

ORANGE WATER AND SEWER AUTHORITY

MEETING OF THE BOARD OF DIRECTORS

AUGUST 24, 2006

The Board of Directors of the Orange Water and Sewer Authority (OWASA) met in regular session on Thursday, August 24, 2006, at 7:00 P.M., at Chapel Hill Town Hall.

Directors present: Michael A. (Mac) Clarke, Chair; Penny Rich, Vice Chair; Fred Battle; Terri Buckner; Milton S. Heath, Jr.; Marge Anders Limbert; Gordon Merklein; and Laura Sandvik. Directors absent: Randy Kabrick, P.E., Secretary.

OWASA staff: Ed Kerwin, John Greene, Mason Crum, Gwen Burston, Mary Darr, Patrick Davis, Greg Feller, Ed Holland, Jan Bryant-Berry, Donnie Boggs, Andrea Orbich, Paula Thomas and Kevin Ray of the OWASA staff; and Robert Epting, Esquire, Epting and Hackney.

Others present: Meg Holton, Water, Wastewater, and Stormwater Manager, UNC; Cam Hill and Patti Hucks, Carolina Masters Crew Club; and Gregory Blumenthal, GMB Consulting.

There being a quorum present, Chair Mac Clarke called the meeting to order.

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MOTIONS ACTED UPON

1. Penny Rich moved to adopt the minutes of the July 13, 2006, Meeting of the Board of Directors. The motion was seconded by Fred Battle, and carried by unanimous vote.

2. BE IT RESOLVED THAT the Orange Water and Sewer Authority adopt a Resolution Establishing a Declaration of Intent to Adopt Revisions to the Sewer Use Ordinance. (Resolution so titled attached hereto and made a part of these minutes. Motion made by Laura Sandvik, seconded by Milton Heath, and carried by unanimous vote.)

3. BE IT RESOLVED THAT the Orange Water and Sewer Authority adopt a Resolution Directing the Filing of an Application with the North Carolina Local Government Commission for Approval of the Issuance and Private Sale of Orange Water and Sewer Authority Water and Sewer System Revenue Bonds, Series 2006. (Resolution so titled attached hereto and made a part of these minutes. Motion made by Penny Rich, seconded by Gordon Merklein, and carried by unanimous vote.)

4. BE IT RESOLVED THAT the Orange Water and Sewer Authority adopt a Resolution Requesting the North Carolina Local Government Commission to Approve the Financing Team to be used in Connection with the Issuance and Sale of Orange Water and Sewer Authority Water and Sewer System Revenue Bonds, Series 2006. (Resolution so titled attached hereto and made a part of these minutes. Motion made by Gordon Merklein, seconded by Milton Heath, and carried by unanimous vote.)

5. BE IT RESOLVED THAT the Orange Water and Sewer Authority adopt a Resolution Authorizing Executive Director of Orange Water and Sewer Authority to Develop and Execute an

Engagement Agreement with Banc of America Securities LLC in Connection with the Issuance and Sale of Orange Water and Sewer Authority Water and Sewer System Revenue Bonds, Series 2006. (Resolution so titled attached hereto and made a part of these minutes. Motion made by Fred Battle, seconded by Gordon Merklein, and carried by unanimous vote.)

6. BE IT RESOLVED THAT the Orange Water and Sewer Authority adopt a Resolution Authorizing Executive Director of Orange Water and Sewer Authority to Develop and Execute an Engagement Agreement with McGuireWoods LLP in Connection with the Issuance and Sale of Orange Water and Sewer Authority Water and Sewer System Revenue Bonds, Series 2006. (Resolution so titled attached hereto and made a part of these minutes. Motion made by Milton Heath, seconded by Gordon Merklein, and carried by unanimous vote.)

7. Laura Sandvik moved that the Board go into a Closed Session to discuss a land acquisition and a personnel matter. The motion was seconded by Penny Rich and carried by unanimous vote.

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ITEM ONE: ANNOUNCEMENTS

CONFLICT OF INTEREST

Mac Clarke said any Board Member who knows of a conflict of interest or potential conflict of interest with respect to any item on the agenda tonight is asked to disclose the same at this time. There were none.

SEPTEMBER 14, 2006 OWASA BOARD MEETING

Mac Clarke said the September 14, 2006, OWASA Board meeting start time has been changed to 5:00 P.M.

COMMITTEE MEETINGS

Penny Rich gave a brief update on Natural Resources/Technical Systems (NRTS) Committee meeting before the Board meeting. The Committee discussed the biosolids information prepared by staff and possible water conservation initiatives with the local governments.

Ms. Rich announced that the NRTS Committee will meet on Thursday, September 28, 2006, at 5:30 P.M., in the First Floor Conference Room at the Chapel Hill Town Hall to discuss biosolids management.

Milton Heath announced a Budget and Financial Planning Committee meeting on Wednesday, August 30, 2006, at 8:30 A.M. in the OWASA Boardroom to prepare for the Board's Budget Work Session #2 on the Rate Study.

Mr. Heath announced a Board Work Session #2 on the Rate Study Thursday, September 7, 2006, at 7:00 P.M. in the OWASA Community Room.

#### STAFF

Ed Kerwin introduced Paula Thomas, Sustainability Administrator; and Mason Crum, Director of Engineering and Planning; who began work at OWASA on July 24, 2006 and July 31, 2006 respectively.

#### CALL TO ARTISTS

Greg Feller said OWASA has issued a Call to Artists for an atrium art project at the OWASA Administration Building in Carrboro. Artists are invited to provide their qualifications and related information for consideration for an art project to be installed on a wall in the main floor atrium. The art project is intended to inform and educate the public about the value of the community's water resources; OWASA's services, facilities, resources and employees; and the value of wise, sustainable water use. The deadline for artists to submit qualifications and related information to OWASA is September 7, 2006.

#### DISTRIBUTION OF 2005-06 PERFORMANCE OF THE WASTEWATER TREATMENT PLANT

Greg Feller said the 2005-06 Annual Report on Performance of the Wastewater Collection and Treatment System has been distributed to OWASA customers.

#### DRINKING WATER QUALITY

Greg Feller said OWASA water meets all standards under the Federal Safe Drinking Water Act. OWASA's Laboratory staff does over 55,000 water quality tests per year in accordance with Federal and State requirements. In addition, every three years, OWASA tests for lead in 30 older homes in accord with Federal standards. Any customers who wish to have their water tested for lead are invited to contact the OWASA Laboratory staff.

#### ITEM TWO: PETITIONS AND REQUESTS FROM THE PUBLIC

Mac Clarke asked for petitions and requests from the public.

Cam Hill of the Carolina Masters Crew Club petitioned the Board for permission to row at Cane Creek during standard operating hours; for a variance from the 14-foot limit on boat length; for permission to store a 60-foot boat and eight oars near the access point; and for an agreement on how to launch their boats (shore access vs. dock access).

Mr. Clarke thanked Mr. Hill for his petition and referred the petition to staff for a report at a future Board meeting.

ITEM THREE: PETITIONS AND REQUESTS FROM THE BOARD

Mac Clarke asked for petitions and requests from the Board. There were none.

ITEM FOUR: PETITIONS AND REQUESTS FROM STAFF

Mac Clarke asked for petitions and requests from staff. There were none.

ITEM FIVE: ANNUAL REPORT ON THE TASTE OF HOPE PROGRAM

Marge Anders Limbert noted that OWASA might want to look at the way we present this program to the public and present it in a more compelling way. She asked whether customers' contributions through the billing process are tax deductible.

Kevin Ray said OWASA does not issue a 1099 Internal Revenue Service donation reporting form to OWASA customers who are Taste of Hope donors because the annual donations by a given customer do not exceed \$600; however, he will research the tax deductibility question and respond to Ms. Limbert.

Fred Battle asked how well advertised is the Taste of Hope program. He has lived in Chapel Hill his whole life and this is the first time he has heard of Taste of Hope.

Greg Feller said the program is publicized periodically in the Blue Thumb customer newsletter and on the front of each monthly bill to customers. OWASA's Customer Service Representatives also ask new customers to sign up as donors, and the service connection form has a place to do so.

