dish washing machines or wastewater with temperature exceeding 150° F;
- (iii) Ground residue from food waste grinders and garbage disposals;
- (iv) Sanitary waste;
- (v) Emulsifiers, chemicals, and enzymes.

(4) Maintenance and Cleaning of System; Maintenance of Records. All FOG Removal Systems shall be cleaned on at least a monthly schedule. More frequent cleaning may be required if the user's discharge contains more than 200 mg/L of fats, oil, and grease. Less frequent cleaning is permitted if it can be demonstrated to the POTW Director that the proposed cleaning schedule will result in a discharge of fats, oil, and grease that is below 200 mg/L and there are no problems with sewer line maintenance as a result of the change in schedule.

(5) Collection of Fat, Oil, and Grease; Maintenance of Records. All users with removal systems shall contract for the removal of the fats, oil, and grease collected from the removal system. The contract shall be available on site for inspection by the POTW Director or designee. The user shall require the contractor to complete a form provided by the POTW Director indicating the ultimate disposition of the fat, oil, and grease collected -- e.g., the disposal destination, such as a named landfill, of the removed substances and whether the fat, oil, and grease are being reprocessed or rendered. The user shall also require the contractor to indicate on a form, which, if it is not the POTW Director's form, shall be acceptable to the POTW Director, each collection made from the user. Required forms shall be maintained on site for a period of three years.

(6) Monitoring of Discharge. In the event of non-compliance of this section, the POTW Director or designee may require that any user monitor and test their discharge for fat, oil and grease. All monitoring results shall be provided to the POTW Director. Approved EPA and NC State guidelines shall be followed for sample collection, handling, and analysis. A NC certified laboratory must perform the analysis. As a condition of discharging to the system, all users may be monitored by the POTW

Director or designee without prior notice.

(7) Exceptions. Exceptions from this section may be made in writing by the POTW Director if it can be shown that an existing establishment cannot site outside removal systems without extreme hardship because of lack of available adjacent land or other similar circumstances. Such application for an exemption shall be made to the POTW Director on or before September 1, 2008.

(8) Noncompliance. Any facility not in compliance with the 200 mg/L FOG limit set forth herein, and not exempted under (7) above, shall retrofit or install a sufficient grease trap and implement adequate cleaning schedule to meet the applicable standards set forth herein.

(9) Reporting. Facilities with a grease trap shall provide a monthly report of the grease trap maintenance to the POTW Director, postmarked no later than the last calendar day of the month following the completed reporting period.

(d) *Pretreatment projects.* Any pretreatment projects submitted and accepted, prior to this article becoming effective, shall be considered in full force and not requiring modification to meet differing requirements of this article, unless required to meet more stringent effluent limitations imposed by a change in the permit. Any pretreatment project submitted, but not approved prior to this article becoming effective shall not require additional review or modification before approval in order to meet the requirements of this article.

11) That Chapter 26, Article IV, Sec. 26-103, entitled “Accidental discharge/slug control plans”, of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) The POTW Director shall evaluate whether an SIU needs a plan or other action to control and prevent Slug Discharges based upon the materials that may reasonably be expected to be discharged into the POTW. All SIUs must be evaluated within one year of being designated an SIU. The POTW Director may require any user to develop, submit for approval, and implement such a plan or other specific action.

(b) All SIUs are required to notify the POTW Director immediately of any changes at its facility increasing the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load.

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) Procedures for immediately notifying the POTW Director of any accidental or slug discharge, as required by section 26-151 of this article; and

(4) 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.

12) That Chapter 26, Article IV, Sec. 26-103, entitled “Hauled wastewater”, of the Durham County Code of Ordinances is hereby amended to read as follows:

In general, hauled wastewater is discouraged. However, under the direction outlined below, the POTW Director may allow hauled wastewater to be introduced to the POTW.

(1) Septic tank waste may be introduced into the POTW only at locations designated by the POTW Director, and at such times as are established by the POTW Director. Such waste shall not violate Division 2 of this Article or any other requirements established by the county. The POTW Director shall require septic tank waste haulers to obtain wastewater discharge permits.

(2) The POTW Director shall require haulers of industrial waste to obtain wastewater discharge permits. The POTW Director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article.

