

Chapter 36

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ARTICLE I. IN GENERAL**Sec. 36-1. Tampering with water or sewer systems Protection of systems on certain days.**

(a) No person shall cut, break, obstruct, damage, change, alter or otherwise interfere or tamper with, in any manner, any water pipe, water main, hydrant, sewer pipe, water tank or any other thing which is a part of the waterworks or sewer system.

(b) No person shall make any connection to any portion of the water or sewer system or perform any excavation or other work adjacent to or near said system or make any street or other repairs which might endanger said water or sewer system on any legal holidays of the town or on Saturdays or Sundays without the prior written permission of the town manager.

(c) No person shall operate any valve on the town water system without the prior notification and approval of the town of Cary.

(d) Penalties for violation.

(1) *Civil.*

- a. The first violation of this section shall subject the offender to a civil penalty in the amount of \$250.00, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he has been cited for violation.
- b. All subsequent violations of this section by the same person shall subject the offender to a civil penalty in the amount of \$1,000.00 per violation, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he has been cited for violation.
- c. The offender shall be issued a written citation by delivery in person or mailed by certified or registered mail. The civil penalty must be paid within 72 hours of receipt of written citation by the offender.

(2) *Criminal.* In addition to, or in lieu of, the remedies authorized in subsection (d)(1) above, any violation of this section may be prosecuted as a criminal matter.

(Code 1976, § 17-16; Code 1982, § 19-1; Ord. No. 87-13, § 1, 3-12-1987; Ord. No. 03-003, 1-9-2003)

State law reference—Penalties for ordinance violations, G.S. 14-4, 160A-175.

Sec. 36-2. Same Testing and repair equipment.

No person shall maliciously or willfully damage, destroy, uncover, deface or tamper with any equipment or materials belonging to the town and used, or intended to be used, for the purposes of making measurements, tests, examinations or repairs to the sewer system or water system of the town.

(Code 1976, § 17-29; Code 1982, § 19-2)

State law reference—Interference with water meters, G.S. 14-151.1.

Sec. 36-3. Connections—Application.

No connection shall be made to any sewer, reclaimed water, or water main or to any sewer, reclaimed water, or water lateral ("new service connection" or "new connection") except after the written application therefor has been approved by the Town in accordance with policy statements and/or standard procedures established by the Town.

(Code 1976, § 17-3; Code 1982, § 19-3; Ord. No. 98-018, 10-8-1998; Ord. No. 2018-Code-03, § 1, 6-28-2018)

Sec. 36-4. Same—Subdivisions.

(a) Both the water distribution system and the sewage collection system in any particular area of a subdivision will be 100 percent completed, tested, sterilized and approved for use before any permit for connection to these systems will be issued.

(b) If the complete paving of streets in the area, including curb and gutter, cannot be accomplished in the time necessary for moving in the homes constructed on the property, exception could be granted by the council to allow for the use of certain homes falling in the above category; provided, that the developer of the property will furnish to the town a bond, approved by the council, guaranteeing the completion of the streets in question; and provided further, that this type of permit will not be issued to more than 20 percent of the homes in any given subdivision section.

(c) No structure located upon a subdivision lot shall be permitted to be connected to town water or sewer lines until such time as the subdivision has been approved by the council.

(d) Application for a permit to connect to water and/or sewer ("new connection") must be made prior to the issuance of any building permit for a dwelling unit. The fees for water and/or sewer service connections shall be set from time to time by the council.

(Code 1976, § 17-4; Code 1982, § 19-4; Ord. No. 87-13, § 2, 3-12-1987; Ord. No. 98-018, 10-8-1998)

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Sec. 36-5. Utility Connections.

(a) *Authority of town.* The town shall install and retain ownership of all public utility meters.

(b) *Utility connection fees.* Every person, firm, partnership or corporation connecting to the town utility system shall pay connection fees as established by the town council in the annual operating budget, except when the town does not make the connection.

(c) All utility connections shall be made in accordance with policy statements and/or standard procedures established by the Town.

(Code 1976, § 17-5; Code 1982, § 19-5; Ord. No. 79-23, § 1, 9-27-1979; Ord. No. 79-30, § 1, 11-8-1979; Ord. No. 84-3, § 1, 3-8-1984; Ord. No. 95-011, 3-27-1995; Ord. No. 2018-Code-03, § 1, 6-28-2018)

Sec. 36-6. Development fees.

(a) Water and sewer system development fees shall be established for service imposed with respect to new development to fund costs of capital improvements necessitated by and attributable to such new development, to recoup costs of existing facilities which serve such new development, or a combination of those costs.