Penny Rich said that OWASA is not allowed to use customer monies to advertise the Taste of Hope program, however some free advertising is available and used when possible. OWASA has sponsored a logo contest and worked with a University public relations class to look get marketing ideas for the Taste of Hope program.

ITEM SIX: SEMI-ANNUAL CONTRACTOR AND CONSULTANT PERFORMANCE REPORT

The Board accepted the Semi-Annual Contractor and Consultant Performance report as an information item.

ITEM SEVEN: FACILITY CAPACITY AND SERVICE DEMAND TRACKING REPORT

The Board accepted the Facility Capacity and Service Demand Tracking report as an information item.

ITEM EIGHT: REPORT ON DISPOSAL OF SURPLUS PERSONAL PROPERTY

The Board accepted the report on disposal of surplus personal property as an information item.

ITEM NINE: EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION REPORT FOR FISCAL YEAR JULY 1, 2005 – JUNE 30, 2006

Marge Anders Limbert said she would like to see this report reflect comparisons with other utilities or governments with water and sewer utilities rather than towns without water and sewer utilities.

Fred Battle suggested OWASA advertise positions with African-American churches in the area.

Terri Buckner suggested the report make a distinction by job classification.

Gwen Burston said she would incorporate the requested changes.

ITEM TEN: EMPLOYEE RECOGNITION AND SUGGESTION REPORT

The Board accepted the Employee Recognition and Suggestion Report as an information item.

ITEM ELEVEN: REPORT ON THE AUGUST 2, 2006 WASTEWATER SPILL AT THE MASON FARM WASTEWATER TREATMENT PLANT (WWTP)

The Board accepted the report on the August 2, 2006 wastewater spill at the Mason Farm WWTP as an information item.

ITEM TWELVE: MINUTES

Mac Clarke requested the word “not” be added on page 5, paragraph 4 in the first sentence to Item 6 of the minutes for the July 13, 2006 Meeting of the Board of Directors as follows:

*Mr. Kabrick then asked for a show of hands in the audience to indicate how many people who row on University Lake are **not** members of University Organizations.*

Penny Rich moved to adopt the minutes of the July 13, 2006, Meeting of the Board of Directors. The motion was seconded by Fred Battle, and carried by unanimous vote. Please see Motion No. 1 above.

ITEM THIRTEEN: DRAFT REPORT ON POTENTIAL APPROACHES FOR ALTERNATIVE EMPLOYEE COMPENSATION

Ed Kerwin made a presentation on possible changes in OWASA's employee compensation policies, such as additional pay for employees who achieve professional certifications, bonuses for educational degrees, spot bonuses, and "skill-based" pay. Mr. Kerwin recommended that employees have the opportunity to provide feedback before the Board considers taking final action.

Fred Battle expressed concern about upward mobility of all staff and said the only way to accomplish this is through training.

The Board agreed that staff will proceed to obtain employees' feedback as a next step and return to the Board with a proposal at a future meeting.

ITEM FOURTEEN: FISCAL YEAR 2006 ANNUAL REPORT ON EMERGENCY WATER LOSS ADJUSTMENTS OF BILLING CHARGES TO CUSTOMER ACCOUNTS

The Board received a report from Patrick Davis on OWASA's current policy regarding billing adjustments for customers whose water use and bills are affected by leaks in plumbing pipes and irrigation systems. Mr. Davis reported that in the 2005-06 fiscal year, the account adjustments totaled about \$95,000, an increase of 154% from the previous year.

The Board asked staff to provide a follow-up report addressing concerns noted in the report.

ITEM FIFTEEN: RESOLUTION ESTABLISHING A DECLARATION OF INTENT TO ADOPT REVISIONS TO THE SEWER USE ORDINANCE

Laura Sandvik made a motion to adopt the Resolution Establishing a Declaration of Intent to Adopt a Sewer Use Ordinance. The Motion was seconded by Milton Heath, and carried by unanimous vote. Please see Motion No. 2 above.

ITEM SIXTEEN: OWASA WATER AND SEWER SYSTEM REVENUE BONDS, SERIES 2006

Penny Rich made a motion to adopt a Resolution Directing the Filing of an Application with the North Carolina Local Government Commission for Approval of the Issuance and Private Sale of Orange Water and Sewer Authority Water and Sewer System Revenue Bonds, Series 2006. The Motion was seconded by Gordon Merklein, and carried by unanimous vote. Please see Motion No. 3 above.

Gordon Merklein made a motion to adopt a Resolution Requesting the North Carolina Local Government Commission to Approve the Financing Team to be used in Connection with the Issuance and Sale of Orange Water and Sewer Authority Water and Sewer System Revenue

Bonds, Series 2006. The Motion was seconded by Milton Heath, and carried by unanimous vote. Please see Motion No. 4 above.

Fred Battle made a motion to adopt a Resolution Authorizing the Executive Director of Orange Water and Sewer Authority to Develop and Execute an Engagement Agreement with Banc of American Securities LLC in Connection with the Issuance and Sale of Orange Water and Sewer Authority Water and Sewer System Revenue Bonds, Series 2006. The Motion was seconded by Gordon Merklein, and carried by unanimous vote. Please see Motion No. 5 above.

Milton Heath made a motion to adopt a Resolution Authorizing the Executive Director of Orange Water and Sewer Authority to Develop and Execute an Engagement Agreement with McGuireWoods LLP in connection with the Issuance and Sale of Orange Water and Sewer Authority Water and Sewer System Revenue Bonds, Series 2006. The Motion was seconded by Gordon Merklein, and carried by unanimous vote. Please see Motion No. 6 above.

**ITEM SEVENTEEN: DISCUSSION OF THE STRATEGIC FINANCIAL PLANNING AND MANAGEMENT DOCUMENT**

The Board agreed to review OWASA's Strategic Financial Planning and Management Document at the September 14, 2006 Board meeting in preparation of the September meetings with three credit rating agencies in connection with OWASA's Water and Sewer System Revenue Bonds, Series 2006 issue.

**ITEM EIGHTEEN: APPOINTMENT OF THE NOMINATING COMMITTEE**

Mac Clarke appointed the following Board members to the Nominating Committee to make recommendations for the upcoming election of officers:

- Laura Sandvik, Chair
- Penny Rich
- Mac Clarke

The election of new officers will occur at the Annual Meeting of the Board of Directors on September 28, 2006.

**ITEM NINETEEN: CLOSED SESSION**

Laura Sandvik made a motion that the Board go into a Closed Session for the purpose of discussing land acquisition and a personnel matter. The motion was seconded by Penny Rich, and carried by unanimous vote. Please see Motion No. 7 above.

There being no further business to come before the Board, the meeting was adjourned at 8:55 P.M.



**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OF ORANGE WATER AND SEWER AUTHORITY TO DEVELOP AND EXECUTE AN ENGAGEMENT AGREEMENT WITH MCGUIREWOODS LLP IN CONNECTION WITH THE ISSUANCE AND SALE OF ORANGE WATER AND SEWER AUTHORITY WATER AND SEWER SYSTEM REVENUE BONDS, SERIES 2006**

**WHEREAS**, the Orange Water and Sewer Authority (“OWASA”), acting by and through its Board of Directors (the “Board”), is authorized by The State and Local Government Revenue Bond Act of North Carolina, Article 5 of Chapter 159 of the North Carolina General Statutes, as amended (the “Act”), and particularly Sections 159-83(a)(5) and 159-81(3)a and b thereof, to issue revenue bonds for the purpose of financing the cost of acquisition, construction, reconstruction, enlargement, equipping, extension, betterment or improvement of facilities for obtaining, conserving, treating and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use and the collection, treatment, purification or disposal of sewage and to refund revenue bonds issued for such purposes; and

**WHEREAS**, OWASA owns and operates facilities for the production, collection, treatment, transmission and distribution of water and the collection, transmission, treatment and disposal of sewage; and

**WHEREAS**, OWASA proposes to issue its Water and Sewer System Revenue Bonds, Series 2006 (the “Series 2006 Bonds”) for the purpose of providing funds, together with other available funds, to (i) pay the cost of acquiring certain real property for watershed protection and acquiring and constructing certain improvements to OWASA’s water and sewer system, (ii) provide a reserve for the Series 2006 Bonds by either funding such reserve or by purchasing a municipal bond debt service reserve fund policy, if in the opinion of OWASA at the time of the sale of the Series 2006 Bonds a reserve for the Series 2006 Bonds is warranted, and (iii) pay certain costs and expenses incurred in connection with the issuance of the Series 2006 Bonds; and

**WHEREAS**, OWASA has selected McGuireWoods LLP to serve as Bond Counsel in connection with the issuance and sale of the Series 2006 Bonds; and

**WHEREAS**, the selection of McGuireWoods LLP to serve as Bond Counsel in connection with the issuance and sale of the Series 2006 Bonds was made by OWASA after a review of the record of service to OWASA of McGuireWoods LLP; and

**WHEREAS**, OWASA wishes to develop and execute an engagement agreement with McGuireWoods LLP in connection with the issuance and sale of the Series 2006 Bonds;

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE ORANGE WATER AND SEWER AUTHORITY DOES HEREBY DETERMINE AND RESOLVE:**

1. That the Board hereby authorizes the Executive Director of OWASA to develop and execute an engagement agreement with McGuireWoods LLP in connection with the issuance and sale of the Series 2006 Bonds.

