

Prime Sponsor(s): Mr. Sheldon, Mr. Carter  
Requested by: Public Works  
Date of Introduction: July 9, 2024

**ORDINANCE NO. 24-123**

**TO AMEND *NEW CASTLE COUNTY CODE*,  
CHAPTER 38 (“UTILITIES”) REGARDING  
ARTICLE 2 (“SEWERS AND SEWAGE DISPOSAL”) AND  
ARTICLE 3 (“PROHIBITIONS, ENFORCEMENT, AND PENALTIES”)**

1       **WHEREAS**, *New Castle County Code*, Chapter 38 regulates discharges to the sanitary  
2 sewer system and includes the U. S. Environmental Protection Agency’s (“EPA”) approved local  
3 limits for the discharge of certain constituents into wastewater (“Local Limits”); and  
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5       **WHEREAS**, Local Limits are set to ensure that wastewater discharged into the sanitary  
6 sewer system does not contain pollutants at levels that could pass through, interfere with, or be  
7 otherwise incompatible with Publicly Owned Treatment Works (“POTW”); and  
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9       **WHEREAS**, as the County is a jurisdiction that contributes wastewater to the Wilmington  
10 Wastewater Treatment Plant (“WWTP”), the County must update Chapter 38 to reflect any  
11 revisions by EPA to the Local Limits that govern discharges to the WWTP; and  
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13       **WHEREAS**, earlier this year, EPA reviewed and approved modifications to the Local  
14 Limits, necessitating revisions to Chapter 38 to reflect the County’s share of those Local Limits;  
15 and  
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17       **WHEREAS**, in addition to revising the Local Limits, the County wishes to update certain  
18 other pretreatment provisions found in Chapter 38 to reflect EPA model language and best  
19 practices; and  
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21       **WHEREAS**, County Council has determined that the provisions of this Ordinance  
22 substantially advance and are reasonably and rationally related to legitimate governmental  
23 interests, including promoting the public health, safety, welfare and quality of life of present and  
24 future in habitants of New Castle County.  
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26       **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**  
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28       Section 1. *New Castle County Code* Chapter 38 (“Utilities”), Article 2 (“Sewers and  
29 Sewage Disposal”), Division 38.02.700 (“Regulation of non-domestic wastewater discharges into  
30 the public sewer system”) is hereby amended by adding the material that is underlined and  
31 deleting the material with strikethroughs, as set forth below:  
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33       **Sec. 38.02.701. Definitions.**  
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35       The following words, terms and phrases, when used in this Division, shall have the  
36 meanings ascribed to them in this Section, except where the context clearly indicates a  
37 different meaning:  
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...

39 Authorized or duly authorized representative means the following: shall be defined as  
40 under Code of Federal Regulations (CFR), 40 CFR 403.12(k)(1)(1)-(3).

41 A. If the user is a corporation:

- 42 1. The president, secretary, treasurer, or a vice-president of the corporation in  
43 charge of a principal business function, or any other person who performs similar  
44 policy or decision-making functions for the corporation; or
- 45 2. The manager of one or more manufacturing, production, or operating facilities,  
46 provided the manager is authorized to make management decisions that govern  
47 the operation of the regulated facility including having the explicit or implicit duty  
48 of making major capital investment recommendations, and initiate and direct other  
49 comprehensive measures to assure long-term environmental compliance with  
50 environmental laws and regulations; can ensure that the necessary systems are  
51 established or actions taken to gather complete and accurate information for  
52 individual wastewater discharge permit requirements; and where authority to sign  
53 documents has been assigned or delegated to the manager in accordance with  
54 corporate procedures.

55 B. If the user is a partnership or sole proprietorship: a general partner or proprietor,  
56 respectively.

57 C. If the user is a Federal, State, or local governmental facility: a director or highest  
58 official appointed or designated to oversee the operation and performance of the  
59 activities of the government facility, or his or her designee.

60 D. The individuals described in paragraphs A through C, above, may designate a duly a  
61 uthorized representative if the authorization is in writing, the authorization specifies the  
62 individual or position responsible for the overall operation of the facility from which the  
63 discharge originates or having overall responsibility for environmental matters for the  
64 company, and the written authorization is submitted to the General Manager.

65 ...

66 Categorical industrial user means an industrial user subject to a categorical pretreatment  
67 standard or categorical standard.

68 Categorical pretreatment standard or categorical standard means standards specifying the  
69 quantity, concentration, or pollutant properties of pollutants that may be discharged to POTWs.  
70 EPA promulgates pretreatment standards for specific industry categories in accordance with  
71 CWA section 307. These standards are codified in 40 CFR Chapter I, Subchapter N, Parts  
72 405-471.

73 ...

74 Discharge or indirect discharge means the introduction of pollutants into a POTW from any  
75 non-domestic source as regulated under the Act. ~~includes deposit, conduct, drain, emit, throw,~~  
76 ~~run, allow, seep or otherwise release or dispose of or allow, permit or suffer any of these acts~~  
77 ~~or omissions.~~

78 ...