(b) Development fee charges shall be collected by method and amount as stated in the annual utility capital improvements budget ordinance and in accordance with G.S. Chapter 162A, Article 8.

(c) Water and sewer system development fees shall be in addition to all other charges prescribed by ordinance or resolution now or hereafter in effect by the town.

(Code 1976, § 17-6; Code 1982, § 19-6; Ord. No. 79-28, §§ 1, 2, 10-11-1979; Ord. No. 82-9, § 1, 8-12-1982; Ord. No. 84-22(A), § 1, 11-8-1984; Ord. No. 86-25(a), § 1, 6-26-1986; Ord. No. 97-031, § 1, 8-14-1997; Ord. No. 02-016, 6-13-2002; Ord. No. 2011-Code-07, 10-13-2011; Ord. No. 2018-Code-03, § 1, 6-28-2018)

Sec. 36-7. Electrical and plumbing inspection.

No building or structure shall be connected to the water or the sewage disposal systems of the town until the wiring and electrical service and all plumbing installations within said structure shall have been inspected and approved by the building inspectors of the town as prescribed by chapter 8 of this Code.

(Code 1976, § 17-8; Code 1982, § 19-7)

Sec. 36-8. Service charges.

The monthly service charges for water and sewer service shall be established each year as a part of the annual operating budget ordinance.

(Code 1976, § 17-10; Code 1982, § 19-8; Ord. No. 78-3, §§ 1, 2, 4-13-1978; Ord. No. 80-16, § 1, 7-24-1980; Ord. No. 82-15, § 1, 9-23-1982; Ord. No. 84-4, § 1, 3-8-1984)

Sec. 36-9. Bills due when presented.

All water, sewer, and garbage bills are due and payable when presented and shall become delinquent ten days after the billing date. If a bill has not been paid by the delinquent date of the next bill, water service shall be discontinued. No water service shall thereafter be rendered until all charges and fees outstanding, including disconnection and reconnection fees, have been paid in full.

(Code 1976, § 17-12; Code 1982, § 19-9; Ord. No. 78-12, § 1, 9-14-1978; Ord. No. 79-1, § 1, 1-25-1979; Ord. No. 84-5, § 1, 3-8-1984; Ord. No. 84-20, § 1, 9-27-1984)

State law reference—Enforcement of rates, G.S. 160A-314.

Sec. 36-10. Disclaimer of liability.

The town shall not be held liable for:

- (1) Any claim or offset for damage or injury caused by or resulting from the performance without negligence of any act or duty herein authorized or required for the conduct, operation and maintenance of services and facilities relating to the furnishing of water and enforcement of penalties for nonpayment of charges thereof.
- (2) Any damage caused by or resulting in the shutting off of the water supply at any premises with or without notice for repairs, maintenance or for nonpayment of bills.
- (3) Any damage or injury resulting from the failure of any pipe, connection, fixture, appliance or installation in any plumbing system on the outlet side of the water meter at any premises connected with the water supply system of the town.
- (4) Any damage resulting from the use of equipment required to maintain public sewer where manhole elevations are above fixture elevations and no backwater device has been installed.
- (5) Any other act or thing required for the proper administration of the provisions of this chapter.

(Code 1976, § 17-15; Code 1982, § 19-10)

Sec. 36-11. Bulk water sales to wholesale customers.

(a) *Wholesale customers defined.* Wholesale customers shall be those customers that purchase water or sewer service from the town for resale to other individual retail water or sewer customers. Such wholesale customers can include other local governments or public or private utilities operating inside or outside the corporate boundaries of the town.

(b) *Contract required.* All bulk water sales to wholesale customers, after the effective date of the ordinance from which this section is derived, will be by contract, which shall set out the terms and conditions of the sale.

(c) *Deposit required.* Wholesale customers shall be required to make a deposit to the town in an amount equal to the cumulative deposit that would be required if their individual retail customers each made a deposit as required under section 36-11. Such deposits shall be returned after 36 months as a wholesale customer, including 12 consecutive months with a good credit history with the town.

(d) *Late penalties.* A late penalty equal to two-thirds of one percent per month (eight percent annual) will be charged on invoices after the due date of the invoice. Unless otherwise contained in a contract for service, the due date shall be 30 days after the billing date.
(Code 1982, § 19-11; Ord. No. 89-79, § 1, 9-28-1989; Ord. No. 01-005, 4-12-2001)

Sec. 36-12. Right of entry.

