

**CITY OF GRAHAM
REGULAR SESSION
TUESDAY, NOVEMBER 1, 2011
7:00 P.M.**

The City Council of the City of Graham met in regular session at 7:00 p.m., on Tuesday, November 1, 2011 in the Council Chambers of the Municipal Building located at 201 South Main Street.

Council Members Present:

Mayor Jerry Peterman
Mayor Pro Tem Jimmy Linens
Council Member Jim Albright
Council Member Victor Euliss
Council Member Chip Turner

Also Present:

Chris Rollins, City Manager
Frankie Maness, Assistant City Manager
Aaron Holland, Planner
Keith Whited, City Attorney
Kimberly Harris, City Clerk

Absent:

None.

Mayor Peterman called the meeting to order at 7:00 p.m.

Mayor Peterman led the City Council in the Pledge of Allegiance and Police Department Chaplain Mark Ryman gave the invocation.

CONSENT AGENDA:**October 2011 Tax Releases and Refunds.**

**CITY OF GRAHAM
RELEASE ACCOUNTS**

NOVEMBER				RE/PP	REASON FOR RELEASE	RELEASED
ACCT #	YEAR	RECIPT	NAME			
383893	2008	2235	DEJESES, AUTRES	PP	NOT ON PARK LIST	6.71
383893	2009	2217	DEJESES, AUTRES	PP	NOT ON PARK LIST	5.84
176876200	2005	6156	DEJESES, AUTRES	PP	NOT ON PARK LIST	9.84
176876200	2006	1651	DEJESES, AUTRES	PP	NOT ON PARK LIST	8.02
176876200	2007	15158	DEJESES, AUTRES	PP	NOT ON PARK LIST	10.53
552716	2008	849	BOZEMAN, DWAYNE A	PP	NOT ON PARK LIST	71.28
584496	2008	2608	EVANS, ANTONIO	PP	NOT ON PARK LIST	92.31
598848	2011	5965	PERRY, DAVID B	RE	PARCEL ONLY PARTIALLY IN CITY LIMITS	255.59
121735200	2003	2042	GARCIA, MICHAEL	PP	NOT ON PARK LIST	7.24
123718200	2003	6095	DEBROU, BERNICE	PP	NOT ON PARK LIST	28.12
135677200	2005	5119	BALTAZAR, LORENZO	PP	NOT ON PARK LIST	8.78
135677200	2006	360	BALTAZAR, LORENZO	PP	NOT ON PARK LIST	7.69
172576200	2007	14360	CALZADA, ROCIO MAGANA	PP	NOT ON PARK LIST	26.90

TOTAL RELEASES 538.85

Approval of Minutes - October 4, 2011 Regular Session

Upon Motion by Council Member Turner, second by Mayor Pro Tem Linens, the Council voted to approve the Consent Agenda.

Mayor Peterman closed the Regular Session and convened the quasi-judicial public hearing portion of the meeting.

Recommendations from the Planning and Zoning Board:

Quasi-Judicial Public Hearing Request of Burton & Burton LLC (Owner) for a Special Use Permit for Property Located at 1360 Truby Drive, Haw River, N.C. for a Unified Business Development. Property shown on Alamance County Tax Map 13- 14-52 (GPIN#8889455912).

Mayor Peterman explained that Council Members should not have ex parte conversation with individuals related to the case. Council Members were invited to advise if anyone had contacted them about this item scheduled for a Quasi-Judicial hearing. None were forthcoming.

Mayor Peterman questioned if any member of the City Council has a financial interest in the issue or has had ex parte communication or bias or fixed opinion on this issue? If so, say I do and please explain. No affirmative response was received.

City Attorney Whited explained that in a quasi-judicial hearing for a special use permit, the petitioner must provide evidence to be allowed to vary from a zoning ordinance. A Quasi-Judicial Hearing is considered a court proceeding; therefore, any information offered during the hearing is considered evidence. Each speaker, for and against, including staff, will be administered an oath prior to giving testimony at the hearing.

City Attorney Whited swore in City Manager Rollins, Assistant City Manager Maness, City Planner Holland, Jack Burton and John Burton.

Assistant Manager Frankie Maness presented to the Council the following findings of fact proposed by the Planning Department:

John H. Burton of Burton & Burton, LLC is requesting a Special Use Permit for a Unified Business Development located at 1360 Truby Drive. Currently, an existing structure exists on the property which is used as a tractor & trailer sales and truck wash. According to the application packet, Mr. Burton is requesting a Special Use Permit to have multiple businesses on one lot. A Special Use Permit is required for a Unified Business Development in a B-2 (General Business) zoning.

The parcel is inside the Graham City Limits, and municipal water and sanitary sewer services are available. The adjacent properties are zoned B-2 (General Business), I-1 (Light Industrial), and I-2 (Heavy Industrial).

- 1) That all applicable regulations of the zoning district in which the use is proposed are complied with.
- 2) That conditions specific to each use, identified by this Ordinance are complied with.
- 3) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.
- 4) That the use will not substantially injure the value of adjoining property or that the use is a public necessity.
- 5) That the location and character of the use if developed according to the plan as submitted will be in harmony with the area in which it is to be located and in general conformity with the plan of development for the Graham planning area.
- 6) That satisfactory provision has been made for the following, when applicable: vehicle circulation, parking and loading, service entrances and areas, screening, utilities, signs and lighting, and open space.

Findings of Fact

- 1) John H. Burton of Burton & Burton, LLC applied for a Special Use Permit for a Unified Business Development on September 26, 2011, for a property located at 1360 Truby Drive, also identified as Alamance County Tax Map 8894555912 (Old Tax Map ID: 13-14-52).
- 2) The property is approximately 4.18 acres and is located inside the Graham City Limits and municipal water and sanitary sewer services are available.
- 3) According to the application packet, Mr. Burton requests to have multiple businesses on one lot.
- 4) Currently, an existing structure exists on the property which is used as a tractor trailer sales and truck wash.
- 5) The adjacent properties are zoned B-2 (General Business), I-1 (Light Industrial), and I-2 (Heavy Industrial).
- 6) According to the *City of Graham Growth Management Plan: 2000-2020*, the parcel is located in the Highway Commercial Recommended Land Development Type and is located in the Hawfields Planning District.
- 7) The City of Graham staff **recommends approval** for the Special Use Permit Request by John H. Burton for a Unified Business Development located at 1360 Truby Drive for the following reasons:
 - The *GMP* promotes development that reduces the number of trips generated by incorporating multiple uses at one site.
 - The *GMP* encourages the reuse and revitalization of unused or underutilized structures and properties.

- 8) The City of Graham Planning Board unanimously recommended approval on October 18, 2011 for the Special Use Permit request.

Mayor Peterman asked Council if they had any questions for the staff. No questions were forthcoming at that time.

Mayor Peterman asked if anyone from the floor would like to speak regarding the Quasi-Judicial Public Hearing Request of Burton & Burton LLC (Owner) for a Special Use Permit for Property Located at 1360 Truby Drive, Haw River, N.C. for a Unified Business Development. No one was forthcoming.

Council Member Albright stated that he would like to ask Mr. John or Jack Burton what their plans for multiple businesses are for the property.

John Burton of 622 W. Davis Street, Burlington, NC responded to Council Member Albright's question by stating that this location does not sale tractors but is a truck wash and rental instead and that those businesses would stay the same. He stated that the company's focus is to move the entire business to Kernersville NC in the near future. He stated that Burlington Tractor and Sales is only using 20,000 feet of this location, leaving the additional space available to divide up many different ways.