79 Interference means a discharge which, alone or in conjunction with a discharge or  
80 discharges from other sources, inhibits or disrupts the POTW, its treatment processes or  
81 operations or its sludge processes, use or disposal and hence causes a violation of the  
82 County's POTW's NPDES permit or prevents sewage sludge use or disposal in compliance  
83 with any federal, State or local statutory/regulatory provisions or permits.

84 ...

85 New source means:

86 A. ~~Any~~ any building, structure, facility or installation from which there is (or may be) a  
87 discharge of pollutants, the construction of which is commenced after the publication of  
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89 proposed national pretreatment standards under Section 307(c) of the federal Clean  
90 Water Act which will be applicable to such source if such standards are thereafter  
91 promulgated in accordance with ~~Section 307(c) of the Act.~~ that section, provided that:

- 92 1. The building, structure, facility or installation is constructed at a site at which no  
93 other source is located; or
- 94 2. The building, structure, facility or installation totally replaces the process or  
95 production equipment that causes the discharge of pollutants at an existing  
96 source; or
- 97 3. The production or wastewater generating processes of the building, structure,  
98 facility or installation are substantially independent of an existing source at the  
99 same site. In determining whether these are substantially independent, factors  
100 such as the extent to which the new facility is integrated with the existing plant,  
101 and the extent to which the new facility is engaged in the same general type of  
102 activity as the existing source should be considered.

103 B. Construction on a site at which an existing source is located results in a modification  
104 rather than a new source if the construction does not create a new building, structure,  
105 facility or installation meeting the criteria of paragraphs (A)(2) or (A)(3) of this section,  
106 but otherwise alters, replaces, or adds to existing process or production equipment.

107 C. Construction of a new source as defined under this paragraph has commenced if the  
108 owner or operator has:

- 109 1. Begun, or caused to begin as part of a continuous onsite construction program:
  - 110 a. Any placement, assembly, or installation of facilities or equipment; or
  - 111 b. Significant site preparation work including clearing, excavation, or  
112 removal of existing buildings, structures, or facilities which is necessary  
113 for the placement, assembly, or installation of new source facilities or  
114 equipment; or
- 115 2. Entered into a binding contractual obligation for the purchase of facilities or  
116 equipment which are intended to be used in its operation within a reasonable  
117 time. Options to purchase or contracts which can be terminated or modified  
118 without substantial loss, and contracts for feasibility, engineering, and design  
119 studies do not constitute a contractual obligation under this paragraph.

120 ...

121 *Pass through* means a discharge which exits the POTW into waters of the United States in  
122 quantities or concentrations which, alone or in conjunction with a discharge or discharges from  
123 other sources, is a cause of a violation of any requirement of the ~~County's~~ POTW's NPDES  
124 permit, including an increase in the magnitude or duration of a violation.

125 ...

126 *Publicly owned treatment works* or *POTW* means any devices or systems owned by a  
127 municipality (as defined by section 502(4) of the Act) used in the storage, conveyance,  
128 treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature.  
129 It also includes sewers, pipes and other conveyances only if they convey wastewater to a  
130 POTW treatment plant. The term also means the municipality which has jurisdiction over the  
131 indirect discharges to and the discharges from such a treatment works.

132 ...

133 *Significant industrial user* means:

- 134 (1) any industrial user (IU) subject to ~~Environmental Protection Agency~~ Environmental Protection Agency categorical  
135 pretreatment standards; or
- 136 (2) any ~~noncategorical~~ noncategorical industrial user that:

- a. discharges twenty-five thousand (25,000) gallons per day or more of process wastewater to the ~~sewer~~ POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); or ~~any user~~
- b. that contributes a process waste stream which makes up five (5) percent or more of the average dry-weather hydraulic or organic capacity of the POTW treatment plant; or
- c. ~~any user~~ is designated as significant by the General Manager on the basis that the user has a reasonable potential for adversely affecting the POTW's treatment plant's operation or for violating any pretreatment standard or requirement.

*Significant noncompliance* means any one (1) or more of the following:

- A. Chronic violations of wastewater discharge limits in which sixty-six (66) percent or more of all of the measurements taken for the same pollutant parameter during a six (6) month period ~~equal or exceed~~ (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous permit limits for the same pollutant parameter.
- ...
- E. Failure to meet, within ninety (90) calendar days after a schedule date, a compliance schedule milestone contained in the wastewater discharge permit or enforcement order for starting construction, completing construction or attaining final compliance.
- F. Failure to provide within forty-five (45) calendar days after the due date, any required reports such as baseline monitoring reports, ninety (90) day compliance reports, compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance schedules.
- ...

*Slug load* or *slug* means any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in Section 38.02.702 of this Code or any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or a noncustomary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits or permit conditions.