2. That this resolution shall take effect immediately upon its passage.

Adopted this 24th day of August, 2006.

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OF ORANGE WATER AND SEWER AUTHORITY TO DEVELOP AND EXECUTE AN ENGAGEMENT AGREEMENT WITH BANC OF AMERICA SECURITIES LLC IN CONNECTION WITH THE ISSUANCE AND SALE OF ORANGE WATER AND SEWER AUTHORITY WATER AND SEWER SYSTEM REVENUE BONDS, SERIES 2006**

**WHEREAS**, the Orange Water and Sewer Authority (“OWASA”), acting by and through its Board of Directors (the “Board”), is authorized by The State and Local Government Revenue Bond Act of North Carolina, Article 5 of Chapter 159 of the North Carolina General Statutes, as amended (the “Act”), and particularly Sections 159-83(a)(5) and 159-81(3)a and b thereof, to issue revenue bonds for the purpose of financing the cost of acquisition, construction, reconstruction, enlargement, equipping, extension, betterment or improvement of facilities for obtaining, conserving, treating and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use and the collection, treatment, purification or disposal of sewage and to refund revenue bonds issued for such purposes; and

**WHEREAS**, OWASA owns and operates facilities for the production, collection, treatment, transmission and distribution of water and the collection, transmission, treatment and disposal of sewage; and

**WHEREAS**, OWASA proposes to issue its Water and Sewer System Revenue Bonds, Series 2006 (the “Series 2006 Bonds”) for the purpose of providing funds, together with other available funds, to (i) pay the cost of acquiring certain real property for watershed protection and acquiring and constructing certain improvements to OWASA’s water and sewer system, (ii) provide a reserve for the Series 2006 Bonds by either funding such reserve or by purchasing a municipal bond debt service reserve fund policy, if in the opinion of OWASA at the time of the sale of the Series 2006 Bonds a reserve fund for the Series 2006 Bonds is warranted, and (iii) pay certain costs and expenses incurred in connection with the issuance of the Series 2006 Bonds; and

**WHEREAS**, OWASA has selected Banc of America Securities LLC (the “Senior Manager”) to serve as underwriter in connection with the issuance and sale of the Series 2006 Bonds; and

**WHEREAS**, the selection of the Senior Manager to serve as underwriter in connection with the issuance and sale of the Series 2006 Bonds was made by OWASA after a review of the record of service to OWASA of the Senior Manager; and

**WHEREAS**, OWASA wishes to develop and execute an engagement agreement with the Senior Manager in connection with the issuance and sale of the Series 2006 Bonds;

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE ORANGE WATER AND SEWER AUTHORITY DOES HEREBY DETERMINE AND RESOLVE:**

1. That the Board hereby authorizes the Executive Director of OWASA to develop and execute an engagement agreement with the Senior Manager in connection with the issuance and sale of the Series 2006 Bonds.

2. That this resolution shall take effect immediately upon its passage.

Adopted this 24th day of August, 2006.

**RESOLUTION DIRECTING THE FILING OF AN APPLICATION WITH THE NORTH CAROLINA LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF THE ISSUANCE AND PRIVATE SALE OF ORANGE WATER AND SEWER AUTHORITY WATER AND SEWER SYSTEM REVENUE BONDS, SERIES 2006**

**WHEREAS**, the Orange Water and Sewer Authority (“OWASA”), acting by and through its Board of Directors (the “Board”), is authorized by The State and Local Government Revenue Bond Act of North Carolina, Article 5 of Chapter 159 of the North Carolina General Statutes, as amended (the “Act”), and particularly Sections 159-83(a)(5) and 159-81(3)a and b thereof, to issue revenue bonds for the purpose of financing the cost of acquisition, construction, reconstruction, enlargement, equipping, extension, betterment or improvement of facilities for obtaining, conserving, treating and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use and the collection, treatment, purification or disposal of sewage; and

**WHEREAS**, OWASA owns and operates facilities for the production, collection, treatment, transmission and distribution of water and the collection, transmission, treatment and disposal of sewage; and

**WHEREAS**, OWASA proposes to issue its Water and Sewer System Revenue Bonds, Series 2006 (the “Series 2006 Bonds”) for the purpose of providing funds, together with other available funds, to (i) pay the cost of acquiring certain real property for watershed protection and acquiring and constructing certain improvements to OWASA’s water and sewer system (collectively, the “2006 Additional Project”), (ii) provide a reserve for the Series 2006 Bonds by either funding such reserve or by purchasing a municipal bond debt service reserve fund policy, if in the opinion of OWASA at the time of the sale of the Series 2006 Bonds a reserve fund for the Series 2006 Bonds is warranted, and (iii) pay certain costs and expenses incurred in connection with the issuance of the Series 2006 Bonds; and

**WHEREAS**, OWASA proposes to issue the Series 2006 Bonds in an aggregate principal amount not to exceed \$30,000,000.00, the determination of the aggregate principal amount of the Series 2006 Bonds to be made at the time of the sale of the Series 2006 Bonds;

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE ORANGE WATER AND SEWER AUTHORITY DOES HEREBY DETERMINE AND RESOLVE:**

1. That the Board hereby finds and determines, in connection with the issuance of the Series 2006 Bonds, that (i) the issuance of the Series 2006 Bonds is necessary or expedient for OWASA, (ii) the proposed aggregate principal amount of the Series 2006 Bonds is adequate and not excessive for the proposed purposes of such issue, (iii) the proposed 2006 Additional Project is feasible, (iv) OWASA’s debt management procedures and policies are good and OWASA’s finances are managed in strict compliance with law and (v) under current economic conditions, the Series 2006 Bonds can be marketed at a reasonable interest cost to OWASA.

2. That the Board hereby authorizes the filing of an application with the Local Government Commission for approval of the issuance of the Series 2006 Bonds, in an aggregate principal amount not to exceed \$30,000,000.00, pursuant to Section 159-86 of the Act and directs Ed Kerwin, Executive Director of OWASA, and Kevin Ray, Director of Finance and Customer Service of OWASA, as representatives of OWASA, to file such application with the Local Government Commission.

3. That the Local Government Commission is hereby requested to sell the Series 2006 Bonds at private sale without advertisement to any purchaser or purchasers thereof, at such price as the Local Government Commission determines to be in the best interest of OWASA, subject to the approval of OWASA.

4. That this resolution shall take effect immediately upon its passage.

Adopted this 24<sup>th</sup> day of August, 2006.