The directors of public works or utilities or the finance director, or any of their assistants, shall have the right to enter, at any reasonable time, any premises for the purposes of billing for services, reading meters, assessing hazards for cross connection control on potable water lines or operating or maintaining any part of the waterworks or sewer works systems as required by this chapter or by the sewer use ordinance.

(Code 1982, § 19-13; Ord. No. 94-037, § 1, 12-8-1994; Ord. No. 99-013, § 2, 8-12-1999; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 36-13. Sub-metering.

(a) *Definition.* Sub-metering is the metering of water for resale to multifamily or multibusiness premises after that water has been metered for sale purposes by the town.

(b) *Registering.* Any party desiring to sub-meter water purchased from the town must register with the town's finance department prior to any sub-metering activity and pay whatever fees are associated with that registration.

(c) *Penalties.* Any party failing to so register for sub-metering with the town shall be subject to the following penalties:

(1) *Civil.*

- a. Any violation of this section shall subject the offender to a civil penalty in the amount of \$1,000.00, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he has been cited for violation.

- b. The offender shall be issued a written citation by delivery in person or mailed by certified or registered mail. The civil penalty must be paid within 72 hours of receipt of written citation by the offender.

- (2) *Criminal*. In addition to, or in lieu of, the remedies authorized in subsection (1), above, any violation of this section may be prosecuted as a criminal matter.

(Code 1982, § 19-15; Ord. No. 01-005, 4-12-2001)

State law reference—Civil penalties, G.S. 160A-175(c).

Sec. 36-14. Maintenance of privately-owned water or sewer pipelines and/or service lines.

(a) Every user or owner/occupant whose premises have a privately-owned water or sewer line(s) and related appurtenances located in the area from the structure to the town's connection of the water distribution or sanitary sewer collection system is required to keep such line(s) in a condition comparable to that of its original design intent. Privately-owned lines are to be free of defects and are only to be used for the delivery of potable water from the town's water distribution system to that premises or for the delivery of wastes from that premises to the town's sanitary sewer system.

(b) Upon becoming aware of a violation of the provision of this section, the town manager or designee shall give notice to the owner and/or occupant of the premises involved. The town manager or designee may direct that within a designated period of time that the malfunction or inappropriate use be corrected. If the staff determines that it is dangerous or prejudicial to the public health, safety or environment the town may summarily remove, abate, or remedy the situation. Specifically, based upon such a finding, notice will be given to correct, repair, and make functioning to the original design the violation within time specified in such notice. Refusal or failure to comply with such notice may result in the town manager or designee directing staff to take the appropriate steps for the correction and repair of the line, as specified in the notice. The expense of the action shall be paid by person in default (owner, user, or property management firm) and if not paid, a lien shall be placed upon the land or premises where the violation arose to be collected as unpaid taxes.

(Code 1982, § 19-16; Ord. No. 99-021, 12-9-1999)

Secs. 36-15—36-33. Reserved.

ARTICLE II. WATER AND SEWER EXTENSIONS

Sec. 36-34. Generally; payment of expense.

All water and sewer extensions to property outside the corporate limits, and all water and sewer extensions to property inside the corporate limits which is developed subsequent to or annexed by voluntary petition subsequent to December 1, 1976, shall be made at the sole expense of the owner, unless water and sewer extensions are made by the town under existing assessment policies. All water and sewer extensions to property within the corporate limits which was developed prior to December 1, 1976, and which was located within the corporate limits prior to December 1, 1976, shall

be made to the property line at the expense of the town. Nothing in this section shall relieve any owner or developer of property from payment of development fees, connection charges or other charges made in conjunction with extension of or connection to water and sewer lines.

(Code 1976, § 17-20; Code 1982, § 19-22; Ord. No. 76-40, § 1, 11-18-1976; Ord. No. 82-9, § 2, 8-12-1982; Ord. No. 02-016, 6-13-2002)

Sec. 36-35. Ownership of mains.

All mains extended and constructed under this article shall be of such size and material and shall be laid in such manner as contained in the town's overall master utility plan and engineering standards. All mains so constructed or extended shall be and remain the property of the town.

(Code 1976, § 17-21; Code 1982, § 19-23)

Sec. 36-36. Street repairs at expense of property owner.

Repaving and repairing of all streets required to be breached to lay and construct mains under this article shall be done at the expense of the property owner obtaining the extension of water and sewer lines.

(Code 1976, § 17-22; Code 1982, § 19-24)

Sec. 36-37. Permit for construction or operation of, or change to, water distribution system, wastewater collection system, or reclaimed water system—Prohibited activities; application; conformance.