**Sec. 38.02.702. Prohibited discharges.**

No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements. It shall also be unlawful for any person to discharge or permit the discharge or infiltration into any public sewer any of the following:

- C. Any water or wastes that contain more than ten (10) mg/l of hydrogen sulfides. in the liquid phase. The County reserves the right to require installation of either vapor phase and or liquid phase on-line monitoring equipment if a hydrogen sulfide or other vapor phase constituent source is suspected.
- ...
- J. Any liquid having a pH lower than 6.0 or higher than 9.0 or having any property capable of causing damage or hazard to structures, equipment ~~and or~~ personnel of the ~~sewer works~~ POTW. pH deviations between 5.0 and 11.0 shall be permitted for a total of ten (10) percent of the time in an eight (8) hour work shift, provided the user

185 installs and operates a pH-monitoring device to continuously monitor and record the  
186 pH of the discharge.

187 ...

- 188 L. Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a
- 189 discharge at a flow rate and/or pollutant concentration which, either singly or by
- 190 interaction with other pollutants, will cause interference with the POTW.
- 191 M. Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly
- 192 or by interaction with other wastes, are sufficient to create a public nuisance or a
- 193 hazard to life, or to prevent entry into the sewers for maintenance or repair.
- 194 N. Wastewater which imparts color which cannot be removed by the treatment process,
- 195 such as, but not limited to, dye wastes and vegetable tanning solutions, which
- 196 consequently imparts color to the treatment plant's effluent, thereby violating the
- 197 County or City of Wilmington's NPDES permit.
- 198 O. Wastewater containing any radioactive wastes or isotopes except in compliance with
- 199 applicable state or federal regulations.
- 200 P. Sludges, screenings, or other residues from the pretreatment of industrial wastes.
- 201 Q. Wastewater causing, alone or in conjunction with other sources, the treatment plant's
- 202 effluent to fail toxicity test.
- 203 R. Detergents, surface-active agents, or other substances in quantities that cause
- 204 excessive foaming in the POTW.
- 205 S. Wastewater causing two readings on an explosion hazard meter more than five
- 206 percent or any single reading over ten percent of the lower explosive limit of the meter
- 207 at the point of discharge into the POTW, or at any point in the POTW. The County
- 208 reserves the right to require installation of either vapor phase and or liquid phase on-
- 209 line monitoring equipment if a hydrogen sulfide or other vapor phase constituents
- 210 source is suspected.

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

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215 **Sec. 38.02.703. Maximum constituents.**

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217 A. Limitations of concentrations and maximum allowable industrial loadings. The thirty (30)
- 218 day average concentration in wastewater of any of the ~~following below~~ constituents shall
- 219 be limited to the ~~following concentrations~~ listed below for dischargers in the Middletown-
- 220 Odessa-Townsend service area. The maximum allowable industrial loadings for the
- 221 Wilmington service area below are established to protect against pass through and
- 222 interference. Maximum allowable industrial loadings may be allocated on a mass- or
- 223 concentration-basis through individual wastewater discharge permits or other control
- 224 mechanisms (see also Section 38.02.704):

Constituent	Industrial Point Source		
	Local Limit Middletown-Odessa- Townsend Service (30-Day Average, mg/l)	In Area	Maximum Allowable Industrial Loading In Wilmington Service Area (30 Day Average, mg/l) (lb/day)

Arsenic	1.00	0.09-2.69
Cadmium	0.015	0.07 2.53
Chromium, Total	1.50	4.00 175.63
Chromium, VI	0.50	—
Copper	1.0	0.94 37.29
Lead	3.00	1.94 22.07
Mercury	0.001	0.0057 0.33
<u>Molybdenum</u>	=	18.42
Nickel	1.00	1.00 24.78
Selenium	—	0.65 6.29
Silver	0.015	—
Zinc	1.00	3.49 64.99
Ammonia as Nitrogen	35.00	35.00 26,000
TKN	15	—
Phosphorus	45	—
Cyanide, Total	—	0.49 31.73
PCBs	Non-Detectable	—
Phenolics	10.00	10.00 4,520
BODs	350	500 120,667
<u>CBODs</u>		88,667
Total Suspended solids (TSS)	500	500 110,000

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G. *General requirements.*  
1. All industrial users shall:  
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231 c. Notify the County and POTW immediately of any slugs or slug loadings in accordance  
232 with 40 CFR 403.12.

233 i. In the case of any discharge, including, but not limited to, accidental discharges,  
234 discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a slug  
235 discharge or slug load, that might cause potential problems for the POTW, the user  
236 shall immediately telephone and notify the POTW of the incident. This notification shall  
237 include the location of the discharge, type of waste, concentration and volume, if  
238 known, and corrective actions taken by the user.

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240 ii. Within five business days following such discharge, the user shall, unless waived by  
241 the POTW, submit a detailed written report describing the cause(s) of the discharge  
242 and the measures to be taken by the user to prevent similar future occurrences. Such  
243 notification shall not relieve the user of any expense, loss, damage, or other liability  
244 which might be incurred as a result of damage to the POTW, natural resources, or any  
245 other damage to person or property; nor shall such notification relieve the user of any  
246 fines, penalties, or other liability which may be imposed pursuant to this article.