(3) Industrial waste haulers may discharge loads only at locations designated by the POTW Director. No load may be discharged without prior consent of the POTW Director. The POTW Director may collect samples of each hauled load to ensure compliance with applicable standards. The POTW Director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(4) 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, permit numbers and addresses of sources of waste, the volume and characteristics of the industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

13) That Chapter 26, Article IV, is amended to add Sec. 26-105, entitled “Sanitary Sewer Construction”, to the Durham County Code of Ordinances to read as follows:

Sec. 26-105. Sanitary Sewer and pretreatment Construction.

(a) All construction of the Sanitary Sewer (new or extension) shall conform to Durham County standards and specifications.

(b) All Sanitary Sewer between Manholes shall be of the same material. This includes any building sewer, or portion of a building sewer, within the edge of the Durham County sanitary sewer easement or NCDOT right-of-way along the same run of pipe.

(c) All ductile iron pipe which is installed as part of new construction or an extension of the existing Sanitary Sewer shall be interior epoxy coated with Protecto 401 or an alternative coating approved by the POTW Director.

(d) All pretreatment systems subject to plan approval must be signed and sealed by a North Carolina Professional Engineer.

14) That Chapter 26, Article IV, Sec. 26-118 entitled “Surcharges”, subsection (3), of the Durham County Code of Ordinances is hereby amended to read as follows:

(3) The determination of the character and concentration of the constituents of the waste

water discharge by the POTW Director or his duly appointed representatives shall be binding as a basis for charges. Should a permittee suspect or have knowledge that the concentration of constituents do not reflect the true concentrations, the permittee may challenge the results within 15 days of receiving the results. Upon review of the challenge and a finding of inaccuracy, the county shall credit any excess charges made or bill for any shortage. In the case of excess billing, the county shall credit to the permittee's account, one-half the cost of substantiating the inaccuracy if the inaccuracy is greater than 25 percent above reported concentrations. The challenge of reported concentrations shall be in writing to the POTW Director. After initial review of the challenge, the POTW Director may elect to resample, accept the challenge based upon prior records, or defer the permittee to a hearing as outlined in section 26-132(9) of this article.

15) That Chapter 26, Article IV, Sec. 26-120, entitled "Sewer Credits", of the Durham County Code of Ordinances is hereby amended to read as follows:

The POTW Director may approve an annual sewer credit if a user produces evidence that more than ten percent of the total annual volume of water consumed is not returned to the county sewer system. Evidence produced must include 12 months of data. All meters used to determine such evidence shall be calibrated at least annually. The POTW Director may require the user to install meters, including continuously monitoring effluent flowmeters and to submit monthly readings to the POTW Director in order to receive a sewer credit. Updates to the original submission shall be submitted annually to the POTW Director to confirm the continued justification of a sewer credit. All user expenses for the justification shall be the responsibility of the user requesting the credit. The sewer credit will be based on the volume in excess of ten percent (10%).

16) That Chapter 26, Article IV, Sec. 26-131, entitled "Wastewater dischargers", of the Durham County Code of Ordinances is hereby amended to read as follows:

It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the county. When requested by the POTW Director, a user must submit information on the nature and characteristics of its wastewater within 45 days of the request. The POTW Director is authorized to prepare a form for this purpose and may periodically require users to update this information as necessary to ensure compliance with this article.

17) That Chapter 26, Article IV, Sec. 26-132, entitled "Wastewater Permits", of the Durham County Code of Ordinances is hereby amended to read as follows:

All Significant Industrial Users shall obtain a significant industrial user permit prior to the commencement of discharge to the POTW. Existing users who are determined by the POTW Director to be Significant Industrial Users shall obtain a Significant Industrial Users permit within 180 days of receiving notification of the POTW Director's determination. Users who do not fit the Significant Industrial Users criteria may at the discretion of the POTW Director be required to obtain a wastewater discharge permit for nonsignificant users. This requirement is not intended to require existing permittees to obtain new permits but will allow the existing permits to be retained as issued by the county industrial pretreatment program, except for necessary changes due to the change of authority.

