

Hearing Officers Report on Proposed Revisions to the
Wastewater Pretreatment Rules in 15A NCAC 02H .0900

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

**A REPORT TO THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE PROCEEDINGS OF
THE PUBLIC HEARING AND COMMENT PERIOD ON
THE PROPOSED REVISIONS TO THE
WASTEWATER PRETREATMENT RULES**

15A NCAC 02H .0900

PUBLIC HEARING

June 16, 2010, Archdale Building, 512 North Salisbury Street, Raleigh NC

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SUMMARY AND RECOMMENDATIONS

INTRODUCTION

The Pretreatment Rules establish procedures for the implementation of the Pretreatment Program. The State delegates authority to local governments to regulate industrial users (IUs) of their wastewater treatment plants (WWTP) by implementing an approved local Pretreatment Program. Local governments covered by the Pretreatment Program are referred to as publically owned treatment works, or POTWs. Upon delegation by the NC Division of Water Quality (DWQ or Division), the POTW is referred to as the Control Authority (CA). The purposes of the program are: (1) to protect publically owned WWTPs, (2) to protect WWTP receiving streams, (3) to protect WWTP workers and the general public, and (4) to promote the beneficial reuse of biosolids.

The program has been in effect in North Carolina since 1982. There are approximately 110 locally delegated pretreatment programs permitting approximately 670 Significant Industrial Users (SIUs).

The Pretreatment Rules (15A NCAC 2H .0900) were last revised in 1994. The proposed modifications of the Pretreatment Rules are necessary to address several aspects of the Environmental Protection Agency's (EPA) October 2005 streamlining of the Federal Pretreatment Regulations in 40 CFR 403. This includes granting NC Control Authorities access to provisions allowing the option to reduce sampling of extremely small IUs.

Other amendments are intended to ensure consistency with the Federal Regulations. These include electronic reporting requirements and revisions to the definition of Significant Noncompliance (SNC) to require separate SNC determinations of daily maximum and monthly averages for the same parameter, and to apply selected SNC criteria such as causing pass through to non-SIUs.

The remaining amendments are intended to ensure consistency with current DWQ practices and to allow flexibility of DWQ oversight of pretreatment programs. This includes amendments to ensure adequate communication and coordination regarding IU discharges in situations where one POTW sends wastewater to another POTW for treatment, sometimes called a "satellite POTW." This situation is becoming more common in NC, especially with regionalization of wastewater services. Other revisions of this type include clarifications regarding submittal of confidential industrial information to DWQ regulators as well as clarifications on sampling requirements, pretreatment permit supporting documentation, and record keeping.

The purpose of the new Rule .0922 is to consolidate and update the adjudicatory hearing conditions to cover pretreatment civil penalties and administrative orders in addition to the adjudication of pretreatment permits already covered in an existing rule.

Prior to the public hearing, meetings were held with representatives of the North Carolina Pretreatment Consortium (NCP), a professional organization representing approximately 100 delegated pretreatment programs. The purpose of these meeting was to get input from the regulated community. After revisions based on the stakeholder meetings were completed, copies of the proposed rules were emailed to NC Pretreatment Programs, the NC League of Municipalities and several industrial groups. Two informational meetings were then held. The meetings were attended by 39 people representing 29 Control Authorities, one consultant and one SIU.

The Proposed Rule was published in the State Register on June 1, 2010. A copy of this is found in Attachment C. The Division conducted one public hearing on the proposed amendments to the pretreatment

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rules. The hearing was held in Raleigh on June 16, 2010. Environmental Management Commission (EMC) members Daryl Moss and Kevin Martin served as the Hearing Officers. Approximately nine people attended the hearing; 1 person made verbal comments. The speaker commented on behalf of Durham County regarding their concerns about the definition of interference and the regulation of satellite POTWs. Written comments giving more detail of the spoken comments were submitted and are included with other written comments. The public comment period remained open until August 2, 2010. Written comments submitted during the public comment period are provided as a part of the hearing record in Attachment B. The issues raised at the public hearing and in written comment are discussed beginning on page A-5.

Comments were received from Durham County, City of Graham, NC Water Quality Association (NCWQA), City of Wilson, City of Randleman, Town of Cary, Greenville Utilities Commission, City of Burlington, City of Greensboro (2 commenters), NC Pretreatment Consortium (NCPC), City of Durham, Metropolitan Sewerage District of Buncombe County (MSD Buncombe), City of Raleigh, City of Newton and City of Charlotte.

Several commenters expressed their support of the comments made by NCWQA and by the NCPC. They were: Greenville Utilities, City of Durham, City of Greensboro, City of Raleigh, City of Newton, City of Charlotte in support of NCWQA and City of Randleman, City of Durham, City of Greensboro, City of Raleigh and City of Charlotte in support of NCPC.

After a detailed review of the comments received, and consultation with other Division staff as well as the Department of Environment and Natural Resources (DENR) Office of General Consult and EPA, a Report of Proceedings including the Hearing Officers recommendations was published on the EMC web-site on October 22, 2010, in preparation for presentation of the Rules to the EMC for adoption at their November 18, 2010, meeting. Notification to the commenters, NC Pretreatment Programs, and other interested parties was provided through email and web-site postings.

After publication, members of the NCWQA met with Division staff on November 4, 2010, to discuss their continuing objection to five areas of the Rules. The Division decided to withdraw the Rules from the November EMC agenda and schedule a meeting with all parties to attempt to resolve these objections. This meeting was held on December 7, 2010. The meeting was productive and various revisions were agreed upon. The most significant of these latest revisions are discussed in the following sections of this report: .0903(b)(23) – Pass Through; .0903(b)(33) – Significant Industrial User; .0906 – SUO requirements for Intermunicipal situations; .0908(e) – required POTW sampling; .0917 – IUP submission and Division review (response only). All changes since the October version are highlighted in the Proposed Rule itself, including the minor ones, are highlighted in the Proposed Rule beginning on page A-23.

A list of acronyms is on page A-22.

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SUMMARY OF HEARING OFFICER RECOMMENDATIONS

While there were several comments on the revisions to the Pretreatment Rules, the majority of comments received were actually about portions of the Rule that were not proposed for revision. In some cases, the record for the original Rule adoption may not have included sufficient explanation of the intent of Rule. In these cases, extra background and details were included in the staff responses, even when no Rule revision was recommended.

The Rule revision recommendations made as a result of the Public Hearing and Comment Period are summarized as follows:

Several commenters felt strongly that the collection system permit should be included in the list of permits for which contributing to permit violations constitutes interference and pass through. The Hearing Officers agree, and recommend various changes to the following Rules: .0903(b)(14) - Interference; .0903(b)(23) - Pass Through; .0903(b)(26) - POTW or Publicly Owned Treatment Works.

There were many comments and objections to the listing of flow in several parts of the Rule. Several revisions are recommended to more properly characterize the ways in which flow is of concern to the Pretreatment Program. These include: .0903(b)(10) - Headworks Analysis; .0903(b)(25) - Pollutant of Concern; .0903(b)(26) - POTW or Publicly Owned Treatment Works ; and .0916(c)(4)(A) - Allocation table (AT).

Several commenters objected to including “an instream water quality standard (WQS) even if not included in the permit” in the definitions of Pass Through and Significant Industrial User (SIU). They believe the entire phrase is inconsistent with the Federal definitions of these terms, as well as being inconsistent with Clean Water Act (CWA) “permit shield” and the National Pollutant Discharge Elimination System (NPDES) permitting program. At the request of a majority of Control Authority representatives, the language is proposed to be removed from both definitions.

Also within the definition of SIU, there were objections to defining an IU contributing more than 5 % of the allowable loading for any pollutant as an SIU as it is more stringent than the Federal definition which only lists 5 % of the allowable loading for organic pollutants such as BOD, TSS, and ammonia. It is proposed to follow the Federal definition.

Several commenters made suggestions on how to improve or clarify the Pretreatment Program requirements for intermunicipal situations. After consultation with the NC DENR’s General Counsel, revision recommendations are made to .0903(b)(32) - Sewer Use Ordinance (SUO) definition; .0906(b)(1) - SUO requirements; and .0906(b)(9) - a brief description (including organization charts) of the Control Authority (CA).

A number of other minor revision recommendations are made to consolidate duplicated wording, or otherwise simplify or clarify existing wording, replace Division approved forms or formats with “forms or formats acceptable to the Division, establish time limits of Division review of changes to the list of SIUs, clarify records retention requirements, revise time limits for inspections associated with Industrial User Pretreatment Permits (IUPs), and clarify Adjudicatory process sets, and which are mandatory in order to seek judicial review.

The next section of this Report beginning on page A-6 addresses each individual Rule that received a comment, and provides staff response and a Rule Revision Recommendation. A copy of the entire Rule as recommended begins on page A-23. A copy of the written public comments is found in Attachment B.

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DESCRIPTION OF PUBLIC COMMENTS, STAFF RESPONSES, AND RULE REVISION RECOMMENDATIONS

.0900 in general [NCWQA]

Issue 1: NCWQA objects to the automatic incorporation by reference of subsequent revisions to the Federal Rules. There is no provision for if the NC rules and Federal rules are inconsistent and the opportunity for public input is missed.

Issue 1 Response:

New Federal Rules have a sufficient comment period and a second comment period should not be necessary. Additionally, where new Federal Rules are more stringent, having a second comment period in North Carolina will not change their applicability. NC Regulations must be at least as stringent as the Federal Regulations.

The Division agrees that a subsequent amendment of the Federal Rule could create inconsistencies with the State Rules in .0900. To address this, each Rule that adopts a portion of 40 CFR 403 by reference that also has specific NC language has been written as follows, "Except where in conflict with any part of this Section, the regulations codified as 40 CFR 403.xxx... are hereby incorporated by reference including any subsequent amendments and editions." The wording in .0903(a) is slightly different, but the meaning is the same. This clarifies that NC Control Authorities would be subject to the specific NC language until such time as the EMC adopts revised Rules, whether the revised Federal Rule is more or less stringent than the NC specific rule language.

This type of wording is not included in .0904, .0909, .0910, .0912., 0914, and .0915 as these Rules do not contain any NC specific provisions. It is also not included in .0913, .0916, .0917, .0920, and .0922 as the issues covered by these Rules are not covered by 40 CFR 403.

Issue 1 Rule Revision Recommendation: None

Issue 2: Durham County commented regarding the regulation of satellite POTWs: 15A NCAC .0901 et seq proposes to place pretreatment administration of POTWs owned by other governing bodies upon treatment plant POTWs without the necessary statutory support to enable the treatment plant POTW to regulate and enforce the required Pretreatment Program.

Issue 2 Response: See discussion and related proposed rule revisions in .0906.

.0902 Scope [NCWQA, Burlington]

The commenters objected to the addition of the phrase "and wastewater discharges" because they believed it would regulate clear water, is inconsistent with Federal rules [403.1] which just say "pollutants from non-domestic sources" and unnecessary as there exists sufficient authority in the Sewer Use Ordinance (SUO) to regulate flow from users.

Response:

While the Division does not necessarily agree with the commenter's interpretation, clear water discharges can be of as great of concern as any other wastewater discharge. It can reduce wastewater treatment plant (WWTP) capacity, contribute to NPDES flow violations, exceed hydraulic capacity of the collection system or dilute the WWTP influent wastewater thereby interfering with the WWTP's treatment ability. However, sufficient authority to control these discharges does exist.

Rule Revision Recommendation: The phrase "and wastewater discharges" is to be removed. The condition will now read as follows:

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Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in 40 CFR Part 403.3 and Rule .0903 of this Section;

.0903(b)(10) Headworks Analysis (HWA) [NCWQA, Burlington, NCPC]

Commenters objected to using NPDES flow limits for identifying SIUs and for allocating flow to non-domestic users. The phrase “permit limits” is not necessary because it is implicit in “interference” and “pass through”. The commenters did not object to the addition of “design capacity” and pointed out that “permit limits” should be “NPDES permit limits”.

Response:

Regarding the proposal to use the WWTP “Design Flow” instead of the NPDES permitted flow, these values are identical for the majority of NC POTWs. The rare cases where the two values are different provide good examples of why the Division selected NPDES permitted flow in the definition of HWA and in other areas of the Rule. One typical case is when a POTW needs to build something to be allowed to use the new flow. Here, some treatment units might have one design flow, but the NPDES permitted flow is established based on the limiting treatment unit. The other typical case is where the WWTP is fully built to the full design flow, but its actual average flows are really low as compared to their full capacity. In this case, POTWs will request NPDES limits, including a flow limit, for a lower flow. This is to the POTW’s advantage as the lower NPDES permitted flow gives a lower Instream Waste Concentration (IWC) and thus higher NPDES pollutant limits. In some cases, it will also mean less reasonable potential for violating a water quality standard (WQS), so fewer limits. In other cases, the monitoring frequencies will be lower, or other requirements such as 24 hour staffing will be reduced. In both cases, it would be inappropriate for the Division to allow use of the higher design flow as the basis for the flow Maximum Allowable Headworks Loading (MAHL). On a case by case basis, the Division might be able to allow calculation of design pollutant loads using the full design flow if this is technically sound.

It was also suggested that “permit limits” be removed because they are implicit by the reference to interference and pass through contained within this definition. It could be interpreted that including “permit limits” is redundant, but by stating specifically that permit limits are part of the HWA procedure there is no confusion on anyone’s part.

Rule Revision Recommendation: The following italicized language is to be inserted:

Rule .0903(b)(10) – Headworks Analysis. “...to calculate the maximum allowable influent loadings for *flow and* pollutants of concern based on design capacity, *NPDES or Non-discharge* permit limits, pass through, interference, sludge, or worker safety and health considerations, as applicable.”

.0903(b)(13) Industrial Waste Survey (IWS) [Graham]

This commenter was concerned that “identification of all industrial users and the character and amount of pollutants ...” could create an excessive burden on the POTW to include all users in the survey. POTWs should be able to use best professional judgment to eliminate some classes of commercial establishments.

Response:

40 CFR 403.8 (f) (2) requires the identification of all possible industrial users (IUs) that might be subject to the Control Authority’s Pretreatment Program and to identify the character and volume of pollutants contributed to the POTW by the IU in order to determine if those IUs meet the definition of SIU. The Division’s IWS guidance in Chapter 3 of the *Comprehensive Guidance for North Carolina Pretreatment Programs* (available at <http://portal.ncdenr.org/web/wq/swp/ps/pret/compguide>) advises that “service only” operations and other small volume commercial users can be eliminated from the list of dischargers who should be sent a survey.

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Rule Revision Recommendation: None

.0903(b)(14) Interference [Durham County, NCWQA, Burlington, NCPC, Durham City]

All who commented on this Rule expressed concern that removing the collection system permit from this definition would imply that the collection system is not subject to interference. It should also be included so industrial discharges which interfere with availability or operation of the collection system will be defined as interference.

Response:

The regulated community feels strongly that the collection system permit should be included in the list of permits for which contributing to permit violations constitutes interference and pass through.

Rule Revision Recommendation: The following italicized language is to be inserted:

"Interference" refers to inhibition or disruption of the POTW *collection system*; treatment processes; operations; or its sludge process, use, or disposal which causes or contributes to a violation of any requirement of Control Authority's (and/or the POTW, if different from the Control Authority) NPDES, *collection system*, or Non-Discharge Permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits.

.0903(b)(23) Pass through [NCWQA, Greenville Utilities, Burlington, Greensboro]

Issue 1: All who commented on this Rule expressed that the collection system should remain in definition. An IU could cause pass through from the collection system and should be held responsible.

Issue 1 Response:

The regulated community feels strongly that the collection system permit should be included in the list of permits for which contributing to permit violations constitutes interference and pass through.

Issue 1 Rule Revision Recommendation: The following italicized language is to be inserted:

"Pass Through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the ~~POTW's~~ Control Authority's (and/or the POTW's, if different from the Control Authority) NPDES permit, NPDES, *collection system*, *stormwater*, or Non-discharge permit, or of an instream water quality standard, standard even if not included in the permit.

Issue 2: The commenters object to including "an instream water quality standard *even if not included in the permit*" in the definition of Pass Through. They believe it is inconsistent with the Clean Water Act (CWA) "permit shield" and the NPDES permitting program. They also believe enforcement would be difficult because standards have to be adjusted for dilution and made even more complicated due to the proposed dissolved standards. Finally, they believed that the IU would have no way of knowing what lawful discharge is and the POTW could be held responsible for parameters that do not have a calculated reasonable potential or permit limit.

NCWQA's November 12, 2010 document added: NC's definition is more stringent than the Federal definition; surrounding states follow the Federal definition; the current NC NPDES boilerplate language does not include a requirement not to discharge toxics in toxic amounts; imposing a "no toxics in toxic amounts" permit limit is inappropriate because it does not tell the POTW (or industrial user) what amounts can be discharged in advance; they are not aware that any other state or EPA regional office has sought to impose this unfair and unnecessary requirement....

Issue 2 Response:

The term Pass Through in the Pretreatment Rules, along with the related term Interference, together formalize the concept that Industrial Users (IUs) can discharge pollutants/wastewater that cause or contribute to POTW

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violations, and that IUs who do this should be identified as having caused or contributed to these problems and be held accountable. [See .0903(b)(14) for definition of Interference.]

North Carolina has both a General Statute [NCGS 143-215.1(a)(6)] and a Rule [15A NCAC 02B .0208(a)] that require all persons discharging to the waters of the state to comply with all water quality standards. However, this is not stated directly in the current NPDES boiler plate. The Division enforces the NCGSs or WQS themselves directly, but does not identify the violation of the NCGS or WQS is also a violation of the NPDES permit.

Using only EPA's Pass Through definition and NC's current NPDES permit language, if there is no NPDES permit violation, the Control Authority or POTW can never designate the IU as having caused Pass Through, because the POTW's violation of the WQS did not actually violate the POTW's NPDES permit. This is why NC added violations of a downstream water quality standard when we first adopted our own Pass Through definition in 1994. The Division felt this more stringent definition was important so that NC POTWs would have access to the Pass Through determination when one of their IUs caused or contributed to the POTW's WWTP causing a WQS violation.