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248 iii. A notice shall be permanently posted on the user's bulletin board or other prominent  
249 place advising employees who to call in the event of a discharge described in  
250 subsection (i). Employers shall ensure that all employees, who could cause such a  
251 discharge to occur, are advised of the emergency notification procedure.

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253 iv. Significant industrial users are required to notify the POTW immediately of any  
254 changes at its facility affecting the potential for a slug discharge.

255 2. All users to which the National Pretreatment Standards apply shall submit BMRs in  
256 accordance with 40 CFR § 403.12.

257 H. The General Manager may develop Best Management Practices (BMPs), by ordinance or  
258 in individual wastewater discharge permits, to implement local limits and the requirements  
259 of Section 38.02.702.

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261 **Sec. 38.02.704. Wastewater discharge permits.**

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265 D. *Permit conditions.* Wastewater discharge permits shall be expressly subject to all sections  
266 of this Division and all other regulations, user charges and fees established by the County.  
267 The conditions of wastewater discharge permits shall be uniformly enforced by the General  
268 Manager. The General Manager may deny or condition new or increased contributions of  
269 pollutants or changes in the nature of pollutants to the POTW by industrial users where  
270 such contributions do not meet applicable pretreatment standards and requirements or  
271 where such contributions would cause the POTW to violate its NPDES permit. Wastewater  
272 discharge permits shall contain the following:

- 273 1. A statement of duration including issuance date, effective date, and expiration date.
- 274 2. Effluent limits, including ~~l~~limits on the average and maximum wastewater constituents  
275 and characteristics, consistent with the applicable discharge standards in Section  
276 38.02.703 and the monitoring frequency established for the discharge.
- 277 3. Limits on rate and time of discharge or requirements for flow regulation.
- 278 4. Requirements for installation of inspection and sampling facilities.
- 279 5. Pretreatment requirements, including national pretreatment standards.

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6. Specifications for monitoring programs which may include sampling locations, frequency and method of sampling, number, types and standards for tests and reporting schedule.
  7. A statement of applicable civil and criminal penalties for violation(s) of the permit as specified in Section 38.03.003 and the pretreatment program enforcement response plan.
  8. Requirements for maintaining plant records relating to wastewater discharge and for providing access to the records for inspecting and copying.
  9. Where appropriate, compliance schedules containing increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment or other means required for the discharger to meet the applicable discharge standards (e.g., hiring an engineer, completing preliminary plans, executing contracts, etc.). Increments of progress shall not exceed nine (9) months.
  10. The requirement to notify the County in advance of any planned significant change in the volume or character of pollutants in the discharge, or to notify the County immediately after discovery of any unplanned significant change.
  11. A statement of nontransferability of the permit.
  12. The requirement that all users shall notify the General Manager of any significant changes to the user's operations or system that may affect the potential for slug discharges at least ninety (90) days before the change.
  13. The requirement to develop and implement a slug control plan if required by the General Manager.
  14. Best Management Practices, when applicable.
  15. The requirement to notify the County in the event sampling performed by the user indicates a violation.
  15. Other conditions as deemed appropriate by the General Manager to ensure compliance.

308 E. Reporting requirements.

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3. ~~Filing of periodic discharge/compliance progress reports. The discharge report may include, but not be limited to wastewater volume rates of flow, constituent concentrations and mass emission rates, compliance with Best Management Practices, hours of operation, number of employees, or other information which relates to the wastewater discharge to the sewers. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the General Manager a report containing the information described in Subsection B. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), periodic reports on continued compliance 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, the report shall include the actual average production rate for the appropriate sampling period. The IU shall sign and certify all compliance reports in accordance with Subsection B.9; and, not later than fourteen (14) days following each date in the schedule and the final date for compliance, the IU shall submit its progress reports on the compliance schedules in accordance with~~

329 Subsections B.10, D.9 and this Subsection. Periodic Compliance Reports. All s  
330 ignificant industrial users must, at a frequency determined by the General Manager,  
331 submit no fewer than twice per year (June and December or on dates specified)  
332 reports indicating the nature, concentration of pollutants in the discharge which are  
333 limited by pretreatment standards and the measured or estimated average and  
334 maximum daily flows for the reporting period. In cases where the pretreatment s  
335 tandard requires compliance with a Best Management Practice (BMP) or pollution  
336 prevention alternative, the user must submit documentation required by the General  
337 Manager or the pretreatment standard necessary to determine the compliance status  
338 of the user.

