

**AN ORDINANCE TO AMEND SECTIONS IN CHAPTER 63 (UTILITIES) OF THE CODE OF THE  
COUNTY OF WASHINGTON, VIRGINIA, TO ADD REFERENCES TO VIRGINIA ADMINISTRATIVE  
CODE SECTIONS AND FOR NON-SUBSTANTIVE EDITORIAL REVISIONS**

**WHEREAS**, in accordance with Virginia Code sections 15.2-2122 and 15.2-5100, *et seq.*, the Washington County Service Authority (Authority), which is governed by the Washington County Service Authority Board of Commissioners (Board of Commissioners), operates a system for wastewater treatment services in Washington County, Virginia, which is regulated by Washington County Code Chapter 63 (Utilities) (Utilities Chapter), which was adopted by the Washington County Board of Supervisors (Board of Supervisors), to establish standards for operation of such system; and

**WHEREAS**, the Board of Commissioners adopted wastewater rules and regulations that mirror the Utilities Chapter; and

**WHEREAS**, by Resolution adopted on September 8, 2020, the Board of Commissioners requested that the Board of Supervisors update the Utilities Chapter in light of changes in applicable federal and state law and regulations that have occurred since the Board of Supervisors last updated the Utilities Chapter on April 23, 2013, including without limitation changes in the Code of Federal Regulations and the Virginia Administrative Code, and to make other non-substantive editorial corrections;

**WHEREAS**, having considered request of the Board of Commissioners, the Board of Supervisors finds it in the best interests of the public health, safety, and welfare to amend the Utilities Chapter in accordance with such request, as set forth herein.

**NOW, THEREFORE, ON THE BASIS OF THE FOREGOING**, and in consideration of the best interests of the public health, welfare, and safety, and having held a public hearing for consideration of these matters, the Board of Supervisors of the County of Washington, Virginia (Board), hereby ordains the following:

1. That this ordinance shall be deemed effective immediately upon its adoption by the Board;
2. That should any section or provision of this ordinance be decided to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section or provision of this ordinance or the Washington County Code;

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3. That sections 63-27, -81, -93, -111, -128, -141, -143, -158, -160, -161, -168, -171, -185, and -213 of the Code of the County of Washington, Virginia (2002, as amended) are amended as set forth herein, subject to Article, Division, Section, and Subsection titles and numbers amendment by the Editor as necessary for Code consistency. New language is indicated by underline, and deletions are indicated by strikethrough; and
4. Sections, subsections, and definitions that are in the current form of Chapter 63 but not set out, below, should remain intact, unchanged in Chapter 63 after the following revisions are made to the specified sections. Ellipses are used to indicate sections of text that are omitted for this presentation but that should remain unchanged after amendments noted herein.

**Code of the County of Washington, Virginia (2002, as amended)**

**Chapter 63 - UTILITIES**

**Sec. 63-27. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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*Best management practices* or *BMPs* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in section 63-91 and section 63-92 [40 CFR 403.5(a)(1) and (b); 9 VAC 25-31-770(A) and 770(B)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

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*Board or board of commissioners* means the Washington County Service Authority Board of Commissioners.

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~~*Control authority* means the Town of Abingdon or Washington County Service Authority, as the case may be.~~

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*Instantaneous maximum allowable discharge limit* or instantaneous limit means the maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

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*Significant industrial user or SIU means:*

- (1) A user subject to categorical pretreatment standards under 9 VAC 25-31-780 and incorporated by reference in 9 VAC 25-31-30;
- (2) A user that discharges an average of 25,000 gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);
- (3) A user that contributes a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW;
- (4) A user that has significant impact, either singularly or in combination with other significant discharges, on the treatment works or the quality of its effluent; or
- (5) A user that is designated as such by the town or authority on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

Upon a finding that a user meeting the criteria in subsections (2) through (5) hereof has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the town or authority may at any time, on its own initiative or in response to a petition received from a user, and in accordance with ~~procedures in~~ 40 C.F.R. 403.8(f)(6) and 9 VAC 25-31-730 et seq., determine that such user should not be considered a significant industrial user.