The objections to this wording were investigated with DENR General Counsel's Office and EPA, and discussed extensively with the Division.

It is proposed that the WQS wording be taken out of the Pass Through definition. Any NC POTW that wishes to keep the WQS wording in their own Pass Through definition in their own Sewer Use Ordinance (SUO) may do so under Rule .0918 which allows adoption of local regulations and laws that are more stringent than the Federal or State law or regulation.

The NPDES boilerplate will be revised to specifically require compliance with all applicable Statutes and Rules. At that time, NC POTWs will again have access to the Pass Through determination when one of their IUs caused or contributed to the POTW's WWTP causing a WQS violation.

With this revision, the applicability of the Clean Water Act permit shield as it relates to the NC Pretreatment Program is no longer an issue. Additional information on the topic is available at <http://www.epa.gov/npdes/pubs/owm0131.pdf>. Any further concerns with the permit shield should be directed to the NPDES Program.

Regarding the concern that a Control Authority or POTW could be held responsible for parameters that do not have a calculated reasonable potential or permit limit for a particular pollutant, this is addressed from two perspectives. First, the Rules for NPDES permit applications require the permittee to notify the Division (NPDES) of the actual and/or expected concentrations of X pollutant in their permit application. The Division (NPDES) performs a Reasonable Potential Analysis (RPA). If RP does not exist, no limit is assigned in the NPDES permit. The permittee is required to notify the Division (NPDES) if the concentrations will change – per Part II, 1 and 2; Part III, C; and Part IV, B of the NPDES permit. The Division (NPDES) would then perform a new RPA to see if the change warrants inclusion of an NPDES limit.

Second, each Pretreatment Control Authority performs a Headworks Analysis (HWA) to develop a Maximum Allowable Headworks Loading (MAHL) for all Pollutants of Concern (POCs) identified for their pretreatment program. For any POC without an NPDES Permit Limit, the pass through MAHL is based on the WQS and the Instream Waste Concentration (IWC) as applicable to the treating WWTP. If the WQS is expressed as dissolved, the Control Authority will use the Total Metal value from the NPDES Calculator. The Calculator will also provide

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estimated NPDES permit limits for the treating WWTP. So the Control Authority (or POTW if different from the Control Authority) knows exactly how much they can discharge and exactly how much they can accept into their WWTP.

The Sewer Use Ordinance (SUO) and Industrial User Pretreatment Permit (IUP) requirements for IU applications and notification of changes take care of the IU not knowing how much they can discharge. The IU properly notifies the Control Authority (and/or the POTW if different from the Control Authority) of the expected concentration of X pollutant in their permit application. The Control Authority evaluates that concentration along with the IU's flow and compares it to their MAHL developed using the WQS. If the Control Authority determines that an IUP limit is necessary, then the IU knows exactly how much they can discharge. If they meet that limit, the Affirmative Defense in 40 CFR 403.16 will protect them from being in violation for causing pass through or interference. If the Control Authority determines that an IUP limit is not required, and the IU continues to discharge at that same level, then the IU is in compliance. It is only if the IU discharges more than the reported concentration that they could become in violation of the SUO, and therefore have the possibility of being in violation for causing pass through or interference.

Issue 2 Rule Revision Recommendation:

The phrase “, or of an instream water quality standard even if not included in the permit” is to be removed. The condition will now read as follows:

(23) "Pass Through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the ~~POTW's Control Authority's (and/or the POTW's, if different from the Control Authority) NPDES permit, NPDES, collection system, stormwater, or Non-discharge permit, or of an instream water quality standard, standard even if not included in the permit.~~

Also see related revisions in .0903(b)(33)(D) and (E).

.0903(b)(25) Pollutant of Concern [NCWQA, Cary, Wilson, Greenville Utilities, Burlington, NCPC, Durham City, Greensboro, Raleigh, Charlotte]

The commenters object to adding flow as a POC. It is inconsistent with Federal Regulations which do not consider flow a pollutant and with virtually all other States. However, some commenters did acknowledge that flow is of concern and needs to be tracked. There is support for the Rules to allow local entities to decide what pollutants are of concern at their POTW. There was also some concern that the Rules contradicted itself by calling flow a POC in one place and not a pollutant in another.

Response:

Flow is "of concern" to the Pretreatment Program for several reasons. First, WWTP capacities for most typical POCs are expressed in mass (lbs/day). Most NC Control Authorities have Industrial User Pretreatment Permit (IUP) limits in concentration (mg/l), which cannot actually protect the MAHL without also having a limit on flow. The Division has always allowed Control Authorities to issue IUPs without a flow limit as long as all pollutants that have a lbs/day MAHL have IUP limits in lbs/day. Even in this case, however, flow is still "of concern" because one must have a flow reading to compute the lbs/day.

Flow is also of concern for prevention of hydraulic overload of the WWTP and of the collection system. The Control Authority must demonstrate it does not permit flow discharge into the collection system or WWTP in excess of its treatment capacity. The NPDES or Nondischarge permit flow limit is the MAHL for flow. In addition, most of the commenting POTWs are so concerned with protection of their collection systems they insisted we add their Division issued collection system permits to the list of permits for which contributing to permit violations constitutes pass through and interference.

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It is true that many Control Authorities in other States do not have flow limits to go along with their mg/l pollutant limits. The mg/l limits are derived by dividing the lbs/day Maximum Allowable Industrial Loading (MAIL – the amount of the MAHL remaining for industry) by the sum of the average flows for each SIU and each SIU gets the same concentration limit. In this case, an SIU could discharge a very high volume of wastewater that meets the mg/l limit but still contributes to exceeding the lb/day MAIL. Since there would be no limit violation, enforcement against such an SIU for contributing to pass through or interference of the treatment plant process will be difficult if not impossible. NC’s method of pollutant allocation allows the Control Authority to allocate pollutants as needed. Also see .0916(c)(4)(A) Allocation Table.

Rule Revision Recommendation: The word “flow” will be removed from the definition of POC and added to the definition of Headworks Analysis in .0903 (b) (10).

.0903(b)(26) Publically Owned Treatment Works (POTW) [Durham County, NCPC]

Issue 1: The term “collection system” is used in other areas of Rule, but not in definition of POTW. Commenters suggested that the following wording be used to clarify that the collection system is part of the POTW “sewers, pipes, and other conveyances; also referred to as a collection system, only if they...”

Issue 1 Response:

The regulated community believes it is important to specifically identify the collection system and to use this same term consistently throughout the Rule. NC already has its own definition of “collection systems” in 15A NCAC 02T .0402(1).

Issue 1 Rule Revision Recommendation: The phrase “sewers, pipes, and other conveyances” will be deleted and the following italicized language is to be inserted:

It also includes ~~sewers, pipes, and other conveyances;~~*the collection system*, only if they ~~convey~~*it conveys* wastewater to a POTW treatment plant. *Also see Rule .0402 of Subchapter 02T of these Rules.*

Issue 2: Suggestion to add 26 (b) – POTW Approval Authority in support of .0906. The POTW Approval Authority would provide concurrence for satellite’s program elements before submission to the Division.

Issue 2 Response: See discussion and related Rules revisions in .0906(b).

Issue 2 Rule Revision Recommendation: None

.0903(b)(33) Significant Industrial User [Graham, NCWQA, Wilson, Cary, Burlington, NCPC, Durham City, Greensboro, Raleigh, Charlotte]

Issue 1, regarding (33)(B):

Commenters are concerned because the NC definition for a Significant Industrial User (SIU) is more stringent than the Federal definition. The Federal criteria are any user that contributes 5% of the dry weather hydraulic or organic capacity, while NC includes 5% of any pollutant of concern (POC). In this context, the term “organic” means BOD, TSS, and NH₃. The proposed lower water quality standards (WQs) will make the WWTP Maximum Allowable Headworks Loadings (MAHL) smaller, thus placing more IUs into the category of SIU. The commenters believe that it should be a local decision whether an IU contributing 5% of other POCs should be an SIU. Comments also indicated that the flow criteria should be based on 5% of the design flow and not 5% of the NPDES permitted flow.

Issue 1 Response:

It is true that NC definition for SIU is more stringent than the Federal definition. It is proposed to make revisions to follow the Federal definition.

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NC Control Authorities may develop their own more stringent definition of SIU in their own Sewer Use Ordinance (SUO), or may retain the 5 % MAHL for any POC definition, under Rule .0918, which allows adoption of local regulations and laws that are more stringent than the Federal or State law or regulation.

Regarding the proposal to use the WWTP “Design Flow” instead of the “NPDES permitted flow,” please see .0903(b)(10) – Headworks Analysis for a discussion of why the Division chooses to use “NPDES permitted flow.”

Regarding the objection to SIU flow limits, please see .0916(c)(4)(A) Allocation Table for a discussion of when flow limits are required.

Issue 1 Rule Revision Recommendation: The rule is revised to remove the crossed out language and the following italicized language is to be inserted.

(B) ~~Contributes process wastewater of more than five percent of the average permitted flow limit of the POTW treatment plant or more than five percent of the maximum allowable headworks loading of the POTW treatment plant for any other pollutant of concern which makes up 5% or more of the NPDES or Non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS and Ammonia.~~

Issue 2 regarding .0903(b)(33)(D):

The commenters state that this part of the Rule is inconsistent with the Federal definition found in 403.3(v) and object to the final criteria for SIU including an IU who has the reasonable potential for violating the POTW’s receiving stream water quality standard (WQS). They believe that a better criteria is a reasonable potential for violating the “POTW’s effluent limitations and conditions in its NPDES permit” or just “its NPDES permit limits”. One suggestion was made that this part of the Rule be used so the Control Authority (CA) could determine if the discharge of the potential POC makes a facility a SIU.

Issue 2 Response:

See detailed discussion on the applicability receiving stream WQSs when an NPDES permit does not include a specific limit in .0903(b)(23), Pass Through, Issue 2. As with the definition of Pass Through, it is also proposed to remove the reference to the WQS from this part of the SIU definition. NC Control Authorities that wish to keep the WQS in wording in their own definition of SIU in their own Sewer User Ordinance (SUO) may do so under Rule .0918 which allows adoption of local regulations and laws that are more stringent than the Federal or State law or regulation. Also see 15A NCAC 02B .0208(a).

Issue 2 Rule Revision Recommendation: The phrase “or the POTW’s receiving stream standard” is also to be removed. Also, minor revision as italicized is to be inserted:

(D) is designated as such by the Control Authority on the basis that the *Industrial User* has a reasonable potential for adversely affecting the POTW’s operation or for violating any Pretreatment Standard or Requirement, or the POTW’s *effluent limitations and conditions in its NPDES or Non-discharge permit*, ~~or the POTW’s receiving stream standard~~, or to limit the POTW’s sludge disposal options; Also, made similar revision to .0903(b)(33)(E).

.0903(b)(34) Significant Noncompliance (SNC) [NCWQA]

The commenter wants references to flow deleted from SNC criteria (A), (B) and (D) of this Rule because flow is not a pollutant and should not be added to these SNC criteria.

Response:

(A) and (B) specifically state that the SNC criteria do not apply to flow. The phrase “and wastewater” was added to (D) so that a CA will have enforcement ability if any discharge, whether it contains pollutants or not, causes imminent endangerment or if the POTW has to exercise their emergency authority to halt a discharge.

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Rule Revision Recommendation: Revised to add the italicized wording to establish a separate effective date for the application of SNC criteria to non-SIUs that is at the beginning of a six month period:

Additionally, *effective July 1, 2011*, any Industrial User which meets the criteria in Subparagraph (b)(34), Parts (C), (D), or (H) shall also be SNC.

.0904 Required Pretreatment Programs [NCWQA]

The commenter requested that (b) use design flow or average annual flow not “permitted flow”. They also asked that the Division not require POTWs with permitted/design flows less than 5 MGD (million gallons per day) to develop pretreatment programs as allowed in 403.8.

Response:

Please see the discussion regarding design versus NPDES permitted flow in .0903(b)(10). Also, in the rare case where the NPDES permitted flow is smaller than the design flow, it may actually be of benefit to the POTW to use permitted flow as the POTW may qualify to be a Modified program under .0904(b), with less stringent requirements.

It is true that 403.8 (a) does not require all POTWs with a design flow of 5 MGD or less to develop pretreatment programs. However, the condition does include the following: “The (EPA) Regional Administrator or (State) Director may require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if he or she finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent Interference with the POTW or Pass Through.”

If NC did decide not to require POTWs with a design flow of less than 5 MGD to develop a pretreatment program, it would not mean that SIUs discharging to those POTWs are not required to be regulated. DWQ would be the Control Authority. The Division would be responsible for the regulation of those SIUs and would have to develop the HWA for POTWs, issue IUPs and take enforcement action. Currently, this would be for 113 SIUs in 55 POTWs. Most municipalities would object to the State taking over regulatory responsibilities within their jurisdiction and the State has no desire to do so. If a POTW wishes to accept wastewater from an SIU, then they should take the responsibility for that decision.

Rule Revision Recommendation: None

.0906 Submission for Program Approval [Durham County, NCWQA, Greenville Utilities, Durham City, Raleigh]

There were several comments regarding the proposed requirements in (b)(2) – Industrial Waste Survey (also in .0903(b)(13)), and (b)(9) description of POTW organization regarding situations where one POTW sends its wastewater to another POTW for treatment. Overall, the concern was about the revisions being unenforceable due to lack of clear legal authority or the general difficulty of one POTW regulating another or otherwise having conflict. One commenter said they support (b) (2), but stated “It seems that the Federal regulations and the draft 0900 regulations allow a Control Authority to oversee any contribution domestic or nondomestic User without an interjurisdictional agreement (IJA). Perhaps the .0900 regulations can be clearly worded such that this power is extended to Control Authorities regardless of their local SUO.”

Other commenters gave a number of suggestions to clarify the Rules:

Must have interlocal agreements (ILAs) and coordinated ordinances, otherwise the requirement (b)(2) (also in .0903(b)(13)) is unenforceable where it requires one local government to institute regulations and ordinances on another local government in direct contravention to NCGS 153A-122 (County SUO can only apply within a City if the City grants permission).

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Revise (b)(2) to clarify that satellite POTWs are responsible for conducting IWS unless delegated to CA in an ILA. Revise (b)(9) to specify that the satellite POTW must implement the Pretreatment Program or give authority to the receiving POTW.

Add a new paragraph .0906 (c) that reads, "For satellite POTWs written concurrence from POTW Approval Authority must be provided with pretreatment program submissions to DWQ."

Response: We agree that a satellite POTW must either implement their own pretreatment program in close coordination with the treating POTW, or must ensure the treating POTW has clear authority to perform all Control Authority responsibilities within their jurisdiction. The Division consulted with the DENR General Council office, who reported the following:

- A municipality that owns a collection system (POTW B) that sends its wastewater to another municipality (POTW A) for treatment can be considered a POTW, and can be required by DWQ to develop a pretreatment program.
- The NC Pretreatment Rules should not mandate which party must be the Control Authority, but instead should establish clear conditions for all options.
- In the case where the parties have agreed that POTW A will be the Control Authority in POTW B and POTW A owns the collection system within POTW B's jurisdiction, all users and customers within POTW B's borders are users and customers of POTW A and therefore subject to POTW A's SUO. Nothing further is needed. If an Interlocal Agreement (ILA) does exist in this case, the Division may require submittal, and require revision if it contradicts the Sewer Use Ordinance (SUO) applicability or otherwise puts inappropriate limitations on POTW A's authority.
- In all other situations, both an ILA and coordinating SUOs are necessary to ensure all parties in an intermunicipal situation have the appropriate authorities and enforcement capabilities. An ILA alone is not sufficient to support pretreatment program implementation. The Division may require submittal of the ILAs and SUOs, and require revision if either document contradicts the other, or otherwise puts any inappropriate limitations on either POTW's authority.
- If one party fails to follow the SUO and ILA, the other party can then enforce the SUO and/or ILA. DWQ can also take enforcement against the violating POTW.
- In addition to the ILA and coordinating SUO, POTW A can issue a permit to POTW B to establish all the requirements.

There can be cases where certain details about day to day communication and responsibilities may not be specifically stated in the ILA. In many of these cases, the parties have worked together to develop separate written procedures to outline these details. The Division may accept these types of written procedures as enforceable elements of the Division approved Pretreatment Programs for both Control Authorities, provided the applicable POTW attorneys document the enforceability of these documents.

The Division will be preparing a Guidance Document to further outline the requirements for the different types of Interlocal situations.

Rule Revision Recommendation:

None for .0903(b)(13)-IWS, .0903(b)(26)-POTW, and .0909(h).

Minor revision to .0906(b)(2) - IWS to replace specifics with a reference to the definition of IWS already found in .0903(b)(13).