Mayor Pro Tem Linens asked what chances there are that an internet business center would be going into the location. John Burton responded that there is a pretty good chance for an internet business center.

Council Member Albright asked if a special use permit would allow them to limit the type of business allowed in a unified business district. City Manager Rollins responded that you cannot exclude what is allowed by the zoning ordinance.

Assistant City Manager Maness explained that the allowance of an internet business center is through "business center" and not "internet sweepstakes".

There being no further discussion Mayor Peterman polled the Council for a motion.

Mayor Pro Tem Linens made a motion to approve the request by John H. Burton for a Special Use Permit for Property Located at 1360 Truby Drive, Haw River, N.C. for a Unified Business Development. Property shown on Alamance County Tax Map 13- 14-52 (GPIN#8889455912) and adopt the Findings of Fact numbers 1 through 8 proposed by the Planning Department as the evidence submitted satisfies the requirements of Section 10.144 of the *City of Graham Development Ordinances*. Ayes: Mayor Peterman, Mayor Pro Tem Linens, Council Member Albright, Council Member Turner. Nays: Council Member Euliss. Motion Carried 4:1.

Mayor Peterman closed the quasi-judicial public hearing and reconvened Regular Session.

**Adopt Ordinance Amending City of Graham Code of Ordinances Chapter 13 Utilities.
Article IV - Sewers Generally, Sewer Use Ordinance.**

Scott Pickard Wastewater Pretreatment Coordinator presented the Council with the request to adopt an ordinance amending the City of Graham Code of Ordinances Chapter 13 Utilities, Article IV – Sewers Generally, Sewer Use Ordinance. This is in response to new changes in the North Carolina pretreatment regulations that were approved by the Environmental Management Commission on January 13, 2011, and were approved by the Rules Review Commission on February 17 and March 17, 2011. The proposed changes to the Sewer Use Ordinance would bring the City of Graham in compliance with the new State rules. These updated changes to the City of Graham Sewer Use Ordinance for consideration have been reviewed and approved by the N.C. Division of Water Quality Pretreatment Unit and Keith Whited, City Attorney.

ARTICLE IV. - SEWERS GENERALLY

- DIVISION 1. - GENERALLY
- DIVISION 2. - SEWER USE
- DIVISION 3. - ENFORCEMENT

DIVISION 1. - GENERALLY

- [Sec. 13-112. - Maintenance and treatment charges; discontinuing service.](#)
- [Sec. 13-113. - Place of discharge.](#)
- [Sec. 13-114. - Injury to sewers.](#)
- [Secs. 13-115—13-141. - Reserved.](#)

Sec. 13-112.- Maintenance and treatment charges; discontinuing service.

(a) Every owner or occupant of property where there is a connection to the city sewer system without water service shall pay a monthly service charge as established by the city council. If the account is still delinquent at 9:00 a.m. on the 19th day of the month or next business day following the 18th, a delinquent notice will be sent to such dwelling house, business establishment, industry or other building with a delinquent fee that is set by the city council. The amount of the fee shall be kept on file in the office of the city clerk.

(b) If the account is still delinquent on the 28th day of the month, the account shall automatically be charged a nonpayment fee on the 29th day or the next business day. The nonpayment fee fixed by the city council must be paid. The amount of the fee shall be kept on file in the office of the city clerk.

(c) After ten additional days and a mailed notice of delinquency, the service may be discontinued by severance of the connection to the city sewer system. A fee equal to the current

rate for a sewer tap shall be paid to the city prior to reconnecting.

(Code 1978, ch. I, art. I, § 9; Code 1983, § 13-56; Ord. of 3-4-1980; Ord. of 8-7-1984; Ord. of 11-3-1998; Ord. of 6-5-2001(3); Ord. of 10-2-2007)

Sec. 13-113.- Place of discharge.

No person shall pour, throw or discharge any substance, either solid or liquid, into any sanitary or storm sewer at any manhole or at any opening therein other than a sewer connection.

(Code 1978, ch. I, art. I, § 16; Code 1983, § 13-57; Ord. of 10-2-2007)

Sec. 13-114.- Injury to sewers.

No person shall obstruct, break, remove or otherwise injure any portion of any manhole, flush-tank or other part of any public sanitary or storm sewer, nor discharge any substance therein that is likely to cause such injury.

(Code 1978, ch. I, art. I, §§ 16, 17; Code 1983, § 13-58; Ord. of 10-2-2007)

Secs. 13-115—13-141.- Reserved.

DIVISION 2. - SEWER USE

Subdivision I. - In General

Subdivision II. - Standards

Subdivision III. - Fees and Charges

Subdivision IV. - Permits

Subdivision V. - Reporting Requirements

Subdivision I. - In General

[Sec. 13-142. - Purpose and policy.](#)

[Sec. 13-143. - Definitions and abbreviations.](#)

[Secs. 13-144—13-169. - Reserved.](#)

Sec. 13-142.- Purpose and policy.

(a) This division sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the City of Graham, hereafter referred to as the city, and enables the city to comply with all applicable state and federal laws, including 15A NCAC 02H .0900, the Clean Water Act (33 USC 1251 et seq.) and the General Pretreatment

Regulations (40 CFR 403).

(b) The objectives of this division are:

- (1) To prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- (2) To prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the state or otherwise be incompatible with the system;
- (3) To promote reuse and recycling of industrial wastewater and sludges from the municipal system;
- (4) To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;
- (5) To provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and
- (6) To ensure that the municipality complies with its NPDES or nondischarge permit conditions, sludge use and disposal requirements and any other federal or state laws to which the municipal wastewater system is subject.

(c) This division provides for the regulation of direct and indirect contributors to the municipal wastewater system through the issuance of permits to certain nondomestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(d) This division shall apply to all users of the municipal wastewater system as authorized by G.S. 160A-312 and or 153A-275. The city shall designate an administrator of the Publicly Owned Treatment Works or POTW and pretreatment program hereafter referred to as the utilities director. Except as otherwise provided herein, the utilities director shall administer, implement, and enforce the provisions of this division. Any powers granted to or imposed upon the utilities director may be delegated by the utilities director to other city personnel. By discharging wastewater into the city wastewater system, industrial users located outside the city limits agree to comply with the terms and conditions established in this division, as well as any permits, enforcement actions, or orders issued hereunder. This includes all industrial users discharging in the wastewater collection system owned by any satellite POTW.

(Code 1983, § 13-71(a); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Sec. 13-143. - Definitions and abbreviations.

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

Act or the Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq.

Approval authority means the director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources or his designee.

Authorized representative of the industrial user means:

- (1) If the industrial user is a corporation, the term "authorized representative" means:
 - a. The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - b. The manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (2) If the industrial user is a partnership or sole proprietorship, the term "authorized representative" means a general partner or the proprietor, respectively.
- (3) If the industrial user is a federal, state or local government facility, the term "authorized representative" means a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
- (4) The individuals described in subsections (1)(2) and (3) of this definition may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.
- (5) If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this article must be submitted to the utilities director prior to or together with any reports to be signed by an authorized representative.

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

Building sewer means a sewer conveying wastewater from the premises of a user to the publicly owned treatment works (POTW).

Bypass means the intentional diversion of waste streams from any portion of a user's treatment

facility.

Categorical standards means National Categorical Pretreatment Standards or pretreatment standard.

Control Authority. Refers to the POTW organization if the POTW organization's Pretreatment Program approval has not been withdrawn.