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- 340 5. Baseline Monitoring Reports. Within either one hundred eighty (180) calendar days  
341 after the effective date of a categorical pretreatment standard, or the final  
342 administrative decision on a category determination under 40 CFR 403.6(a)(4),  
343 whichever is later, existing categorical industrial users currently discharging to or  
344 scheduled to discharge to the POTW shall submit to the General Manager a report  
345 which contains the information listed below. At least ninety (90) calendar days prior to  
346 commencement of their discharge, new sources, and sources that become categorical  
347 industrial users subsequent to the promulgation of an applicable categorical standard,  
348 shall submit to the General Manager a report which contains the information listed  
349 below. A new source shall report the method of pretreatment it intends to use to meet  
350 applicable categorical standards. A new source also shall give estimates of its  
351 anticipated flow and quantity of pollutants to be discharged. Users described above  
352 shall submit the information set forth below (as described in 40 CFR 403.12(b)).  
353 a. All information required in 38.02.704.B paragraphs 1-8 and 12.  
354 b. Measurement of pollutants.  
355 i. The user shall identify the pretreatment standards applicable to each regulated  
356 process; in addition, the user shall submit the results of sampling and analysis  
357 identifying the nature and concentration (or mass, where required by the standard  
358 or General Manager) of regulated pollutants in the discharge from each regulated  
359 process. Both daily maximum and average concentration (or mass, where  
360 required) shall be reported. The sample shall be representative of daily  
361 operations. In cases where the sandard requires compliance with a Best  
362 Management Practice or pollution prevention alternative, the user shall submit  
363 documentation as required by the General Manager or the applicable standards to  
364 determine compliance with the standard.  
365 ii. The user shall take a minimum of one representative sample to compile that  
366 data necessary to comply with the requirements of this paragraph.  
367 iii. Samples should be taken immediately downstream from pretreatment facilities  
368 if such exist or immediately downstream from the regulated process if no  
369 pretreatment exists. If other wastewaters are mixed with the regulated wastewater  
370 prior to pretreatment the user should measure the flows and concentrations  
371 necessary to allow use of the combined wastestream formula in 40 CFR 403.6(e)  
372 to evaluate compliance with the pretreatment standards. Where an alternate  
373 concentration or mass limit has been calculated in accordance with 40 CFR  
374 403.6(e) this adjusted limit along with supporting data shall be submitted to the  
375 General Manager.  
376 iv. Sampling and analysis shall be performed in accordance with the techniques  
377 prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136  
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379 does not contain sampling or analytical techniques for the pollutant in question, or  
380 where the Administrator determines that the part 136 sampling and analytical  
381 techniques are inappropriate for the pollutant in question, sampling and analysis  
382 shall be performed by using validated analytical methods or any other applicable  
383 sampling and analytical procedures, including procedures suggested by the  
384 POTW or other parties, approved by the EPA.

385 v. The General Manager may allow the submission of a baseline report which  
386 utilizes only historical data so long as the data provides information sufficient to  
387 determine the need for industrial pretreatment measures.

388 vi. The baseline report shall indicate the time, date and place of sampling and  
389 methods of analysis, and shall certify that such sampling and analysis is  
390 representative of normal work cycles and expected pollutant discharges to the  
391 POTW.

392 c. *Compliance Certification.* A statement, reviewed by the user's authorized r  
393 epresentative as defined in Section 38.02.701 and certified by a qualified  
394 professional, indicating whether pretreatment standards are being met on a  
395 consistent basis, and, if not, whether additional operation and maintenance  
396 (O&M) and/or additional pretreatment is required to meet the pretreatment s  
397 tandards and requirements.

398 d. *Compliance Schedule.* If additional pretreatment and/or O&M will be required to  
399 meet the pretreatment standards, the shortest schedule by which the user will  
400 provide such additional pretreatment and/or O&M must be provided. The  
401 completion date in this schedule shall not be later than the compliance date  
402 established for the applicable pretreatment standard. A compliance schedule  
403 pursuant to this Section must meet the requirements set out in subsection 6  
404 below.

405 e. *Signature and Report Certification.* All baseline monitoring reports must be  
406 certified with the statement in Section 38.02.704.E.1. of this ordinance and signed  
407 by an authorized representative as defined in Section 38.02.701.

408 6. *Compliance Schedule Progress Reports.* The following conditions shall apply to the  
409 compliance schedule required by Section 38.02.704.E.5.d. of this ordinance:

410 a. *The schedule shall contain progress increments in the form of dates for the*  
411 *commencement and completion of major events leading to the construction and*  
412 *operation of additional pretreatment required for the user to meet the applicable p*  
413 *retreatment standards (such events include, but are not limited to, hiring an*  
414 *engineer, completing preliminary and final plans, executing contracts for major*  
415 *components, commencing and completing construction, and beginning and*  
416 *conducting routine operation):*

417 b. *No increment referred to above shall exceed nine (9) months;*

418 c. *The user shall submit a progress report to the General Manager no later than*  
419 *fourteen (14) calendar days following each date in the schedule and the final date*  
420 *of compliance including, as a minimum, whether or not it complied with the*  
421 *increment of progress, the reason for any delay, and, if appropriate, the steps*  
422 *being taken by the user to return to the established schedule; and*

423 d. *In no event shall more than nine (9) months elapse between such progress*  
424 *reports to the General Manager.*

425 7. *Reports on Compliance with Categorical Pretreatment Standard Deadline.* Within  
426 *ninety (90) calendar days following the date for final compliance with applicable*  
427 *categorical pretreatment standards, or in the case of a new source following*

428 commencement of the introduction of wastewater into the POTW, any user subject to  
429 such pretreatment standards and requirements shall submit to the General Manager a  
430 report containing the information described in paragraphs 5.a, 5.b, and 5.c. of this  
431 subsection. For users subject to equivalent mass or concentration limits established in  
432 accordance with the procedures in 40 CFR 403.6(c), this report shall contain a  
433 reasonable measure of the user's long-term production rate. For all other users  
434 subject to categorical pretreatment standards expressed in terms of allowable  
435 pollutant discharge per unit of production (or other measure of operation), this report  
436 shall include the user's actual production during the appropriate sampling period. All  
437 compliance reports must be signed and certified. All sampling will be done in  
438 conformance with Section 38.02.706.C.