(a) No person shall do or carry out any of the things or activities listed in subsections (a)(1)—(3) below concerning a water distribution system (hereafter "water system"), wastewater collection system (sometimes hereafter "sanitary sewer system"), or reclaimed water system, which is, or is proposed to become, a part of the town water system, wastewater collection system, or reclaimed water system, and is located within the town utility service area, as such term is defined in G.S. 143-215.1(f), unless such person shall have applied for and shall have received from the town a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit. The term "water system" shall mean and include, but shall not be limited to, water distribution lines, including required fire hydrants, valves, air release valves and manholes. The term "sanitary sewer system" shall mean and include, but shall not be limited to, sanitary sewer lines, manholes, wastewater pumping stations, and force mains, including required valves, air release valves and cleanouts located in the public rights-of-way. The term "reclaimed water system" shall mean and include, but shall not be limited to, reclaimed water lines, including required valves, air release valves, and manholes. Activities prohibited without a permit shall be as follows:

- (1) Construct or operate any water system, sanitary sewer system, or reclaimed water system;
- (2) Alter, extend, or change the construction or method of operation of any existing or proposed water, sanitary sewer system, or reclaimed water system; or
- (3) Enter into a contract for the construction and installation of any water system, sanitary sewer system, or reclaimed water system, or for the alteration or extension of such a system.

(b) Any person proposing to undertake any thing or activity described in subsection (a) of this section shall make timely and proper application on such form(s) as may be prescribed by the director of utilities, or his or her designee, (hereafter "director") and provide such information as may be required by the director. A copy of all applications for permits subject to this section and of all approved permits and plans shall be provided to the state department of environmental quality (DEQ) pursuant to applicable law.

(c) All water systems, sanitary sewer systems, or reclaimed water systems proposed for connection to the town water system, sanitary sewer system, or reclaimed water system and all proposed modifications to any existing portion of the town water system, sanitary sewer system, or reclaimed water system shall be designed, constructed and installed in conformance with applicable provisions of the then current town standard specifications and details manual (hereafter "town standards") and any other town rules, policies and procedures (hereafter "town requirements"). Any engineering plans, specifications and profiles submitted by applicants for water systems, sanitary sewer systems, or reclaimed water systems, and modifications shall be prepared by or under the direct supervision of an engineer licensed to practice in the state, shall bear the seal of such engineer, and shall be subject to approval by the director. Such plans, specifications and profiles shall be prepared at the expense of the applicant. The director shall maintain a copy of the current town standards and town requirements for public inspection.

(d) The denial of an application for a permit, subject to the provisions of this section, shall be made in writing and shall contain each reason for the denial and the town's estimate of the changes in the applicant's proposed activities or plan which will be required in order that the applicant may obtain a permit. Nothing in such estimate shall preclude or otherwise bar the town from denying a permit which incorporates such changes, based upon changed circumstances or information not previously known by the town.

(Code 1982, § 19-25; Ord. No. 95-021, 6-22-1995; Ord. No. 04-010, § 19-25, 9-9-2004; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 36-38. Same—Processing of applications.

(a) Each application subject to section 36-37 shall be accompanied by a fee, which shall be set forth in the town's schedule of charges and fees. A copy of the current fee schedule shall be maintained by the director and made available for inspection upon request. Any application which is not accompanied by a fee in the proper amount may be considered incomplete.

(b) The director shall review the fee, plans, specifications and other project data accompanying an application, and shall determine if the application and accompanying material are complete and in a form acceptable to the director. The director shall acknowledge receipt of a complete application.

(c) The director shall take final action on all permit applications not later than 90 days following receipt of a complete application; however, no permit shall be issued until final approval has also been given by the town engineering department or town council for any related development plan. All permits issued shall be in writing; provided, however, in the event construction has not begun pursuant to an issued permit within one year of the date of the permit, the permit shall expire and a new permit must be applied for and obtained by the applicant in accordance with sections 36-37

through 36-41. Construction and operation shall strictly conform to the permit requirements. A permit may contain such conditions as the director determines to be reasonably necessary, considering the factors on which final action on a permit can be based. Final action on any permit shall be based upon the design, capacity and manner of operation of the appropriate town water system, sanitary sewer system, or reclaimed water system; effectuating the purposes of all applicable rules, regulations, statutes and ordinances of the town, the state, and the United States of America; and on the town standards and town requirements.

(d) If the application is not complete, the application shall be returned to the applicant. The director shall advise the applicant in writing:

- (1) How the application can be modified to make it complete and acceptable; and
- (2) That the time for the director to take final action on an application does not begin until receipt of a complete, corrected application.