**RESOLUTION REQUESTING THE NORTH CAROLINA LOCAL GOVERNMENT COMMISSION TO APPROVE THE FINANCING TEAM TO BE USED IN CONNECTION WITH THE ISSUANCE AND SALE OF ORANGE WATER AND SEWER AUTHORITY WATER AND SEWER SYSTEM REVENUE BONDS, SERIES 2006**

**WHEREAS**, the Orange Water and Sewer Authority (“OWASA”), acting by and through its Board of Directors (the “Board”), is authorized by The State and Local Government Revenue Bond Act of North Carolina, Article 5 of Chapter 159 of the North Carolina General Statutes, as amended (the “Act”), and particularly Sections 159-83(a)(5) and 159-81(3)a and b thereof, to issue revenue bonds for the purpose of financing the cost of acquisition, construction, reconstruction, enlargement, equipping, extension, betterment or improvement of facilities for obtaining, conserving, treating and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use and the collection, treatment, purification or disposal of sewage; and

**WHEREAS**, OWASA owns and operates facilities for the production, collection, treatment, transmission and distribution of water and the collection, transmission, treatment and disposal of sewage; and

**WHEREAS**, OWASA proposes to issue its Water and Sewer System Revenue Bonds, Series 2006 (the “Series 2006 Bonds”) for the purpose of providing funds, together with other available funds, to (i) pay the cost of acquiring certain real property for watershed protection and acquiring and constructing certain improvements to OWASA’s water and sewer system (the “2006 Additional Project”), (ii) provide a reserve for the Series 2006 Bonds by either funding such reserve or by purchasing a municipal bond debt service reserve fund policy, if in the opinion of OWASA at the time of the sale of the Series 2006 Bonds a reserve for the Series 2006 Bonds is warranted, and (iii) pay certain costs and expenses incurred in connection with the issuance of the Series 2006 Bonds; and

**WHEREAS**, OWASA proposes to issue the Series 2006 Bonds in an aggregate principal amount not to exceed \$30,000,000.00, the determination of the aggregate principal amount of the Series 2006 Bonds to be made at the time of the sale of the Series 2006 Bonds; and

**WHEREAS**, OWASA has selected for recommendation to the Local Government Commission a financing team to be used in connection with the issuance and sale of the Series 2006 Bonds; and

**WHEREAS**, the selection of said financing team was made by OWASA after a review of the record of service to OWASA of the members of said financing team; and

**WHEREAS**, OWASA wishes to obtain the approval of the Local Government Commission for said financing team;

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE ORANGE WATER AND SEWER AUTHORITY DOES HEREBY DETERMINE AND RESOLVE:**

1. That the Board hereby recommends that the following financing team members be engaged in connection with the issuance and sale of the Series 2006 Bonds and requests that the Local Government Commission approve said financing team members:

Bond Counsel:	McGuireWoods LLP
Underwriters:	Banc of America Securities LLC (Senior Manager) Scott & Stringfellow, Inc., trading as BB&T Capital Markets
Underwriters' Counsel:	Womble Carlyle Sandridge & Rice, PLLC
Trustee and Bond Registrar:	The Bank of New York Trust Company, N.A.
Feasibility Consultant (Agreed-upon Procedures):	Burton & Associates

2. That this resolution shall take effect immediately upon its passage.

Adopted this 24th day of August, 2006.



**RESOLUTION ESTABLISHING A DECLARATION OF INTENT  
TO ADOPT A SEWER USE ORDINANCE**

**WHEREAS**, on April 27, 1995, the OWASA Board of Directors approved a *Resolution Adopting a Sewer Use Ordinance*; and

**WHEREAS**, the NC Division of Environment and Natural Resources has made changes to sewer use regulations; and

**WHEREAS**, the Sewer Use Ordinance has been redrafted to comply with the State's revisions; and

**WHEREAS**, the first revision dated August 17, 2006, has been presented to the OWASA Board of Directors for review and comment; and

**WHEREAS**, North Carolina General Statute 162A-6.14C requires that the Authority pass a "declaration of intent" to adopt a Sewer Use Ordinance at least 60 days prior to such adoption of a revised Sewer Use Ordinance; and

**WHEREAS**, such "declaration of intent" shall describe the ordinance proposed for adoption and be submitted to each governing body for review and comment during the 60 day notice period.

**NOW, THEREFORE, BE IT RESOLVED:**

1. That the Board of Directors of the Orange Water and Sewer Authority hereby declare its intent to adopt a Sewer Use Ordinance similar to the first revision dated August 17, 2006 which is attached.

2. That the Executive Director is authorized to submit this "declaration of intent" to adopt a Sewer Use Ordinance to the managers of Orange County, the Town of Carrboro, and the Town of Chapel Hill to comply with North Carolina General Statute 162A-6.14C relative to adoption of such ordinance.

Adopted this 24th day of August, 2006.

**First Draft  
August 17, 2006**

**ORANGE WATER AND SEWER AUTHORITY  
SEWER USE ORDINANCE**

DRAFT

**Adopted April 27, 1995**

**ORANGE WATER AND SEWER AUTHORITY  
SEWER USE ORDINANCE  
Adopted April 27, 1995**

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# OWASA SEWER USE ORDINANCE

## SECTION 1 - GENERAL PROVISIONS

### 1.1 Purpose and Policy

This ordinance sets forth uniform requirements for users of the Publicly Owned Treatment Works for the Orange Water and Sewer Authority, hereinafter referred to as OWASA Authority, to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code § 1251 et seq.) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). The objectives of this ordinance are:

- A. To prevent the introduction of pollutants into the publicly Owned Treatment Works that will interfere with its operation;
- B. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;
- C. To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
- D. To promote reuse and recycling of reclaimed wastewater and biosolids ~~sludge~~ from the Publicly Owned Treatment Works;
- E. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and
- F. To enable OWASA ~~the Authority~~ to comply with its National Pollutant Discharge Elimination System permit conditions, biosolids and sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.

This ordinance shall apply to all users of the Publicly Owned Treatment Works. The ordinance authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

## 1.2 Administration

Except as otherwise provided herein, the Executive Director shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the Executive Director may be delegated by the Executive Director to other OWASA Authority personnel.

## 1.3 Abbreviations and Definitions

A. The following abbreviations, when used in this ordinance, shall have the designated meanings:

- BOD - Biochemical Oxygen Demand
- CBOD - Carbonaceous Biochemical Oxygen Demand
- CFR - Code of Federal Regulations
- COD - Chemical Oxygen Demand
- CWA - Clean Water Act
- ~~DWQ DEM~~ - Division of Water Quality Environmental Management, North Carolina Department of Environment ~~Health~~ and Natural Resources
- EPA - U.S. Environmental Protection Agency
- gpd - gallons per day
- mg/l - milligrams per liter
- NCGS - North Carolina General Statutes
- NPDES -National Pollutant Discharge Elimination System
- O&M - Operation and Maintenance
- POTW - Publicly Owned Treatment Works
- RCRA - Resource Conservation and Recovery Act
- SIC - Standard Industrial Classification
- SU – Standard Unit
- TKN - Total Kjeldahl Nitrogen
- TSS - Total Suspended Solids
- U.S.C. - United States Code

B. Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated.

1. Act or "the Act." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.*
2. Administrator. The deputy, agent, or representative authorized by the Board of Directors of OWASA ~~the Authority~~ to act in behalf of OWASA ~~the Authority~~.
3. Approval Authority. The Director of the Division of Water Quality Environmental Management of the North Carolina Department of Environment, ~~Health~~ and Natural Resources or a duly authorized representative.

45. Authorized Representative of the User.

(a) If the user is a corporation:

(1) The president, secretary, treasurer, 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

(2) 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 regulation; 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 proceedings. ~~The manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty five (25) million dollars (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.~~

(b) If the user is a partnership or sole proprietorship a general partner or proprietor, respectively.

(c) If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and



performance of the activities of the government facility, or a duly authorized representative.

(d) The individuals described in paragraphs a through c, 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 OWASA ~~the Authority~~.

(e) 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 OWASA prior to or together with any reports to be signed by an authorized representative.

56. Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g., mg/l). The term carbonaceous BOD, or CBOD, is the quantity of oxygen utilized in the biochemical oxidation of carbonaceous organic matter under standard laboratory procedures for five days at 20° centigrade.

67. 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 apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

78. Environmental Protection Agency or EPA. The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, or other duly authorized official of said agency.

89. 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.

910. Grab Sample. A sample which is taken from a waste stream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

1014. Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.

~~12. Instantaneous Maximum Allowable Discharge Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the flow rate and the duration of the sampling event.~~

1143. Interference. A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge and biosolids processes, use or disposal; and therefore, is a cause of a violation of OWASA's the Authority's NPDES permit or of the prevention of sewage sludge or biosolids use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local ordinances: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge or biosolids management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

1214. Medical Waste. Isolation wastes, pharmaceuticals, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, ~~and~~ potentially contaminated laboratory wastes, and dialysis wastes.