- 439 F. *Duration of permit.* All wastewater permits shall contain a statement of duration. Permits  
440 shall be issued for a specified time period, not to exceed five (5) years. A permit shall be  
441 issued for a period of not less than a year or may be stated to expire on a specific date.  
442 The terms and conditions of the permit may be subject to modifications and change by the  
443 General Manager during the life of the permit as limitations or requirements are modified  
444 and changed. The user shall be informed of any proposed changes in the permit at least  
445 ninety (90) calendar days prior to the effective date of change. Every user shall be allowed  
446 a comment period relating to any of the proposed changes in his or her permit and which  
447 shall be the first forty-five (45) calendar days of the ninety (90) calendar day period prior to  
448 the effective date of change. Any changes or new conditions in the permit shall include a  
449 reasonable time schedule for compliance.

- 450 ...  
451 J. Permit reissuance. A user with an expiring individual wastewater discharge permit shall  
452 apply for individual wastewater discharge permit reissuance by submitting a complete  
453 permit application a minimum of 120 calendar days prior to the expiration of the user's  
454 existing individual wastewater discharge permit.

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456 **Sec. 38.02.706. Compliance monitoring.**

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458 At all times and at his or her discretion, the General Manager shall have the power to take  
459 samples or require sampling of any user's discharge to the public sewers in accordance with  
460 the following:

- 461 A. *Inspections.* The General Manager and other duly authorized employees of the  
462 County, bearing proper credentials and identification, shall be permitted to enter all  
463 premises at a reasonable hour for the purpose of inspection, observation,  
464 measurement, sampling and testing in accordance with this Division. The user shall  
465 not be held liable for any unsafe acts performed by the General Manager or his or her  
466 representative while on the user's premises, and any loss to the user as a direct result  
467 of any unsafe acts performed by the General Manager or his or her representative  
468 while on the user's premises shall be the responsibility of the General Manager.  
469 Where a user has security measures in force which require proper identification and  
470 clearance before entry into its premises, the user shall make necessary arrangements  
471 with its security guards so that, upon presentation of suitable identification, the  
472 General Manager or his or her representative shall be permitted to enter without delay  
473 for the purposes of performing specific responsibilities.
- 474 B. *Sampling points.* ~~Samples shall be taken and flow measurements made, whenever~~  
475 ~~possible, at a common manhole into which all flows from such premises are~~  
476 ~~combined. Such manhole shall be constructed by the owner of such premises, at his~~

477 or her own expense, when directed by order of the General Manager. Whenever the  
478 installation of a common manhole is impossible or impractical, the owner of such  
479 premises shall construct and maintain at his or her own expense, in lieu of the  
480 common manhole, two (2) or more manholes as required by order of the General  
481 Manager for accurate measurement of all flows discharged from such premises into  
482 the sewer system; if no special manhole has been required, the control sample shall  
483 be taken at a point to be mutually selected by representatives of the General  
484 Manager and the user.

485 1. The General Manager shall have the right to set up on the user's property,  
486 or require installation of, such devices as are necessary to conduct sampling and/or  
487 metering of the user's operations.

488 2. The General Manager may require the user to install monitoring equipment  
489 as necessary. The facility's sampling and monitoring equipment shall be maintained at  
490 all times in a safe and proper operating condition by the user at its own expense. All  
491 devices used to measure wastewater flow and quality shall be calibrated annually or  
492 as otherwise agreed upon by the General Manager to ensure their accuracy.

493 3. Any temporary or permanent obstruction to safe and easy access to the  
494 facility to be inspected and/or sampled shall be promptly removed by the user at the  
495 written or verbal request of the General Manager and shall not be replaced. The costs  
496 of clearing such access shall be born by the user.