*Significant noncompliance* means an industrial user's violations which meet one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits, defined as those in which 66 percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits ~~the daily maximum limit or the average limit for the same pollutant parameter;~~
- (2) Technical review criteria (TRC) violations, defined as those in which 33 percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily average maximum limit or the average limit times the applicable TRC (TRC = 1.4 FOR BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (3) Any other discharge violation that the ~~control~~ town or authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under section 63-196 [40 C.F.R. 403.8 and 9 VAC 25-31-800] to halt or prevent such a discharge;
- (5) Failure to meet, within 90 days after the scheduled date, a compliance schedule milestone contained in a local control mechanism or enforcement order; for starting construction, completing construction, or attaining final compliance;

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- (6) Failure to provide, within ~~30~~<sup>45</sup> days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (7) Failure to accurately report noncompliance; or
- (8) Any other violation or group of violations which the ~~control~~ town or authority determines will adversely affect the operation or implementation of the local pretreatment programs.

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**Sec. 63-46. - Compliance with article.**

Where a public sanitary sewer is not available under the provisions of section ~~63-32~~ 63-49, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this article.

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**Sec. 63-81. - Purpose and policy.**

- (a) This article sets forth uniform requirements for direct and indirect contributors into the wastewater collection and/or treatment systems owned or operated by or for the town or authority, and enables the town or authority to comply with all applicable state and federal laws required by the Clean Water Act of 1977 and the general pretreatment regulations (40 C.F.R. 403) and Virginia Permit Regulation ~~Part VII~~ (9 VAC 25-31-10 et seq.) issued and amended from time to time by the commonwealth.
- (b) The objectives of this regulation are to:
  - (1) Prevent the introduction of pollutants into the town's or authority's wastewater systems which will interfere with the operation of the system or contaminate the resulting sludge;
  - (2) Prevent the introduction of pollutants into the town's or authority's wastewater systems which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system;
  - (3) Ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
  - (4) Promote reuse and recycling of industrial wastewater and sludge from the POTW;
  - (5) Enable the town or authority to comply with its VPDES permit conditions, sludge use and disposal requirements, and any other federal or state laws to which the POTW is subject;

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- (6) Protect both POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public;
  - (7) Provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the POTW.
- (c) This article shall apply to Washington County and to persons outside the town's or authority's service area, including those who are, by contract or agreement with the town or authority, users of the town's or authority's sewage collection systems and/or sewage treatment facilities.

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**Sec. 63-93. - Federal categorical pretreatment standards generally.**

- (a) The categorical pretreatment standards found at 40 C.F.R. Chapter I, Subchapter N, Parts 405 through 471 and 9 VAC 25-31-30, as amended from time to time, are incorporated by reference and shall apply as if fully set out in this article.
- (b) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the town or authority may impose equivalent concentration or mass limits in accordance with 40 C.F.R. 403.6(c) and 9 VAC 25-31-780(C).
- (c) When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the town or authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users in accordance with 40 CFR 403.6(c)(2) and 9 VAC 25-31-780(C).
- (d) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the town or authority shall impose an alternative limit using the combined waste stream formula in 40 C.F.R. 403.6(e) and 9 VAC 25-31-780(E).
- (e) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 C.F.R. 403.13 and 9 VAC 25-31-850, that factors relating to its discharge are fundamentally different from the factors considered by the EPA when developing the categorical pretreatment standard.
- (f) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 C.F.R. 403.15 and 9 VAC 25-31-870.

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**Sec. 63-111. - Hauled wastewater.**

- (a) Septic tank waste may be introduced into the POTW only at locations designated by the town or authority, and at such times as are established by the town or authority. Such

waste shall not violate any requirements established by the town or authority. The town or authority shall require septic tank waste haulers to obtain a wastewater discharge permit or license. The town or authority may also prohibit the disposal of hauled septic tank waste. The discharge of hauled septic tank waste is subject to all other requirements of this article and is at the sole discretion of the town or authority.