Domestic wastewater means liquid waste that has pollutant levels equal to or less than the levels given in section 13-172 and is from noncommercial preparation and handling of food or from sanitary conveyances of dwellings, commercial buildings, industrial facilities, or institutions.

Environmental Protection Agency or *EPA* means the U.S. Environmental Protection Agency, or, where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of said agency.

Grab sample means a sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

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

Indirect discharge or *discharge* means the discharge or the introduction from any nondomestic source regulated under section 307(b), (c), or (d) of the Act (33 USC 1317) into the publicly owned treatment works (POTW).

Industrial user or *user* means any person or organization which is a source of indirect discharge.

Interference means the inhibition, or disruption of the publicly owned treatment works (POTW) collection system, treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the control authority's (and /or POTW's, if different from the Control Authority) National Pollution Discharge Elimination System (NPDES), collection system, or nondischarge permit or prevents sewage sludge use or disposal in compliance with specified applicable state and federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act, (33 USC 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA), (42 USC 6901 et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria, including those contained in any state sludge management plan prepared pursuant to Title IV of the SWDA applicable to the method of disposal or use employed by the POTW.

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

National categorical pretreatment standard or *categorical standard* means any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b)

and (c) of the Act (33 USC 1317) which applies to a specific category of industrial users, and which appears in 40 CFR ch. 1, subch. N, 405—471.

National Pollution Discharge Elimination System or NPDES permit means a permit issued pursuant to section 402 of the Act (33 USC 1342), or pursuant to G.S. 143-215.1 by the state under delegation from EPA.

National prohibitive discharge standard or prohibitive discharge standard means absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 13-170 and are developed under the authority of 307(b) of the Act and 40 CFR 403.5.

New source.

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

- a. The building, structure, facility, or installation is constructed at a site at which no other source is located;
- b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection (1)b or c above but otherwise alters, replaces, or adds to existing process or production equipment.

(3) For purposes of this definition, construction of a new source has commenced if the owner or operator has:

- a. Begun, or caused to begin, as part of a continuous on-site construction program:
 1. Any placement, assembly, or installation of facilities or equipment; or
 2. Significant site preparation work, including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- b. Entered into a binding contractual obligation for the purchase of facilities or equipment which is intended to be used in its operation within a reasonable time.

Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

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

Nondischarge permit means a disposal system permit issued by the state pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to the surface waters of the State.

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

Person means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all federal, state, and local government entities.

pH means a measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

Pollutant means any "waste" as defined in G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

POTW director means the chief executive administrative officer of the publicly owned treatment works (POTW) or his /her delegate. For the city, the POTW Director is the utilities director.

POTW treatment plant means that portion of the publicly owned treatment works (POTW) designed to provide treatment to wastewater.

Pretreatment or treatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a publicly owned treatment works (POTW). The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants, unless allowed by an applicable pretreatment standard.

Pretreatment program means the program for the control of pollutants introduced into the publicly owned treatment works (POTW) from nondomestic sources which was developed by the city in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.

Pretreatment requirement means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

Pretreatment standards means any prohibited discharge standards, categorical standards, or local limit which applies to an industrial user.

Publicly owned treatment works (POTW) or municipal wastewater system means a treatment works as defined by section 212 of the Act (33 USC 1292) which is owned in this instance by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this division, the term "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, or in any other way, users of the city's POTW.

Severe property damage means substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Significant industrial user (SIU) means any industrial user of the wastewater disposal system who:

- (1) Has an average daily process wastewater flow of 25,000 gallons or more;
- (2) Contributes process wastewater which makes up five percent or more of the NPDES or Non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS, and Ammonia; or
- (3) Is required to meet a National Categorical Pretreatment Standard; or
- (4) Is found by the city, 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, the system's effluent quality, or compliance with any pretreatment standards or requirements.
- (5) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraphs (1) and (2) above has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement, the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options, and thus is not a Significant Industrial User.
- (6) Subject to approval under Rule .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (3) above meets the requirements of 40 CFR Part 403.3 (v) (2) and thus is a Non-Significant Categorical Industrial User.
- (7) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority

may determine that an Industrial User meeting the criteria in paragraph (3) above meets the requirements of 40 CFR Part 403.12(e)(3) and thus is a Middle Tier Significant Industrial User. Sampling and inspection requirements may be cut in half as per 40 CFR 403.8(f) (2) (v) (C) and 403.12(e) (3).

Significant noncompliance or SNC is the status of noncompliance of a Significant Industrial User when one or more of the following criteria are met. Additionally any Industrial user which meets the criteria in Parts (3),(4),or (8) listed below shall also be SNC.

- (1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(1);
- (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(1) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil, and grease, 1.2 for all other pollutants (except flow and pH);
- (3) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR Part 403.3(1) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Control Authority and or POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- (4) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the Control Authority's or the POTW's if different from the Control Authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and section 13-299 (e) of this SUO to halt or prevent such a discharge.
- (5) Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.
- (6) Failure to provide reports for the compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and compliance reports within 45 days from the due date.
- (7) Failure to accurately report noncompliance.
- (8) Any other violation or group of violations that the control authority and or POTW determines will adversely affect the operation or implementation of the local pretreatment program.

Slug load or discharge means any discharge at a flow rate or concentration which has a

reasonable potential to cause interference or pass through, or in any other way violates the POTW's regulations, local limits, or industrial user permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a nonroutine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in section 13-170.

Standard industrial classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.

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

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

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.

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

Wastewater permit means as set forth in section 13-233(b).

Waters of the state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

(b) This ordinance is gender neutral and the masculine gender shall include the feminine and vice-versa.

(c) Shall is mandatory; may is permissive or discretionary.

(d) The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.

(e) The following abbreviations when used in this division shall have the designated meanings:

BOD means biochemical oxygen demand.

CFR means Code of Federal Regulations.

COD means chemical oxygen demand.

EPA means Environmental Protection Agency.

gpd means gallons per day.

l means liter.

mg means milligrams.

mg/l means milligrams per liter.

G.S. means North Carolina General Statutes.

NPDES means National Pollution Discharge Elimination System.

O&M means operation and maintenance.

POTW means publicly owned treatment works.

RCRA means Resource Conservation and Recovery Act.

SIC means Standard Industrial Classification.

SIU means significant industrial user.

SWDA means Solid Waste Disposal Act.

TSS means total suspended solids.

TKN means total Kjeldahl nitrogen.

USC means United States Code.

(Code 1983, § 13-71(b); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Secs. 13-144—13-169.- Reserved.

Subdivision II. - Standards

[Sec. 13-170. - Prohibited discharge standards.](#)

[Sec. 13-171. - National categorical pretreatment standards.](#)

[Sec. 13-172. - Local limits.](#)

[Sec. 13-173. - State requirements.](#)

[Sec. 13-174. - Right of revision.](#)

[Sec. 13-175. - Dilution.](#)

[Sec. 13-176. - Pretreatment of wastewater.](#)

[Sec. 13-177. - Accidental discharge/slug control plans.](#)

[Sec. 13-178. - Limitations on private sewage disposal.](#)

[Secs. 13-179—13-209. - Reserved.](#)

Sec. 13-170.- Prohibited discharge standards.

(a) General prohibitions. No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all users of a POTW whether or not the user is a significant industrial user or subject to any national, state, or local pretreatment standards or requirements.

(b) Specific prohibitions. No user shall contribute or cause to be contributed 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, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods specified in 40 CFR 261.21.