The following italicized language is to be inserted in .0906(b)(1) on the SUO:

(1) A Sewer Use Ordinance (SUO) providing the legal authority for implementing the pretreatment program, along with an attorney's statement, as required by 40 CFR Part 403.8 (f)(1) and Rule .0905 of this Section. Where the Control Authority accepts wastewater from one or more Satellite POTWs *and is the Control Authority within the Satellite POTW's service area*, the attorney's statement *for that Control Authority* shall document the ~~relevant legal documents~~ *Interlocal agreements (ILAs) authorized by NCGS 153A-278 and 160A-460 et seq*

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and/or SUO sections that establish the Control Authority's authority for regulation within all satellite POTW services areas *which are tributary to the Control Authority's POTW*. ~~unless the Pretreatment Program in those satellite service areas is administered by a separate Control Authority. In that case, the attorney's statement shall describe all relevant legal documents; Where a Satellite POTW serves as the Control Authority within its service area, the attorney's statement for that Control Authority shall document the Interlocal agreements (ILAs) and SUO sections that establish the Satellite POTW's authority for regulation within its service area and the requirements for the Satellite POTW to implement its Pretreatment Program in accordance with the downstream POTW's SUO and the ILA. In either case, where the POTW organizations have other written procedures to outline responsibilities not covered by the ILA or SUO, the applicable attorney's statements shall also include documentation of these procedures and the source of their enforceability;~~

Additionally, .0906(b)(9) language was removed as the requirements are now covered by .0906(b)(1) on SUO:

~~.0906(b)(9) a brief description (including organization charts) of the Control Authority which will administer the Pretreatment Program. Where more than one POTW organization is involved in the POTW wastewater collections and/or treatment system, the description shall address all the agencies, including identification of which party will receive IU applications for new and changed discharges and how the parties will communicate on SIU determinations. At such time as a SIU is identified in a satellite POTW organization's jurisdiction, the Division Director may require additional information, documents, and/or procedures as he or she determines necessary to ensure compliance with Pretreatment Program requirements, especially as needed to support appropriate communication between the POTW organizations as relates to Pretreatment Program. This may include submittal of any formal *Interlocal Agreements* authorized by NCGS 153A-278 and NCGS 160A-460 et seq, or other written procedures;~~

.0907 Procedures for program approval and revision [NCWQA, Greensboro,]

Comments indicate that this Rule is inconsistent with 403.18 in that it does not distinguish between material (substantial) program modifications, which require approval, and insignificant (non-substantial) modifications. They would like to have, at a minimum, the industrial waste survey (IWS) and revisions to the list of SIUs exempt from the list of changes requiring Division approval. It was also suggested that the Rules should specify a 90 day review period for HWA, IWS and other required submittals, or include a provision for automatically extending a permit expiration date if a HWA review goes over 90 days.

Response:

The distinction in 403.18 between substantial and non-substantial program modifications is not whether or not the modification needs to be approved by the Approval Authority (AA), but rather whether or not a public notice needs to be issued when the modification must be submitted to the AA, and when the modification can be implemented. Non-substantial modifications do not require a public notice, must be submitted at least 45 days prior to implementation, and can be implemented if the AA does not notify the POTW of its decision to approve or deny the modification, or treat the modification as substantial. Substantial modifications must be public noticed and cannot be implemented until they are approved by the AA, with no time limit for the AA to act.

Generally, the Division has committed to providing review comments within 90 days on all Program elements, including the IWS. One exception is IUPs where .0917 (d) already gives a specific time frame of 30 days. The Division is proposing wording to set a 30 day time limit in the Rule on SIU deletions as well. Every effort is made to complete a thorough review of all submissions and to provide one set of comprehensive comments within the applicable 90 or 30 day review timeframe. However, at times an initial submission is lacking too much information to complete a review, and the additional information that is submitted leads to more questions. In the past year the Division's Pretreatment, Emergency Response, and Collections Systems (PERCS) Unit has reviewed 139 of the types of projects that are given a 90 day review time. With only 4 exceptions, the reviews have been completed within 90 days. The Division believes that these types of projects, including the IWS, are

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too critical to the operation of the Pretreatment Program and the protection of the treatment plant and environment to allow them to be considered approved without receiving a full review.

Rule Revision Recommendation: The following italicized language is to be inserted:

- (4) *Except as specified below*, a pretreatment program revision shall become effective upon written approval of the Division Director.
- (A) *Pretreatment Permits: See Rule .0917(d).*
- (B) *The Division shall have 30 days from the receipt of a request for deletion of SIUs from the SIU list in which to make general comments upon, objections to or recommendations with respect to the request. Unless such an objection or request for more information is made, the request shall be final and binding.*

.0908 Reporting and Recordkeeping [NCWQA, Burlington, NCPC, Durham City]

Issue 1 regarding .0908 (b)(4).

Commenters would like to delete flow as a requirement of the allocation table (AT).

Issue 1 Response:

Regarding flow on the AT, please see .0916(c)(4)(A) Allocation Table.

Issue 1 Rule Revision Recommendation: Minor revision to replace AT details with reference to Rule .0916(c)(4) which already has the details.

Issue 2 regarding .0908 (e).

Commenters believe that this Rule is inconsistent with Federal Rule by requiring twice per year sampling for non-organic compounds. In this context, “organic compounds” means compounds like benzene, toluene, pesticides, etc.

Issue 2 Response: It is true that NC’s requirement for Control Authority sampling of SIUs is more stringent than the Federal definition. This requirement was first established in the State Rules in 1987. The requirement was revised in 1994 to go back to the Federal requirement of once each year for the more expensive organic compounds. [In this context, organic compounds mean solvents, and pesticides such as benzene, toluene, and DDT. The term is more formally defined in .0908(e) as the types of compounds listed in 40 CFR Part 136.3(a), Tables IC, ID, and IF, as amended]. If a Control Authority determines that an IUP limit is necessary at a given SIU for any non-organic pollutant and for flow in order to ensure protection of their WWTP and prevention of Pass Through and interference, we continue to believe twice per year sampling for all IUP limited non-organic parameters is appropriate.

NC Control Authorities already have various options for reduction of POTW sampling such as removing the IUP limit from the IUP altogether as allowed under the 1993 NC Division Local Limits Procedure and EPA’s October 2005 Streamlining “pollutants not present” waiver. The current Proposed Rule changes also add the option of EPA’s 2005 Streamlining “Middle Tier CIU” status. However, it is recognized that there may be some instances where those options are not applicable where the second sampling is still excessive.

It is proposed to add wording to provide NC Control Authorities with the option to demonstrate that one POTW sample per year is sufficient.

Issue 2 Rule Revision Recommendation: The following italicized language is added.

- (A) *The second of the twice each year POTW sampling required in Subparagraph (e)(1) of this Rule may be waived by the Division for good cause shown by the Control Authority.*

Also, see similar revision to .0916(c)(4)(B).

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Issue 3 regarding .0908 (e)(2).

Commenters would like this part revised so when a Control Authority elects to sample for the SIU that the Control Authority shall collect and analyze for the “required parameters” rather than “shall collect and analyze at a minimum samples as described in this Rule ...”

Issue 3 Response: Suggested wording is clearer.

Issue 3 Rule Revision Recommendation: The following italicized language is to be inserted:

- (2) If the Control Authority elects to sample and analyze in lieu of the industrial user, the Control Authority shall collect and analyze ~~at a minimum samples as described in this Rule~~ *for the required parameters* and, if applicable, in accordance with categorical standards.

Issue 4 regarding .0908 (f)

Commenters object to the requirement that documents must be retained for three years “after the end of the effective period of the document, including supporting information” as it is too vague and suggest just using three years.

Issue 4 Response:

The three year provisions in 403 CFR 403.12(o) and in various other Federal Regulations refer to retention of records related to various reports that are submitted on a set schedule. These conditions do not address any other types of required pretreatment documents, such as IUPs, HWAs and IWSs, which are effective for five years, or ERPs, long/short term monitoring plans (LTMP/STMPs), or SUOs, which can be effective for even longer periods. If the phrase “after the end of the effective period of the document” was not included, the Rule could imply that those longer term documents could be discarded two years or more before replacement documents are developed. However, the language as originally proposed could be considered vague, especially because the meaning of “supporting information” is not defined for most of these pretreatment elements. A written records retention schedule policy outside of the Rule would allow for more specificity and lessen confusion. The Division will work with the NC Pretreatment Programs to develop such a procedure.

Issue 4 Rule Revision Recommendation: The following italicized language is to be inserted:

(f) Control Authorities and Industrial Users shall retain for a minimum of three years records of monitoring activities and results along with supporting information including annual pretreatment reports, general records, water quality records, and records of industrial user impact on the POTW. ~~Support information for Other documents required by any portion of this Section for other Pretreatment Program elements, such as pretreatment permits (IUPs), HWAs, SUOs, ERPs, etc. shall be retained for five years. three years after the end of the effective period of the document, including supporting information. as specified by the Division Director.~~ A summary of all Significant Industrial User effluent monitoring data reported to the Control Authority by the Industrial User or obtained by the Control Authority shall be maintained on ~~Division approved~~ forms or in a format ~~approved by~~ specified by or otherwise acceptable to the Division for review by the Division. See also Rule 15A-NCAC-02H .0805 of this Subchapter for laboratory records retention requirements.

Issue 5 regarding .0908 (h)

Commenters want references to satellite POTWs to make clear which entity has what authorities and who will carry out the Pretreatment Program. The Rules should require legal mechanisms to be in place where a CA can relinquish pretreatment program duties and authority to the receiving POTW treatment plant.

Response: See discussion and related Rules revisions in .0906(b).

Rule Revision Recommendation: None

.0913 Public Access to Information [NCWQA, Burlington]

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Commenters requested that the Division ensure that the State disclosure requirements are consistent with 40 CFR 403.14.

Response: DENR's General Council office has reviewed the proposed language for 15A NCAC 02H .0913 and 40 CFR 403.14 and found that they are consistent. NCGS 143-215.3C provides the IU the opportunity to protect, as confidential information, trade secrets; and both the local Control Authorities and POTWs and the Division would be governed by that provision in reviewing and using information for which the protection is sought.

Rule Revision Recommendation: None

.0916 Pretreatment Permits [NCWQA, Burlington, MDS Buncombe, Greensboro, Raleigh]

Issue 1 regarding .0916(c)(3)(C):

Commenters requested that the SIU inspection within 12 months of permit issuance not be required with the permit submittal. It is not required by Federal Rule and could be an unintended trap for CAs.

Issue 1 Response:

The Federal Regulations include almost nothing specific about SIU IUPs. When Rule .0916 was first adopted in 1987 to establish conditions for individual permits for each SIU, the Division determined that a Control Authority on-site inspection of the SIU, and its pretreatment facilities if any, is a valuable tool to ensure development of a good IUP. The Division continues to feel this is appropriate. However, the 12 month restriction can be a problem. The Federal Regulations in 40 CFR 403.8(f)(2)(v) require that an SIU inspection be done annually, which the Division has interpreted as a calendar year. So an SIU could be inspected in March of one year and in September of the following year and the Control Authority would be in compliance with the annual inspection requirement. If the permit had to be renewed in June, the inspection would not be within the last 12 months. This will become even more of an issue for any SIUs that are considered middle tier SIUs whose inspection requirement in 403.8(f)(2)(v) is now reduced to once every other year.

Issue 1 Rule Revision Recommendation: The following italicized language is to be inserted:

The Control Authority staff shall include documentation of an *the most recent* onsite inspection of the industrial user and any existing wastewater pretreatment system. ~~system as part of the permit record for new and renewed permits. Such inspection shall have been conducted a maximum of 12 months prior to the issue date of the pretreatment permit.~~

Issue 2 regarding .0916(c)(4)(A).

Commenters would like to delete flow as a requirement of the AT because they believe it is unnecessary.

Issue 2 Response:

Flow is necessary to the AT to demonstrate that the Control Authority does not permit flow discharge to the collection system or WWTP in excess of its hydraulic capacity. It is also necessary because most WWTP capacities for most typical pollutants of concern (POCs) are expressed in mass (lbs/day). Most NC Control Authorities have IUP limits in concentration (mg/l), which cannot actually protect the MAHL without also having a limit on flow. The Division has always allowed Control Authorities to issue IUPs without a flow limit as long as all pollutants that have a lbs/day MAHL have IUP limits in lbs/day. Even in this case, however, flow is still "of concern" because one must have a flow reading to compute the lbs/day.

Issue 2 Rule Revision Recommendation: Minor revision to add italicized wording:

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

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.0917 SIU Pretreatment permit submission and review [NCWQA, Burlington, Greensboro, NCPC, MSD Buncombe]

Overall, commenters questioned the requirements in (a) and (b) for POTWs to submit all SIU pretreatment permits to the Division upon issuance as well as the requirements in (d)-(h) for the State to review all SIU pretreatment permits. No other State requires submittal and/or review. The Division can request submittal of any specific permits they feel the need to have on hand and/or review. The requirement to submit all permits is a burden with no environmental benefit; DWQ staff does not have time to review every permit. POTWs have demonstrated their ability to responsibly issue SIU permits. It was suggested that permit submittal and/or review only be required for new SIUs, where there have been issues with a particular industry, Control Authorities (CAs) which are new, have failed to issue proper permits in the past or on an audit basis. Support Rules to allow local entities to decide whether permits need State review.

Specifically on (b), it is unclear what supporting information is required for a permit modification.

Specifically on (g), suggest adding "requests shall be a single comprehensive request for information."

Response:

Regarding what other states do for permit submittal and/or review, it is our understanding that EPA's intent was that the Approval Authority would review all of a Control Authority's SIU permits during their once every 5 year audit inspection. By requiring submittal of all IUPs at the time of issuance, the Division as NC's Approval Authority is simply rearranging how we apply our resources. Many of the Regional Offices are performing audits by themselves. They may not have the necessary training to review permits and certainly not the time. Also, by requiring submittal of IUPs upon issuance, the subsequent review can detect problems immediately rather than 1 – 4 years later.

The Division receives a number of requests for information on SIUs and their permits from the public, other Division and Department staff, other State offices such as the Department of Commerce, and legislative staff. Submittal of permits at the time of issuance allows the Division to maintain sufficient files and databases so that these requests can be addressed in a timely fashion. However, paragraph (c) was added to Rule .0917 specifically to allow the requirements for permit submission upon issuance to be waived based on many of the factors suggested by the commenters.

A permit submittal does not necessarily mean a permit review. It is important to remember that the Rules themselves simply establish conditions under which the Division may conduct a review of any permit, should they wish to do so. These include limits on the timeliness of the review and the scope of conditions under which objections to a permit can be made. The Rules do not actually require the Division to review any individual permit, or any type of permit. And the Division feels strongly that it would be inappropriate for the Rules to be revised to prevent the Division from reviewing any permit. To do so would be counter to the Division's responsibilities as Approval Authority to ensure proper implementation of local Pretreatment Programs.

The Division does agree with the commenters that numerous pretreatment programs have been in operation for many years and that there are pretreatment professionals that are very capable of writing adequate IUPs. Cutting back on detailed reviews of each individual permit prepared by such Control Authorities would free up resources to devote to other tasks such as more training and more direct assistance to those Control Authorities that need it. The Division has agreed to work out an agreement with NCWQA/NCPC regarding the form and substance of DWQ's streamlined permit review policy.

Regarding paragraph (b) and supporting information required for permit modifications, (b) includes the statement "Permit modification submissions for Significant Industrial Users shall include updated versions of this supporting information listed below as applicable to that modification." The Allocation Table (AT) would not be

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required unless the modification changed permit limits per .0916(c)(4)(a). A modification that removes a limit would need a rationale for this. A new application is only filed with a new or renewed permit, so would not be required for a permit modification. If the permit was being modified to address information related to a particular part of the application, only that information and/or revised application part would be required. The inspection would not be required for any permit modifications per .0916(c)(3)(C).

Regarding paragraph (g) and a single comprehensive request for more information, every effort is made to complete a thorough review at the time of the submission and to provide one set of comprehensive comments. However, at times an initial submission is lacking too much information to complete a review and the additional information that is submitted leads to more questions.

Rule Revision Recommendation: None

.0920 Pretreatment Facility Operation and Maintenance

Commenters questioned why this in the Rules if the State never intends to classify pretreatment facilities. Since it is not used, it should be taken out.

Response:

The Division's Technical Assistance & Certification Unit (TACU) reports that the Wastewater Pollution Control Systems Operators Certification Commission (WPCSOCC) does not now classify pretreatment systems as these facilities do not hold NPDES or water quality permits issued by DWQ but may choose to in the future. Even without classification by the WPCSOCC, Control Authorities and other POTWS may require industries with pretreatment facilities to have operators with certification from the State, require other operator training, establish operator site visitation schedules, operation and maintenance (O&M) procedures, etc. as they see fit under their local SUOs or user permits. The Division has elected, however, to keep the condition in for future flexibility should the need arise.

Rule Revision Recommendation: None

.0922 Hearings [NCWQA]

The commenter questioned if the reference to "civil" penalty in (a) should be a reference to an "administrative" penalty. The commenter also requested clarification on whether the appeal to the POTW Director in (a) is a mandatory appeal that will otherwise preclude judicial review, and if it is requested this be more clear. Similarly, the commenter questioned if the reference to Optional Appeal Hearings in (b) should be a reference to Administrative Appeal Hearings. The concern was that otherwise it appears inconsistent with the body of this Section which states that failure to follow such available appeals will preclude further appeal, and asks for the same clarity as for Section (a). Finally, the commenters believe that overall the Rule should indicate that any IU that has properly followed (a) and (b) may seek judicial review by following procedures in (d).

Response:

The Division consulted with the DENR attorneys, who replied as follows:

- The term "civil penalties" and "administrative penalties" are interchangeable. However, for consistency with NCGS 143-215.6A, the term "civil penalties" is preferable.
- The term "Administrative Appeal Hearing" is more clear for (b) and it flows better from the language in (a).
- Overall, the Rule is intended to mean that the appeal to the POTW Director in (a) is a mandatory appeal that will otherwise preclude judicial review. Additionally, if an individual Control Authority does elect to include the second "Administrative Appeal Hearing" level in its SUO, the language in the Rule also means that this second level of appeal is also a mandatory appeal that will otherwise preclude judicial review.

Rule Revision Recommendation: The following italicized language is proposed:

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(b) ~~Optional~~ *Administrative Appeal Hearings*. If so provided by the governing body of the Control Authority.... Failure to make written demand within the time specified herein shall bar further ~~appeal~~ *judicial review*.

(d) *Judicial Review*. Any person against whom a final decision of the hearing officer or POTW Director is entered, pursuant to the hearing(s) conducted under this Rule and who has exhausted all administrative remedies made available to him or her by statute or by the Control Authority's Sewer Use Ordinance, may seek judicial review of the decision...