(1) *Significant Industrial User determination.* All persons proposing to discharge nondomestic wastewater, or proposing to change the volume or characteristics of an existing discharge of nondomestic wastewater shall request from the POTW Director a

Significant Industrial Users determination. If the POTW Director determines that the proposed discharge fits the Significant Industrial Users criteria he will require that a Significant Industrial Users permit application be filed.

(2) *Significant Industrial Users permit application.* Users required to obtain a significant industrial user permit shall complete and file with the county an application in the form prescribed by the POTW Director, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant Industrial Users shall apply for a Significant Industrial Users permit within 90 days after notification of the POTW Director's determination in subsection 26-132(1) above. In support of the application, the user may be required to submit, in units and terms appropriate for evaluation, the following information as appropriate to this discharge:

- a. Name, address and location (if different from the address).
- b. Standard industrial classification (SIC) codes for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated.
- c. Types and Concentrations (or mass) of pollutants contained in the discharge, including, but not limited to, those mentioned in Division 2 of this Article, 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 POTW; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to Section 304(g) of the Act and contained in 40 CFR, Part 136, as amended.
- d. Time and duration of the indirect discharge.
- e. Average daily and 30-minute peak wastewater flow rates, including daily, monthly and seasonal variations if any.
- f. Site plans, floor plans, mechanical and plumbing plans and details or schematics to show all sewers, floor drains, sewer connections, direction of flow and appurtenances by the size, location and elevation (the permittee shall maintain an accurate set of engineering drawings showing all mechanical and plumbing details that connect to the discharge sewer, either directly or indirectly).
- g. Description of activities, facilities and plant processes on the premises, including all materials which are or could be accidentally or intentionally discharged.
- h. Where known, the nature and concentration of any pollutants in the discharge which are limited by any county, state or federal pretreatment standards and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards.
- i. If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
 1. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine months.

2. No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW Director including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between such progress reports to the POTW Director.
 - j. Each product produced by type, amount, process or processes and rate of production.
 - k. Type and amount of raw materials processed (average and maximum per day).
 - l. Number and type of employees and hours of operation of plant and proposed or actual hours of operation of pretreatment system.
 - m. If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H .0908(a), as outlined in section 26-146 of this article.
 - n. Description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g).
 - o. Any other information as may be deemed by the POTW Director to be necessary to evaluate the permit application.
- (3) *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 POTW Director 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."
- (4) *Application review and evaluation.* The POTW Director will evaluate the data furnished by the user and may require additional information.
- a. The POTW Director is authorized to accept applications for the county and shall refer all applications to the POTW staff for review and evaluation.
 - b. Within 60 days of receipt the POTW Director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.
- (5) *Tentative determination and draft permit.*
- a. The POTW staff shall conduct a review of the application and an on-site inspection of the Significant Industrial Users, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the Significant Industrial Users permit.
 - b. If the staff's tentative determination in subsection a. above is to issue the permit,

the following additional determinations shall be made in writing:

1. Proposed discharge limitations for those pollutants proposed to be limited;
 2. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
 3. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
- c. The staff shall organize the determinations made pursuant to subsection a. and b. above and the county's general permit conditions into a significant Significant Industrial Users.
- (6) *Permit supporting documentation.* The Control Authority staff shall prepare the following documents for all Significant Industrial User permits.
- a. 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 maximum allowable loadings of the POTW, including flow. 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.
 - b. The basis, or rationale, for the pretreatment limitations, including the following:
 1. documentation of categorical determination, including documentation of any calculations used in applying categorical pretreatment standards; and
 2. documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).
- (7) *Permit synopsis.* A fact sheet providing a brief synopsis of the application shall be prepared by the POTW staff for submission to the applicant and the approval authority and shall be made available to the public upon request. The contents of such fact sheets shall include at least the following information:
- a. A sketch and detailed description of the industrial facilities and pretreatment facilities, including the location of all points of discharge to the POTW and all established compliance monitoring points.
 - b. A quantitative description of the discharge described in the application which includes at least the following:
 1. The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
 2. The actual average daily discharge in pounds per day of any limited pollutant and any pollutant identified in the application as known or suspected present; and
 3. The basis for the pretreatment limitations, including the documentation of any calculations in applying categorical pretreatment standards.
- (8) *Final action on Significant Industrial Users permit applications.*
- a. The POTW Director shall take final action on all applications not later than 90 days following receipt of a complete application.