1315. New Source.

(a) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

(1) The building, structure, facility, or installation is constructed at a site at which no other source is located; or

- (2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - (3) 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, shall be considered.
- (b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (1)(2b) or (3e) above but otherwise alters, replaces, or adds to existing process or production equipment
  - (c) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
    - (1) Begun, or caused to begin, as part of a continuous onsite construction program;
      - (i) any placement, assembly, or installation of facilities or equipment; or
      - (ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
    - (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

1416. 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.

154. OWASA Authority. The Orange Water and Sewer Authority, Carrboro, North Carolina acting through its Board of Directors.

1617. Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of OWASA's ~~the Authority's~~ NPDES permit, including an increase in the magnitude or duration of a violation, or a downstream water quality standard.

1718. Person. Any individual, partnership, copartnership, 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 governmental entities.

1819. pH. A measure of the intensity of the acid or base condition of a solution, expressed in standard units. A value of 7 is neutral, below 7 is acidic, and above 7 is basic.

1920. Pollutant. 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, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

2021. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

2122. Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

2223. Pretreatment Standards or Standards. Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.

2324. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 2.2 of this ordinance.

2425. Publicly Owned Treatment Works or POTW. A "treatment works," as defined by Section 212 of the Act (33 U.S.C. §1292) which is owned by

OWASA the Authority. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

2526. Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

2627. Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).

2728. Shall is mandatory, and requires compliance: May is permissive and compliance is subject to the discretion of OWASA the Authority.

2829. Significant Industrial User.

(a) A user subject to categorical pretreatment standards; or

(b) A user that:

(1) Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater); or

(2) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(3) Is designated as such by OWASA the Authority on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement; or

(4) Is found by OWASA, the Division of Water Quality or the U.S. Environmental Protection Agency (EPA) to have the potential for impact, either singly or in combination with other contributing industrial users, on the wastewater treatment system, the quality of sludge or biosolids, the system's effluent quality, or compliance with any pretreatment standards or requirements.

(c) Upon a finding that a user meeting the criteria in Subsection (b) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, OWASA the Authority may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40

CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

2930. Slug Load or Discharge Slug. Any discharge which in concentration of any given constituent or in quantity of flow has a reasonable potential to cause interference or pass-through, or in any other way violates the POTW's regulations, local limits, or User Permit conditions. ~~exceeds for any period duration longer than fifteen (15) minutes more than five (5) times the average twenty four (24) hour concentration or flow during normal operation or which could~~ This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharge that can cause a violation of the prohibited discharge standards in Section 2.2 of this ordinance.

3034. Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

3132. State. State of North Carolina.

3233. Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

3334. Total Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

3435. User or Industrial User. A source of indirect discharge.

3536. Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

3637. Wastewater Treatment Plant or Treatment Plant. That portion of the POTW which is designed to provide treatment of municipal sewage and other compatible wastewater.

## SECTION 2 - GENERAL SEWER USE REQUIREMENTS

### 2.1 Building Sewers and Connections

No unauthorized person(s) shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining written approval from the Administrator. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the Owner(s). The Owner(s) shall indemnify OWASA ~~the Authority~~ from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer provided, however, that such indemnification shall not extend to loss or damage due solely to willful misconduct or negligence on the part of OWASA ~~the Authority~~. Excluding industrial plant sites or other sites which have written approval from the Administrator for single discharge points, a separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway. The front building may be extended to the rear building and the whole considered as one building sewer; but OWASA ~~the Authority~~ does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Administrator, to meet all requirements of this ordinance. Existing building sewers may be kept in service if, in the opinion of the Administrator, they are in acceptable structural condition and operate satisfactorily. All new building sewers, including any necessary replacement of existing building sewers, must comply with the state plumbing code. The connection of the building sewer into the public sanitary sewer shall be made in accordance with the Sewer Extension Policy of OWASA ~~the Authority~~.

No person(s) shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of infiltration/inflow to a public sanitary sewer or to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

It shall be the responsibility of the property owner to keep and maintain the building sewer connected to the public sewer in good repair. The Owner shall be responsible for making necessary repairs, at his own expense, to the building sewer when notified in writing by the Administrator that repairs are necessary. Should the Owner fail to repair the building sewer within 60 days after receiving written notification by the Administrator that such repairs are necessary, OWASA ~~the Authority~~ may make the necessary repairs to the building sewer and shall assess the Owner for the cost of the repairs.

Grease, oil, and sand interceptor sewers shall be provided when, in the opinion of the Administrator, they are necessary for the proper handling of liquid wastes containing floatable oil, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All grease, oil, and sand interceptors

shall be of a type and capacity approved by the Administrator, and shall be located as to be readily and easily accessible for cleaning and inspection. Where installed, all grease, oil and sand interceptors shall be maintained by the Owner(s) at the Owner(s) expense in continuously efficient operation at all times. In the maintaining of these interceptors, the Owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates and means of disposal which are subject to review by the Administrator. Any removal and hauling of the collected materials not performed by Owner(s) personnel must be performed by a currently licensed waste disposal firms.

## **2.2 Prohibited Discharge Standards**

- A. General Prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.
- B. Specific Prohibitions. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
1. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;
  2. Wastewater having a pH less than 6.0 or greater 10.0, or otherwise, having any corrosive characteristics capable of causing damage or hazard to treatment processes, structures, equipment and/or personnel of the POTW;
  3. Trucked or hauled pollutants, except at discharge points designated by the Administrator in accordance with Section 3.4 of this ordinance;
  4. Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the POTW such as, but not limited to: floatable oil, garbage with particles greater than one-half inch (1/2") in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, pottery, casting clays, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes;
  5. Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either



singly or by interaction with other pollutants, will cause interference with the POTW;

6. Wastewater having a temperature greater than 150°F (66°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C);
7. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
8. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
9. Hazardous waste as defined under 40 CFR Part 261;
10. Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
11. Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating OWASA's ~~the Authority's~~ NPDES permit;
12. Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations;
13. Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water, and unpolluted wastewater, unless specifically authorized by the Administrator;
14. Sludges, screenings, or other residues from the pretreatment of industrial wastes;
15. Medical wastes, except as specifically authorized by the Administrator in a wastewater discharge permit;
16. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test or violate any applicable Water Quality Standards;

17. Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;
18. Fats, oils, or greases of animal or vegetable origin in concentrations greater than 325 mg/l, as identified by EPA Method 1664 or 275 mg/l as identified by EPA Method 413 ~~that interfere with the proper operation of the POTW;~~
19. Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than five percent (5%) or any single reading over ten percent (10%) of the Lower Explosive Limit of the meter. Materials specifically prohibited from discharge into the POTW include gasoline, kerosene, naphtha, fuel oil, paints, solvents, or any other substance which may cause a fire or explosives hazards to the POTW;
20. Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, biosolids, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge or biosolids use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the biosolids management method being used.

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

### **2.3 National Categorical Pretreatment Standards**

The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated.

- A. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Administrator may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- B. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Administrator shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
- C. A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally

different from the factors considered by EPA when developing the categorical pretreatment standard.

D. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

## 2.4 State Requirements

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

## 2.5 Local Limits

Specific pollutant limitations may be established by OWASA ~~the Authority~~ through an industrial user permit to prevent discharge of any wastewater which may interfere with the proper operation of the POTW. The following pollutant limits are established to protect against pass through and interference. No person shall discharge wastewater containing in excess of the following average ~~maximum allowable~~ discharge limits unless authorized by OWASA ~~the Authority~~ through an individual permit:

- 25.0 ~~30.0~~ mg/l ammonia nitrogen
- 1.5 mg/l antimony
- 0.003 ~~0.016~~ mg/l arsenic
- 205 mg/l CBOD5
- 0.003 ~~0.007~~ mg/l cadmium
- 0.05 ~~0.214~~ mg/l chromium
- 0.061 ~~0.265~~ mg/l copper
- 0.015 ~~1.0~~ mg/l cyanide
- 0.049 ~~0.059~~ mg/l lead
- 0.0003 ~~0.003~~ mg/l mercury
- 0.003 mg/l molybdenum
- 0.021 ~~0.171~~ mg/l nickel
- ~~100 mg/l oil and grease~~
- 0.011 mg/l selenium
- 0.005 ~~0.100~~ mg/l silver
- 40.0 mg/l total kjeldahl nitrogen
- 5.0 mg/l total phenols

- 6.5 mg/l total phosphorus
- 235 mg/l total suspended solids
- 0.175 ~~0.530~~ mg/l zinc

The above limits apply at the point where the wastewater is discharged to the POTW. All concentrations for metallic substances are for "total" metal unless indicated otherwise. The Administrator may impose mass limitations in addition to, or in place of, the concentration-based limitations above.