Miscellaneous [NCWQA]

One commenter requested that "Division approved forms" be replaced with "Forms acceptable to the Division."
Response:

This phrase or similar is present in several places in the Rule. The Division generally agrees with the proposal as it allows POTWs to make changes to forms and formats provided by the Division, or to develop and use entirely new forms or formats, both without having to wait for prior Division approval, while still allowing the Division to require changes should we find a significant problem with a revision.

Rule Revision: In the following Rules, "Division approved forms or formats" or similar wording was replaced by either "forms or formats acceptable to the Division" or "forms or formats specified by or otherwise acceptable to the Division." .0908(b)-1st paragraph; .0908(b)(4); .0908(b)(5); .0908(f); .0909(g); and .0916(c)(6)(A). In .0907(b), the phrase "Division approved forms" was removed altogether.

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LIST OF ACRONYMS

AA:	Approval Authority
AT:	Allocation Table
BOD:	Biological Oxygen Demand
CA:	Control Authority
CWA:	Clean Water Act
DENR:	Department of Environment and Natural Resources
DWQ:	Division of Water Quality
EMC:	Environmental Management Commission
EPA:	Environmental Protection Agency
HWA:	Headworks Analysis
IJA:	Interjurisdictional Agreement
ILA:	Interlocal Agreement
IU:	Industrial User
IUP:	Industrial User Pretreatment Permit
IWC:	Instream Waste Concentration
IWS:	Industrial Waste Survey
LTMP:	Long-term Monitoring Plan
MAHL:	Maximum Allowable Headworks Loading
MAIL:	Maximum Allowable Industrial Loading
MGD:	million gallons per day
MSD:	Metropolitan Sewerage District
NCPC:	North Carolina Pretreatment Consortium
NCWQA:	North Carolina Water Quality Association
NH ₃ :	Ammonia Nitrogen
NPDES:	National Pollutant Discharge Elimination System
O&M:	Operation and Maintenance
PERCS:	Pretreatment, Emergency Response and Collection Systems
POC:	Pollutant of Concern
POTW:	Publically Owned Treatment Works
RPA:	Reasonable Potential Analysis
TSS:	Total Suspended Solids
SIU:	Significant Industrial User
SNC:	Significant Noncompliance
STMP:	Short-term Monitoring Plan
SUO:	Sewer Use Ordinance
TACU:	Technical Assistance and Certification Unit
WPCSOCC:	Wastewater Pollution Control Systems Operators Certification Commission
WQS:	Water Quality Standard
WWTP:	Wastewater Treatment Plant

Hearing Officers Report on Proposed Revisions to the
Wastewater Pretreatment Rules in 15A NCAC 02H .0900

WASTEWATER PRETREATMENT RULES
AS RECOMMENDED
BY THE HEARING OFFICERS
FOR ADOPTION BY THE EMC

1 12/2010: The **BLUE** highlighted text changes are made in December 2010 as a result of the final
 2 series of meetings and comments (i.e., after the original Hearing Officers Report was published
 3 on the EMC web-site on 10/22/2010.

4
 5 10/22/2010: The **GREY** highlighted texts are changes made as a result of the formal Public
 6 Comment/Hearings. These changes were in the Hearing Officers Report on the EMC web-site as
 7 of 10/22/2010.

8
 9 Another copy of this Rule as Proposed with boxes that explain each change is available on the
 10 PERCS website at <http://portal.ncdenr.org/web/wq/swp/ps/pret>.

11 SECTION .0900 – LOCAL PRETREATMENT PROGRAMS

12 15A NCAC 02H .0901 PURPOSE

13
 14 (a) The rules in this Section are designed to implement North Carolina General Statutes 143-
 15 215.3(a)(14) and 143-215.1 and provisions of the Federal Water Pollution Control Act (also
 16 known as the "Clean Water Act") regarding the ~~pretreatment of industrial discharges~~ discharge of
 17 non-domestic wastewater into publicly owned treatment works (POTWs). They establish
 18 responsibilities of State and local government, industry, and the public to implement
 19 Pretreatment Standards to control pollutants which pass through or interfere with treatment
 20 processes in POTWs, which may contaminate sewage sludge, or which otherwise have an
 21 adverse impact on the POTW, its workers, or the environment.

22
 23 (b) Copies of rules referenced in this Section may be obtained from the Division of
 24 ~~Environmental Management, Water Quality, Water Quality Section~~ Surface Water Protection
 25 Section at the following locations:

26 ~~(1) Pretreatment Offices~~

27 ~~Archdale Building~~

28 ~~P. O. Box 29535, 512 N. Salisbury St.,~~

29 ~~Raleigh, N.C. 27626-0535~~

30 (1) [http://www.ncwaterquality.org/percs/;](http://www.ncwaterquality.org/percs/)

31 (2) the North Carolina Department of Environment and Natural Resources, Division
 32 of Water Quality

33 Offices of the Pretreatment, Emergency Response, and Collection Systems
 34 (PERCS) Unit

35 Physical Address: Archdale Building, 512 N. Salisbury St.,

36 Raleigh, N.C. 27604

37 Mailing Address: 1617 Mail Service Center

38 Raleigh, N.C. 27699-1617

39 ~~(2)~~(3) Raleigh Regional Office

40 3800 Barrett Dr.

41 Raleigh, N.C. 2761127609

42 ~~(3)~~(4) Asheville Regional Office

43 59 Woodfin Place 2090 US Highway 70

44 Asheville, NC 28801 Swannanoa, NC 28778

45 ~~(4)~~(5) Mooresville Regional Office

46 919 N. Main St., 610 East Center Avenue, Suite 301

- 1 Mooresville, N.C. 28115
 2 ~~(5)~~(6) Fayetteville Regional Office
 3 ~~Wachovia-Systel Bldg; Suite 714~~
 4 ~~225 Green Street~~
 5 Fayetteville, N.C. 28301
 6 ~~(6)~~(7) Washington Regional Office
 7 1424 Carolina Avenue,
 8 Washington, N.C. 27889
 9 ~~(7)~~(8) Wilmington Regional Office
 10 127 Cardinal Drive Extension,
 11 Wilmington, N.C. 28405-3845
 12 ~~(8)~~(9) Winston-Salem Regional Office
 13 ~~8025 North Point Blvd. 585 Waughtown Street~~
 14 ~~Winston-Salem, N.C. 27106~~27107

15
 16 *History Note: Authority G.S. 143-215.3(a)(14);*
 17 *Eff. March 28, 1980;*
 18 *Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1,*
 19 *1984.*
 20
 21
 22

23 15A NCAC 02H .0902 SCOPE

24 These Rules apply to:

- 25 (1) Pollutants ~~and wastewater discharges~~ from non-domestic sources covered by
 26 Pretreatment Standards which are indirectly discharged into or transported by
 27 truck or rail or otherwise introduced into POTWs as defined in 40 CFR Part 403.3
 28 and Rule .0903 of this Section;
 29 (2) POTWs and Control Authorities which receive wastewater from sources subject
 30 to Pretreatment Standards; and
 31 (3) Any new or existing source subject to Pretreatment Standards. Pretreatment
 32 Standards do not apply to sources which discharge to a sewer which is not
 33 connected to a POTW treatment plant.
 34

35 *History Note: Authority G.S. 143-215.3(a)(14);*
 36 *Eff. March 28, 1980;*
 37 *Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987.*
 38
 39
 40

41 15A NCAC 02H .0903 DEFINITION OF TERMS

42 (a) Unless otherwise defined in Paragraph (b) of this Rule, the definitions promulgated by the
 43 Environmental Protection Agency and codified as 40 CFR Part 403.3 are hereby incorporated by
 44 reference including any subsequent amendments and editions. This material is available for
 45 inspection at the ~~Department of Environment, Health, and Natural Resources, Division of~~
 46 ~~Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N.~~

1 ~~Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from the US Government~~
 2 ~~Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-~~
 3 ~~6947 at a cost of twenty six dollars (\$26.00).locations listed in Rule .0901 of this Section and at~~
 4 ~~http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.~~

5 (b) For this Rule the following definitions in addition to those incorporated by reference in
 6 Paragraph (a) of this Rule shall apply:

7 (1) "Approval Authority" means the Director of the Division of ~~Environmental~~
 8 ~~Management-Water Quality~~ of the North Carolina Department of ~~Environment,~~
 9 ~~Health, Environment~~ and Natural Resources, or his/her designee.

10 (2) "Average" means the value calculated by dividing the sum of the data values
 11 collected over a time period by the number of data points which comprise the
 12 sum.

13 (3) "Bypass" is the intentional diversion of waste streams from any portion of a
 14 pretreatment facility.

15 (4) "Commission" means the Environmental Management Commission of the North
 16 Carolina Department of ~~Environment, Health, Environment~~ and Natural
 17 Resources or its successor.

18 ~~(5) "Compliance Judgment Point" or "CJP" is the term used for a value used in~~
 19 ~~calculating significant noncompliance. Compliance judgment points are~~
 20 ~~calculated by summing the number of individual sample values for a parameter~~
 21 ~~and the number of averages of sample values calculated for the same parameter~~
 22 ~~during a six month compliance judgment period.~~

23 ~~(6)(5) "Control Authority" refers to:~~

24 ~~(A) the POTW organization if the POTW's POTW organization's submission~~
 25 ~~for its pretreatment program has been approved and that approval has not~~
 26 ~~been subsequently withdrawn, withdrawn (see also Rule .0908(h) of this~~
 27 ~~Section), or;~~

28 ~~(B) the approval authority if the submission has not been approved or the~~
 29 ~~Division has subsequently withdrawn pretreatment program approval.~~

30 ~~(6)(5) "Control Authority" refers to the POTW organization if the POTW organization's~~
 31 ~~Pretreatment Program has been approved in accordance with Rules .0905, .0906,~~
 32 ~~and .0907 of this Section, and that approval has not been subsequently withdrawn.~~
 33 ~~Otherwise, the Approval Authority is the Control Authority.~~

34 ~~(7)(6) "Division" refers to the North Carolina Department of ~~Environment, Health,~~~~
 35 ~~~~Environment~~ and Natural Resources, Division of ~~Environmental Management-~~~~
 36 ~~~~Water Quality.~~~~

37 ~~(8)(7) "Enforcement Response Plan" or "ERP" means the ~~POTW-Control Authority~~~~
 38 ~~pretreatment program document describing the guidelines for identifying~~
 39 ~~violations of and enforcing specific local limits and other pretreatment standards~~
 40 ~~and requirements.~~

41 ~~(9)(8) "EPA" means the United States Environmental Protection Agency.~~

42 ~~(10)(9) "Fundamentally Different Factors" are factors upon which a variance from a~~
 43 ~~National Categorical Pretreatment Standard may be granted. These factors are~~
 44 ~~those relating to an industrial user that are fundamentally different from the~~
 45 ~~factors considered during development of a National Categorical Pretreatment~~
 46 ~~Standard applicable to that user and that may justify a different discharge limit~~

1 than specified in the applicable National Categorical Pretreatment Standard.

2 ~~(11)~~(10) "Headworks Analysis" or "HWA" is the analysis used to calculate the
3 maximum allowable POTW influent loadings for flow and pollutants of concern
4 based on design capacity, NPDES or Non-discharge permit limits, pass through,
5 interference, sludge, or worker safety and health ~~considerations~~. considerations, as
6 applicable. The headworks analysis is the technical basis for deriving local limits
7 applied to industrial users.

8 (11) "Indirect Discharge" or "Discharge" refers to the introduction of pollutants into a
9 POTW from any non-domestic source regulated under section 307(b), (c), or (d)
10 of the Clean Water Act.

11 (12) "Industrial User" or "User" means a source of Indirect Discharge.

12 ~~(12)~~(13) "Industrial Waste Survey" refers to the ~~periodic~~ survey of the users of the
13 POTW collection system and/or treatment plant performed by the ~~POTW Control~~
14 Authority to determine those users meeting the criteria for Significant Industrial
15 User status as required by 40 CFR Part 403.8 (f)(2)(i-iii) and Rule .0905 of this
16 Section, including identification of all industrial users and the character and
17 amount of pollutants contributed to the POTW by these industrial users and
18 identification of those industrial users meeting the definition of Significant
19 Industrial User. Where the Control Authority accepts wastewater from one or
20 more satellite POTWs, the IWS for that Control Authority shall address all
21 satellite POTW services areas, unless the Pretreatment Program in those satellite
22 service areas is administered by a separate Control Authority.

23 ~~(13)~~(14) "Interference" refers to inhibition or disruption of the POTW collection
24 system; treatment processes; operations; or its sludge process, use, or disposal
25 which causes or contributes to a violation of any requirement of the POTW's
26 Control Authority's (and/or the POTW treatment plant's, if different from the
27 Control Authority) NPDES, collection system, stormwater, or Non-Discharge
28 Permit or prevents sewage sludge use or disposal in compliance with specified
29 applicable State and Federal statutes, regulations, or permits.

30 ~~(14)~~ "Long Term Monitoring Plan" or "LTMP" is the ~~monitoring plan designed to~~
31 ~~collect POTW site specific data for use in the Headworks Analysis.~~

32 (15) "Medical Waste" refers to isolation wastes, infectious agents, human blood and
33 blood products, pathological wastes, sharps, body parts, contaminated bedding,
34 surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

35 (16) "Monitoring Plan" refers to the monitoring plan designed to collect POTW site-
36 specific data for use in the Headworks Analysis. Monitoring Plans may be
37 designated as "Long Term" or "Short Term," LTMP and STMP, respectively, as
38 the Division Director determines to be necessary.

39 ~~(16)~~(17) "National Categorical Pretreatment Standard" or "Categorical Standard"
40 refers to any regulation containing pollutant discharge limits promulgated by EPA
41 in accordance with sections 307(b) and (c) of the Federal Clean Water Act which
42 applies to a specific category of industrial users, and which appears in 40 CFR
43 Chapter 1, Subchapter N, Parts 405-471.

44 ~~(17)~~(18) "National Prohibited Discharge Standard" is an absolute prohibition
45 against the discharge of certain substances to the POTW, including both general
46 and specific prohibitions.

1 ~~(18)~~(19) "Net/Gross Calculation" is an adjustment of a categorical pretreatment
2 standard to reflect the presence of pollutants in the industrial user's intake water.

3 ~~(19)~~—"New Source" refers to:

4 ~~(A)~~—~~Any building, structure, facility, or installation from which there may be a~~
5 ~~discharge of pollutants, the construction of which commenced after the~~
6 ~~publication of proposed categorical pretreatment standards under section~~
7 ~~307(e) of the Federal Clean Water Act which will be applicable to such~~
8 ~~source if such standards are thereafter promulgated in accordance with~~
9 ~~section 307(e), provided that:~~

10 ~~(i)~~—~~the building, structure, facility, or installation is constructed at a~~
11 ~~site at which no other source is located; or~~

12 ~~(ii)~~—~~the building, structure, facility, or installation totally replaces the~~
13 ~~process or production equipment that causes the discharge of~~
14 ~~pollutants at an existing source; or~~

15 ~~(iii)~~—~~the production or wastewater generating processes of the building,~~
16 ~~structure, facility, or installation are substantially independent of~~
17 ~~an existing source at the same site. In determining whether these~~
18 ~~are substantially independent, factors such as the extent to which~~
19 ~~the new facility is integrated with the existing plant, and the extent~~
20 ~~to which the new facility is engaged in the same general type of~~
21 ~~activity as the existing source, shall be considered.~~

22 ~~(B)~~—~~Construction on a site at which an existing source is located results in a~~
23 ~~modification rather than a new source if the construction does not create a~~
24 ~~new building, structure, facility, or installation meeting the criteria of~~
25 ~~Subparts (19)(A)(ii) or (iii) of this Rule but otherwise alters, replaces, or~~
26 ~~adds to existing process or production equipment.~~

27 ~~(C)~~—~~For purposes of this definition, construction of a new source has~~
28 ~~commenced if the owner or operator has:~~

29 ~~(i)~~—~~Begun, or caused to begin, as part of a continuous on-site~~
30 ~~construction program:~~

31 ~~(I)~~—~~Any placement, assembly, or installation of facilities or~~
32 ~~equipment; or~~

33 ~~(II)~~—~~Significant site preparation work including clearing,~~
34 ~~excavation, or removal of existing buildings, structures or~~
35 ~~facilities which is necessary for the placement, assembly, or~~
36 ~~installation of new source facilities or equipment; or~~

37 ~~(ii)~~—~~Entered into a binding contractual obligation for the purchase of~~
38 ~~facilities or equipment which are intended to be used in its~~
39 ~~operation within a reasonable time. Options to purchase or~~
40 ~~contracts which can be terminated or modified without substantial~~
41 ~~loss, and contracts for feasibility, engineering, and design studies~~
42 ~~do not constitute a contractual obligation under this definition.~~

43 (20) "Noncontact Cooling Water" is water used for cooling which does not come into
44 direct contact with any raw material, intermediate product, waste product, or
45 finished product.