- b. The POTW Director is authorized to:
1. Issue a Significant Industrial Users permit containing such conditions as are necessary to effectuate the purposes of this article and G.S. 143-215.1.
 2. Issue a Significant Industrial Users permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements.
 3. Modify any permit upon not less than 60 days notice and pursuant to section 26-132(10) of this article.
 4. Revoke any permit pursuant to section 26-201 of this article.
 5. Suspend a permit pursuant to section 26-201 of this article.
 6. Deny a permit application when in the opinion of the POTW Director such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.

(9) Hearings.

- a. *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 26-202, or one issued a notification of violation or an administrative order under section 26-201 shall have the right to an adjudicatory hearing before the Durham County Manager or his designee upon making written demand, identifying the specific issues to be contested, to the POTW Director 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. For modified permits, only those parts of the permit being modified may be adjudicated. The County Manager 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 POTW Director shall transmit a copy of the County Manager's decision by registered or certified mail.
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.
- b. *Reserved.*
- c. *Official record.* When decision is issued under section 26-132(9)a. above, the POTW Director 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 County Manager.

(10) *Permit modification.*

- a. 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.
 1. A single modification of any compliance schedule not in excess of four months.
 2. 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.
 3. Changes in the ownership of the establishment when no other change in the permit is indicated.
- b. Within nine 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 26-132(2) the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable national categorical pretreatment standard.
- c. 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.

(11) *Permit conditions.*

- a. The POTW Director shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this article and G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:
 1. A statement of duration (in no case more than five years);
 2. A statement of non transferability.
 3. Applicable effluent limits based on categorical standards or local limits or both;
 4. 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;
 5. Requirements for notifying the POTW Director in the event of an accidental Discharge or Slug Load;
 6. A statement that applicable civil and criminal penalties may be imposed for violation of pretreatment standards and requirements and any applicable compliance schedule.

7. Requirements to implement a plan or other controls for the prevention of accidental Discharges and/or Slug Loads if determined by the POTW Director to be necessary for the User.
8. Requirements for immediately notifying the POTW Director of any changes at its facility effecting the potential for spills and other accidental Discharges, or Slug Loads.

b. In addition, permits may contain, but are not limited to, the following:

1. Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
2. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass or other measure of identified wastewater pollutants or properties.
3. 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 treatment works.
4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the county wastewater system.
5. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
6. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
7. Specifications for monitoring programs which may include sampling location, frequency of sampling, number, types, and standards for tests and reporting schedules.
8. Requirements for immediate reporting of any instance of noncompliance and for automatic re-sampling and reporting within 30 days where self-monitoring indicates a violation(s).
9. Compliance schedules for meeting pretreatment standards and requirements.
10. Requirements for submission of periodic self-monitoring or special notification reports.
11. Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in section 26-158 and affording the POTW Director, or his representatives, access thereto.
12. Requirements for prior notification and approval by the POTW Director 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.
13. Requirements for the prior notification and approval by the POTW Director of any change in the manufacturing and/or pretreatment process used by the permittee that may affect the wastewater discharge and its compliance with a permit or this article.
14. Requirements for immediate notification of excessive, accidental, or slug discharges or any discharge which could cause any problems to the system.
15. Other conditions as deemed appropriate by the POTW Director so as to ensure compliance with this article, and state and federal laws, rules and regulations.

- (12) *Permits duration.* Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.
- (13) *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.
- (14) *Permit reissuance.* A Significant Industrial Users shall apply for permit reissuance by submitting a complete permit application in accordance with section 26-132 a minimum of 180 days prior to the expiration of the existing permit. The county may allow users to certify that the permit application information submitted previously by the permittee to the county is accurate and representative of the user's current wastewater discharge in lieu of resubmitting information that is in the county's possession. This provision shall not be invoked for any permittee that has been proven to have violated this article or their discharge permit during the term of the permit that is to be renewed.

18) That Chapter 26, Article IV, Sec. 26-146, entitled, "Baseline monitoring reports", subsections (a) and (b), of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the POTW Director a report which contains the information listed in paragraph (b), below. At least 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 POTW Director 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 in section 26-146(a), 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 POTW from the regulated processes.
- (4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e). Flow measurement shall be in accordance with section 26-118(b)(1) of this article.
- (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 POTW Director 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 26-155 of this article.