## **2.6 OWASA's ~~Authority's~~ Right of Revision**

OWASA ~~The Authority~~ reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

## **2.7 Dilution**

No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Administrator may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

## **SECTION 3 - PRETREATMENT OF WASTEWATER**

### **3.1 Pretreatment Facilities**

Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in Section 2.2 of this ordinance within the time limitations specified by EPA, the State, or the Administrator, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Administrator for review, and shall be acceptable to the Administrator before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to OWASA the Authority under the provisions of this ordinance.

### **3.2 Additional Pretreatment Measures**

- A. Whenever deemed necessary, the Administrator 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 maybe necessary to protect the POTW and determine the user's compliance with the requirements of this ordinance.
- B. The Administrator 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.
- C. Grease, oil, and sand interceptors shall be provided when, in the opinion of the Administrator, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the Administrator and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.
- D. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

### **3.3 Accidental Discharge/Slug Control Plans**

- A. At least once every two (2) years, the Administrator shall evaluate whether each significant industrial user needs a plan to control and prevent slug

discharges and accidental discharges as defined in Section 1.3(B)(29). ~~an accidental discharge/slug control plan.~~ All significant industrial users must be evaluated within one year of being designated a significant industrial user. The Administrator may require any user to develop, submit for approval, and implement such a plan. Alternatively, the Administrator may develop such a plan for any user.

B. All significant industrial users are required to notify the Administrator immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see sections 6.5 and 6.6.

C. An accidental discharge/slug control plan shall address, at a minimum, the following:

- 1.~~A.~~ Description of discharge practices, including nonroutine batch discharges;
- 2.~~B.~~ Description of stored chemicals;
- 3.~~C.~~ Procedures for immediately notifying the Administrator of any accidental or slug discharge, as required by Section 6.6 of this ordinance; and
- 4.~~D.~~ 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.

### **3.4 Hauled Wastewater**

- A. Septic tank waste may be introduced into the POTW only at locations designated by the Administrator, and at such times as are established by the Administrator. Such waste shall not violate Section 2 of this ordinance or any other requirements established by OWASA ~~the Authority~~. The Administrator may require septic tank waste haulers to obtain wastewater discharge permits for use of OWASA's ~~the Authority's~~ facility.
- B. The Administrator shall require haulers of industrial waste to obtain wastewater discharge permits. The Administrator may require generators of hauled industrial waste to obtain wastewater discharge permits. The Administrator also may prohibit the disposal of hauled industrial waste. The

discharge of hauled industrial waste is subject to all other requirements of this ordinance.

- C. Industrial waste haulers may discharge loads only at locations designated by the Administrator. No load may be discharged without prior consent of the Administrator. The Administrator may collect samples of each hauled load to ensure compliance with applicable standards. The Administrator may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- D. Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous waste.

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## **SECTION 4 - WASTEWATER DISCHARGE PERMIT APPLICATION**

### **4.1 Wastewater Analysis**

When requested by the Administrator, a user must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The Administrator is authorized to prepare a form for this purpose and may periodically require users to update this information.

### **4.2 Wastewater Discharge Permit Requirement**

- A. No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Administrator, except that a significant industrial user that has filed a timely application pursuant to Section 4.3 of this ordinance may continue to discharge for the time period specified therein.
- B. The Administrator may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of this ordinance.
- C. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections 10 through 12 of this ordinance. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State pretreatment standards or requirements or with any other requirements of Federal, State, and local law.

### **4.3 Wastewater Discharge Permitting: Existing Connections**

Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this ordinance and who wishes to continue such discharges in the future, shall, within thirty (30) days after said date, apply to the Administrator for a wastewater discharge permit in accordance with Section 4.5 of this ordinance, and shall not cause or allow discharges to the POTW to continue after sixty (60) days of the effective date of this ordinance except in accordance with a wastewater discharge permit issued by the Administrator.

### **4.4 Wastewater Discharge Permitting: New Connections**

Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit, in accordance with Section 4.5 of this ordinance, must be filed at least sixty (60) days prior to the date upon which any discharge will begin or recommence.



#### **4.5 Wastewater Discharge Permit Application Contents**

All users required to obtain a wastewater discharge permit must submit a permit application. The Administrator may require all users to submit as part of an application the following information:

- A. All information required by Section 6.1(B) of this ordinance;
- B. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
- C. Number and type of employees, hours of operation, and proposed or actual hours of operation;
- D. Each product produced by type, amount, process or processes, and rate of production;
- E. Type and amount of raw materials processed (average and maximum per day);
- F. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
- G. Time and duration of discharges; and
- H. Any other information as may be deemed necessary by the Administrator to evaluate the wastewater discharge permit application. Incomplete or inaccurate applications will not be processed and will be returned to the applicant for revision.

#### **4.6 Application Signatories and Certification**

All wastewater discharge permit applications and user reports must be signed by the current an authorized representative of the user on file with the Administrator as defined in Section 1.3(B)(4) and contain the following certification statement:

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

#### **4.7 Wastewater Discharge Permit Decisions**

The Administrator will evaluate the data furnished by the user and may require additional information. Within sixty (60) days of receipt of a complete wastewater discharge permit application, the Administrator will determine whether or not to issue a wastewater discharge permit. The Administrator may deny any application for a wastewater discharge permit.

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## SECTION 5 - WASTEWATER DISCHARGE PERMIT ISSUANCE PROCESS

### 5.1 Wastewater Discharge Permit Duration

A wastewater discharge permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the Administrator. Each wastewater discharge permit will indicate a specific date upon which it will expire.

### 5.2 Wastewater Discharge Permit Contents

A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the Administrator to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate biosolids or sludge management and disposal, and protect against damage to the POTW.

#### A. Wastewater discharge permits will contain:

1. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;
2. A statement that the wastewater discharge permit is nontransferable without prior notification to OWASA ~~the Authority~~ in accordance with Section 5.5 of this ordinance, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
3. Effluent limits based on applicable pretreatment standards;
4. Self 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; ~~and~~
5. Requirements for notifying the Administrator in the event of an accidental discharge or slug load as defined in Section 1.3(B)(29);
6. Requirements to implement a Plan or other controls for prevention of accidental discharges and/or slug loads as defined in Section 1.3(B)(29), if determined by the Administrator to be necessary for the User; and
7. Requirements for immediately notifying the Administrator of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in 1.3(B)(29). Also see Section 6.5 and 6.6.

~~8.-5~~ A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.

B. Wastewater discharge permits may contain, but are not be limited to, the following conditions:

1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow ordinance 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, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- ~~3.~~ ~~Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;~~
4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
5. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
6. Requirements for installation and maintenance of inspection and sampling facilities and equipment;
7. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit; and
8. Other conditions as deemed appropriate by the Administrator to ensure compliance with this ordinance, and State and Federal laws, rules, and ordinances.

### **5.3 Wastewater Discharge Permit Appeals**

~~The Administrator shall provide public notice of the issuance of a wastewater discharge permit.~~ Any person, including the user, may petition the Administrator to reconsider the terms of a wastewater discharge permit within fifteen (15) days of notice of its issuance.

- A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- B. In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.
- C. The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.
- D. If the Administrator fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit shall be considered final administrative actions for purposes of judicial review.
- E. Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a complaint with the North Carolina Office of Administrative Hearings within thirty (30) days following the Administrator's decision.

### **5.4 Wastewater Discharge Permit Modification**

The Administrator may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- A. To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;
- B. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

- D. Information indicating that the permitted discharge poses a threat to OWASA's ~~the Authority's~~ POTW, OWASA's ~~Authority's~~ personnel, or the receiving waters;
- E. Violation of any terms or conditions of the wastewater discharge permit;
- F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
- G. Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;
- H. To correct typographical or other errors in the wastewater discharge permit; or
- I. To reflect a transfer of the facility ownership or operation to a new owner or operator.