(e) Any permit issued by the director, pursuant to sections 36-37 through 36-41, is subject to revocation, suspension, or modification, in whole or in part, upon 14 days' written notice to the applicant by the director for good cause, including, but not limited to:

- (1) Violation of any terms or conditions of sections 36-37 through 36-41 or the permit;
 - (2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
 - (3) Refusal of or by the permittee or its contractors, agents or employees to allow authorized officers, employees or agents of the town, upon presentation of credentials, to inspect or observe any activity, system, or other work required by the permittee's permit.
- (Code 1982, § 19-26; Ord. No. 95-021, 6-22-1995; Ord. No. 04-010, § 19-26, 9-9-2004)

Sec. 36-39. Same—Enforcement.

(a) Any person that violates, fails to comply with, or continues to violate any provision of sections 36-37 through 36-41 or any permit issued hereunder shall be liable to the town for a maximum civil penalty of up to \$10,000.00 per violation per day for as long as the violation(s) continues. Each day on which a violation shall occur or continue shall be deemed a separate and distinct violation. In determining the amount of the civil penalty, the director shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, efforts to correct the violation, the compliance history of the person against whom the violation is assessed, cost of enforcement to the town, whether the violation was committed willfully or intentionally, and any other factor as justice requires.

(b) If any person violates the provisions of sections 36-37 through 36-41 or the terms or conditions of any permit issued hereunder, a civil action may be commenced in the general court of justice in the name of the town for such legal and equitable relief as may be appropriate.

(c) The remedies provided herein are not exclusive. The town may take any one, all, or any combination of these actions against any person in violation of the provisions of sections 36-37 through 36-41 or the terms or conditions of any permit issued hereunder.

(Code 1982, § 19-27; Ord. No. 95-021, 6-22-1995)

State law reference—Civil penalties, G.S. 160A-175(c).

Sec. 36-40. Same—Hearing.

(a) *Persons entitled to hearing.* Any person whose application for a permit under section 36-38 is denied, any person whose application for a permit is issued subject to conditions the applicant finds unacceptable, any person whose permit is revoked or suspended, and any person against whom a penalty is assessed pursuant to section 36-39 (each of whom is hereafter referred to as "aggrieved person") is entitled to a hearing pursuant to this section.

(b) *Demand for hearing.*

- (1) The aggrieved person shall exercise such right to a hearing by making a written demand for a hearing in accordance with this subsection.
- (2) Any person making a demand for a hearing shall deliver the demand to the director within 30 days of:
 - a. The date of the contested permit;
 - b. The date of the notice of denial of a permit application;
 - c. The date of the notice of a revocation or suspension of an issued permit; or
 - d. The date a penalty was assessed, as the case may be.

(c) *Contents of demand.* The written demand for a hearing must identify separately and with particularity:

- (1) The aggrieved person;
- (2) The specific permit provisions or conditions or other issues contested or to be considered;
- (3) The reasons for the objection; and
- (4) Any alternate provisions, conditions or terms the aggrieved person proposes.

(d) *Conduct of hearing.*

- (1) The hearing shall be conducted by the director and shall be subject to such rules as have been approved by the council or the director as hereinafter set forth. If the demand for a hearing is not made in accordance with the provisions of this section, the director shall reject the demand and any right to a hearing shall be terminated. If any person demanding a hearing shall fail to comply with an order of the director or with any rules issued by the director or approved by the council concerning the conduct of the hearing, the director may reject the demand and any right to a hearing shall be terminated. Within 90 days of the receipt of the written demand for a hearing, the director shall conduct a hearing and issue

a final order or decision. The director shall transmit a copy of the final order or decision to the aggrieved person by registered or certified mail. No further review of the director's final order or decision will be allowed, except as set forth in sections 36-37 through 36-41.