497 C. *Sample collection.* With the exception of samples for oil and grease, temperature, pH,  
498 cyanide, total phenols, sulfides, and volatile organic compounds which must be  
499 obtained by grab collection techniques, the user must collect wastewater samples  
500 using twenty-four (24) hour flow-proportioned composite sampling techniques, unless  
501 time-proportional composite sampling or grab sampling is authorized by the General  
502 Manager. Where time-proportional composite or grab sampling is authorized, the  
503 samples must be representative of the discharge. Using protocols (including  
504 appropriate preservation) specified in 40 CFR 136 and appropriate EPA guidance,  
505 multiple grab samples collected during a twenty-four hour (24) period may be  
506 composited prior to the analysis as follows: for cyanide, total phenols, and sulfides, the  
507 samples may be composited in the laboratory or in the field; and for volatile organics  
508 and oil and grease, the samples may be composited in the laboratory. Composite  
509 samples for other parameters unaffected by the composting procedures as  
510 documented in approved EPA methodologies may be authorized as appropriate. For  
511 sampling required in support of baseline monitoring and 90-day compliance reports, a  
512 minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and  
513 grease, sulfide and volatile organic compounds for facilities for which historical  
514 sampling data do not exist; for facilities for which historical sampling data are  
515 available, the General Manager may authorize a lower minimum. For the reports  
516 required by paragraph 38.02.704.E.3, the industrial user is required to collect the  
517 number of grab samples necessary to assess and assure compliance by with  
518 applicable pretreatment standards and requirements.

519 D. *Method of analysis.* ~~All measurements, tests and analyses of the characteristics of~~  
520 ~~waters and wastes to which reference is made in this Division shall be determined in~~  
521 ~~accordance with 40 CFR 136 to reflect the composition of the user's discharge to the~~  
522 ~~public sewers. All pollutant analyses, including sampling techniques, to be submitted~~  
523 ~~as part of a wastewater discharge permit application or report shall be performed in~~  
524 ~~accordance with the techniques prescribed in 40 CFR Part 136 and amendments~~  
525 ~~thereto, unless otherwise specified in an applicable categorical pretreatment standard.~~

526 If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant  
527 in question, or where the EPA determines that the Part 136 sampling and analytical  
528 techniques are inappropriate for the pollutant in question, sampling and analyses shall  
529 be performed by using validated analytical methods or any other applicable sampling  
530 and analytical procedures, including procedures suggested by the General Manager  
531 or other parties, approved by EPA. All analysis shall be conducted either using a lab  
532 certified by either a national or other state accreditation program or the lab must be  
533 able to provide documentation that sufficient quality control/quality assurance  
534 procedures are in place to ensure verifiable results. At such time the State  
535 implements a statewide laboratory accreditation program, then analysis shall be  
536 conducted using the requirements of that program.

- 537 F. *Disputed constituent concentration.* If the constituent concentration of the wastes  
538 discharged from an industrial user to the POTW as determined under this Section is  
539 disputed by the IU, the following procedure shall be instituted:  
540 1. Within five (5) business days of receipt of the analysis in question, the IU shall submit  
541 a request for review setting forth the nature of the dispute and reasons for the request.

- 542 ...  
543 G. *Noncompliance notification.* If a discharge does not comply with any effluent  
544 limitations specified in this Division or within the industrial user's permit, the industrial  
545 user shall inform the County via telephone within twenty-four (24) hours of becoming  
546 aware of the violation and in writing within five (5) working business days of becoming  
547 aware of the violation. The industrial user shall also repeat the sampling and analysis  
548 and submit the results to the General Manager within thirty (30) calendar days of  
549 becoming aware of the violation. Resampling by the industrial user is not required if  
550 the County performs sampling at the user's facility at least once a month, or if the  
551 County performs sampling at the user between the time when the initial sampling was  
552 conducted and the time when the user or the County receives the results of this  
553 sampling, or if the County has performed the sampling and analysis in lieu of the i  
554 ndustrial user.

555  
556 **Sec. 38.02.708. Accidental discharges, slug, and spill notification.**

- 557  
558 A. *Notification of discharge.* All users shall notify the General Manager within twenty-four (24)  
559 hours by telephone upon accidentally discharging wastes in violation of this Division, upon  
560 discharging wastes which exceed the prohibitions in 40 CFR Section 403(5)(b), including  
561 any slug loadings, or upon discharging wastes which could potentially harm the POTW to  
562 enable countermeasures to be taken to minimize damage to the public sewer, treatment  
563 facility, treatment processes and the receiving waters. Such notification shall be followed,  
564 within five (5) working business days of the date of occurrence, by a detailed written  
565 statement to the General Manager describing the causes of the accidental discharge and  
566 the measures being taken to prevent future occurrence.

567 ...

- 568  
569 C. *Preventive measures.* All users shall notify the General Manager of any significant  
570 changes to the user's operations or system that may affect the potential for slug  
571 discharges at least ninety (90) calendar days before the change. The General Manager  
572 may require users to develop spill prevention plans where there is a potential for adverse  
573 input

574 ...