(2) Solid or viscous substances in amounts which will cause obstruction of flow in the POTW resulting in interference or solids greater than one-quarter inch in any dimension. Any wastewater proved to be detrimental to the POTW such as, but not limited to: wood, glass, ashes, sand, cinders, unshredded garbage, grease, animal guts or tissues, paunch manure, bones, hair, hides, or fleshings, entrails, whole blood, feathers, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt residues, lubricating oil, mud, or glass grindings or polishing wastes.

(3) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.

(4) Any wastewater having a pH less than 5.0 or more than 9.0 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment, except as specifically approved by the utilities director.

(5) Any wastewater containing pollutants including oxygen-demanding pollutants (BOD, etc.) in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to cause interference with the POTW.

(6) Any wastewater having a temperature greater than 150 degrees Fahrenheit (66 degrees Celsius), or which will inhibit biological activity in the POTW treatment plant resulting in interference, or which will cause injury to any part of the POTW system, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius).

(7) Any 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.

(8) Any trucked or hauled pollutants.

(9) Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

(10) Any substance which may cause the POTW's effluent or any other product of the

POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used.

- (11) Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
 - (12) Any wastewater containing any radioactive wastes or isotopes, except as specifically approved by the utilities director in compliance with applicable state or federal regulations.
 - (13) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the utilities director.
 - (14) Fats, oils, or greases of animal or vegetable origin in concentrations that will cause interference or pass through with the POTW.
 - (15) Any sludges, screenings or other residues from the pretreatment of industrial wastes.
 - (16) Any medical wastes, except as specifically authorized by the utilities director in a wastewater discharge permit.
 - (17) Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.
 - (18) Any material that would be identified as hazardous waste according to 40 CFR 261.
 - (19) Any wastewater causing the treatment plant effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B .0200.
 - (20) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
 - (21) Recognizable portions of the human or animal anatomy.
 - (22) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.
 - (23) At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent nor any single reading over ten percent of the lower explosive limit (LEL) of the meter.
- (c) Pollutants, substances, wastewater, or other wastes prohibited by this division shall not be

processed or stored in such a manner that they could be discharged to the municipal wastewater system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.

(d) When the utilities director determines that a user is contributing to the POTW any of the substances enumerated in subsection (b) of this section in such amounts which may cause or contribute to interference of POTW operation or pass through, the utilities director shall:

- (1) Advise the user of the potential impact of the contribution on the POTW in accordance with section 13-299; and
- (2) Take appropriate actions in accordance with subdivision IV of this division for such user to protect the POTW from interference or pass through.

(Code 1983, § 13-72(a); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Sec. 13-171.- National categorical pretreatment standards.

Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR, ch. 1, subch. N, 405—471 and incorporated herein.

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

(Code 1983, § 13-72(b); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Sec. 13-172.- Local limits.

(a) An industrial waste survey is required prior to a user discharging wastewater containing in excess of the following average discharge limits:

300 mg/l BOD

250 mg/l TSS

30 mg/l TKN

0.003 mg/l arsenic

0.003 mg/l cadmium

0.061 mg/l copper

0.015 mg/l cyanide

0.049 mg/l lead

0.0002 mg/l mercury

0.021 mg/l nickel

0.005 mg/l silver

0.05 mg/l total chromium

0.175 mg/l zinc

(b) Industrial waste survey information will be used to develop user-specific local limits when necessary to ensure that the POTW's maximum allowable headworks loading is not exceeded for particular pollutants of concern. User-specific local limits for appropriate pollutants of concern shall be included in wastewater permits. The utilities director may impose mass-based limits in addition to or in place of concentration-based limits.

(Code 1983, § 13-72(c); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Sec. 13-173.- 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 division.

(Code 1983, § 13-72(d); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Sec. 13-174.- Right of revision.

The city reserves the right to establish limitations and requirements which are more stringent than those required by either state or federal regulation if deemed necessary to comply with the objectives presented in section 13-142 or the general and specific prohibitions in section 13-170, as allowed by 40 CFR 403.4.

(Code 1983, § 13-72(e); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Sec. 13-175.- Dilution.

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the city or state.

(Code 1983, § 13-72(f); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Sec. 13-176.- Pretreatment of wastewater.(a) *Pretreatment facilities.*

- (1) Users shall provide wastewater treatment as necessary to comply with this division and wastewater permits issued under section 13-233(b) and shall achieve compliance with all National Categorical Pretreatment Standards, local limits, and the prohibitions set out in section 13-170 within the time limitations as specified by EPA, the state, or the utilities director, whichever is more stringent.
- (2) Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense.
- (3) Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review, and shall be approved by the utilities director before construction of the facility.
- (4) The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this division.
- (5) Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the utilities director prior to the user's initiation of the changes.

(b) *Additional pretreatment measures.*

- (1) Whenever deemed necessary, the utilities director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this division.
- (2) The utilities director may require any persons discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
- (3) The City of Graham Fats, Oils and Grease Policy was developed to implement the specific prohibition of the discharge of solid or viscous substances in amounts which would cause obstruction to the flow in the POTW collection system resulting in harm, interference, pass through, NPDES permit violations and/or sanitary sewer overflows. The FOG policy is applicable to all food service establishments that discharge to the City of Graham POTW. Any violation of the City of Graham Fats, Oils, and Grease Policy is hereby a violation of this division. Enforcement of the fats, oils, and grease policy will be in accordance with this division and Section (9) of the fats, oils, and grease policy.
- (4) Grease, oil, and sand interceptors shall be provided when, in the opinion of the utilities

director, 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 a type and capacity approved by the utilities director 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 users at their expense. The user shall be responsible for ensuring that no waste or wastewater pumped from such interceptors is reintroduced back into the interceptor, collection system, into the environment, or is otherwise improperly disposed of. The user may be required to submit documentation of interceptor cleaning and repair to the utilities director.

(5) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(Code 1983, § 13-72(g); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Sec. 13-177.- Accidental discharge/slug control plans.

The utilities director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in section 13-143(a), the definition *Slug load* or *discharge*. All significant industrial users (SIUs) must be evaluated within one year of being designated an SIU. The utilities director may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the utilities director may develop such a plan for any user. All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load. Also see sections 13-265 and 13-266. An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including nonroutine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the utilities director of any accidental or slug discharge, as required by section 13-266; and
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(Code 1983, § 13-72(h); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Sec. 13-178.- Limitations on private sewage disposal.

In areas where public sewer service is available, the use of privies, cesspools and septic tanks is prohibited.

(Code 1983, § 13-72(i); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Secs. 13-179—13-209.- Reserved.

Subdivision III. - Fees and Charges

[Sec. 13-210. - Fees.](#)

[Sec. 13-211. - Surcharges.](#)

[Sec. 13-212. - Pretreatment program administration charges.](#)

[Secs. 13-213—13-232. - Reserved.](#)

Sec. 13-210.- Fees.

(a) *Purpose.* It is the purpose of this subdivision to provide for the recovery of costs from users of the city's wastewater disposal system for the implementation of the program established herein. The applicable charges or fees shall be set forth in the city's schedule of charges and fees on file in the office of the city clerk.

(b) *User charges.* A user charge shall be levied on all users including, but not limited to, persons, firms, corporations or governmental entities that discharge, cause or permit the discharge of sewage into the POTW.

(1) The user charge shall reflect at least the cost of debt service, operation and maintenance (including replacement) of the POTW.