46 (21) "Non-discharge Permit" is a permit issued by the State pursuant to G.S. 143-

- 1 215.1(d) for a waste which is not discharged directly to surface waters of the State
 2 or for a wastewater treatment works which does not discharge directly to surface
 3 waters of the State.
- 4 (22) "Operator in Responsible Charge" is the operator designated to fulfill the
 5 requirements of G.S. 90A-44.
- 6 (23) "Pass Through" means a discharge which exits the POTW into waters of the State
 7 in quantities or concentrations which, alone or with discharges from other
 8 sources, causes a violation, including an increase in the magnitude or duration of
 9 a violation, of the POTW's Control Authority's (and/or the POTW's, if different
 10 from the Control Authority) NPDES permit, NPDES, collection system,
 11 stormwater, or Non-discharge permit, or of an instream water quality standard,
 12 standard even if not included in the permit.
- 13 ~~(24)~~ "Permit Synopsis" refers to a document compiling information from the
 14 ~~pretreatment permit application and industry inspection and providing the~~
 15 ~~rationale for the pretreatment permit limits.~~
- 16 ~~(25)~~(24) "Pollutant" includes any waste defined in G.S. 143-213(18); dredged
 17 spoil; solid waste; incinerator residue; garbage; sewage sludge; munitions;
 18 medical wastes; chemical waste; biological materials; radioactive materials; heat;
 19 wrecked or discarded equipment; rock; sand; cellar dirt; municipal and
 20 agricultural waste; and certain characteristics of wastewater, such as pH,
 21 temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor.
- 22 ~~(26)~~(25) "Pollutant of Concern" or "POC" is a pollutant identified as being of
 23 concern to the POTW Control Authority for purposes of the pretreatment
 24 program; a pollutant of concern may include but not be limited to conventional
 25 wastewater pollutant, such as BOD, TSS, or ammonia; any of the priority
 26 pollutants; flow; pH; and any pollutant that may be identified as a source of
 27 interference, pass through, whole effluent toxicity, or sludge contamination.
- 28 ~~(27)~~(26) "POTW", or Publicly Owned Treatment Works, means a treatment works
 29 as defined by Section 212 of the Federal Clean Water Act (CWA), which is
 30 owned by a State or local government organization. This definition includes any
 31 devices and systems used in the storage, treatment, recycling and reclamation of
 32 municipal sewage or industrial wastes of a liquid nature. It also includes sewers,
 33 pipes, and other conveyances, the collection system, only if they convey it
 34 conveys wastewater to a POTW treatment plant. Also see Rule .0402 of
 35 Subchapter 02T of these Rules. The term also means the local government
 36 organization, or municipality, as defined in section 502(4) of the CWA, which has
 37 jurisdiction over indirect discharges to and the discharges from such a treatment
 38 works. In this context, the organization may be the owner of the POTW treatment
 39 plant or the owner of the collection system into which an indirect discharger
 40 discharges. This second type of POTW may be referred to as a "satellite POTW
 41 organization." For clarity, the local government may be referred to as the
 42 "POTW organization" or "Control Authority" as applicable in this Rule and all
 43 other Rules in this Section. See also Subparagraph (b)(5) of this Rule and Rule
 44 .0908(h) of this Section.
- 45 ~~(28)~~(27) "POTW Director" means the chief administrative officer of the ~~publicly~~
 46 ~~owned treatment works~~ Control Authority or his/her delegate.

- 1 ~~(29)~~(28) "Pretreatment" refers to the reduction of the amount of pollutants, the
2 elimination of pollutants, or the alteration of the nature of pollutant properties in
3 wastewater prior to or in lieu of discharging or otherwise introducing such
4 pollutants into a ~~POTW.~~ POTW collection system and/or treatment plant. The
5 reduction or alteration may be obtained by physical, chemical, or biological
6 processes, or process changes or other means, except as prohibited by 40 CFR
7 ~~Section Part~~ 403.6(d).
- 8 ~~(30)~~(29) "Pretreatment Standard" is any prohibited discharge standard, categorical
9 standard, or local limit which applies to an industrial user.
- 10 ~~(31)~~(30) "Process Wastewater" means any water which, during manufacturing or
11 processing, comes into direct contact with or results from the production or use of
12 any raw material, intermediate product, finished product, by-product, or waste
13 product.
- 14 ~~(32)~~(31) "Removal Credits" are credits, available under certain conditions, that are
15 applicable to categorical industrial users and are used to adjust categorical
16 standards in such a way as to reflect POTW consistent removal of a particular
17 pollutant.
- 18 ~~(33)~~(32) "Sewer Use Ordinance" or "SUO" means the ~~local government POTW~~
19 and/or Control Authority organization ordinance providing the legal authority for
20 administering the pretreatment program.
- 21 ~~(34)~~ "Significant Industrial User" or "SIU" means an industrial user that discharges
22 wastewater into a publicly owned treatment works and that:
- 23 ~~(A)~~ upon the effective date of this Rule until January 1, 1996, discharges an
24 average of 50,000 gallons or more per day of process wastewater to the
25 POTW; effective January 1, 1996, that discharges an average of 25,000
26 gallons or more per day of process wastewater to the POTW (excluding
27 sanitary, noncontact cooling and boiler blowdown wastewaters) or;
- 28 ~~(B)~~ contributes more than 5 percent of the design flow of the POTW treatment
29 plant or more than 5 percent of the maximum allowable headworks
30 loading of the POTW treatment plant for any pollutant of concern, or;
- 31 ~~(C)~~ is required to meet a national categorical pretreatment standard, or;
- 32 ~~(D)~~ is, regardless of Parts (A), (B), and (C) of this definition, otherwise
33 determined by the control authority to have a reasonable potential for
34 adversely affecting the POTW's operation or for violating any
35 pretreatment standard or requirement or POTW's receiving stream
36 standard, or to limit the POTW's sludge disposal options.
- 37 (33) "Significant Industrial User" or "SIU" means an industrial user that discharges
38 wastewater into a publicly owned treatment works and that:
- 39 (A) Discharges an average of 25,000 gallons per day or more of process
40 wastewater to the POTW (excluding sanitary, noncontact cooling and
41 boiler blowdown wastewaters); or
- 42 (B) Contributes process wastewater of more than five percent of the average
43 permitted flow limit of the POTW treatment plant or more than five
44 percent of the maximum allowable headworks loading of the POTW
45 treatment plant for any other pollutant of concern; which makes up 5% or
46 more of the NPDES or Non-discharge permitted flow limit or organic

capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS and Ammonia; ~~or~~

- (C) ~~Is subject to Categorical Pretreatment Standards under 40 CFR Part 403.6 and 40 CFR chapter I, Subchapter N, Parts 405-471; ~~or~~~~
- (D) ~~is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement, or the POTW's effluent limitations and conditions in its NPDES or Non-discharge permit, or the POTW's receiving stream standard, or to limit the POTW's sludge disposal options;~~
- (E) ~~Subject to approval under Rule .0907(b) of this Section, the Control Authority may determine that an Industrial User meeting the criteria in Subparagraph (b)(33), Parts (A) or (B) of this Rule has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement, the POTW's effluent limitations and conditions in its NPDES or Non-discharge permit, the POTW's receiving stream standard, or to limit the POTW's sludge disposal options, and thus is not a Significant Industrial User; or~~
- (F) ~~Subject to approval under Rule .0907(b) of this Section, the Control Authority may determine that an Industrial User meeting the criteria in Subparagraph (b)(33), Part (C) of this Rule meets the requirements of 40 CFR Part 403.3(v)(2) and thus is a Non-Significant Categorical Industrial User.~~

(35)(34) "Significant Noncompliance" or "SNC" is the status of noncompliance of a Significant Industrial User ~~an industrial user~~ when one or more of the following criteria are ~~met; met~~. Additionally, effective July 1, 2011, any Industrial User which meets the criteria in Subparagraph (b)(34), Parts (C), (D), or (H) shall also be SNC.

- (A) ~~Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of all the measurements taken during a six month period exceed (by any magnitude) for the daily maximum limit and the average limit pollutant parameter; this percentage is determined by dividing the total number of violations for the parameter by the number of compliance judgment points for the parameter taken for the same pollutant parameter (not including flow) during a six month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);~~
- (B) ~~Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements taken for each the same pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH); this percentage is determined by dividing~~

1 the total number of TRC violations for the parameter by the number of
2 compliance judgment points for the parameter);

- 3 (C) Any other violation of a pretreatment effluent limit (daily maximum or
4 longer term average) Pretreatment Standard or Requirement as defined by
5 40 CFR Part 403.3(l) (daily maximum, long-term average, instantaneous
6 limit, or narrative standard) that the Control Authority (or POTW, if
7 different from the Control Authority, determines has caused, alone or in
8 combination with other discharges, interference or pass through (including
9 endangering the health of POTW personnel or the general public);
- 10 (D) Any discharge of a pollutant or wastewater that has caused imminent
11 endangerment to human health, welfare or to the environment or has
12 resulted in either the Control Authority's or the POTW's, if different from
13 the Control Authority, exercise of its emergency authority under
14 ~~Paragraph (f)(1)(vi)(B) of 40 CFR 403.8~~ 40 CFR Part 403.8(f)(1)(vi)(B) to
15 halt or prevent such a discharge;
- 16 (E) Failure to meet, within 90 days after the schedule date, a compliance
17 schedule milestone contained in a pretreatment permit or enforcement
18 order for starting construction, completing construction, or attaining final
19 compliance;
- 20 (F) Failure to provide, within ~~30-45~~ days after the due date, required reports
21 such as baseline monitoring reports, 90-day compliance reports, ~~periodic~~
22 self-monitoring reports, and reports on compliance with compliance
23 schedules;
- 24 (G) Failure to accurately report noncompliance; or
- 25 (H) Any other violation or group of violations that the Control Authority
26 and/or POTW determines will adversely affect the operation or
27 implementation of the local pretreatment program.

28 ~~(36)~~(35) "Staff" means the staff of the Division of ~~Environmental Management,~~
29 Water Quality, Department of Environment, Health, Environment and Natural
30 Resources.

31 ~~(37)~~(36) "Upset" is an exceptional incident in which there is unintentional and
32 temporary noncompliance with categorical pretreatment standards because of
33 factors beyond the reasonable control of the industrial user. An upset does not
34 include noncompliance to the extent caused by operational error, improperly
35 designed treatment facilities, inadequate treatment facilities, lack of preventive
36 maintenance, or careless or improper operation.

37 ~~(38)~~(37) "Waste reduction" means source reduction and environmentally sound
38 recycling.

39 ~~(39)~~(38) "Wastewater" means the liquid and water-carried industrial or domestic
40 wastes from dwellings, commercial buildings, industrial facilities, mobile sources,
41 treatment facilities and institutions, together with any groundwater, surface water,
42 and storm water that may be present, whether treated or untreated, which are
43 contributed into or permitted to enter the POTW.

44 ~~(40)~~(39) "Waters of the State" are all streams, rivers, brooks, swamps, sounds, tidal
45 estuaries, bays, creeks, lakes, waterways, reservoirs, and all other bodies or
46 accumulations of water, surface or underground, natural or artificial, public or

1 private, which are contained in, flow through, or border upon the State or any
2 portion thereof.

3
4 *History Note: Authority G.S. 130A-334(13); 143-215.3(a)(1),(14); 150B-21.6;*
5 *Eff. March 28, 1980;*
6 *Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1,*
7 *1984.*

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9
10
11 15A NCAC 02H .0904 REQUIRED PRETREATMENT PROGRAMS

12 (a) The Regulations regarding pretreatment program development by the POTW Control
13 Authority promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~
14 Parts 403.8(a) through 40 CFR Part 403.8(e) are hereby incorporated by reference including any
15 subsequent amendments and editions. This material is available for inspection at the ~~Department~~
16 ~~of Environment, Health, and Natural Resources, Division of Environmental Management,~~
17 ~~Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC~~
18 ~~27626 0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O.~~
19 ~~Box 56445, Atlanta, Georgia 30343, phone number (404) 331 6947 at a cost of twenty six~~
20 ~~dollars—(\$26.00). locations listed in Rule .0901 of this Section and at~~
21 http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

22 (b) The Division may allow a POTW Control Authority having a combined ~~design permitted~~
23 flow less than or equal to ~~2~~ two million gallons per day and ~~having fewer~~ less than four
24 Significant Industrial Users to develop and implement a Modified Pretreatment Program that
25 encompasses a portion of the requirements in Rules .0905 and .0906 of this Section, as
26 designated by the Division Director. ~~A POTW having a combined design flow less than or equal~~
27 ~~to 2 million gallons per day and having fewer than four Significant Industrial Users may request~~
28 ~~that the Director consider the POTW for Modified Pretreatment Program status prior to January~~
29 ~~1, 1996 only if the POTW demonstrates that all SIU's meeting the definition of SIU that is~~
30 ~~effective January 1, 1996 have been identified and permitted, if necessary. In making the~~
31 decision to allow Modified Pretreatment Program development and implementation, the Division
32 Director may consider factors including but not limited to percent industrial flow, industrial
33 waste characteristics, compliance status of the facility, and the potential for industrial growth.

34
35 *History Note: Authority G.S. 143-215.1(a),(b); 143-215.3(a)(14); 150B-21.6;*
36 *Eff. March 28, 1980;*
37 *Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1,*
38 *1984.*

39
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41
42 15A NCAC 02H .0905 POTW PRETREATMENT PROGRAM IMPLEMENTATION
43 REQUIREMENTS

44 Except where specified differently in this Section, the POTW pretreatment program requirements
45 promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.8(f) and
46 (g) are hereby incorporated by reference including any subsequent amendments and editions.

1 This material is available for inspection at the ~~Department of Environment, Health, and Natural~~
 2 ~~Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P.~~
 3 ~~O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from~~
 4 ~~the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone~~
 5 ~~number (404) 331-6947 at a cost of twenty six dollars (\$26.00). locations listed in Rule .0901 of~~
 6 ~~this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.~~ In general, the
 7 implementation of a pretreatment program involves the updating of the Sewer Use Ordinance
 8 (SUO); ~~on-going~~ implementation of industrial waste survey (IWS) activities; updating of the
 9 Headworks Analysis (HWA), or technical basis for local limits; implementation of the Long or
 10 Short Term Monitoring Plan (LTMP); (LTMP/STMP); ~~on-going~~ implementation of compliance
 11 activities, including sampling and inspection of significant industrial users; maintenance of
 12 Control Authority organization description; maintenance of staffing and funding information;
 13 implementation of the Enforcement Response Plan (ERP), and ~~periodic~~ reporting to the Division
 14 on pretreatment program activities.

15
 16 *History Note: Authority G.S. 143-215.1(a),(b); 143-215.3(a)(1),(14); 150B-21.6; 153A-274;*
 17 *153A-275; 160A-311; 160A-312;*
 18 *Eff. March 28, 1980;*
 19 *Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1,*
 20 *1984.*

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 22
 23
 24 15A NCAC 02H .0906 SUBMISSION FOR PROGRAM APPROVAL

25 (a) Except where in conflict with any part of this Section, the regulations regarding the contents
 26 of pretreatment programs submitted for approval and the contents of a request to revise national
 27 categorical pretreatment standards, promulgated by the Environmental Protection Agency and
 28 codified as 40 CFR Part 403.9 are hereby incorporated by reference including any subsequent
 29 amendments and editions. This material is available for inspection at the ~~Department of~~
 30 ~~Environment, Health, and Natural Resources, Division of Environmental Management,~~
 31 ~~Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC~~
 32 ~~27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O.~~
 33 ~~Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty six~~
 34 ~~dollars (\$26.00). locations listed in Rule .0901 of this Section and at~~
 35 ~~http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.~~ In general, pretreatment program
 36 development submissions include a Sewer Use Ordinance (SUO) providing the legal authority
 37 for implementing the pretreatment program, an attorney's statement, a description of the POTW
 38 organization which will administer the pretreatment program, and a description of funding levels
 39 and full and part-time staffing available to implement the pretreatment program in addition to
 40 those items listed in Paragraph (b) of this Rule.

41 (b) In addition to the contents of a POTW Control Authority pretreatment program submission
 42 described in Paragraph (a) of this Rule, the program submission shall contain:

- 43 (1) A Sewer Use Ordinance (SUO) providing the legal authority for implementing the
 44 pretreatment program, along with an attorney's statement, as required by 40 CFR
 45 Part 403.8 (f)(1) and Rule .0905 of this Section. Where the Control Authority
 46 accepts wastewater from one or more Satellite POTWs and is the Control

Authority within the Satellite POTW's service area, the attorney's statement for that Control Authority shall document the Interlocal agreements (ILAs) authorized by NCGS 153A-278 and 160A-460 et seq and SUO sections that establish the Control Authority's authority for regulation within all Satellite POTW services areas which are tributary to the Control Authority's POTW. Where a Satellite POTW serves as the Control Authority within its service area, the attorney's statement for that Control Authority shall document the Interlocal Agreements (ILAs) and SUO sections that establish the Satellite POTW's authority for regulation within its service area and the requirements for the Satellite POTW to implement its Pretreatment Program in accordance with the downstream POTW's SUO and the ILA. In either case, where the POTW organizations have other written procedures to outline responsibilities not covered by the ILA or SUO, the applicable attorney's statements shall also include documentation of these procedures and the source of their enforceability;

- (4)(2) an Industrial Waste Survey (IWS), or industrial user survey, as defined in Subparagraph (13) of Rule .0905(b) of this Section; as required by 40 CFR Part 403.8 (f) (2) (i-iii) ~~403.8(f)(2)(i-iii)~~ and 15A NCAC 2H .0905, ~~Rule .0905 of this Section,~~ including identification of all industrial users and the character and amount of pollutants contributed to the POTW collection system and/or treatment plant by these industrial users and identification of those industrial users meeting the definition of Significant Industrial User; ~~User. (A) Where the Control Authority accepts wastewater from one or more satellite POTWs, the IWS for that Control Authority shall address all satellite POTW services areas, unless the Pretreatment Program in those satellite service areas is administered by a separate Control Authority;~~
- (2)(3) a Long Term Monitoring Plan (LTMP) ~~Plan to provide POTW site-specific data for the HWA and subsequent technical evaluations of local limits to satisfy the requirements of 40 CFR 122.21(j); —Part 122.21(j).~~ Modified Pretreatment Programs developed under Rule .0904(b) of this Section may be allowed to implement a shorter term monitoring plan (STMP) as the Division Director determines to be necessary;
- (3)(4) a Headworks Analysis (HWA) and supporting documentation, including POTW site-specific and relevant literature data, upon which to base industrial user-specific effluent limits and other local limits for prohibited pollutants (as defined in 40 CFR Parts 403.5(a) and (b) and ~~15A NCAC 2H .0909~~); ~~Rule .0909 of this Section~~);
- (4)(5) a compliance monitoring program, including inspection, sampling, equipment, and other compliance procedures, which will implement the requirements of 40 CFR Parts 403.8(f) and 403.12, and ~~15A NCAC 2H .0905 and .0908~~; ~~Rules .0905 and .0908 of this Section~~;
- (5)(6) draft industrial user pretreatment permits for Significant Industrial Users as required by 40 CFR Parts 403.8(f)(1)(iii) and 403.9(b)(1)(ii) and Rule .0916 of this Section, and supporting documentation outlined in Rule .0917 of this Section;
- (6)(7) procedures for approving the construction of pretreatment facilities by industrial users and for permitting industrial users for construction, operation and discharge as required by G.S. 143-215.1; procedures for approving construction shall

- 1 include issuance of authorization to construct, as appropriate;
- 2 ~~(7)~~(8) an Enforcement Response Plan (ERP) as required by 40 CFR Parts 403.8(f)(5)
- 3 and 403.9(b)(1)(ii) for identifying violations of and enforcing specific local limits
- 4 and other Pretreatment Requirements as required by and specified in 40 CFR
- 5 Parts 403.5 and 403.6 and Rules .0909 and .0910 of this Section;
- 6 ~~(9)~~ a brief description (including organization charts) of the Control Authority which
- 7 will administer the Pretreatment Program. Where more than one POTW
- 8 organization is involved in the POTW wastewater collections and/or treatment
- 9 system, the description shall address all the agencies, including identification of
- 10 which party will receive Industrial User applications for new and changed
- 11 discharges and how the parties will communicate on Significant Industrial User
- 12 determinations. At such time as a Significant Industrial User is identified in a
- 13 satellite POTW organization's jurisdiction, the Division Director may require
- 14 additional information, documents, and/or procedures as he or she determines
- 15 necessary to ensure compliance with Pretreatment Program requirements,
- 16 especially as needed to support appropriate communication between the POTW
- 17 organizations as relates to Pretreatment Program. This may include submittal of
- 18 any formal Interlocal Agreements authorized by NCGS 153A 278 and 160A 460
- 19 et seq interjurisdictional agreements or other written procedures;
- 20 (10) a description of funding levels and full- and part-time manpower available to
- 21 implement the Program;
- 22 ~~(8)~~(11) a description of data management procedures for compiling and managing
- 23 compliance, LTMP/STMP, and any other pretreatment-related monitoring data;
- 24 data, including documentation of approval of electronic reporting procedures as
- 25 required under 40 CFR Part 3 if applicable; and
- 26 ~~(9)~~(12) a request for pretreatment program approval as required by 40 CFR Part 403.9
- 27 and Rule .0900 of this Section.