- (2) The director may submit rules to the council for approval concerning the conduct of the hearing and any other matter associated with the hearing. Such rules may impose requirements in addition to the provisions of this section. Upon approval by the council, such rules shall be as effective as if set forth in this section. The director shall make a copy of such rules available for inspection upon the request of any person.
- (3) The director is authorized to take any action which is reasonably necessary or convenient in considering a demand for a hearing and in resolving the issues raised therein so long as such action is not contrary to the provisions of sections 36-37 through 36-41, any rules approved by the council, or other applicable law.
- (4) The director may appoint a hearing officer to conduct any hearing authorized by this section. A hearing officer shall have the same authority to conduct a hearing and reach a decision as is provided to the director; provided that the decision of the hearing officer shall not be final, but shall be a recommended decision for consideration by the director. The director may approve such decision without change, reject the decision and require a new or continued hearing, or issue a different or revised decision which is supported by evidence presented at the hearing. The director may refer a recommended decision of a hearing officer to the town manager or designee. In the event of a referral, the town manager or designee shall have the same authority to act upon a recommended decision of a hearing officer as is provided to the director. The decision of the director or, in the event of a referral, of the town manager or designee shall be final. A final order may provide that the action which is the basis for the demand for a hearing is approved without change or may modify such action in any manner that is supported by the evidence presented at the hearing.
- (5) The director may provide for any part of the hearing to be recorded by any reasonable means, including, but not limited to, audio and/or video recording, stenographer, or court reporter. A transcript of any hearing, or part thereof, which is recorded need not be prepared unless requested. The original of a requested transcript shall be filed with the director. Each person shall bear the cost of the transcript which such person requests, including any copy thereof.

(e) *Judicial review.* Any person against whom a final order or decision of the director is made, pursuant to the hearing conducted under section 36-40, may seek judicial review of the order or decision by filing a written petition within 30 days after the date of notice of the order or decision, but not thereafter, with the superior court of the county. If not previously requested, such person shall request in writing that a transcript be prepared for every part of the hearing which was recorded. Such request shall be made at or before the time that the petition is filed. A copy of the petition shall be served on the town in the manner required by law. Within 30 days after service of a copy of the petition upon the town or such other time as may be ordered by the court, the town shall prepare and transmit to the court the original or a certified copy of the official record of the hearing as hereinafter set forth. The official record of the hearing shall consist of all notices, motions and other similar documents; all documentary and tangible evidence tendered at the hearing; and the final order or decision. A transcript of each part of the hearing that was recorded shall be included in the official

record as an exhibit, if available at the time the remaining portion of the official record is transmitted to the court. If the transcript is not available at that time, it shall be transmitted to the court as soon as reasonably possible after the transcript has been prepared. If testimony is taken and not recorded, a narrative summary of any testimony taken shall be prepared and transmitted to the court as an exhibit to the official record.

(Code 1982, § 19-28; Ord. No. 95-021, 6-22-1995)

Sec. 36-41. Same—Changes to permitting program.

The town permitting program, as set forth herein, has been established pursuant to authority contained in G.S. 130A-317 and G.S. 143-215.1(f) and rules promulgated thereunder. Amendments to G.S. 130A-317 and 143-215.1(f) and rules promulgated thereunder that affect the town permitting program shall be incorporated into the town permitting program within 60 days of the effective date of such amendments, or as otherwise required by law.

(Code 1982, § 19-29; Ord. No. 95-021, 6-22-1995)

Sec. 36-42. Reimbursement Policy.

(a) The cost of installing all utility facilities within a subdivision or on property being connected, and the cost of installing all utility facilities between such subdivision or property being developed and the existing facilities of the town, shall be borne by the property being so connected, except as explicitly provided in this Section.

(b) In instances where utility system extensions and facilities provide utility service beyond the scope of a specific development, the developer may request reimbursement from the Town by one or more of the following methods, as authorized by G.S. 160A-320; 160A-499; and Town of Cary Land Development Ordinance Section 3.24.

- (1) *Oversize Reimbursement.* Developers who construct utility facilities in accordance with the Town's utility master plans, but sized greater than that required for the project being developed, may be eligible for reimbursement. Such "oversize reimbursement" shall be requested during development plan review and will be processed by the Town in accordance with policy statements and/or standard procedures established by the Town.
- (2) *Fee Credit and Reimbursement Contract.* Developers who construct off-site utility facilities, or on-site utility facilities of a regional nature (including pump stations), may be eligible to enter into a fee credit and reimbursement contract with the Town, whereby water and/or sewer system development fees may be waived and costs in excess of those development fees may be eligible for reimbursement by the Town. Such "reimbursement contracts" shall be requested by the developer; shall cover only those utility facilities expressly referred to in the contract; and will be processed by the Town in accordance with policy statements and/or standard procedures established by the Town.

(Ord. No. 2018-Code-03, § 1, 6-28-2018)

Secs. 36-43—36-70. Reserved.

ARTICLE III. WATER

DIVISION 1. GENERALLY

Sec. 36-71. Permit for use of groundwaters; application; fee.

(a) No person shall construct, install or operate a new facility to withdraw, obtain or utilize groundwaters, for any purpose, unless such person shall first obtain a permit therefor from the town.

(b) The application for permit shall set forth such facts as necessary to enable the town to establish and maintain adequate records of groundwater use within the town.