(2) Each user shall pay his proportionate cost based on volume of flow. The volume of flow used in determining the total discharge of wastewater for payment of user charges shall be based on metered water consumption as shown in the records of meter readings maintained by the city.

(3) The city manager shall review annually the sewage contributions of users, the total costs of debt service, operation and maintenance of the POTW and will make recommendations to the city council for adjustments in the schedule of charges and fees as necessary.

(4) Charges for flow to the POTW not directly attributable to the users shall be distributed among all users of the POTW based upon the volume of flow of the users.

(5) Each user shall be notified, at least annually in conjunction with the regular bill, of the rate for the user charge which is attributable to the wastewater treatment services.

(6) The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with requirements of section 204(b)(1)(A) of the Clean Water Act.

(Code 1983, § 13-73(a), (b); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Sec. 13-211.- Surcharges.

(a) All industrial users of the POTW are subject to industrial waste surcharges on discharges which exceed the following levels:

BOD	300 mg/l
TSS	250 mg/l

(1) The amount of surcharge will be based upon the mass emission rate (in pounds per day) discharged above the levels listed above. The amount charged per pound of excess will be set forth in the schedule of charges and fees.

a. The volume of flow used in determining the total discharge of wastewater for payment of surcharge shall be based on metered water consumption as shown in the records of meter readings maintained by the city; or

b. If required by the city or at the individual discharger's option, other flow monitoring devices which measure the actual volume of wastewater discharged to the sewer. Such devices shall be accessible and safely located, and the measuring system shall be installed in accordance with plans approved by the city. The metering system shall be installed and maintained at the user's expense according to arrangements that may be made with the city.

(2) Where any user procures all or part of his water supply from sources other than the city, the user shall install and maintain at his own expense a flow-measuring device of a type approved by the city.

(3) The character and concentration of the constituents of the wastewater used in determining surcharges shall be determined by samples collected and analyzed by the city and industry self monitoring. Samples shall be collected in such a manner as to be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR 136.

(b) The determination of the character and concentration of the constituents of the wastewater discharge by the utilities director or his duly appointed representatives shall be binding as a basis for charges.

(Code 1983, § 13-73(c); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Sec. 13-212.- Pretreatment program administration charges.

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

- (1) Reimbursement of costs of setting up and operating the pretreatment program;
- (2) Monitoring, inspections and surveillance procedures;
- (3) Reviewing slug control plans, including accidental and/or slug load discharge

procedures and construction plans and specifications;

(4) Permitting;

(5) Other fees as the city may deem necessary to carry out the requirements of the pretreatment program.

(Code 1983, § 13-73(d); Ord. of 4-5-1994(2); Ord. of 4-3-2001; Ord. of 10-2-2007)

Secs. 13-213—13-232.- Reserved.

Subdivision IV. - Permits

[Sec. 13-233. - Wastewater discharge permit, application and issuance.](#)

[Sec. 13-234. - Application review and evaluation.](#)

[Sec. 13-235. - Final action on significant industrial user permit applications.](#)

[Sec. 13-236. - Hearings.](#)

[Sec. 13-237. - Permit modification.](#)

[Sec. 13-238. - Permit conditions.](#)

[Sec. 13-239. - Permits duration.](#)

[Sec. 13-240. - Permit transfer.](#)

[Sec. 13-241. - Permit reissuance.](#)

[Secs. 13-242—13-260. - Reserved.](#)

Sec. 13-233.- Wastewater discharge permit, application and issuance.

(a) *Permit required.* It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the city. When requested by the utilities director, a user must submit information on the nature and characteristics of its wastewater within 30 days of the request. The utilities director is authorized to prepare a form for this purpose and may periodically require users to update this information.

(b) *Significant industrial user permits.* All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the utilities director to be significant industrial users shall obtain a significant industrial user permit within 180 days of receiving notification of the utilities director's determination. Industrial users who do not fit the significant industrial user criteria may at the discretion of the utilities director be required to obtain a wastewater discharge permit for nonsignificant industrial users.

(1) *Significant industrial user determination.* All persons proposing to discharge nondomestic wastewater, or proposing to change the volume or characteristics of an existing discharge of nondomestic wastewater shall request from the utilities director a significant industrial user determination. If the utilities director determines or suspects that the proposed discharge fits the significant industrial user criteria, he will require that a

significant industrial user permit application be filed.

(2) Significant Industrial User Permit Application

Users required to obtain a significant industrial user permit shall complete and file with the city, an application in the form prescribed by the utilities director, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within 90 days after notification of the utilities director's determination in (b)(1) above. The application shall include at a minimum:

- (A) name of industrial user;
- (B) address of industrial user;
- (C) Standard industrial classification (SIC) code(s) or expected classification and industrial user category;
- (D) wastewater flow;
- (E) types and concentrations (or mass) of pollutants contained in the discharge;
- (F) major products manufactured or services supplied;
- (G) description of existing on-site pretreatment facilities and practices;
- (H) locations of discharge points;
- (I) raw materials used or stored at the site;
- (J) flow diagram or sewer map for the industrial user;
- (K) number of employees;
- (L) operation and production schedules ; and
- (M) description of current and projected waste reduction activities in accordance with G.S. 142-215.1 (g) ;

(3) *Application signatories and certification.* All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the control authority and/or municipality as defined in section 13-143, definition *Authorized representative of the industrial user* 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 ensure 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.

(Code 1983, § 13-74(a), (b)(1)—(3); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-234.- Application review and evaluation.

(a) *Evaluation of data.* The utilities director will evaluate the data furnished by the user and may require additional information.

(1) The utilities director is authorized to accept applications for the city and shall refer all applications to the POTW staff for review and evaluation.

(2) Within 30 days of receipt, the utilities director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.

(b) *Tentative determination and draft permit.*

(1) The POTW staff shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.

(2) If the staff's tentative determination in subsection (b)(1) of this section is to issue the permit, the following additional determinations shall be made in writing:

- a. Proposed discharge limitations for those pollutants proposed to be limited;
- b. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
- c. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.

The staff shall organize the determinations made pursuant to subsections (b)(1) and (2) of this section and the city's general permit conditions into a significant industrial user permit.

(c) *Permit Supporting documentation.* The Control Authority staff shall prepare the following documents for all Significant Industrial User permits.

(1) an allocation table (AT) listing permit information for all Significant Industrial Users including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with Division approved maximum allowable loadings of the POTW , including flow , on forms or in a format provided by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.

(2) The, basis or rationale, for the pretreatment limitations, including the following:

(A) documentation of categorical determination, including documentation of any calculations used in applying categorical pretreatment standards; and

(b) documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).

(Code 1983, § 13-74(b)(4)—(6); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-235.- Final action on significant industrial user permit applications.

(a) The utilities director shall take final action on all applications not later than 90 days following receipt of a complete application.

(b) The utilities director is authorized to:

(1) Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this division and G.S. 143-215.1;

(2) Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;

(3) Modify any permit upon not less than 60 days' notice and pursuant to section 12-237;

(4) Revoke any permit pursuant to section 13-299;

(5) Suspend a permit pursuant to section 13-299;

(6) Deny a permit application when in the opinion of the utilities director such discharge may cause or contribute to pass through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.

(Code 1983, § 13-74(b)(7); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-236.- Permit modification.

(a) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed in subsections (a)(1) through (3) of this section. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance:

(1) Changes in the ownership of the discharge when no other change in the permit is indicated;

(2) A single modification of any compliance schedule not in excess of four months;

(3) Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.