- c. Sampling must be performed in accordance with procedures set out in section 26-156 of this ordinance and 40 CFR 403.12(b) and (g).

19) That Chapter 26, Article IV, Sec. 26-147 entitled, "Compliance schedule progress reports" subsection (c), of the Durham County Code of Ordinances is hereby amended to read as follows:

(c) The user shall submit a progress report to the POTW Director no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

20) That Chapter 26, Article IV, Sec. 26-147 entitled, "Compliance schedule progress reports" subsection (d), of the Durham County Code of Ordinances is hereby amended to read as follows:

(d) In no event shall more than nine months elapse between such progress reports to the POTW Director.

21) That Chapter 26, Article IV, Sec. 26-148, entitled "Reports on compliance with categorical pretreatment standard deadline", of the Durham County Code of Ordinances is hereby amended to read as follows:

Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the POTW Director a report containing the information described in section 26-146(b)(4)-(6) of this article. 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 26-132(3) of this article.

22) That Chapter 26, Article IV, Sec. 26-149, entitled "Periodic compliance reports", of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) All Significant Industrial Users shall, at a frequency determined by the POTW Director 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 permit and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in Section 26-155 and 26-156 of this ordinance. Categorical users, where authorized by the categorical standard, may submit a certification stating that no regulated pollutant has been discharged since their last discharge monitoring data for the regulated pollutant. All periodic compliance reports must be signed and certified in accordance with section 26-132(3) of this article.

(b) If a user subject to the reporting requirement in this section monitors any pollutant more frequently at the designated sampling point than required by the POTW Director, using the procedures prescribed in section 26-155 of this article, the results of this monitoring shall be included in the report.

23) That Chapter 26, Article IV, Sec. 26-150, entitled “Reports of changed conditions”, of the Durham County Code of Ordinances is hereby amended to read as follows:

Each user must notify the POTW Director 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 30 days before the change. The permittee shall not begin the changes until receiving written approval from the POTW Director. See Section 26-151(d) for other reporting requirements.

- (1) The POTW Director 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 26-132 of this article.
- (2) The POTW Director may issue a wastewater discharge permit under section 26-132 of this article or modify an existing wastewater discharge permit under section 26-132 of this article in response to changed conditions or anticipated changed conditions.
- (3) For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of 20 percent or greater, and the discharge of any previously unreported pollutants.

24) That Chapter 26, Article IV, Sec. 26-151, entitled “Reports of potential problems”, of the Durham County Code of Ordinances is hereby amended to add subsection (d) to read as follows:

(a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a noncustomary batch discharge, or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW Director 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 days following such discharge, the user shall, unless waived by the POTW Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, natural resources or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties or other liability which may be imposed pursuant to this article.

(c) A written notice, advising appropriate employees of the procedures required by paragraph (a) above, shall be readily available at all times. 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 POTW Director 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.

25) That Chapter 26, Article IV, Sec. 26-152, entitled “Reports from unpermitted users”, of the Durham County Code of Ordinances is hereby amended to read as follows:

All users classified as Non-Significant Categorical Industrial Users under Section 26-82 SIU(3) shall provide appropriate reports to the POTW Director as the POTW Director 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).

26) That Chapter 26, Article IV, Sec. 26-153, entitled “Notice of violation/repeat sampling and reporting”, of the Durham County Code of Ordinances is hereby amended to read as follows:

If sampling performed by a user indicates a violation of this article, the user must immediately contact the Triangle Wastewater Treatment Plant and provide written notice to the POTW Director 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 POTW Director within thirty (30) days after becoming aware of the violation, unless:

- (1) The POTW Director monitors at the user's facility at least once a month; or
- (2) The POTW Director samples between the user's initial sampling and when the user receives the results of this sampling.

27) That Chapter 26, Article IV, Sec. 26-154, entitled “Notification of the discharge of hazardous waste”, of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user:

- (1) An identification of the hazardous constituents contained in the wastes;
- (2) An estimation of the mass and concentration of such constituents in the wastestream discharge during the calendar month; and
- (3) An estimation of the mass and concentration of such constituents in the wastestream expected to be discharged during the following 12 months.