28 ~~(c) The POTW must submit three bound copies of the program containing the information in~~

29 ~~Paragraphs (a) and (b) of this Rule to the Division of Environmental Management.~~

30

31 *History Note: Authority G.S. 143-215.1(a),(b); 143-215.3(a)(1),(14); 150B-21.6;*

32 *Eff. March 28, 1980;*

33 *Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1,*

34 *1984.*

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37

38 15A NCAC 02H .0907 PROCEDURES FOR PROGRAM APPROVAL, PROCEDURES:

39 REVISION AND WITHDRAWAL

40 (a) Procedures for approval of a POTW Control Authority pretreatment program and for

41 removal credit authorization are as follows:

- 42 (1) Except where in conflict with any part of this Section, the approval procedures for
- 43 POTW Control Authority pretreatment programs and applications for removal
- 44 credit authorization promulgated by the Environmental Protection Agency and
- 45 codified as 40 CFR Part 403.11 are hereby incorporated by reference including
- 46 any subsequent amendments and editions. This material is available for

1 inspection at the ~~Department of Environment, Health, and Natural Resources,~~
 2 ~~Division of Environmental Management, Pretreatment Offices, Archdale~~
 3 ~~Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535.~~
 4 ~~Copies may be obtained from the US Government Printing Office Bookstore, P.~~
 5 ~~O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost~~
 6 ~~of twenty-six dollars (\$26.00). locations listed in Rule .0901 of this Section and at~~
 7 ~~http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.~~

- 8 (2) Upon program approval, a POTW Control Authority is delegated, subject to the
 9 provisions of Rules .0916 and .0917 of this Section, the authority to issue the
 10 construction, operation and discharge permits required by G.S. 143-215.1(a) for
 11 those Significant Industrial Users discharging or proposing to discharge to the
 12 POTW.

13 (b) Either the Division or the POTW Control Authority may initiate program revisions. The
 14 POTW Control Authority ~~must~~ shall submit a request to the Division for approval of
 15 modifications to its approved pretreatment program, including, but not limited to its legal
 16 authority, or Sewer Use Ordinance (SUO), Headworks Analysis (HWA), Long or Short Term
 17 Monitoring Plan ~~(LTMP)~~, ~~(LTMP/STMP)~~, Enforcement Response ~~Plan~~, ~~Plan (ERP)~~, summary of
 18 Industrial Waste ~~Survey~~, ~~Survey (IWS)~~ activities, and revisions to the list of Significant
 19 Industrial Users (SIUs), Control Authority organization description, staffing and funding
 20 information, Division approved forms, and any other Pretreatment Program ~~procedures.~~
 21 Revisions to an approved pretreatment program shall be accomplished as follows:

- 22 (1) the POTW Control Authority shall submit a modified program description, an
 23 attorney's statement if the legal authority of the program is being modified, and
 24 other documents as the Division Director determines to be necessary under the
 25 ~~circumstances; the circumstances.~~ The attorney's statement may consist merely of
 26 a verification that the North Carolina Model Pretreatment Sewer Use Ordinance is
 27 proposed for adoption by the Control Authority, if that is the case;
 28 (2) whenever the Division Director determines that the proposed program
 29 modifications are substantial, the Division shall issue public notice and provide an
 30 opportunity for public comment as described in ~~15A NCAC 2H Rules .0109 and~~
 31 ~~.0110; public .0110~~ of this Subchapter. Public notices issued by the Control
 32 Authority are deemed sufficient notice;
 33 (3) the Division Director or his/her delegate shall approve or disapprove program
 34 revisions based on the requirements of this Section, G.S. 143-215.1, G.S. 143-
 35 215.3 and the Water Quality Memorandum of Agreement between the Division
 36 and the EPA; and
 37 (4) Except as specified below, a pretreatment program revision shall become
 38 effective upon written approval of the Division Director.
 39 (A) Pretreatment Permits: See Rule .0917(d).
 40 (B) The Division shall have 30 days from the receipt of a request for deletion
 41 of SIUs from the SIU list in which to make general comments upon,
 42 objections to or recommendations with respect to the request. Unless such
 43 an objection or request for more information is made, the request shall be
 44 final and binding.

45 ~~(c) Revision to the POTW's Significant Industrial Users (SIU) list shall be made using the~~
 46 ~~procedure outlined in Paragraph (b) of this Rule. The SIU list may be revised at any time,~~

1 provided sufficient documentation as required by the Division is supplied and supports such a
 2 determination. Requests for deletion of SIUs from the SIU list shall be accompanied by
 3 documentation which shows:

- 4 (1) ~~the industrial user does not meet the criteria outlined in Subparagraph (b)(34) of~~
 5 ~~Rule .0903 of this Section; or~~
 6 (2) ~~the industrial user meets the criteria outlined in Parts (b)(34)(A) or (B) of Rule~~
 7 ~~.0903 of this Section and the wastewater treatment plant receiving the discharge~~
 8 ~~has a significant available capacity for flow and all pollutants reasonably expected~~
 9 ~~to be in the industrial user's discharge.~~

10 ~~(d)(c)~~ The Division Director may withdraw pretreatment program approval when a POTW
 11 Control Authority no longer complies with requirements of this Section and the POTW Control
 12 Authority fails to take corrective action. The following procedures apply when the Division
 13 Director determines that program withdrawal may be needed:

- 14 (1) The Division Director shall give the POTW Control Authority 180 days notice of
 15 the program withdrawal;
 16 (2) the POTW Control Authority shall submit within 60 days of such notice a plan for
 17 the orderly transfer of all relevant program information not in the possession of
 18 the Division (such as permit files, compliance files, reports and permit
 19 applications) which is necessary for the Division to administer the pretreatment
 20 program;
 21 (3) within 60 days of the receipt of the POTW Control Authority transfer ~~plan~~ plan,
 22 the Division Director shall evaluate the POTW Control Authority plan and shall
 23 identify any additional information needed by the Division for program
 24 administration or identify any other deficiencies in the plan; and
 25 (4) at least 30 days before the program ~~withdrawal~~ withdrawal, the Division Director
 26 shall publish public notice of the program transfer and shall mail notice to all
 27 pretreatment permit holders of the POTW Control Authority.

28 ~~(e)(d)~~ Applications for removal credit authorization shall be made in accordance with
 29 procedures established by this Rule. Approval shall become effective upon written approval of
 30 the Division Director.

31 ~~(f)(e)~~ A pretreatment program is considered inactive when industrial users defined as Significant
 32 Industrial Users no longer discharge to the POTW, based on modifications of the Control
 33 Authority pretreatment program approved by the Division. Inactive approved pretreatment
 34 programs shall notify the Division when a Significant Industrial User proposes to discharge to
 35 the POTW. When required by the Division to return to active status, a POTW Control Authority
 36 may be required to update any or all of the requirements listed in Rule .0906 of this ~~Section.~~
 37 Section. The Control Authority shall obtain Division approval of the reactivation under this Rule
 38 prior to commencement of discharge of the Significant Industrial User.

39 ~~(g)(f)~~ The Division may require that representatives of Modified Pretreatment Programs
 40 developed under ~~Paragraph (b) of Rule .0904~~ .0904(b) of this Section meet with Division
 41 personnel periodically to discuss implementation of and revisions to their Modified Pretreatment
 42 Program.

43
 44 *History Note: Authority G.S. 143-215(a); 143-215.1(a),(c); 143-215.3(a)(3),(14),(e);*
 45 *150B-21.6;*
 46 *Eff. March 28, 1980;*

1 Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1,
2 1984.

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5
6 15A NCAC 02H .0908 REPORTING/RECORD KEEPING REQUIREMENTS FOR
7 POTWS/INDUSTRIAL USERS

8 (a) Except where in conflict with any part of this Section, the regulations regarding the reporting
9 requirements for ~~POTWs~~ Control Authorities and industrial users promulgated by the
10 Environmental Protection Agency and codified as 40 CFR ~~Part~~-Parts 403.8(g) and 403.12 are
11 hereby incorporated by reference including any subsequent amendments and editions. This
12 material is available for inspection at the ~~Department of Environment, Health, and Natural~~
13 ~~Resources, Division of Environmental Management, Pretreatment Offices, Archdale Building, P.~~
14 ~~O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be obtained from~~
15 ~~the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone~~
16 ~~number (404) 331-6947 at a cost of twenty-six dollars (\$26.00).~~locations listed in Rule .0901 of
17 this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

18 (b) ~~POTWs~~ Control Authorities with active approved pretreatment programs shall submit once
19 per year a pretreatment report describing its pretreatment activities over the previous 12 months.
20 Two copies of each pretreatment report shall be submitted to the Division ~~according to one of the~~
21 ~~following schedules: a report shall be submitted by September 1 of each year describing~~
22 ~~pretreatment activities for two six-month periods, January 1 through June 30 of that year and~~
23 ~~July 1 to December 31 of the previous year; or a report shall be submitted by March 1 of each~~
24 ~~year for activities conducted for two six-month periods, January 1 through June 30 and July 1~~
25 ~~through December 31 of the previous year. The POTW shall be notified by the Division as to~~
26 ~~which schedule to follow.~~ This annual report shall contain the following information in
27 accordance with forms specified by or otherwise acceptable to the Division:

- 28 (1) a narrative summary of actions taken by the ~~permittee~~ Control Authority to ensure
29 compliance with pretreatment requirements;
- 30 (2) a pretreatment program summary on forms or in a format approved by the
31 Division;
- 32 (3) a list of ~~Significant~~ Industrial Users in significant noncompliance with
33 pretreatment requirements, the nature of the violations, and actions taken or
34 proposed to correct the violations; on forms or in a format approved by the
35 Division;
- 36 (4) an allocation table ~~listing permit information for all Significant Industrial Users,~~
37 ~~including but not limited to permit limits, permit effective and expiration dates,~~
38 ~~and a comparison of total permitted flows and loads to the Division approved~~
39 ~~maximum allowable loadings of the POTW, on forms or in a format approved by~~
40 ~~the Division; as described in Rule .0916(c)(4) of this Section; and~~
- 41 (5) other information which in the opinion of the Division Director is needed to
42 determine compliance with the implementation of the pretreatment program,
43 including, but not limited to, Significant Industrial User compliance schedules,
44 public notice of ~~Significant~~ Industrial Users in significant noncompliance, a
45 summary of Significant Industrial User effluent monitoring data as described in
46 Paragraph(f) Paragraphs (a) and (e) of this Rule, Rule, a summary of information

1 related to significant non-compliance determination for Industrial Users that are
 2 not considered Significant Industrial Users, and Long or Short Term Monitoring
 3 Plan data on forms or in a format approved by acceptable to the Division;
 4 Division.

5 ~~(6) a description of all POTW and Significant Industrial User waste reduction~~
 6 ~~activities.~~

7 (c) In lieu of submitting annual reports as described in Paragraph (b) of this Rule, the Division
 8 Director may allow Modified Pretreatment Programs developed under Rule .0904(b) of this
 9 Section to submit only a partial annual report, or to meet with Division personnel as required to
 10 discuss enforcement of pretreatment requirements and other pretreatment implementation issues.

11 ~~(de)~~ Inactive pretreatment programs are not required to submit the report described in Paragraph
 12 Paragraphs (b) and (c) of this Rule. Inactive approved pretreatment programs shall notify the
 13 Division when a Significant Industrial User proposes to discharge to the POTW-POTW and shall
 14 comply with Rule .0907 of this Section.

15 ~~(ed)~~ Samples shall be collected and analyzed by the POTW staff Control Authority independent
 16 of the industry industrial users for each Significant Industrial User:

17 ~~(1) for all permit-limited parameters, except those listed in Paragraph (d)(2) of this~~
 18 ~~Rule, a minimum of twice per year, twice each year is defined as once during~~
 19 ~~each six-month period in Paragraph (b) of this Rule;~~

20 ~~(2) for organic compounds limited in the Significant Industrial User permits, a~~
 21 ~~minimum of once each year. If the POTW elects to sample and analyze in lieu of~~
 22 ~~the industry, the POTW shall collect and analyze at a minimum samples as~~
 23 ~~described in this Rule and, if applicable, in accordance with categorical standards.~~
 24 ~~Independent monitoring of the industry by the POTW is not required for~~
 25 ~~pollutants which are limited by a categorical standard for which specific~~
 26 ~~certification or other alternative procedures apply, even if the industry chooses to~~
 27 ~~monitor in addition to using certification or other alternative procedures;~~

28 (1) Except as specified below, a minimum of once each year for permit-limited
 29 organic compounds, and a minimum of twice each year for all other permit-
 30 limited parameters including flow. For the purposes of this paragraph, “organic
 31 compounds” means the types of compounds listed in 40 CFR Part 136.3(a),
 32 Tables IC, ID, and IF, as amended, and “twice each year” is defined as once
 33 during each six-month period defined as described in Paragraph (b) of this Rule.

34 (A) The second of the twice each year Control Authority sampling required in
 35 Subparagraph (e)(1) of this Rule may be waived by the Division for good
 36 cause shown by the Control Authority.

37 (B) Independent monitoring of the industrial user by the Control Authority is
 38 not required for pollutants which are limited by a categorical standard for
 39 which specific certification or other alternative procedures apply where
 40 the industrial user submits the required documentation for that
 41 certification or procedure, even if the industrial user chooses to monitor in
 42 addition to using certification or other alternative procedures;

43 (C) The minimum frequencies in Subparagraph (e)(1) of this Rule shall be
 44 reduced by half for all permit-limited parameters at a Significant Industrial
 45 User determined to fit the criteria under 40 CFR Part 403.12(e)(3) (Middle
 46 Tier CIU), [after 403.8(f)(2)(v)(C)]; and

1 (D) For categorical parameters with monitoring waived under 40 CFR Part
 2 403.12(e)(2), a minimum of once during the term of the applicable
 3 Significant Industrial User Pretreatment Permit (403.8(f)(2)(v)(A)).

4 (2) If the Control Authority elects to sample and analyze in lieu of the industrial user,
 5 the Control Authority shall collect and analyze for the required parameters at a
 6 minimum samples as described in this Rule and, if applicable, in accordance with
 7 categorical standards.