(b) Within nine months of the promulgation of a national categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user subject to a national categorical pretreatment standard has not previously submitted an application for a wastewater discharge permit as required by section 13-233(b), the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable national categorical pretreatment standard.

(c) A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. 143-215.1(b) for modifications.

(Code 1983, § 13-74(b)(9); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-237.- Permit conditions.

(a) The utilities director shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this subdivision and G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:

- (1) A statement of duration (in no case more than five years);
- (2) A statement of non-transferability;
- (3) Applicable effluent limits based on categorical standards or local limits, or both;
- (4) Applicable monitoring, sampling, reporting, notification, and recordkeeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state and local law;
- (5) Requirements for notifying the POTW in the event of an accidental discharge or slug load as defined in section 13-143(a), the definition *Slug load or discharge*;
- (6) Requirements to implement a plan or other controls for prevention of accidental discharges and/or slug loads as defined in section 13-143(a), the definition *Slug load or discharge*, if determined by the utilities director to be necessary for the user;
- (7) Requirements for immediately notifying the POTW of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in 13-143(a), the definition *Slug load or discharge*. Also see sections 13-265 and 13-266;
- (8) A statement of applicable civil and/or criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.

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

- (1) Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
- (2) Limits on the instantaneous, daily and/or monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.

- (3) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
- (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
- (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment.
- (7) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
- (8) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 days where self-monitoring indicates a violation.
- (9) Compliance schedules for meeting pretreatment standards and requirements.
- (10) Requirements for submission of periodic self-monitoring or special notification reports.
- (11) Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in section 13-273 and affording the POTW director, or his representatives, access thereto.
- (12) Requirements for prior notification and approval by the utilities director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system.
- (13) Requirements for the prior notification and approval by the utilities director of any change in the manufacturing and/or pretreatment process used by the permittee.
- (14) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the terms of the permit.
- (15) Other conditions as deemed appropriate by the utilities director to ensure compliance with this division, and state and federal laws, rules, and regulations.

(Code 1983, § 13-74(b)(10); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-238.- Permits duration.

Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.

(Code 1983, § 13-74(b)(11); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-239.- Permit transfer.

Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.

(Code 1983, § 13-74(b)(12); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-240.- Permit reissuance.

A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with this subdivision a minimum of 180 days prior to the expiration of the existing permit.

(Code 1983, § 13-74(b)(13); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Secs. 13-241—13-260.- Reserved.

Subdivision V. - Reporting Requirements

[Sec. 13-261. - Baseline monitoring reports.](#)

[Sec. 13-262. - Compliance schedule progress reports.](#)

[Sec. 13-263. - Reports on compliance with categorical pretreatment standard deadline.](#)

[Sec. 13-264. - Periodic compliance reports.](#)

[Sec. 13-265. - Reports of changed conditions.](#)

[Sec. 13-266. - Reports of potential problems.](#)

[Sec. 13-267. - Reports from users exempt from permit requirement.](#)

[Sec. 13-268. - Notice of violation; repeat sampling and reporting.](#)

[Sec. 13-269. - Notification of the discharge of hazardous waste.](#)

[Sec. 13-270. - Analytical requirements.](#)

[Sec. 13-271. - Sample collection.](#)

[Sec. 13-272. - Timing.](#)

[Sec. 13-273. - Recordkeeping.](#)

[Sec. 13-274. - Compliance monitoring.](#)

[Sec. 13-275. - Confidential information.](#)

[Secs. 13-276—13-298. - Reserved.](#)

Sec. 13-261.- Baseline monitoring reports.

(a) *Baseline report of categorical pretreatment discharge.* Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the utilities director a report which contains the information listed in subsection (b) of this section. At least

90 days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the utilities director a report which contains the information listed in subsection (b) of this section. 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) *Required information.* Users described in subsection (a) of this section 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 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 utilities director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 13-270.

c. Sampling must be performed in accordance with procedures set out in section 13-271 of this division and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).

(6) *Certification.* A statement, reviewed by the user's current authorized representative as defined in section 13-143, definition *Authorized representative of the industrial user*, subsection (1)b 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 13-262.

(8) *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with section 13-233(b)(3).

(Code 1983, § 13-75(a); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-262.- Compliance schedule progress reports.

The following conditions shall apply to the compliance schedule required by section 13-261(b)(8):

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. 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;

(2) No increment referred to in subsection (1) of this section shall exceed nine months;

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

(4) In no event shall more than nine months elapse between such progress reports to the utilities director.

(Code 1983, § 13-75(b); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-263.- Reports on compliance with categorical pretreatment standard deadline.

(a) Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the utilities director a report containing the information described in sections 13-264 through 13-266.

(b) 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.

- (c) All compliance reports must be signed and certified in accordance with section 13-233(b)(3).

(Code 1983, § 13-75(c); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-264.- Periodic compliance reports.

The POTW may sample and analyze user discharges in lieu of requiring the users to conduct sampling and analysis.

(1) All significant industrial users shall, at a frequency determined by the utilities director but in no case less than twice per year during months specified by the POTW director, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in sections 13-270 and 13-271. All periodic compliance reports must be signed and certified in accordance with section 13-233(b)(3).

(2) 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.

(3) If a user subject to the reporting requirements of this subdivision monitors any pollutant more frequently than required by the utilities director, using the procedures prescribed in section 13-270, the results of this monitoring shall be included in the report.

(Code 1983, § 13-75(d); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-265.- Reports of changed conditions.

Each user must notify the utilities director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 30 days before the change. The permittee shall not begin the changes until receiving written approval from the Control Authority and /or Municipality. See section 13-266 for other reporting requirements.

(1) The utilities director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under section 13-233.

(2) The utilities director may issue a wastewater discharge permit under section 13-233 or modify an existing wastewater discharge permit under section 13-233 in response to changed conditions or anticipated changed conditions.

(3) For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of 20 percent or greater, and the discharge of any previously unreported pollutants.

(Code 1983, § 13-75(e); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-266.- 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 13-143(a), the definition *Slug load or discharge*, that may cause potential problems for the POTW, the user shall immediately telephone and notify the utilities director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(b) Within five days following such discharge, the user shall, unless waived by the utilities director, submit a detailed written report describing the cause 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 subdivision.

(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 subsection (a) of this section. 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 (SIUs) are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a nonroutine, episodic nature, a non-customary batch discharge, or a slug load as defined in section 13-143(a), the definition *Slug load or discharge*.

(Code 1983, § 13-75(f); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-267.- Reports from users exempt from permit requirement.

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the utilities director as the utilities director may require. All users classified as Non-Significant Categorical Industrial Users under section 13-143(a) shall provide appropriate reports to the utilities director as the utilities director may require. At a minimum, this shall include the Annual certification of continuing to meet the Non-Significant Industrial User Criteria as required under 40 CFR 403.12(q).

(Code 1983, § 13-75(g); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-268.- Notice of violation; repeat sampling and reporting.

(a) If sampling performed by a user indicates a violation, the user must notify the utilities director within 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 utilities director within 30 days after becoming aware of the violation. The user may also be required to resample if notified by the POTW that any sampling event from the user indicates a violation. If allowed by

the utilities director, the user is not required to resample:

- (1) If the utilities director monitors at the user's facility at least once a month; or
 - (2) If the utilities director samples between the user's initial sampling and when the user receives the results of this sampling.
- (b) If the utilities director does not require the user to perform any self-monitoring and the POTW sampling of the user indicates a violation, the utilities director shall repeat the sampling and obtain the results of the repeat analysis within 30 days after becoming aware of the violations, unless one of the following occurs:
- (1) The utilities director monitors at the user's facility at least once a month;
 - (2) The utilities director samples the user between the user's initial sampling and when the POTW receives the results of this initial sampling; or
 - (3) The POTW requires the user to perform sampling and submit the results to the utilities director within the 30-day deadline of the POTW becoming aware of the violation.