All notifications must take place no later than 30 days before the discharge commences. The user shall not begin the discharge until receiving written approval from the POTW Director. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under section 26-150 of this article. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of sections 26-146, 26-148 and 26-149 of this article.

(b) Discharges are exempt from the requirements of paragraph (a) above, during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specific in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time

notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

(c) In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW Director, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this article, a permit issued thereunder, or any applicable federal or state law.

28) That Chapter 26, Article IV, Sec. 26-155, entitled “Analytical requirements”, of the Durham County Code of Ordinances is hereby amended to read as follows:

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 Durham County. 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 Durham County.

29) That Chapter 26, Article IV, Sec. 26-156, of the Durham County Code of Ordinances is hereby amended to read as follows:

(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 POTW 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 POTW Director 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 POTW Director. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

30) That Chapter 26, Article IV, Sec. 26-156, entitled, “Record keeping”, of the Durham County Code of Ordinances is hereby amended to read as follows:

Users subject to the reporting requirements of this article shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this article. Records, obtained pursuant to required monitoring activities, 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. All records, pursuant to required monitoring or gathered independently, shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the county, or where the user has been specifically notified of a longer retention period by the POTW Director.

31) That Chapter 26, Article IV, Sec. 26-171, entitled “Monitoring facilities”, of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) The county requires the user to provide and operate at the user's own expense, monitoring facilities to allow inspection, sampling and flow measurement pursuant to section 26-118(1), of the user's facility's sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the county 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) The POTW Director may designate a minimum frequency for calibration of monitoring equipment; however, the User shall be responsible for ensuring the accuracy of the equipment at all times.

(c) 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.

(d) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the county's requirements and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the county. A longer period than 90 days may be allowed by the POTW Director if the user demonstrates that 90 days is not sufficient for construction.

32) That Chapter 26, Article IV, Sec. 26-172, entitled “Inspection and sampling”, of the Durham County Code of Ordinances is hereby amended to read as follows:

The county may inspect the facilities of any user to ascertain compliance with this article and the terms of the user's permit. Users shall allow the county, approval authority, and EPA or their representative ready access at all reasonable times to all parts of the premises, related to wastewater discharge, for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. Ready access shall include all provisions of an approved Access SOP. The county, 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 county, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the Control Authority, Approval Authority's or EPA's access, while in conformance with the Access SOP, to the user's premises shall be a violation of this article. Delays that are significantly longer than outlined in the Access SOP may constitute denial of access. In the event a user, for purposes of safety or security, needs to impose special requirements for access to its facility, the user shall submit an Access SOP. The Access SOP shall contain all accompaniment requirements, time constraints, orders, contacts, procedures and safety requirements that the county inspectors may need to gain access to the facility.

33) That Chapter 26, Article IV, Sec. 26-173, entitled "Search warrants", of the Durham County Code of Ordinances is hereby amended to read as follows:

If the Control Authority, Approval Authority or EPA has been refused access to a building, structure or property or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the county designed to verify compliance with this article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Control Authority, Approval Authority or EPA may seek issuance of a administrative inspection warrant from the magistrate.

34) That Chapter 26, Article IV, Sec. 26-187, entitled "Acquiring confidential treatment status", of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) The POTW Director shall make a determination of whether the business information and trade secrets are entitled to confidential treatment status whenever he receives the appropriately timed request for confidential treatment status.

(b) Confidential information should be identified by each user in a general way at the time of application for a permit, upon submittal of an Access SOP or at the discretion of the user. Information so identified will be given safeguards from the time of receipt and until determined as not confidential treatment status information or the specified time period expires.

(c) Confidential treatment status shall be afforded to a user if:

- (1) The user has submitted a valid request for confidential treatment status;
- (2) The user has satisfactorily shown that it has taken measures itself to protect the confidentiality of the information or data;
- (3) No statute or regulation specifically requires disclosure of such information or data; and
- (4) The user provides satisfactory proof that disclosure of the information is likely to cause substantial harm to the user's competitive position; or if:
- (5) Release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under G.S. § 66-152(3).