- (b) Grease trap waste from commercial food establishments discharging wastewater to the town or authority sewer system may be introduced into the POTW only at locations designated by the town or authority, and at such times as are established by the town or authority. Such waste shall not violate any requirements and regulations established by the POTW and the town or authority. Grease trap waste haulers are required to obtain a wastewater discharge permit or license, as established by the town or authority. The town or authority may also prohibit the disposal of hauled grease trap waste. The discharge of hauled grease trap waste is subject to all other requirements of this article and is at the sole discretion of the town or authority.
- (c) The town or authority shall require haulers of industrial waste to obtain a wastewater discharge license. The town or authority may require generators of hauled industrial waste to obtain a permit pursuant to section 63-124. The town or authority may also prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article and is at the sole discretion of the town or authority.
- (d) Industrial waste haulers may discharge loads only at locations designated by the town or authority. No load may be discharged without a license obtained from the town or authority. The town or authority or their authorized agent may collect samples of each hauled load to ensure compliance with applicable standards. The town or authority may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- (e) Industrial waste haulers, septic waste haulers, and grease waste haulers must provide an approved hauling manifest for every load. The manifest form shall be provided by the town or authority for each waste hauler to use.
- (f) The town or authority has the right to inspect, investigate, and monitor the waste haulers, the loads that are brought to the POTW, and the customers that the waste haulers service.

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**Sec. 63-128. - Same—Application contents.**

- (a) Users required to obtain a wastewater discharge permit or general permit shall complete and file with the town or authority an application in the form prescribed by the town or authority and accompanied by a fee as set by the town or authority. Existing users shall apply for a wastewater discharge permit or general permit within 60 days after the effective date of this division and proposed new users shall apply at least 120 days prior to

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connecting to or contributing to the POTW. The town or authority may require all users to submit as part of an application the following information:

- (1) All information required by subsection 63-158(b) of this division;
  - (2) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
  - (3) Number and type of employees, hours of operation, and proposed or actual hours of operation of the pretreatment plant;
  - (4) Each product produced by type, amount, process or processes, and rate of production;
  - (5) Type and amount of raw materials processed (average and maximum per day);
  - (6) The site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, and appurtenances by the size, location and elevation and all points of discharge;
  - (7) Time and duration of discharges;
  - (8) Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on subsection 63-161(b) [40 CFR 403.12(e)(2) and 9 VAC 25-31-840(E)(2)];
  - (9) Any request to be covered by a general permit based on subsection 63-124(b);
  - (10) Any other information as may be deemed necessary by the town or authority to evaluate the wastewater discharge permit application; and
  - (11) All applicable permit fees as determined by the town or authority.
- (b) The town or authority will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the town or authority may issue a wastewater discharge permit or general permit subject to the terms and conditions provided herein. These preceding provisions apply to any building additions and/or renovations.
- (c) Incomplete or inaccurate applications will not be processed and will be returned to the user for revisions.

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**Sec. 63-141. - Same—Contents of permit.**

A wastewater discharge permit or general permit shall include such conditions as are deemed reasonably necessary by the town or authority to prevent pass through or interference, protect the quality of the water body receiving the treatment plants effluent,

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protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

- (a) Wastewater discharge permits and general permits must contain the following conditions:
  - (1) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five years.
  - (2) A statement that the wastewater discharge permit is nontransferable without prior notification to and approval from the town or authority, in accordance with section 63-144 of this division, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.
  - (3) Effluent limits, including best management practices, applicable to the user based on applicable standards in federal, state, and local law.
  - (4) Self-monitoring, sampling, reporting, notification, and recordkeeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law.
  - (5) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state, or local law.
  - (6) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the discharge or a waiver for decreased frequency of monitoring in accordance with subsection 63-161(b).
  - (7) Any grant of the monitoring waiver by the town or authority (subsection 63-161(b)) must be included as a condition in the user's permit.
  - (8) A statement that indicates the application and reapplication requirements as described in section 63-128 and ~~section~~ section 63-146 ~~of this regulation~~.
  - (9) A statement that indicates that the town or authority may modify a permit with good cause as described in section 63-143.
  - (10) A statement that indicates that the town or authority may revoke or terminate a permit with good cause including, but not limited to, the reason indicated in section 63-145 and section 63-197.
  - (11) A statement that indicates that the permittee must adhere to proper operation and maintenance standards as described in section 63-108.
  - (12) A statement that indicates that the town or authority may also immediately suspend a user's discharge, after notice and opportunity to respond, that

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threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment as described in section 63-196.

