

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

4
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

8
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

12
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

16
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

20
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.

25
26 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**

27
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:

32
33 **Sec. 38.02.701. Definitions.**

34
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:

38 ...

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
88

proposed national pretreatment standards under Section 307(c) of the federal Clean Water Act which will be applicable to such source if such standards are thereafter promulgated in accordance with ~~Section 307(c) of the Act.~~ that section, provided that:

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

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

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

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

...

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

...

Publicly owned treatment works or *POTW* means any devices or systems owned by a municipality (as defined by section 502(4) of the Act) used in the storage, conveyance, 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 a POTW treatment plant. The term also means the municipality which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

...

Significant industrial user means:

- (1) any industrial user (IU) subject to ~~Environmental Protection Agency~~ categorical pretreatment standards; or
- (2) any ~~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

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

...

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

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

Sec. 38.02.703. Maximum constituents.

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

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

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

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- ...
- G. *General requirements.*
1. All industrial users shall:
- ...

c. Notify the County and POTW immediately of any slugs or slug loadings in accordance with 40 CFR 403.12.

i. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a slug discharge or slug load, that might cause potential problems for the POTW, the user shall immediately telephone and notify the POTW 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.

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

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

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

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

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

Sec. 38.02.704. Wastewater discharge permits.

...

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

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

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.
16. Other conditions as deemed appropriate by the General Manager to ensure compliance.

E. *Reporting requirements.*

- ...
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~~

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

...

5. Baseline Monitoring Reports. Within either one hundred eighty (180) calendar 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 industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the General Manager a report which contains the information listed below. At least ninety (90) calendar days prior to commencement of their discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the General Manager a report which contains the information listed below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged. Users described above shall submit the information set forth below (as described in 40 CFR 403.12(b)).
 - a. All information required in 38.02.704.B paragraphs 1-8 and 12.
 - b. Measurement of pollutants.
 - i. The user shall identify the pretreatment standards applicable to each regulated process; in addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or General Manager) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a Best Management Practice or pollution prevention alternative, the user shall submit documentation as required by the General Manager or the applicable standards to determine compliance with the standard.
 - ii. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
 - iii. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR 403.6(e) to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the General Manager.
 - iv. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136

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

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 paragraphs 5.a, 5.b, and 5.c. of this subsection. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified. All sampling will be done in conformance with Section 38.02.706.C.

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

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

Sec. 38.02.706. Compliance monitoring.

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

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

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

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

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

Sec. 38.02.708. Accidental discharges, slug, and spill notification.

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

- ...
- C. *Preventive measures.* 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) calendar days before the change. The General Manager may require users to develop spill prevention plans where there is a potential for adverse input

...

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.

623
624 D. *Show cause hearing.* The General Manager of the Department of Public Works may order
625 any person who contributes to violation of this Chapter or permit or order issued under this
626 Chapter to show cause why a proposed enforcement action should not be taken. Notice
627 shall be served on the person specifying the time and place for the meeting, the proposed
628 enforcement action and the reasons for such action and requesting that the person show
629 cause why the proposed enforcement action should not be taken. The notice of the meeting
630 shall be served personally or by registered or certified mail, return receipt requested, at least
631 ten (10) ~~working~~ business days prior to the scheduled hearing, except in an emergency as
632 determined by the General Manager of the Department of Public Works. Such notice shall
633 be served to any ~~principal executive, general partner or corporate officer~~ authorized
634 representative. Whether or not a duly notified person appears as noticed, additional
635 enforcement action may be pursued.

636 ...
637 G. *Notification of proposed termination of service or revocation of discharge permit.*
638 ...

- 639
640 3. Continuing noncompliance. The General Manager may, upon thirty (30) calendar days'
641 notice to the permittee, revoke the permit and/or terminate service to the permittee
642 unless, at the expiration of such period, the General Manager is satisfied that the
643 permittee is making satisfactory progress to eliminate or correct the conditions which
644 caused such notice.

645 ...

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

647
648 A. Fines. Persons disputing fines shall send within ten (10) working business days of
649 receipt of notification of the fine a written request to the General Manager for
650 reconsideration. Where the General Manager believes the dispute has merit, he or she
651 shall convene a show cause hearing on the matter within thirty (30) working days of
652 receiving the request.

653
654 B. Appeals. Any person aggrieved by any decision, action or determination made by the
655 General Manager of the Department of Public Works interpreting or implementing this
656 Chapter or in any permit issued in this Chapter may file with the General Manager of
657 the Department of Public Works a written request for reconsideration within ten (10)
658 working business days of receipt of such decision, action or determination, setting forth
659 in detail the facts supporting the request for reconsideration. The General Manager of
660 the Department of Public Works decision, action or determination shall remain in effect
661 during such period of reconsideration. Any person or entity aggrieved by a decision of
662 the General Manager of the Department of ~~Special Services~~ Public Works may appeal
663 such decision in any manner provided by law.
664

665 Section 3. This Ordinance shall become effective upon passage by New Castle County
666 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:

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

Approved on:

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.