575 **Sec. 38.02.709. Public notification.**

576 The General Manager shall annually publish in the newspapers(s) of general circulation  
577 that provide meaningful public notice within the jurisdiction a list of the industrial users which  
578 were in significant noncompliance with any pretreatment requirements or standards during the  
579 previous calendar year. The notification shall also summarize any enforcement actions taken  
580 against the users during the same twelve (12) months.  
581

582 **Sec. 38.02.710. Confidentiality.**

583 Information and data on an industrial user from reports, questionnaires, permit  
584 applications, permits and monitoring programs and from inspections shall be available to the  
585 public or other governmental agency without restriction unless the user specifically requests  
586 and is able to demonstrate to the satisfaction of the General Manager that the release would  
587 divulge information, processes or methods of production entitled to protection as trade secrets  
588 of the user. Any such request must be asserted at the time of submission of the information or  
589 data. When requested and demonstrated by the user furnishing a report that such information  
590 should be held confidential, the portions of a report which might disclose trade secrets or secret  
591 processes shall not be made available for inspection by the public, but shall be made available  
592 immediately upon request to governmental agencies for uses related to the NPDES program or  
593 pretreatment program, and in enforcement proceedings involving the person furnishing the  
594 report. Wastewater constituents and characteristics will not be recognized as confidential  
595 information. The County shall make all records and files pertaining to permitted facilities  
596 available to the U.S. Environmental Protection Agency and Delaware Department of Natural  
597 Resources and Environmental Control, unless otherwise prohibited by law.  
598

599 Section 2. *New Castle County Code* Chapter 38 (“Utilities”), Article 3 (“Prohibitions,  
600 Enforcement, and Penalties”) is hereby amended by adding the material that is underlined and  
601 deleting the material with strikethroughs, as set forth below:  
602

603 **Sec. 38.03.002. Enforcement.**

604 ...  
605

606  
607 B. *Right of entry.* The General Manager of the Department of Public Works or his or her  
608 representatives, or an authorized representative of the POTW, if not the County, may go  
609 upon any land for the purpose of making surveys for sewers, sewer systems, sewage  
610 disposal plants or pumping plants, or for rights-of-way or other property rights, or periodic  
611 inspections and monitoring to determine compliance required for the sewers, sewer  
612 systems, sewage disposal plants and pumping plants.  
613

614 C. *Notice of violation.* When the General Manager of the Department of Public Works has  
615 reasonable cause to believe that any person has violated or is violating this Chapter or a  
616 permit or an order issued under this Chapter, the General Manager of the Department of  
617 Public Works or his or her agent may serve upon such person a written notice of violation.  
618 Within ten (10) ~~working~~ business days of receipt of this notice, the person shall submit to  
619 the General Manager of the Department of Public Works an explanation of the violation and  
620 a plan for satisfactory correction and prevention of potential future violations, including  
621 specific required actions. Submission of this plan shall not relieve the person of liability for  
622 any violation occurring before or after the receipt of the notice of violation.

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D. *Show cause hearing.* The General Manager of the Department of Public Works may order any person who contributes to violation of this Chapter or permit or order issued under this Chapter to show cause why a proposed enforcement action should not be taken. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action and requesting that the person show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail, return receipt requested, at least ten (10) ~~working~~ business days prior to the scheduled hearing, except in an emergency as determined by the General Manager of the Department of Public Works. Such notice shall be served to any ~~principal executive, general partner or corporate officer~~ authorized representative. Whether or not a duly notified person appears as noticed, additional enforcement action may be pursued.

...

G. *Notification of proposed termination of service or revocation of discharge permit.*

...

3. Continuing noncompliance. The General Manager may, upon thirty (30) calendar days' notice to the permittee, revoke the permit and/or terminate service to the permittee unless, at the expiration of such period, the General Manager is satisfied that the permittee is making satisfactory progress to eliminate or correct the conditions which caused such notice.

...

**Sec. 38.03.004. - Means of appeal.**

A. Fines. Persons disputing fines shall send within ten (10) ~~working~~ business days of receipt of notification of the fine a written request to the General Manager for reconsideration. Where the General Manager believes the dispute has merit, he or she shall convene a show cause hearing on the matter within thirty (30) working days of receiving the request.

B. Appeals. Any person aggrieved by any decision, action or determination made by the General Manager of the Department of Public Works interpreting or implementing this Chapter or in any permit issued in this Chapter may file with the General Manager of the Department of Public Works a written request for reconsideration within ten (10) ~~working~~ business days of receipt of such decision, action or determination, setting forth in detail the facts supporting the request for reconsideration. The General Manager of the Department of Public Works decision, action or determination shall remain in effect during such period of reconsideration. Any person or entity aggrieved by a decision of the General Manager of the Department of ~~Special Services~~ Public Works may appeal such decision in any manner provided by law.

Section 3. This Ordinance shall become effective upon passage by New Castle County Council and approval of the County Executive, or as otherwise provided in 9 *Del. C.* § 1156.

Adopted by County Council of  
New Castle County on:

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Karen Hartley-Nagle  
President of County Council  
of New Castle County

Approved on:

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Matthew Meyer  
County Executive  
of New Castle County

**SYNOPSIS:** This Ordinance revises Chapter 38 to reflect recent EPA approved changes to the Local Limits. As the County is a jurisdiction that contributes wastewater to the Wilmington Wastewater Treatment Plant (“WWTP”), the County must update Chapter 38 to reflect any revisions by EPA to the Local Limits that govern discharges from the WWTP. This Ordinance also updates certain other pretreatment provisions found in Chapter 38 to reflect EPA model language and best practices

**FISCAL IMPACT:** There will be no discernible fiscal impact from the passage of this Ordinance.