(13) A statement that indicates that all sampling reports submitted to the POTW must include a chain-of-custody document.

(b) Wastewater discharge permits or general permits may contain the following:

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

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**Sec. 63-143. - Same—Modification.**

(a) The town or authority may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- (1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
- (2) To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;

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- (3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
  - (4) Information indicating that the permitted discharge poses a threat to the town's or authority's POTW, authority personnel, or the receiving waters;
  - (5) Violation of any terms or conditions of the wastewater discharge permit;
  - (6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
  - (7) Revisions of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13 and 9 VAC 25-31-850;
  - (8) To correct typographical or other errors;
  - (9) To reflect a transfer of the facility ownership or operation to a new owner or operator.
- (b) The town or authority may modify a general permit for good cause, including, but not limited to, the following reasons:
- (1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
  - (2) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
  - (3) To correct typographical or other errors; or
  - (4) To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with section 63-144.
- (c) The filing of a request by a permittee for a wastewater discharge permit modification does not stay any wastewater discharge permit condition.

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**Sec. 63-158. - Baseline monitoring reports.**

- (a) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a categorical determination under 40 CFR 403.6(a)(4) and 9 VAC 25-31-780(A)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the town or authority a report which contains the information listed in subsection (b) below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the town or authority a report which contains the information listed in subsection (b) below. A new source shall also be required to report the method of pretreatment it intends to use to meet applicable categorical standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants to be discharged.

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- (b) Users described above shall submit the information set forth below:
- (1) *Identifying information.* The name and address of the facility, including the name of the operator and owner.
  - (2) *Environmental permits.* A list of any environmental control permits held by or for the facility.
  - (3) *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated process.
  - (4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from the regulated process streams and other streams, as necessary, to allow use of the combined waste\_stream formula set out in 40 CFR 403.6(e) and 9 VAC 25-31-780(E).
  - (5) *Measurement of pollutants.*
    - a. The categorical pretreatment standards applicable to each regulated process.
    - b. The results of sampling and analysis identifying the nature and concentration and/or mass, where required by the standard or by the town or authority of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum and long-term average concentrations, or mass, where required, shall be reported. The sample shall be analyzed in accordance with procedures set out in section 63-167 of this division.
    - c. Sampling must be performed in accordance with procedures set out in section 63-168 of this division.
  - (6) *Certification.* A statement reviewed by the authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
  - (7) *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in section 63-159 of this division.
  - (8) *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with section 63-129 of this division.

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**Sec. 63-160. - Report on compliance with categorical pretreatment standard deadline.**

Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the town or authority a report containing the information described in subsections 63-158(b)(4) through (6) of this division. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c) and 9 VAC 25-31-780(C), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with section 63-129 of this division.

**Sec. 63-161. - Periodic compliance reports.**

- (a) All significant industrial users shall, at a frequency and schedule determined by the town or authority but in no case less than twice per year, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with section 63-129 of this division.
- (b) The town or authority may authorize an industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions:
  - (1) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.
  - (2) The monitoring waiver is valid only for the duration of the effective period of the permit, but in no case longer than five years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent permit. See subsection 63-128(a)(8).
  - (3) In making a demonstration that a pollutant is not present, the industrial user must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

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- (4) The request for a monitoring waiver must be signed in accordance with section 63-27, and include the certification statement in section 63-129 [~~40 CFR 403.6(a)(2)(II)~~ and 9 VAC 25-31-780(A)(2)(b)].
  - (5) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.
  - (6) Any grant of the monitoring waiver by the town or authority must be included as a condition in the user's permit. The reasons supporting the waiver and any information submitted by the user in its request for the waiver must be maintained by the town or authority for three years after expiration of the waiver.
  - (7) Upon approval of the monitoring waiver and revision of the user's permit by the town or authority, the industrial user must certify on each report with the statement in section 63-171, that there has been no increase in the pollutant in its wastestream due to activities of the industrial user.
  - (8) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the user's operations, the user must immediately: comply with the monitoring requirements of subsection 63-161(a), or other more frequent monitoring requirements imposed by the town or authority, and notify the town or authority.
  - (9) This provision does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.
- (c) The town or authority may reduce the requirement for periodic compliance reports [See subsection 63-161(a), 40 CFR 403.12(e)(1), and 9 VAC 25-31-840E(1)] to a requirement to report no less frequently than once a year, unless required more frequently in the pretreatment standard or by the state, where the industrial user's total categorical wastewater flow does not exceed any of the following:
- (1) Five hundred gallons per day as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches;
  - (2) Pollutant-specific daily loading values as established by the town or authority.
- (d) Reduced reporting is not available to industrial users that have in the last two years been in significant noncompliance, as defined in section 63-185 of this regulation. In addition, reduced reporting is not available to an industrial user with daily flow rates, production levels, or pollutant levels that vary so significantly that, in the opinion of the town or authority, decreasing the reporting requirement for this industrial user would result in data that are not representative of conditions occurring during the reporting period.
- (e) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and

maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

- (f) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the town or authority, using the procedures prescribed in section 63-167 of this division, the results of this monitoring shall be included in the report.
- (g) The town or authority may elect to sample and analyze in lieu of requiring the users to conduct sampling and analysis. If this option is exercised, the user may be billed for the service.

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**Sec. 63-168. - Sample collection.**

- (a) Except as indicated in subsection (b) and (c) below, the user must collect wastewater samples using 24-hour flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the town or authority may authorize the use of time proportional sampling or a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the town or authority, as appropriate. In addition, grab samples may be required to show compliance with the instantaneous discharge limits.
- (b) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- (c) For sampling required in support of baseline monitoring and 90-day compliance reports required in section 63-158 and 63-160 [40 CFR 403.12(b) and (d) and 9 VAC 25-31-840(B) and (D)], a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the town or authority may authorize a lower minimum. For the reports required by section 63-161 [40 CFR 403.12(e) and 403.12(h) and 9 VAC 25-31-840(E) and (H)], the industrial user is required to collect the number of grab samples necessary to assess and assure compliance by with applicable pretreatment standards and requirements.
- (d) All monitoring reports submitted to the POTW that include sampling data are required to include a chain-of-custody document.

...

**Sec. 63-171. - Certification of pollutants not present.**

Users that have an approved monitoring waiver based on subsection 63-161(b) must certify on each report with the following statement that there has been no increase in the pollutant in its ~~wastestream~~ waste stream due to activities of the user.

Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR \_\_\_\_\_ [specify applicable national pretreatment standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of \_\_\_\_\_ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under section 63-161(a).

...

**Sec. 63-185. - Publication of industrial users in significant noncompliance.**

- (a) The town or authority shall publish annually, in a newspaper of general circulation that provides meaningful public notice in the municipality where the POTW is located, a list of the users which, during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term "significant noncompliance" shall mean:
- (b) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of wastewater measurements taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits ~~the daily maximum limit or average limit for the same pollutant parameter by any amount;~~
- (c) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- (d) Any other discharge violation that the town or authority believes has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;
- (e) ~~Any other discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the town's or authority's exercise of its emergency authority to halt or prevent such a discharge~~ Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under Section 63-196 [40 C.F.R. 403.8 and 9 VAC 25-31-800] to halt or prevent such a discharge;

*Proposed ordinance to be considered by the  
Washington County, Virginia, Board of Supervisors,  
After public hearing to be held at its regular meeting on October 13, 2020*

- (f) Failure to provide, within 90 days of the scheduled date, a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (g) Failure to provide, within ~~30~~45 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standards and deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (h) Failure to accurately report noncompliance; or
- (i) Any other violation(s) or group of violations which the town or authority determines will adversely affect the operation or implementation of the local pretreatment program.

...

**Sec. 63-213. - Same—Prohibited discharge standards.**

- (a) A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section 63-91 of this article or the specific prohibitions in section 63-92 of this article, if it can prove by a preponderance of the evidence that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and either:
  - (1) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
  - (2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the town or authority was regularly in compliance with its VPDES permit, and, in case of interference, was in compliance with applicable sludge use or disposal requirements.
- ~~(B)~~b) Pursuant to 40 CFR Section 403.5(a)(2) and 9 VAC 25-31-770(A)(2), the affirmative defense outlined in this section cannot apply to specific prohibitions in subsections 63-92(a)(1), (3) and (20).

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