(d) The POTW Director shall notify the user of his/her determination of confidentiality status within 30 days of receipt of a request for confidential treatment status. To the extent that the POTW Director rejects a user's claim, within ten days of receiving such notice, the user shall have the right to appeal the POTW Director's decision in accordance with the procedures set forth in section 26-132(9) of this article. The POTW Director shall continue to maintain confidential treatment status for such information until all appeals are completed.

35) That Chapter 26, Article IV, Sec. 26-188, entitled “Confidential treatment”, of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) If the POTW Director determines that the information or data is entitled to confidential treatment status for the period requested, he shall maintain the information in confidence during that period.

(b) This rule is subject to the following exceptions:

(1) *Emergency situations.* If the POTW Director finds that disclosure of information receiving confidential treatment status is essential to alleviate a situation posing an imminent and substantial danger to public health or safety, he may disclose the information to the local emergency response authorities as he finds necessary under the circumstances.

(2) *Court-ordered disclosure.* The POTW Director shall disclose any confidential information in any manner and to the extent ordered by a court of competent jurisdiction.

(3) *User notification.* The POTW Director shall notify the user of the disclosures above within 14 days of the disclosure if the user has not been a part of the proceedings requiring such disclosure.

36) That Chapter 26, Article IV, Sec. 26-189, entitled “Contractors; assurance of confidentiality”, of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) No confidential status information shall be disclosed to, nor access to user's facility demanded for, contractors of the county pursuant to this article, unless the contract between the county and the contractor provides:

(1) That the contractor and contractor's employees shall use the information disclosed, or gathered from inspections, only for the purpose of carrying out the work required by the contract. The contractor and the contractor's employees shall refrain from disclosing the information to anyone other than the POTW Director without prior written approval from the affected business or the county attorney for the county and shall return to the POTW Director all copies of the information upon request by the POTW Director, whenever the information is no longer required by the contractor for the performance of the work required under the contract, or upon completion of the contract. Information known to be confidential shall not be given to anyone other than the POTW Director who will distribute the information to the contractor as appropriate after a determination of confidential status.

(2) That the contractor shall obtain a written agreement to honor such terms of the contract from each of the contractor's employees who will have access to the information or inspections, before such employee is allowed access to the confidential information or facilities; and

(3) That the contractor acknowledges and agrees that the contract provisions concerning the use and disclosure of confidential status information are included for the benefit of, and shall be enforceable by both the county and the user submitting the confidential status information.

(b) For the purpose of this subsection, information requested of users directly by a contractor, as agent of the POTW Director, shall be considered to be information supplied to the contractor by the POTW Director.

37) That Chapter 26, Article IV, Sec. 26-190, entitled “Safeguarding of confidential status information; penalty for wrongful disclosure”, of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) Neither the POTW Director nor any county employee, agent or contractor may disclose or use for private gain, any confidential status information which came into his possession by virtue of his official position, contract or employment.

(b) Each POTW and county employee, agent or contractor who has custody or possession of confidential status information shall take appropriate measures to properly safeguard such information and to protect against improper disclosure.

(c) Violation of paragraph (a) or (b) above, shall constitute grounds for dismissal, suspension, fine, contract termination, damages or other disciplinary action.

38) That Chapter 26, Article IV, Sec. 26-201, entitled “Administrative Remedies”, of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) *Notification of violation.* Whenever the POTW Director or designee finds that any user has violated or is violating this article, wastewater permit or any prohibition, limitation or requirements contained therein, or any other pretreatment requirement the POTW Director or designee may serve upon such a user a written notice stating the nature of the violation. Within 30 days from the date of this notice, an explanation for the violation, analytical analysis documenting compliance, and a plan for the satisfactory correction thereof shall be submitted to the county 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 POTW Director 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 a compliance order issued pursuant to section 26-201(d) below.

(c) *Show cause hearing.* The POTW Director may order any user who causes or is responsible for an unauthorized discharge, has violated this article 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 POTW Director 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 certified mail (return receipt requested) at least ten days before the hearing. Service may be made on any agent or officer of a corporation.

The POTW Director 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 26-202 nor is any action or inaction taken by the POTW Director under this section subject to an administrative appeal under section 26-132(9).