(Code 1983, § 13-75(h); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-269.- Notification of the discharge of hazardous waste.

(a) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharge during the calendar month, and an estimation of the mass and concentration of such constituents in the wastestream expected to be discharged during the following (12) months. All notifications must take place no later than 180 days before the discharge commences. The user shall not begin the discharge until receiving written approval from the city. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under section 13-265 of this ordinance. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of sections 13-261, 13-263, 13-264 of this ordinance.

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

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

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

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

(e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued there under, or any applicable Federal or State law.

(Code 1983, § 13-75(i); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-270.- 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 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR 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 the EPA and the city.. Analysis must be performed by a State certified lab for each parameter analyzed, if such certification exists for that parameter.

(Code 1983, § 13-75(j); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-271.- 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 the sample results are unrepresentative of its discharge.

(b) Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The POTW shall determine the number of grabs necessary to be representative of the user's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for BMR and 90-day compliance reports. Additionally, the utilities director may allow collection of multiple grabs during a 24-hour period which are composited prior to analysis as allowed under 40 CFR 136.

(c) Composite samples. All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-

proportional composite sampling or grab sampling is authorized by the utilities director. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

(Code 1983, § 13-75(k); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-272.- 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.

(Code 1983, § 13-75(l); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-273.- Recordkeeping.

Users subject to the reporting requirements of this subdivision shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this subdivision and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include:

- (1) The date, exact place, method, and time of sampling, and the name of the person taking the samples;
- (2) The dates analyses were performed;
- (3) Who performed the analyses;
- (4) The analytical techniques or methods used; and
- (5) The results of such analyses.

These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the utilities director.

(Code 1983, § 13-75(m); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-274.- Compliance monitoring.

(a) *Monitoring facilities.* The city requires the user to provide and operate at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems.

- (1) The monitoring facility should normally be situated on the user's premises, but the city may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.
- (2) There shall be ample room in or near such sampling manhole or facility to allow

accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

(3) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the city's requirements and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the city.

(b) *Inspection and sampling.* The city will inspect the facilities of any user to ascertain whether the purpose of this subdivision is being met and all requirements are being complied with.

(1) Persons or occupants of premises where wastewater is created or discharged shall allow the city, approval authority and EPA, or their representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties.

(2) The city, approval authority and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations.

(3) Where a user has security measures in force which would 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, personnel from the city, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

(4) Denial of the city's, approval authority's or EPA's access to the user's premises shall be a violation of this subdivision. Unreasonable delays may constitute denial of access.

(c) *Protection of sampling equipment.* No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any equipment or materials belonging to the city and used or intended to be used for the purposes of making measurements, tests, or examination and left upon the premises of a person discharging wastes into the sanitary sewer. Any person violating this provision shall be subject to civil penalties as set forth under section 13-300 or prosecution for damaging or tampering with public property .

(d) *Search warrants.* If the city, approval authority, or EPA has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this subdivision, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the city, approval authority, or EPA may seek issuance of a search warrant from the magistrate of the county.

(Code 1983, § 13-76; Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-275.- Confidential information.

(a) Information and data provided by an industrial user to the POTW director pursuant to this ordinance identifying the nature and frequency of a discharge, shall be available to the public without restriction. All other information which may be submitted by an industrial user to the POTW Director in connection with any required reports shall also be available to the public unless the industrial user or other interested person specifically identifies the information as confidential upon submission and is able to demonstrate to the satisfaction of the POTW Director that the disclosure of such information or a particular part thereof to the general public would divulge methods or processes entitled to protection as trade secrets.

(b) Information provided by an industrial user to the POTW Director that is determined to be entitled to confidential treatment shall be made available upon written request to the Division of Water Quality or any state agency for uses related to the Pretreatment Program, the National Pollutant Discharge Elimination System (NPDES) Permit, collection system permit, stormwater permit, and/or Non-discharge permit, and for uses related to judicial review or enforcement proceedings involving the person furnishing the report.

(c) Information and data received by the Division or other state agency under paragraph (b) above shall be subject to the processes set forth in G.S. 143-215.3C.

(Code 1983, § 13-77; Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Secs. 13-276—13-298.- Reserved.**DIVISION 3. - ENFORCEMENT**

[Sec. 13-299. - Administrative remedies.](#)

[Sec. 13-300. - Civil penalties.](#)

[Sec. 13-301. - Other available remedies.](#)

[Sec. 13-302. - Remedies nonexclusive.](#)

[Sec. 13-303. - Annual publication of significant noncompliance.](#)

[Sec. 13-304. - Affirmative defenses to discharge violations.](#)

[Secs. 13-305—13-326. - Reserved.](#)

Sec. 13-299.- Administrative remedies.

(a) *Notification of violation.* Whenever the utilities director finds that any industrial user has violated or is violating this article, wastewater permit, or any prohibition, limitation or requirements contained therein or any other pretreatment requirement, the utilities director may serve upon such person a written notice stating the nature of the violation. Within 30 days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the city by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of

violation.

(b) *Consent orders.* The utilities director is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to subsection (d) of this section.

(c) *Show cause hearing.* The utilities director may order any industrial user who causes or is responsible for an unauthorized discharge, has violated this article, or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken.

(1) In the event the utilities director determines that a show cause order should be issued, a notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken.

(2) The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten days before the hearing. Service may be made on any agent or officer of a corporation.

(3) The utilities director shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

(4) A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under section 13-300 nor is any action or inaction taken by the utilities director under this section subject to an administrative appeal under section 13-236.

(d) *Administrative orders.* When the utilities director finds that an industrial user has violated or continues to violate this article, permits or orders issued hereunder, or any other pretreatment requirement, the utilities director may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

(1) Immediately comply with all requirements;

(2) Comply in accordance with a compliance time schedule set forth in the order;

(3) Take appropriate remedial or preventive action in the event of a continuing or threatened violation;

(4) Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

(e) *Emergency suspensions.*

(1) The utilities director may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or

welfare of persons or the environment, interferes with the POTW or causes the POTW to violate any condition of its NPDES or nondischarge permit.

(2) Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated.

(3) In the event of a failure to comply voluntarily with the suspension order, the utilities director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals.

(4) The utilities director shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the utilities director prior to the date of the above-described hearing.

(f) *Termination of permit or permission to discharge.*

(1) The utilities director may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:

- a. Failure to accurately report the wastewater constituents and characteristics of the user's discharge;
- b. Failure to report significant changes in operations, or wastewater constituents and characteristics;
- c. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or
- d. Violation of conditions of the permit or permission to discharge, conditions of this subdivision or any applicable state and federal regulations.

(2) Noncompliant industrial users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under this subdivision why the proposed action should not be taken.

(Code 1983, § 13-78(a); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-300.- Civil penalties.

(a) Any user who is found to have failed to comply with any provision of this division, or the orders, rules, regulations and permits issued hereunder, may be assessed a civil penalty of up to twenty-five thousand dollars (\$25,000.00) per day per violation.