(c) The permit fee shall be as established by the town.
(Code 1982, § 19-35; Ord. No. 82-8, § 1, 8-12-1982)

Sec. 36-72. Use of town water.

No person shall take or carry away water from any hydrant or public fountain or supply or sell water to other persons, except as permitted by the town for sub-metering purposes. The fire hydrants are for the use of the fire department for fighting fires and are not to be used by any unauthorized person for any purpose.

(Code 1976, § 17-18; Code 1982, § 19-36; Ord. No. 01-005, 4-12-2001)

CARY CODE OF ORDINANCES

Sec. 36-73. Protection of water system.

No person shall throw trash, rubbish, sticks, stones or any other substance into the storage tank or reservoir or other water system of the town or on the grounds around the wells of the town or upon the grounds surrounding the buildings of any part of and pertaining to the town water system. (Code 1976, § 17-17; Code 1982, § 19-37)

Sec. 36-74. Connection required.

(a) *Improving property.* Every person improving property located within the corporate limits of the town which requires a new well or expansions to an existing well shall make an approved water connection if either of the following conditions exist:

- (1) Property abuts or adjoins a street or alley along which is located a water line; or
- (2) Property is located adjacent to a town water line.

This connection shall be to the house, building or other place of human habitation or occupancy, provided that no person shall be required to cross the private property of another to make such a connection.

(b) *Compliance with codes.* All water connections shall be in accordance with the North Carolina State Plumbing Code and the requirements of this Code and any and all local, state and federal requirements that apply.

(c) *Fees due.* At the time any connection request made by the property owner to the town has been approved, all water connection charges, development fees and outstanding assessment, or fee in lieu of assessment, shall be due and payable.

(d) *Occupancy.* No person shall occupy any house or building for human habitation after the water supply has been cut off, except in cases where it is cut off temporarily for the purpose of effecting necessary repairs.

(e) *Private wells.* Private wells used for water supply to habitable structures, which are approved by the county board of health, may be constructed within the town where property is located in such a manner that compliance with this section is not possible. If the private well fails and/or the property cannot support a well and the property is within 300 feet of a water line, the owner shall make an approved water connection as required in this section.

(Code 1976, § 17-1; Code 1982, § 19-38; Ord. No. 90-25, § 1, 3-22-1990; Ord. No. 93-12, § 1, 3-11-1993; Ord. No. 99-013, § 2, 8-12-1999; Ord. No. 99-019, 10-14-1999; Ord. No. 02-005, 2-28-2002; Ord. No. 02-016, 6-13-2002)

State law reference—Power to require connections, G.S. 160A-317.

Sec. 36-75. Single source of water supply.

(a) No water service connection shall be made from any town water main to any premises supplied with water from any other source without written permission first obtained from the town manager. No such statement of permission shall vest any right of continuation thereof, and the permission may be revoked and terminated at any time by the town manager. No water service

connection shall be made or permitted to serve more than one premises, and no water line connection shall be made or used to carry town water from any premises so served to any other premises.

(b) If for any reason any premises are supplied with town water from two or more water service connections to town water mains located on different streets, each service connection shall be provided with a check valve of a type approved by the town manager.

(Code 1976, § 17-7; Code 1982, § 19-39)

Sec. 36-76. Separate meters.

(a) Every new irrigation system installation shall be separately connected to an irrigation meter. Every existing nonsingle family residential irrigation system shall be taken off of regular water meters and connected to a separate irrigation meter within 18 months of the effective date of the ordinance from which this section is derived.

(b) Waivers from this "separate meter" requirement for existing nonresidential irrigation systems may be granted by the director of utilities ("director") within 18 months after the effective date of the ordinance from which this section is derived, if:

- (1) The cost of modification for the separate irrigation meter will exceed the greater of:
 - a. Twelve hundred dollars; or
 - b. Twenty percent of the initial installation cost for the irrigation system, plus all improvements; and
- (2) The customer enters into a written agreement with the town to establish a site-specific water allocation for irrigation.

(c) If the customer ever exceeds the site-specific water allocation assigned to him, then the waiver shall lapse and the customer shall be required to install a separate irrigation meter. The director shall establish the procedures for the documentation necessary for establishing such situations.

(Code 1976, § 17-9; Code 1982, § 19-40; Ord. No. 02-025, 11-21-2002; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 36-77. Sale of water from public works facility and hydrants.