(d) *Compliance orders.* When the POTW Director finds that a user violated or continues to violate any provision of this article, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the POTW Director may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, the POTW Director may commence an action to revoke or suspend the user's permit, or take other immediate enforcement action authorized by this article to bring the user into compliance with this article or the user's permit. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(e) *Emergency suspensions.* The POTW Director 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, or causes the POTW to violate any condition of its NPDES permit.

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 POTW Director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The POTW Director shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The 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 POTW Director prior to the date of the above-described hearing.

(f) *Revocation of permit.* The POTW Director 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, pursuant to Division 6 of this Article, 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 users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under section 26-201 of this article why the proposed action should not be taken.

39) That Chapter 26, Article IV, Sec. 26-202, entitled "Civil Penalties", of the Durham County Code

of Ordinances is hereby amended to read as follows:

- (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 up to twenty-five thousand dollars (\$25,000) per day per violation.
 - (1) Penalties between \$10,000 and \$25,000 per day per violation may be assessed against a violator only if:
 - i. For any class of violation, only if a civil penalty has been imposed against the violator within the five years preceding the violation, or
 - ii. 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 POTW Director determines that the violation was intentional and a civil penalty has been imposed against the violator within the five years preceding the violation.
- (b) In determining the amount of the civil penalty, the POTW Director 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 county.
- (c) The county may recover reasonable attorney's fees, court costs and other expenses associated with enforcement activities, including, but not limited to, monitoring, sampling, analytical expenses and the cost of any actual damages incurred by the POTW.
- (d) Appeals of civil penalties assessed in accordance with this section shall be as provided in section 26-132(9).
- (e) Filing a suit for civil penalties shall not be a bar against or a prerequisite for taking any other action against a user.

40) That Chapter 26, Article IV, Sec. 26-203, entitled "Other available remedies", of the Durham County Code of Ordinances is hereby amended to read as follows:

The following remedies, in addition to those previously mentioned in this article, are available to the POTW Director who may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:

- (1) *Criminal violations.* The district attorney for the Fourteenth Judicial District may, at the request of the county, prosecute noncompliant users who violate the provisions of G.S. 143-215.6B. (Under state 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)).

- (2) *Injunctive relief.* Whenever a user is in violation of the provisions of this article or an order or permit issued hereunder, the POTW Director, through the county attorney, may petition the superior court of justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.
- (3) *Water supply severance.* Whenever a user is in violation of the provisions of this article or an order or permit issued hereunder, water service to the user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.
- (4) *Public nuisances.* Any violation of the prohibitions or effluent limitations of this article or of a permit or order issued hereunder, shall be subject to the remedies and sanctions afforded by law governing public nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying such nuisance.

41) That Chapter 26, Article IV, Sec. 26-204, entitled “Remedies nonexclusive”, of the Durham County Code of Ordinances is hereby amended to read as follows:

The remedies provided for in this article are not exclusive. The POTW Director 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 county enforcement response plan. However, the POTW Director may take other action against any user when the circumstances warrant. Further, the POTW Director is empowered to take more than one enforcement action against any noncompliant user.

42) That Chapter 26, Article IV, Sec. 26-216, entitled “Annual publication of significant noncompliance”, of the Durham County Code of Ordinances is hereby amended to read as follows:

At least annually, the POTW Director shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of those users which were found to be in significant noncompliance, with applicable pretreatment standards and requirements, during the previous 12 months.

43) That Chapter 26, Article IV, Sec. 26-226(c), entitled “Upset”, of the Durham County Code of Ordinances is hereby amended to read as follows:

(c) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operation 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 POTW Director within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five 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.

44) That Chapter 26, Article IV, Sec. 26-228, entitled “Bypass”, of the Durham County Code of Ordinances is hereby amended to read as follows:

- (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) Bypass provisions.
 - (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW Director, at least ten days before the date of the bypass, if possible.
 - (2) A user shall submit oral notice to the POTW Director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five 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 POTW Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
- (c) Bypass is prohibited, and the POTW Director may take an enforcement action against a user for a bypass, unless:
 - (1) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
 - (2) 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
 - (3) The user submitted notices as required under paragraph (b) of this section.

45) These amendments shall take effect upon enactment.

Approved by the Durham County Board of County Commissioners, this the ____ day of November, 2012.

Michael D. Page, Chairman
Durham County Board of County Commissioners