8 ~~(e) For the purpose of indicating the nature and concentration of the industries discharges in the~~
 9 ~~baseline reports, deadline compliance reports and periodic compliance reports required in~~
 10 ~~Paragraph (a) of this Rule the following shall apply:~~

11 ~~(1) analyses shall be completed on all pollutants which are limited by the categorical~~
 12 ~~standard unless the categorical standard contains specific certification or other~~
 13 ~~alternative procedures for specific pollutants;~~

14 ~~(2) compliance with a monthly average limitation shall be shown every six months by~~
 15 ~~the analysis of a sufficient number of samples to be representative of the~~
 16 ~~industry's monthly discharge.~~

17 ~~(f) POTWs Control Authorities and Industrial Users shall retain for a minimum of three years~~
 18 ~~records of monitoring activities and results along with support supporting information including~~
 19 ~~annual pretreatment reports, general records, water quality records, and records of industrial user~~
 20 ~~impact on the POTW. Support information for Other documents required by any portion of this~~
 21 ~~Section for other Pretreatment Program elements, such as pretreatment permits (IUPs), HWAs,~~
 22 ~~SUOs, ERPs, etc., shall be retained for five years. three years after the end of the effective period~~
 23 ~~of the document, including supporting information, as specified by the Division Director. A~~
 24 ~~summary of all Significant Industrial User effluent monitoring data reported to the POTW~~
 25 ~~Control Authority by the Industrial User or obtained by the POTW Control Authority shall be~~
 26 ~~maintained on Division approved forms or in a format approved by specified by or otherwise~~
 27 ~~acceptable to the Division for review by the Division. Division. See also Rule 15A NCAC 02H~~
 28 ~~.0805 of this Subchapter for laboratory records retention requirements.~~

29 ~~(g) In lieu of submitting annual reports, Modified Pretreatment Programs developed under~~
 30 ~~Paragraph (b) of Rule .0904 of this Section may be required to meet with Division personnel~~
 31 ~~periodically to discuss enforcement of pretreatment requirements and other pretreatment~~
 32 ~~implementation issues.~~

33 ~~(h)(g) Forms or format deviating from Division issued Division specified forms or format for all~~
 34 ~~documents and supporting information required by any portion of this Section shall be submitted~~
 35 ~~to acceptable to the Division for approval and shall contain all required information in a logical~~
 36 ~~order or, if appropriate, in a computer-compatible format.~~

37 ~~(h) In the case where the receiving POTW treatment plant is not owned by the same local~~
 38 ~~governmental organization as the Control Authority, all information required to be reported to~~
 39 ~~the industrial user's Control Authority by this Section shall also be submitted to the POTW~~
 40 ~~treatment plant governmental organization.~~

41 ~~(i) In the case where the Control Authority accepts electronic reporting, the reporting shall~~
 42 ~~comply with 40 CFR Part 3, and the Control Authority shall maintain documentation of approval~~
 43 ~~as required under 40 CFR Part 3.~~

44
 45 *History Note: Authority G.S. 143-215.1(a),(b); 143-215.2; 143-215.3(a)(2),(14);*
 46 *143-215.6(a)(1); 143-215.63 through 143-215.69; 150B-21.6;*

1 *Eff. March 28, 1980;*
 2 *Amended Eff. **March 1, 2011**; November 1, 1994; October 1, 1987; December 1,*
 3 *1984.*

7 15A NCAC 02H .0909 NATIONAL PRETREATMENT STANDARDS: PROHIBITED
 8 DISCHARGES

9 The regulations regarding national prohibited pretreatment standards and local limits
 10 development and enforcement promulgated by the Environmental Protection Agency and
 11 codified as 40 CFR Part 403.5 are hereby incorporated by reference including any subsequent
 12 amendments and editions. This material is available for inspection at the ~~Department of~~
 13 ~~Environment, Health, and Natural Resources, Division of Environmental Management,~~
 14 ~~Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC~~
 15 ~~27626 0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O.~~
 16 ~~Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty six~~
 17 ~~dollars (\$26.00).locations listed in Rule .0901 of this Section and at~~
 18 http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

19
 20 *History Note: Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(1),(14); 150B-21.6;*
 21 *Eff. March 28, 1980;*
 22 *Amended Eff. **March 1, 2011**; November 1, 1994; October 1, 1987; December 1,*
 23 *1984.*

27 15A NCAC 02H .0910 NATIONAL PRETREATMENT STANDARDS:
 28 CATEGORICAL STANDARDS

29 The regulations regarding national categorical pretreatment standards promulgated by the
 30 Environmental Protection Agency and codified as 40 CFR Part 403.6 are hereby incorporated by
 31 reference including any subsequent amendments and editions. This material is available for
 32 inspection at the ~~Department of Environment, Health, and Natural Resources, Division of~~
 33 ~~Environmental Management, Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N.~~
 34 ~~Salisbury St., Raleigh, NC 27626 0535. Copies may be obtained from the US Government~~
 35 ~~Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia 30343, phone number (404) 331-~~
 36 ~~6947 at a cost of twenty six dollars (\$26.00).locations listed in Rule .0901 of this Section and at~~
 37 http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

38
 39 *History Note: Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;*
 40 *Eff. March 28, 1980;*
 41 *Amended Eff. **March 1, 2011**; November 1, 1994; October 1, 1987; December 1,*
 42 *1984.*

46 15A NCAC 02H .0911 REVISION TO REFLECT POTW REMOVAL OF POLLUTANT

1
2 *History Note: Authority G.S. 143-215.1(a),(b); 143-215.3(a)(14);*
3 *Eff. March 28, 1980;*
4 *Amended Eff. December 1, 1984;*
5 *Repealed Eff. October 1, 1987.*
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9 15A NCAC 02H .0912 ADJUSTMENTS FOR FUNDAMENTALLY DIFFERENT
10 FACTORS

11 The regulations regarding variances from national categorical pretreatment standards for
12 fundamentally different factors promulgated by the Environmental Protection Agency and
13 codified as 40 CFR Part 403.13 are hereby incorporated by reference including any subsequent
14 amendments and editions. This material is available for inspection at the ~~Department of~~
15 ~~Environment, Health, and Natural Resources, Division of Environmental Management,~~
16 ~~Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC~~
17 ~~27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O.~~
18 ~~Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty six~~
19 ~~dollars (\$26.00).~~ locations listed in Rule .0901 of this Section and at
20 http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.
21

22 *History Note: Authority G.S. 143-215(a); 143-215.1(a),(b); 143-215.3(a),(14),(e); 150B-21.6;*
23 *Eff. March 28, 1980;*
24 *Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1,*
25 *1984.*
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28

29 15A NCAC 02H .0913 PUBLIC ACCESS TO INFORMATION

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

39 (b) Information and data provided by an industrial user to the Division Director shall be subject
40 to the processes set forth in G.S. 143-215.3C.

41 (c) Information provided by an industrial user to a Control Authority that is determined to be
42 entitled to confidential treatment shall be made available upon written request to the Division or
43 any state agency for uses related to the Pretreatment Program, the National Pollutant Discharge
44 Elimination System (NPDES) Permit, collection system permit, stormwater permit, and/or Non-
45 discharge permit, and for uses related to judicial review or enforcement proceedings involving
46 the person furnishing the report.

1 (d) Information and data received by the Division or other state agency under Paragraph c) of
 2 this Rule shall be subject to the processes set forth in G.S. 143-215.3C.

3
 4 *History Note: Authority G.S. 132-1.2; 132-6; 132-9; 143-215.1(a),(b),(c); 143-215.3(a)(3); 143-*
 5 *215.1; 143-215.3; 143-215.3C;*

6 *Eff. March 28, 1980;*

7 *Amended Eff. March 1, 2011; October 1, 1987.*

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 10
 11 15A NCAC 02H .0914 UPSET PROVISION

12 The upset provision promulgated by the Environmental Protection Agency and codified as 40
 13 CFR Part 403.16 is hereby incorporated by reference including any subsequent amendments and
 14 editions. This material is available for inspection at the ~~Department of Environment, Health, and~~
 15 ~~Natural Resources, Division of Environmental Management, Pretreatment Offices, Archdale~~
 16 ~~Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC 27626-0535. Copies may be~~
 17 ~~obtained from the US Government Printing Office Bookstore, P. O. Box 56445, Atlanta, Georgia~~
 18 ~~30343, phone number (404) 331-6947 at a cost of twenty six dollars (\$26.00).locations listed in~~
 19 ~~Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.~~

20
 21 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;*

22 *Eff. December 1, 1984;*

23 *Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987.*

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 25
 26
 27 15A NCAC 02H .0915 NET/GROSS CALCULATION

28 The net/gross calculation provisions promulgated by the Environmental Protection Agency and
 29 codified as 40 CFR Part 403.15 are hereby incorporated by reference including any subsequent
 30 amendments and editions. This material is available for inspection at the ~~Department of~~
 31 ~~Environment, Health, and Natural Resources, Division of Environmental Management,~~
 32 ~~Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC~~
 33 ~~27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O.~~
 34 ~~Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty six~~
 35 ~~dollars (\$26.00).locations listed in Rule .0901 of this Section and at~~
 36 ~~http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.~~

37
 38 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;*

39 *Eff. December 1, 1984;*

40 *Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987.*

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 43
 44 15A NCAC 02H .0916 PRETREATMENT PERMITS

45 (a) All Significant Industrial Users who discharge waste into a POTW or who construct or
 46 operate a pretreatment facility ~~must~~ shall obtain a permit from the Control Authority.

1 (b) Where the Division is the Control Authority, permits shall be issued in accordance
 2 with Section .0100 of this Subchapter. ~~15A NCAC 02H .0100.~~

3 (c) Where the ~~POTW~~ is the Control Authority, Authority is a POTW organization, Significant
 4 Industrial User permits shall be issued as follows:

5 (1) Application: any Significant Industrial User required to obtain a permit in
 6 Paragraph (a) of this Rule shall be required to complete, sign and submit to the
 7 Control Authority a permit application. Application fees and procedures may be
 8 prescribed by the Control Authority. All pretreatment permit applications shall
 9 include as a minimum:

- 10 (A) name of ~~industry;~~ Industrial User;
- 11 (B) address of ~~industry;~~ Industrial User;
- 12 (C) standard industrial classification (SIC) code(s) or expected classification
 13 and ~~industry~~ Industrial User category;
- 14 (D) wastewater flow;
- 15 (E) types and concentrations (or mass) of pollutants contained in the
 16 discharge;
- 17 (F) major products manufactured or services supplied;
- 18 (G) description of existing on-site pretreatment facilities and practices;
- 19 (H) locations of discharge points;
- 20 (I) raw materials used or stored at the site;
- 21 (J) flow diagram or sewer map for the ~~industry;~~ Industrial User;
- 22 (K) number of employees;
- 23 (L) operation and production schedules; and
- 24 (M) description of current and projected waste reduction activities in
 25 accordance with G.S. 143-215.1(g).

26 (2) Renewals: Applications for pretreatment permit renewals shall be accomplished
 27 by filing an appropriate application form as listed in ~~.0916 Subparagraph (c)(1) of~~
 28 this Rule prior to permit expiration. The number of days prior to expiration by
 29 which the application ~~must~~ shall be filed shall be established by the Control
 30 Authority.

31 (3) Review and Evaluation:

- 32 (A) The POTW Director is authorized to accept applications for the
 33 Commission and shall refer all applications to the ~~POTW~~ Control
 34 Authority staff for review and evaluation.
- 35 (B) The POTW Director shall acknowledge receipt of a complete application,
 36 or if not complete, shall return the application to the applicant with a
 37 statement of what additional information is required.
- 38 (C) The ~~POTW~~ Control Authority staff shall include as ~~part of the permit~~
 39 ~~record~~ documentation of an the most recent on site inspection of the
 40 industrial ~~facility~~ user and any existing wastewater pretreatment ~~system.~~
 41 system as part of the permit record for new and renewed permits. Such
 42 inspection shall have been conducted a maximum of 12 months prior to
 43 the issue date of the pretreatment permit.
- 44 (D) The ~~POTW~~ Control Authority staff shall conduct an evaluation and make
 45 a tentative determination to issue or deny the permit. If the ~~POTW~~
 46 Control Authority staff's tentative determination is to issue the permit, it

1 shall make the following additional determinations in writing and transmit
2 them to the ~~permittee~~Industrial User:

- 3 (i) proposed effluent limitations for those pollutants proposed to be
4 limited;
- 5 (ii) a proposed schedule of compliance, including interim dates and
6 requirements, for meeting the proposed effluent limitations; and
- 7 (iii) a brief description of any other proposed special conditions which
8 will have significant impact upon the discharge described in the
9 application.

10 The ~~POTW~~ Control Authority staff shall organize the determinations made
11 into a pretreatment permit.

12 ~~(4) Permit synopsis and allocation table: A brief synopsis of the application and~~
13 ~~permit shall be prepared by the POTW staff for all Significant Industrial User~~
14 ~~permits. This synopsis shall be maintained in the POTW files in accordance with~~
15 ~~Rule .0908(f) of this Section. The synopsis and allocation table shall be sent to the~~
16 ~~Division along with the pretreatment permit if required in Rule .0917 of this~~
17 ~~Section. An allocation table listing permit information for all Significant~~
18 ~~Industrial Users, including but not limited to permit limits, permit effective and~~
19 ~~expiration dates, and a comparison of total permitted loads with Division~~
20 ~~approved maximum allowable loadings of the POTW shall be prepared on forms~~
21 ~~or in a format approved by the Division and updated as permits are issued,~~
22 ~~modified, or renewed. Forms or format deviating from Division issued forms or~~
23 ~~format shall be submitted to the Division for approval and shall contain all~~
24 ~~required information in a logical order or, if appropriate, in a computer-~~
25 ~~compatible format. The contents of the synopsis shall include at least the~~
26 ~~following information:~~

27 ~~(A) a copy of the completed industrial user application or a quantitative~~
28 ~~description of the discharge described in the application which includes at~~
29 ~~least the following:~~

- 30 ~~(i) the rate or frequency of the proposed discharge; if the discharge is~~
31 ~~continuous, the average daily flow;~~
- 32 ~~(ii) the average daily discharge in pounds per day of any pollutants~~
33 ~~which are present in significant quantities or which are subject to~~
34 ~~limitations or prohibition.~~

35 ~~(B) the basis, or rationale, for the pretreatment limitations, including the~~
36 ~~documentation of any calculations used in applying categorical~~
37 ~~pretreatment standards; and~~

38 ~~(C) a copy of the record of the inspection of the industrial user required in Part~~
39 ~~(e)(3)(C) of this Rule.~~

40 (4) Permit supporting documentation. The Control Authority staff shall prepare the
41 following documents for all Significant Industrial User permits.

42 (A) An allocation table (AT) listing permit information for all Significant
43 Industrial Users, including but not limited to permit limits, permit
44 effective and expiration dates, and a comparison of total permitted flows
45 and loads with Division approved maximum allowable loadings of the
46 POTW, including flow, on forms or in a format approved-specified by or

1 otherwise acceptable to the Division. The AT shall be updated as permits
 2 are issued or renewed, and as permits are modified where the permitted
 3 limits or other AT information is revised.

4 (B) The basis, or rationale, for the pretreatment limitations, including the
 5 following:

6 (i) documentation of categorical determination, including
 7 documentation of any calculations used in applying categorical
 8 pretreatment standards;

9 (ii) documentation of the rationale of any parameters for which
 10 monitoring has been waived under 40 CFR Part 403.12(e)(2); and

11 (iii) documentation of the rationale of any parameters for which the
 12 second of the twice each year Control Authority sampling has been
 13 waived under Rule .0908(e)(1)(A) of this Section.

14 (5) ~~Hearings:~~

15 (A) ~~Adjudicatory Hearings. An applicant whose permit is denied, terminated,~~
 16 ~~or is granted subject to conditions he/she deems unacceptable, shall have~~
 17 ~~the right to an adjudicatory hearing before the POTW Director or other~~
 18 ~~hearing officer appointed by the POTW Director upon making written~~
 19 ~~demand, identifying the specific issues to be contested, to the POTW~~
 20 ~~Director within 30 days following notice of the final decision to deny or~~
 21 ~~grant the permit. Unless such written demand is made, the decision on the~~
 22 ~~application shall be final and binding, subject to the provisions of Rule~~
 23 ~~.0917 of this Section, and further appeal is barred. For modified permits,~~
 24 ~~only those parts of the permit being modified may be adjudicated. The~~
 25 ~~POTW Director or other hearing officer, as appropriate, shall make a~~
 26 ~~decision on the contested permit within the time period specified in the~~
 27 ~~Control Authority's Sewer Use Ordinance. The POTW Director shall~~
 28 ~~transmit a copy of the hearing officer's decision to the petitioner by~~
 29 ~~registered or certified mail. If no further administrative appeal is provided~~
 30 ~~by the governing body of the Control Authority under Part (e)(5)(B) of~~
 31 ~~this Rule then the decision is a final decision for the purposes of seeking~~
 32 ~~judicial review. An Official Record of the adjudicatory hearing must be~~
 33 ~~prepared as described in Part (e)(5)(C) of this Rule.~~

34 (i) ~~New Permits. Upon appeal, including judicial review in the~~
 35 ~~General Courts of Justice, of the terms or conditions of a newly~~
 36 ~~issued permit, the terms and conditions of the entire permit are~~
 37 ~~stayed and the permit is not in effect until either the conclusion of~~
 38 ~~judicial review or until the parties reach a mutual resolution.~~

39 (ii) ~~Renewed or Modified Permits. Upon appeal, including judicial~~
 40 ~~review in the General Courts of Justice, of the terms or conditions~~
 41 ~~of a renewed or modified permit, the terms and conditions of the~~
 42 ~~existing permit remain in effect until either the conclusion of~~
 43 ~~judicial review or until the parties reach a mutual resolution.~~

44 (iii) ~~Terminated Permits. Upon appeal, including judicial review in the~~
 45 ~~General Courts of Justice, of a terminated permit, no permit is in~~
 46 ~~effect until either the conclusion of judicial review or until the~~

parties reach a mutual resolution.