### **5.5 Wastewater Discharge Permit Transfer**

Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least sixty (60) days advance notice to the Administrator and the Administrator approves the wastewater discharge permit transfer. The notice to the Administrator must include a written certification by the new owner or operator which:

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

Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

### **5.6 Wastewater Discharge Permit Revocation**

The Administrator may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- A. Failure to notify the Administrator of significant changes to the wastewater prior to the changed discharge;
- B. Failure to provide prior notification to the Administrator of changed conditions pursuant to Section 6.5 of this ordinance;

- C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- D. Falsifying self-monitoring reports;
- E. Tampering with monitoring equipment;
- F. Refusing to allow the Administrator timely access to the facility premises and records;
- G. Failure to meet effluent limitations;
- H. Failure to pay fines;
- I. Failure to pay sewer charges;
- J. Failure to meet compliance schedules;
- K. Failure to complete a wastewater survey or the wastewater discharge permit application;
- L. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
- M. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this ordinance.

Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

#### **5.7 Wastewater Discharge Permit Reissuance**

A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with Section 4.5 of this ordinance, a minimum of ninety (90) days prior to the expiration of the user's existing wastewater discharge permit.

#### **5.8 Regulation of Waste Received from Other Jurisdictions**

- A. If another municipality, or user located within another municipality, contributes wastewater to the POTW, the Administrator shall enter into an intermunicipal agreement with the contributing municipality.

- B. Prior to entering into an agreement required by paragraph A, above, the Administrator shall request the following information from the contributing municipality:
1. A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;
  2. An inventory of all users located within the contributing municipality that are discharging to the POTW; and
  3. Such other information as the Administrator may deem necessary.
- C. An intermunicipal agreement, as required by paragraph A, above, shall contain the following conditions:
1. A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as this ordinance and local limits which are at least as stringent as those set out in Section 2.54 of this ordinance. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to OWASA's ~~the Authority's~~ ordinance or local limits;
  2. A requirement for the contributing municipality to submit a revised user inventory on at least an annual basis;
  3. A provision specifying which pretreatment implementation activities, including wastewater discharge permit issuance inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the Administrator; and which of these activities will be conducted jointly by the contributing municipality and the Administrator;
  4. A requirement for the contributing municipality to provide the Administrator with access to all information that the contributing municipality obtains as part of its pretreatment activities;
  5. Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;
  6. Requirements for monitoring the contributing municipality's discharge;
  7. A provision ensuring the Administrator access to the facilities of users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the Administrator; and
  8. A provision specifying remedies available for breach of the terms of the intermunicipal agreement.



## SECTION 6 - REPORTING REQUIREMENTS

### 6.1 Baseline Monitoring Reports

- A. Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the Administrator a report which contains the information listed in paragraph B, below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the Administrator a report which contains the information listed in paragraph B, below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- B. Users described above shall submit the information set forth below.
1. Identifying Information. The name and address of the facility, including the name of the operator and owner.
  2. Environmental Permits. A list of any environmental control permits held by or for the facility.
  3. Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the 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).
  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 Administrator, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term

average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 6.9 of this ordinance.

(c) Sampling must be performed in accordance with procedures set out in Section 6.10 of this ordinance and 40 CFR 403.12(b) and (g), including 40 CFR.12 (g)(4).

6. Certification. A statement, reviewed by the user's current authorized representative as defined in Section 1.3(B)(4) and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
7. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 6.2 of this ordinance.
8. Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with Section 4.6 of this ordinance.

## **6.2 Compliance Schedule Progress Reports**

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

- A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- B. No increment referred to above shall exceed nine (9) months;
- C. The user shall submit a progress report to the Administrator no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the

increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

- D. In no event shall more than nine (9) months elapse between such progress reports to the Administrator.

### **6.3 Reports on Compliance with Categorical Pretreatment Standard Deadline**

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the Administrator a report containing the information described in Section 6.1(B)(4-6) of this ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation) this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 4.6 of this ordinance.

### **6.4 Periodic Compliance Reports**

- A. All significant industrial users shall, at a frequency determined by the Administrator but in no case less than once every six months ~~twice per year (in June and December)~~, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the applicable measured or estimated average and maximum daily flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in Sections 6.9 and 6.10 of this ordinance. All periodic compliance reports must be signed and certified in accordance with Section 4.6 of this ordinance.
- ~~B. 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.C~~ If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the Administrator, using the procedures prescribed in Section 6.9 and 6.10 of this ordinance, the results of this monitoring shall be included in the report.

## **6.5 Reports of Changed Conditions**

Each user must notify the Administrator of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change. See Section 6.6(D) for other reporting requirements.

- A. The Administrator 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 4.5 of this ordinance.
- B. The Administrator may issue a wastewater discharge permit under Section 4.7 of this ordinance or modify an existing wastewater discharge permit under Section 5.4 of this ordinance in response to changed conditions or anticipated changed conditions.
- C. For purposes of this requirement, significant changes include, but are not limited to, flow increases of twenty percent (20%) or greater, and the discharge of any previously unreported pollutants.

## **6.6 Reports of Potential Problems**

- A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load as defined in Section 1.3(B)(29), that may cause potential problems for the POTW, the user shall immediately telephone and notify the Administrator of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- B. Within five (5) days following such discharge, the user shall, unless waived by the Administrator, 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 ordinance.
- C. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

D. All significant industrial users are required to notify the Administrator immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section 1.3(B)(29).

## **6.7 Reports from Unpermitted Users**

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the Administrator as the Administrator may require.

## **6.8 Notice of Violation/Repeat Sampling and Reporting**

A. If sampling performed by a user indicates a violation, the user must notify the Administrator 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 Administrator within thirty (30) days after becoming aware of the violation. If allowed by the Administrator, the user is not required to resample:

1. if the Administrator monitors at the user's facility at least once a month; or
2. if the Administrator samples between the user's initial sampling and when the user receives the results of this sampling.

B. If the Administrator does not require the user to perform any self-monitoring and the POTW sampling of the user indicates a violation, the Administrator shall repeat the sampling and obtain results of the repeat analysis within thirty (30) days after becoming aware of the violations, unless one of the following occurs:

1. the Administrator monitors the user's facility at least once a month; or
2. the Administrator samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or
3. the Administrator requires the user to perform sampling and submit the results to the Administrator within the thirty (30) day deadline of the POTW becoming aware of the violation.

## **6.9 Analytical Requirements**

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. 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.

#### **6.10 Grab and Composite Sample Collection**

- A. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge. Except as indicated in Section B, below, the user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the Administrator may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits.
- 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 Administrator 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 baseline monitoring reports and 90 day compliance reports. Additionally, the Administrator may allow collection of multiple grabs during a 24 hour period which are composited prior to analysis as allowed under 40 CFR 136. Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- 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 Administrator. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternate sampling must be documented.

#### **6.11 Timing**

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

## 6.12 Record Keeping

Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or OWASA ~~the Authority~~, or where the user has been specifically notified of a longer retention period by the Administrator.

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## **SECTION 7 - COMPLIANCE MONITORING**

### **7.1 Right of Entry: Inspection and Sampling**

The Administrator shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this ordinance and any wastewater discharge permit or order issued hereunder. Users shall allow the Administrator ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying and the performance of any additional duties.

- A. Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Administrator will be permitted to enter without delay for the purposes of performing specific responsibilities.
- B. The Administrator shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.
- C. The Administrator may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated in accordance with the manufacturer's recommendations to ensure their accuracy.
- D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Administrator and shall not be replaced. The costs of clearing such access shall be born by the user.
- E. Unreasonable delays in allowing the Administrator access to the user's premises shall be a violation of this ordinance.

### **7.2 Search Warrants**

If the Administrator has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of OWASA ~~the Authority~~ designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Administrator may seek issuance of a search warrant from the North Carolina General Court of Justice.



## **SECTION 8 - CONFIDENTIAL INFORMATION**

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the Administrator's inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the Administrator, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data.