(b) Penalties between \$10,000.00 and \$25,000.00 per day per violation may be assessed against the violator only if:

- (1) For any class of violation, a civil penalty has been imposed against the violator within the five years preceding the violation; or
 - (2) In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this article, or the orders rules, regulations and permits issued hereunder, only if the utilities director determines that the violation was intentional and a civil penalty has been imposed against the violator within the five years preceding the violation.
- (c) In determining the amount of the civil penalty, the utilities director shall consider the following:
- (1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
 - (2) The duration and gravity of the violation;
 - (3) The effect on ground or surface water quantity or quality or on air quality;
 - (4) The cost of rectifying the damage;
 - (5) The amount of money saved by noncompliance;
 - (6) Whether the violation was committed willfully or intentionally;
 - (7) The prior record of the violator in complying or failing to comply with the pretreatment program;
 - (8) The costs of enforcement to the city.
- (d) Appeals of civil penalties assessed in accordance with this section shall be as provided in section 13-304.

(Code 1983, § 13-78(b); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-301.- Other available remedies.

Remedies, in addition to those previously mentioned in this division, are available to the utilities director who may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:

- (1) *Criminal violations.* The district attorney for the Alamance County Judicial District (15A) may, at the request of the city, prosecute noncompliant users who violate the provisions of G.S. 143-215.6B.
- (2) *Injunctive relief.* Whenever a user is in violation of the provisions of this division or an order or permit issued hereunder, the utilities director, through the city attorney, may petition the General Court of Justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.
- (3) *Water supply severance.* Whenever an industrial user is in violation of the provisions

of this division or an order or permit issued hereunder, water service to the industrial user may be severed and service will only recommence, at the user's expense, after the user has satisfactorily demonstrated the ability to comply.

(4) Public Nuisances. Any violation of the prohibitions or effluent limitations of this ordinance or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the POTW Director. Any person(s) creating a public nuisance shall be subject to the provisions of the appropriate ordinances of the city governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying said nuisance.

(Code 1983, § 13-78(c); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-302.- Remedies nonexclusive.

The remedies provided for in this division are not exclusive. The utilities director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the utilities director may take other action against any user when the circumstances warrant. Further, the utilities director is empowered to take more than one enforcement action against any noncompliant user. It is further provided, when appropriate, that each day's continuing violation shall be deemed a separate and distinct offense.

(Code 1983, § 13-78(d); Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Sec. 13-303.- Annual publication of significant noncompliance.

At least annually, the utilities director shall publish in the largest daily newspaper circulated in the service area a list of those industrial users which were found to be in significant noncompliance, also referred to as reportable noncompliance in 15A NCAC 2H .0903(b)(10), with applicable pretreatment standards and requirements, during the previous 12 months.

(Code 1983, § 13-79; Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Section 13- 304 Adjudicatory Hearings

(1) Initial Adjudicatory Hearing. An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, a permittee/user assessed a civil penalty under section 13-300 or one issued an administrative order under section 13-299 shall have the right to an adjudicatory hearing before the POTW Director or other hearing officer appointed by the POTW Director upon making written demand, identifying the specific issues to be contested, to the POTW Director within 30 days following receipt of the significant industrial user permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding and further appeal is barred. For modified permits, only those parts of the permits being modified may be adjudicated. The hearing officer shall make a final decision on the contested permit, penalty, or order within 45 days of the receipt of the demand for a hearing. The POTW Director shall transmit a copy of the hearing officer's decision by registered or certified mail as described in paragraph (3) below. The terms

and conditions of a permit under appeal shall be as follows:

- (a) New Permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
 - (b) Renewed Permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
 - (c) Terminated permits. Upon appeal, including judicial review in the General courts of Justice, of a terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
- (2) Final Appeal Hearing. Any decision of a hearing officer made as a result of an adjudicatory hearing held under paragraph (1) above may be appealed to the City Council serving the City of Graham upon filing a written demand within 10 days of receipt of notice of the decision. Hearings held under this Subdivision shall be conducted in accordance with local hearing procedures. Failure to make written demand within the time specified herein shall bar further appeal. The Council serving the city shall make a final decision on the appeal within 90 days from receipt of the demand filed under paragraph (1) and shall transmit a written copy of its decision by registered or certified mail as described in paragraph (3) below. The decision is a final decision for the purposes of seeking judicial review.
- (3) Official Record. When a final decision is issued under paragraph (2) above, the Council serving the city shall prepare an official record of the case that includes:
 - (a) All notices, motions, and other like pleadings;
 - (b) A copy of all documentary evidence introduced;
 - (c) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.
 - (d) A copy of the final decision of the Council serving the city.
- (4) Judicial Review. Any person against whom a final order or decision of the Council serving the city is entered, pursuant to the hearing conducted under paragraph (2) above, may seek judicial review of the order or decision by filing a written request for review by the Superior Court of Alamance County within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter along with a copy to the city. Within 30 days after receipt of the copy of the written request for review by the Court, the Council serving the city shall transmit to the reviewing court the original or a certified copy of the official record.

Sec. 13-305.- Affirmative defenses to discharge violations.(a) *Upset.*

(1) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (a)(2) of this section are met.

(2) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and the user can identify the cause of the upset;

b. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and

c. The user has submitted the following information to the utilities director within 24 hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five days:

1. A description of the indirect discharge and cause of noncompliance;

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

3. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(3) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(4) 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.

(5) 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.

(b) *Prohibited discharge standards defense.* A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section 13-170(a) or the specific prohibitions in section 13-170(b)(2), (3) and (5)—(7), 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:

(1) 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

(2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

(c) *Bypass.*

(1) 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 ensure efficient operation. These bypasses are not subject to the provision of subsections (c)(2) and (3) of this section.

(2) If a user knows in advance of the need for a bypass, it shall submit prior notice to the utilities director, at least ten days before the date of the bypass, if possible.

(3) A user shall submit oral notice to the utilities director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass.

a. A written submission shall also be provided within five days of the time the user becomes aware of the bypass.

b. 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.

c. The utilities director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(4) Bypass is prohibited, and the utilities director 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 subsection (c)(2) of this section.

(5) The utilities director may approve an anticipated bypass, after considering its adverse effects, if the utilities director determines that it will meet the three conditions listed in

subsection (c)(3) of this section.

(Code 1983, § 13-80; Ord. of 4-5-1994(2); Ord. of 10-2-2007)

Section 13-306 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 13-307 Conflict.

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

Secs. 13-308—13-326.- Reserved.

Upon Motion by Council Member Euliss, Second by Mayor Pro Tem Linens, the Council Adopted an Ordinance Amending and Rewriting The City of Graham Code of Ordinances Chapter 13 Utilities, Article IV- Sewers Generally – Sewer Use Ordinance. All Aye.

Issues Not Included on Tonight's Agenda.

Sammy Johnston of 1212 Raspberry Run, Graham addressed City Council and requested that Council strongly consider building a City of Graham fire substation. He stated that he did not believe that the Fire Chief had been willing to go out and look for land for a substation.

City Manager Rollins responded that Fire Chief Andrews had looked at several locations and has hired an engineer to look at 2 sites and consider 1 more site for the purpose of a fire substation.

Mr. Johnston advised the Council that he currently had issue with Mayor Peterman which dates back to when he was a coworker with Mayor Peterman in the Fire Department.

City Manager Rollins advised City Council that the Financial Officer would soon be submitting the Financial Report.

Council Member Euliss voiced his support in taking issue with Mayor Peterman.

There being no further business, Council Member Turner moved to adjourn, followed by Mayor Pro Tem Linens, all aye.

Kimberly Harris, City Clerk