~~(B) Optional Appeal Hearings. If so provided by the governing body of the Control Authority, any decision of a hearing officer or POTW Director made as a result of an adjudicatory hearing held under Part (c)(5)(A) of this Rule may be appealed, to the governing body of the Control Authority or other unbiased entity designated by the governing body of the Control Authority upon filing a written demand within ten days of receipt of notice of the decision. Failure to make written demand within the time specified herein shall bar further appeal. The governing body of the Control Authority or other unbiased entity, as appropriate, shall make a final decision on the appeal within the time period specified in the Control Authority's Sewer Use Ordinance. The governing body of the Control Authority or its designee shall transmit a written copy of its decision by registered or certified mail to the petitioner. This decision is a final decision for the purposes of seeking judicial review. An Official Record of the hearing must be prepared as described in Part (c)(5)(C) of this Rule.~~

~~(C) Official Record. When a final decision for the purposes of judicial review is issued under Subparagraph (c)(5) of this Rule, the hearing officer shall prepare an official record of the case that includes:~~

~~(i) All notices, motions, and other like pleadings;~~

~~(ii) A copy of all documentary evidence introduced;~~

~~(iii) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken;~~

~~(iv) A copy of the final decision of the hearing officer.~~

~~(D) Judicial Review. Any person against whom a final decision of the hearing officer or POTW Director is entered, pursuant to the hearing(s) conducted under Subparagraph (c)(5) of this Rule, may seek judicial review of the decision, by filing a written petition within 30 days after receipt of notice by registered or certified mail of the final decision, but not thereafter, with the Superior Court of the appropriate county along with a copy to the Control Authority. Within 30 days after receipt of the copy of the petition of judicial review, the final decision maker shall transmit to the reviewing court the original or a certified copy of the official record.~~

~~(6)(5) Final Action on Permit Applications:~~

~~(A) The POTW Director shall take final action on all applications by either issuing a pretreatment permit or by denying the discharge not later than 90 days following the receipt of a complete application. If, following the 30 day period required by Part (c)(5)(A) of this Rule and Rules .0917(e) Rules .0917(d) and .0922 of this Section, no written demand for hearing, objection, or request for more information under Rule .0917(f)(2) of this Section has been made, the permit shall become final and binding.~~

~~(B) The POTW Director is authorized to:~~

~~(i) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1;~~

~~(ii) issue a permit containing time schedules for achieving compliance~~

- 1 with applicable pretreatment standards and limitations and other
 2 legally applicable requirements;
- 3 (iii) modify or revoke any permit pursuant to Subparagraph ~~(e)(7)~~
 4 (c)(6) of this Rule;
- 5 (iv) deny a permit application;
- 6 (v) issue permits to industrial users not identified as Significant
 7 Industrial Users using procedures prescribed by the Control
 8 Authority; and
- 9 (vi) require ~~Significant~~ Industrial Users to develop a waste reduction
 10 plan and implement waste reduction techniques and technologies.
- 11 (C) Permits shall be issued or renewed for a period of time deemed reasonable
 12 by the POTW Director but in no case shall the period exceed five years.
- 13 (D) The POTW Director shall notify an applicant by certified or registered
 14 mail of the denial of his/her permit application. Notifications of denial
 15 shall specify the reasons therefore and the proposed changes which in the
 16 opinion of the POTW Director will be required to obtain the permit.
- 17 ~~(7)(6)~~ Modification and Revocation of Permits:
- 18 (A) Any permit issued pursuant to this Rule is subject to revocation or
 19 modification in whole or part for good cause as outlined in the Control
 20 Authority's ~~sewer use ordinance~~. Sewer Use Ordinance.
- 21 (B) Modifications of permits shall be subject to the same procedural
 22 requirements as the issuance of permits except as follows:
- 23 (i) changes in the ownership of the discharge when no other change in
 24 the permit is indicated;
- 25 (ii) a single modification of any compliance schedule not in excess of
 26 four months;
- 27 (iii) modification of compliance schedules (construction schedules) in
 28 permits for new sources where the new source will not begin to
 29 discharge until control facilities are operational; or
- 30 (iv) modifications of the monitoring requirements in the permit.
- 31 ~~(C) Permit effective dates and modification effective dates shall not be~~
 32 ~~retroactive.~~
- 33 (7) Permit effective dates and modification effective dates shall not be retroactive.

34
 35 *History Note: Authority G.S. 143-215(a); 143-215.1(a), (c), (g); 143-215.3(a)(3),(14)(e);*
 36 *Eff. October 1, 1987;*
 37 *Amended Eff. March 1, 2011; November 1, 1994.*

- 38
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 40
 41 15A NCAC 02H .0917 PRETREATMENT PERMIT SUBMISSION AND REVIEW
- 42 (a) Upon issuance, each POTW Control Authority shall transmit to the Division copies of all
 43 issued Significant Industrial User pretreatment permits.
- 44 ~~(b) For new Significant Industrial Users and for Significant Industrial Users identified as~~
 45 ~~categorical industrial users, upon issuance, the POTW shall transmit to the Division:~~
- 46 ~~(1) Notice of actions taken by the POTW to the consideration of any permit~~

1 application including a copy of each pretreatment permit and any conditions,
2 requirements or documents which are related to the pretreatment permit;

3 (2) ~~A synopsis of the permit and an allocation table for the POTW receiving the~~
4 ~~discharge(s).~~

5 (b) Permits and permit renewal submissions to the Division for Significant Industrial Users shall
6 include the supporting information listed below. Permit modification submissions for Significant
7 Industrial Users shall include updated versions of this supporting information listed below as
8 applicable to that modification:

9 (1) the rationale for limits and allocation table required by Rule .0916(c)(4) of this
10 Section;

11 (2) a copy of the completed industrial user application required in Rule .0916(c)(1)
12 of this Section; and

13 (3) a copy of the record of the inspection of the industrial user required in Rule
14 .0916(c)(3)(C) of this Section.

15 (c) The Division Director may waive some or all of the requirements in Paragraphs (a) and (b)
16 of this Rule. In making the decision to waive these requirements, the Division Director may
17 consider factors including but not limited to training levels of Control Authority staff, quality of
18 previous pretreatment permit submissions, percent maximum allowable headworks loading
19 capacity remaining, percent industrial user flow, industrial user waste characteristics, and
20 compliance status of the POTW and its respective environmental permits.

21 ~~(e)(d)~~ The Division shall have 30 days from the receipt of pretreatment permits in which to
22 make general comments upon, objections to or recommendations with respect to the permit.
23 Unless such an objection or request for more information in accordance with Paragraph ~~(f)~~~~(g)~~ of
24 this Rule is made, the permit shall be final and binding.

25 ~~(d)~~(e) Within 30 days of the receipt of a pretreatment permit to which the Division Director has
26 objected the Division staff shall set forth in writing and transmit to the Control Authority:

27 (1) A statement of the reasons for the objection, including the regulations that support
28 the ~~objection and;~~ objection; and

29 (2) The actions which ~~must~~ shall be taken by the Control Authority to eliminate the
30 objection including the effluent limitations and conditions which the permit would
31 include if it were issued by the Division.

32 ~~(e)~~(f) The Division Director's objection to the issuance of a pretreatment permit ~~must~~ shall be
33 based upon one or more of the following grounds:

34 (1) the permit fails to apply or to ensure compliance with any applicable requirement
35 of this Section;

36 (2) the procedures followed in connection with formulation of the pretreatment
37 permit failed to comply with the procedures required by State Statute or by the
38 POTW's Control Authority's approved pretreatment program;

39 (3) a finding made by the Control Authority in connection with the pretreatment
40 permit which misinterprets any categorical pretreatment standard or pretreatment
41 regulation or misapplies them to the facts;

42 (4) the provisions of the pretreatment permit relating to the maintenance of records,
43 monitoring or sampling by the ~~permittee~~ Control Authority and the industrial user
44 are, in the judgment of the Division Director, inadequate to assure compliance
45 with permit conditions or applicable pretreatment standards.

46 ~~(f)~~(g) Prior to notifying the POTW Control Authority of an ~~objection~~ objection, the Division

1 Director:

2 (1) shall consider all data transmitted pursuant to ~~Rule~~ Rules .0916 and .0917 of this
3 Section;

4 (2) may, if more information is needed to determine whether the permit is adequate,
5 request the ~~POTW~~ Control Authority to make available to the Division staff the
6 complete record of permit proceedings, or any portions of the record that the
7 Division Director determines are necessary for review. Requests ~~must~~ shall be
8 made within 30 days of the ~~state's~~ Division's receipt of the permit under Rule
9 .0916 of this Section, and shall suspend the 30 day review period in Paragraph
10 ~~(e)~~ (d) of this Rule. When the Division staff has obtained the requested records or
11 portions of the record, the Division staff shall have an additional 30 days for
12 review; and

13 (3) may, to the extent feasible within the period of time available, afford interested
14 persons the opportunity to comment on the basis for the objection.

15 (gh) If within 60 days of the receipt of the Division Director's objection the ~~POTW~~ Control
16 Authority does not resubmit a permit revised to meet the Division Director's objection, the
17 Division Director may issue the permit in accordance with ~~15A NCAC 2H .0100. Section .0100~~
18 of this Subchapter. Exclusive authority to issue the permit required by G.S. 143-215.1(a) passes
19 to the Division when this time expires.

20
21 *History Note: Authority G.S. 143-215(a); 143-215.1(a)(c); 143-215.3(a)(3),(14)(e);*

22 *Eff. October 1, 1987;*

23 *Amended Eff. March 1, 2011; November 1, 1994.*

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27 15A NCAC 02H .0918 LOCAL LAW

28 Nothing in the rules of this Section is intended to affect any pretreatment requirements, including
29 any standards or prohibitions, established by local law as long as the local requirements are not
30 less stringent than any set forth in National Pretreatment Standards, or any other requirements or
31 prohibitions established under the Clean Water Act, the North Carolina General Statutes, or the
32 rules of this Section.

33
34 *History Note: Authority G.S. 143-215.1(a), (b); 143-215.3(a)(1), (14); 153A-274; 153A-275;*

35 *160A-311; 160A-312;*

36 *Eff. November 1, 1994.*

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39
40 15A NCAC 02H .0919 BYPASS

41 The regulations regarding the bypass provisions promulgated by the Environmental Protection
42 Agency and codified as 40 CFR Part 403.17 are hereby incorporated by reference including any
43 subsequent amendments and editions. This material is available for inspection at the ~~Department~~
44 ~~of Environment, Health, and Natural Resources, Division of Environmental Management,~~
45 ~~Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC~~
46 ~~27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O.~~

1 ~~Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six~~
 2 ~~dollars (\$26.00).~~ locations listed in Rule .0901 of this Section and at
 3 http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

4
 5 *History Note: Authority G.S. 143-215.1(a)(1); 143-215.3(a)(14); 150B-21.6;*
 6 *Eff. November 1, 1994.1994;*
 7 *Amended March 1, 2011;*
 8
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10
 11 15A NCAC 02H .0920 PRETREATMENT FACILITY OPERATION AND
 12 MAINTENANCE

13 (a) Upon classification of pretreatment facilities permitted under this Section and upon
 14 development of specific certification and training programs for operators of classified facilities,
 15 the permittee industrial user must shall designate an Operator in Responsible Charge and a back-
 16 up operator as required by the Water Pollution Control System Operators Certification
 17 Commission as established in 15A NCAC 8A .0202. Subchapter 08G of these Rules. Copies of
 18 this Rule are available from the Division of Environmental Management, Water Quality Section,
 19 Archdale Building, 512 N. Salisbury Street, P. O. Box 29535, Raleigh, North Carolina 27626-
 20 0535 at no charge.

21 (b) In order to insure the proper operation and maintenance of facilities permitted under this
 22 Section and classified under the Rules of the Water Pollution Control System Operators
 23 Certification Commission (15A NCAC 8), Subchapter 08G of these Rules, the Operator in
 24 Responsible Charge, or a back-up operator when appropriate, must shall operate and visit the
 25 facility as required by the Water Pollution Control System Operators Certification Commission
 26 as established in 15A NCAC 8A .0202. Subchapter 08G of these Rules. Copies of these Rules
 27 are available from the Environmental Management, Water Quality Section, Archdale Building,
 28 512 N. Salisbury Street, P. O. Box 29535, Raleigh, North Carolina 27626-0535 at no charge.

29 (c) Copies of rules referenced in this Rule may be obtained at the following locations:

30 (1) <http://www.ncwaterquality.org/tacu/index.html>

31 (2) the North Carolina Department of Environment and Natural Resources, Division
 32 of Water Quality

33 Offices of the Technical Assistance and Certification Unit (TACU)

34 Physical Address: 219 North East Street

35 Raleigh, N.C. 27601

36 Mailing Address: 1618 Mail Service Center

37 Raleigh, N.C. 27699-1618
 38

39 *History Note: Authority G.S. 143-215.3;*
 40 *Eff. November 1, 1994.1994;*
 41 *Amended March 1, 2011;*
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45 15A NCAC 02H .0921 REVISION TO REFLECT POTW REMOVAL OF POLLUTANT
 46 The regulations regarding removal credits promulgated by the Environmental Protection Agency

1 and codified as 40 CFR Part 403.7 are hereby incorporated by reference including any
 2 subsequent amendments and editions. This material is available for inspection at the ~~Department~~
 3 ~~of Environment, Health, and Natural Resources, Division of Environmental Management,~~
 4 ~~Pretreatment Offices, Archdale Building, P. O. Box 29535, 512 N. Salisbury St., Raleigh, NC~~
 5 ~~27626-0535. Copies may be obtained from the US Government Printing Office Bookstore, P. O.~~
 6 ~~Box 56445, Atlanta, Georgia 30343, phone number (404) 331-6947 at a cost of twenty-six~~
 7 ~~dollars—(\$26.00)-locations listed in Rule .0901 of this Section and at~~
 8 http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

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 10 *History Note: Authority G.S. 143-215.1(a),(b); 143-215.3(a)(14); 150B-21.6;*
 11 *Eff. November 1, 1994-1994;*
 12 *Amended **March** 1, 2011;*

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 16 15A NCAC 02H .0922 HEARINGS

17 (a) Adjudicatory Hearings. An industrial user applicant whose permit is denied, terminated, or
 18 is granted subject to conditions he/she deems unacceptable, an industrial user assessed a civil
 19 penalty under the Control Authority's Sewer Use Ordinance, or an industrial user issued an
 20 administrative order under the Control Authority's Sewer Use Ordinance shall have the right to
 21 an adjudicatory hearing before the POTW Director or other hearing officer appointed by the
 22 POTW Director upon making written demand, identifying the specific issues to be contested, to
 23 the POTW Director within 30 days following notice of the final decision to deny or grant the
 24 permit, civil penalty assessment, or administrative order. Unless such written demand is made,
 25 the action shall be final and binding, subject to the provisions of Rule .0917 of this Section if
 26 applicable, and further appeal is barred. For modified permits, only those parts of the permit
 27 being modified may be adjudicated. The POTW Director or other hearing officer, as
 28 appropriate, shall make a decision on the contested action within the time period specified in the
 29 Control Authority's Sewer Use Ordinance but in no case shall the decision be made more than 90
 30 days from receipt of the demand, including the time for any decision under Paragraph (b) of this
 31 Rule. The POTW Director shall transmit a copy of the hearing officer's decision to the petitioner
 32 by registered or certified mail. If no further administrative appeal is provided by the governing
 33 body of the Control Authority under Paragraph (b) of this Rule then the decision is a final
 34 decision for the purposes of seeking judicial review. An Official Record of the adjudicatory
 35 hearing ~~must~~ shall be prepared as described in Paragraph (c) of this Rule. The terms and
 36 conditions of a permit under appeal shall be as follows:

- 37 (1) New Permits. Upon appeal, including judicial review in the General Courts of
 38 Justice, of the terms or conditions of a newly issued permit, the terms and
 39 conditions of the entire permit are stayed and the permit is not in effect until
 40 either the conclusion of judicial review or until the parties reach a mutual
 41 resolution.
- 42 (2) Renewed or Modified Permits. Upon appeal, including judicial review in the
 43 General Courts of Justice, of the terms or conditions of a renewed or modified
 44 permit, the terms and conditions of the existing permit remain in effect until either
 45 the conclusion of judicial review or until the parties reach a mutual resolution.
- 46 (3) Terminated Permits. Upon appeal, including judicial review in the General

Courts of Justice, of a terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

(b) ~~Optional~~ Administrative Appeal Hearings. If so provided by the governing body of the Control Authority, any decision of a hearing officer or POTW Director made as a result of an adjudicatory hearing held under Paragraph (a) of this Rule may be appealed, to the governing body of the Control Authority or other unbiased entity designated by the governing body of the Control Authority upon filing a written demand within ten days of receipt of notice of the decision. Failure to make written demand within the time specified herein shall bar further ~~appeal~~ judicial review. The governing body of the Control Authority or other unbiased entity, as appropriate, shall make a final decision on the appeal within the time period specified in the Control Authority's Sewer Use Ordinance. The governing body of the Control Authority or its designee shall transmit a written copy of its decision by registered or certified mail to the petitioner. This decision is a final decision for the purposes of seeking judicial review. An Official Record of the hearing ~~must~~ shall be prepared as described in Paragraph (c) of this Rule.

(c) Official Record. When a final decision for the purposes of judicial review is issued under this Rule, the hearing officer shall prepare an official record of the case that includes:

- (1) All notices, motions, and other like pleadings;
- (2) A copy of all documentary evidence introduced;
- (3) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken; and
- (4) A copy of the final decision of the hearing officer.

Revised wording below to follow terms used in NCGS 143-215.6A(k) and changed "petition" to "request."

Added "and who has exhausted all administrative remedies made available to him or her by statute or by the Control Authority's Sewer User Ordinance" was added. This clarifies that if a POTW's SUO does not include the Optional Administrative Appeal Hearings allowed under (c), then the industrial user may proceed with judicial review after the conclusion of the adjudicatory hearing process allowed under (a).

(d) Judicial Review. Any person against whom a final decision of the hearing officer or POTW Director is entered, pursuant to the hearing(s) conducted under this Rule and who has exhausted all administrative remedies made available to him or her by statute or by the Control Authority's Sewer Use Ordinance, may seek judicial review of the decision, by filing a written request for review by the superior court pursuant to Article 27 of Chapter 1 of the G.S. General Statutes within 30 days after receipt of notice by registered or certified mail of the final decision, but not thereafter, with the Superior Court of the appropriate county along with a copy to the Control Authority. Within 30 days after receipt of the copy of the request for judicial review, the final decision maker shall transmit to the reviewing court the original or a certified copy of the official record.

History Note: Authority G.S. 143-215(a); 143-215.1(a), (c), (g); 143-215.2(b); 143-215.3(a)(3),(14)(e); 143-215.6A(j), (k) Eff. March 1, 2011.