When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

## SECTION 9 - PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE

The Administrator shall publish annually, in a newspaper of general circulation that provides meaningful public notice within OWASA's service area, the largest daily newspaper published in the Authority service area, a list of the users which, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall mean:

- A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of wastewater measurements taken during a six (6) month period exceed the daily maximum limit or average limit for the same pollutant parameter by any amount;
- B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period are equal to or greater than equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for CBOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- C. Any other discharge violation that the Administrator believes 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 pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the Administrator's exercise of emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on conformance with compliance schedules;
- G. Failure to accurately report noncompliance; or
- H. Any other violation(s) which the Administrator determines will adversely affect the operation or implementation of the local pretreatment program.

## **SECTION 10 - ADMINISTRATIVE ENFORCEMENT REMEDIES**

### **10.1 Notification of Violation**

When the Administrator finds that a user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Administrator may serve upon that user a written Notice of Violation. Within fifteen (15) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Administrator. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Administrator to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

### **10.2 Consent Orders**

The Administrator may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 10.4 and 10.5 of this ordinance and shall be judicially enforceable.

### **10.3 Show Cause Hearing**

The Administrator may order a user which has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Administrator and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least fifteen (15) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

### **10.4 Compliance Orders**

When the Administrator finds that a user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Administrator 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,

sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. ~~OWASA The Authority~~ may disconnect or permanently block from the wastewater system of ~~OWASA the Authority~~ the private sewer of any user whose permission to discharge has been revoked if such action is necessary to insure compliance with the order of revocation. Action to enforce compliance with the order of permission to discharge may include at the discretion of the Administrator, termination of public water service provided by ~~OWASA the Authority~~. 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.

### **10.5 Cease and Desist Orders**

When the Administrator finds that a user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Administrator may issue an order to the user directing it to cease and desist all such violations and directing the user to:

- A. Immediately comply with all requirements; and
- B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

### **10.6 Administrative Fines**

- A. When the Administrator finds that a user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Administrator may fine such user in an amount not to exceed \$1,000 per day. Such fines may be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation.
- B. Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of one hundred percent (100%) of the unpaid balance, and interest shall accrue thereafter at a rate of one and one-half

percent (1.5%) per month. A lien against the user's property will be sought for unpaid charges, fines, and penalties.

- C. Users desiring to dispute such fines must file a written request for the Administrator to reconsider the fine along with full payment of the fine amount within fifteen (15) days of being notified of the fine. Where a request has merit, the Administrator may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The Administrator may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.
- D. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

### **10.7 Emergency Suspensions**

The Administrator may immediately suspend sewer service to a user, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Administrator may also immediately suspend sewer service to a user, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

- A. Any user notified of a suspension of its sewer service shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Administrator may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Administrator may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Administrator that the period of endangerment has passed, unless the termination proceedings in Section 10.8 of this ordinance are initiated against the user.
- B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Administrator prior to the date of any show cause or termination hearing under Sections 10.3 or 10.8 of this ordinance. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

## 10.8 Termination of ~~Discharge~~ Permission to Discharge

The Administrator may revoke permission to discharge for good cause, including, but not limited to, the following reasons: ~~In addition to the provisions in Section 5.6 of this ordinance, any user who violates the following conditions is subject to discharge termination:~~

- A. Violation of wastewater discharge permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or,
- E. Violation of the pretreatment standards in Section 2 of this ordinance or any applicable State and Federal Regulations.

Such user will be notified of the proposed termination of its sewer service and be offered an opportunity to show cause as provided for under Section 10.3 of this ordinance why the proposed action should not be taken. Exercise of this option by the Administrator shall not be a bar to, or a prerequisite for, taking any other action against the user.

## SECTION 11 - JUDICIAL ENFORCEMENT REMEDIES

### 11.1 Injunctive Relief

When the Administrator finds that a user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Administrator may petition the North Carolina General Court of Justice through OWASA's ~~the Authority's~~ Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the user. The Administrator may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

### 11.2 Civil Penalties

A. A user who has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to OWASA ~~the Authority~~ for a maximum civil penalty of \$25,000 ~~1,000~~ per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

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

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

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

B. The Administrator may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by OWASA ~~the Authority~~.

C. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm

caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

- D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

### **11.3 Remedies Nonexclusive**

The remedies provided for in this ordinance are not exclusive. The Administrator may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with OWASA's ~~the Authority's~~ enforcement response plan. However, the Administrator may take other action against any user when the circumstances warrant. Further, the Administrator is empowered to take more than one enforcement action against any noncompliant user.

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## **SECTION 12 - SUPPLEMENTAL ENFORCEMENT ACTION**

### **12.1 Water Supply Severance**

Whenever a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, water service to the user supplied by OWASA ~~the Authority~~ may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

### **12.2 Public Nuisance**

A violation of any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the Administrator. Any person(s) creating a public nuisance shall be subject to the provisions of laws governing such nuisances, including reimbursing OWASA ~~the Authority~~ for any costs incurred in removing, abating, or remedying said nuisance.

### **12.3 Contractor Listing**

Users which have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to OWASA ~~the Authority~~. Existing contracts for the sale of goods or services to OWASA ~~the Authority~~ held by a user found to be in significant noncompliance with pretreatment standards or requirements may be terminated at the discretion of the Administrator.

## SECTION 13 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

### 13.1 Upset

- A. For the purposes of this section, "upset" means 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.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (C), below, are met.
- C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  1. An upset occurred and the user can identify the cause(s) of the upset,
  2. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  3. The user has submitted the following information to the Administrator within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days]:
    - (a) A description of the indirect discharge and cause of noncompliance;
    - (b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
    - (c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

- F. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

### **13.2 Prohibited Discharge Standards**

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2.2(A) of this ordinance or the specific prohibitions in Sections 2.2(B)(4) through (2019) of this ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

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

### **13.3 Bypass**

- A. For the purposes of this section,
  - 1. "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.
  - 2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. 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 (C) and (D) of this section.

- C. 1. If a user knows in advance of the need for a bypass, it shall submit prior notice to the Administrator, at least ten (10) days before the date of the bypass, if possible.
2. A user shall submit oral notice to the Administrator of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the 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 Administrator may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- D. 1. Bypass is prohibited and the Administrator may take an enforcement action against a user for a bypass, unless
- (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - (c) The user submitted notices as required under paragraph (C) of this section.
2. The Administrator may approve an anticipated bypass, after considering its adverse effects, if the Administrator determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

## **SECTION 14 - WASTEWATER TREATMENT RATES AND FEES**

Fees shall be assessed to users for wastewater discharges into the POTW and for executing or enforcing the provisions of this ordinance. These charges shall be developed by the Administrator and approved by OWASA ~~the Authority~~ in accordance with the uUser cCharge sSystem and other regulations and policies of OWASA ~~the Authority~~ and applicable statutes of the State. The existing charges for the previous year will be reviewed prior to adopting each annual budget. Charges shall be developed for the following purposes:

- A. Industrial monitoring, inspections, and surveillance procedures;
- B. Reviewing accidental discharge procedures and construction;
- C. Reviewing permit applications;
- D. Reviewing appeals;
- E. Special industrial discharges;
- F. Recovering capital related expenditures;
- G. Other charges, including user charges based on billable flow and excessive pollutant discharges to the POTW, necessary to recover the operation and maintenance costs of the wastewater disposal system.

Charges for Items A through E shall be based on the actual cost to OWASA ~~the Authority~~ for each specific user or incident. However, a fixed rate may be proposed by the Administrator, subject to OWASA ~~Authority~~ approval, for those procedures that are repetitive and do not differ substantially within each class of users. Charges for Items F through G shall be developed and assessed in accordance with the uUser cCharge sSystem.

The charges and fees developed in accordance with the provisions of this Article shall be in the form of a resolution adopted by OWASA ~~the Authority~~.

## **SECTION 15 - AUTHORITY**

This ordinance is adopted under the authority granted by North Carolina General Statutes 162A.

## **SECTION 16 - SEVERABILITY**

If any provision, paragraph, word, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs,

words, sections, and chapters shall not be affected and shall continue in full force and effect.

**SECTION 17 - CONFLICT**

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

**SECTION 18 - EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and approval as set forth in the attached Resolution of Adoption as provided by law.

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