Water may be purchased from the town at designated facilities or from any fire hydrant under the following conditions:

- (1) The charge for such water shall be at the rate established in the annual operating budget ordinance.
- (2) When water is obtained through a fire hydrant only town employees may turn on or off the fire hydrant.
- (3) The fire hydrant shall have a hydrant meter and RPZ backflow preventer properly attached to register the amount of water being purchased. Only town employees shall attach or detach the hydrant meter.

- (4) The charge of the use of a hydrant meter and accessory equipment shall be as established in the annual operating budget ordinance.
 - (5) The finance department shall establish rules for the use of hydrant meters and accessory equipment, hours of operation, etc., as may be necessary.
 - (6) Reclaimed water may only be purchased, when available, at the water reclamation facilities during hours established by the town's finance department.
- (Code 1982, § 19-41; Ord. No. 76-37, § 1, 10-14-1976; Ord. No. 85-26, § 1, 8-22-1985; Ord. No. 87-13, § 3, 3-12-1987; Ord. No. 99-013, § 2, 8-12-1999)

Sec. 36-78. Cross connection control, backflow prevention assemblies required, program established.

(a) *Application, purpose, authorization.* This section applies to all persons who use, or connect in any way to, the Town of Cary's public water system. The purpose of this section is to protect the health and safety of the public by protecting the public water system from contaminants "backflowing" into the public water system from private water systems. This section:

- (1) Requires the installation of backflow prevention assemblies to prevent contaminants from "backflowing" or siphoning through uncontrolled cross connections into the public water system; and
- (2) Establishing a backflow prevention program.

(b) *Definitions.* As used in this article, the following definitions apply:

- (1) *Backflow prevention assembly or BPA* means a device used to prevent backflow into the public water system from a consumer's water service connection. The type of BPA required by this section depends on the degree of contamination hazard. An "approved" BPA is one that has been approved by the American Society of Sanitary Engineers (ASSE) or the American Water Works Association (AWWA), or USC, or the Foundation for Cross Connection Control and Hydraulic Research.
- (2) *Certified Backflow prevention assembly technician or technician* means any person who has received from the town a certificate to install, test, repair, overhaul, or maintain approved backflow prevention assemblies. A backflow prevention assembly technician certificate will be issued to any person who:
 - a. Demonstrates knowledge of applicable laws, rules, and regulations applying to BPAs in the state of North Carolina and in the town, and
 - b. Is a licensed plumber or has at least two years experience under and is employed by a North Carolina licensed plumber or plumbing contractor, or has equivalent qualifications acceptable to the town, and
 - c. Holds a certificate of completion from an approved training program in the installation, testing, repair, overhaul and maintenance of backflow prevention assemblies.

- (3) *Consumer* means any customer of the town's public water system, or any person, firm, or entity using or receiving water from the town's public water system or owning or possessing property or facilities that receive water from, or connect to the town's public water system.
- (4) *Contamination hazard* means an existing or potential cross connection that presents the risk of impairment of the quality of the water in the public water system and creates a potential or actual hazard to the public health through the introduction of hazardous or toxic substances or waterborne health hazards in the form of physical or chemical contaminants or biological organisms and pathogens.
- (5) *Cross connection* means any unprotected actual or potential connection or structural arrangement between the town's public water system and any other pipe, conduit, source or system through which it is possible to introduce any contamination other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, and other temporary or permanent devices or arrangements through which or because of which backflow can or may occur are considered to be cross connections.
- (6) *Degree of hazard* means whether the hazard or potential hazard is a health hazard, or a non-health hazard. The degree of hazard shall be determined by the town from the evaluation of conditions within a private water system and the use to which a property connected to public system is put.
- (7) *Health hazard* means an actual or potential threat of contamination of a physical, chemical, biological, pathogenic or toxic nature to the public or private water system to such a degree or intensity that there would be a danger to health. Examples of waterborne hazards include, but are not limited to:
 - a. *Physical*: Radioisotopes/radionuclides;
 - b. *Chemical*: Lead, mercury and other heavy metals, organic compounds, other toxins and hazardous substances;
 - c. *Biological*: Microorganisms and pathogens like cryptosporidium, typhoid, cholera and E. Coli.
- (8) *Imminent Hazard* means a hazard situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.
- (9) *Non-health Hazard* means an actual or potential threat to the quality of water of the public water system or a private water system. A non-health hazard is one that, if introduced into the public water supply system, could be a nuisance to water users, but would not adversely affect human health.

(10) *Private water system* means that part of a water service connection to the town's public water system which is located on the consumer's side of the town's water meter. A private water system may be a water service line to a single premise or structure or it may be a privately owned and maintained water distribution system, which serves more than one structure or premises. For the purpose of this section, once water from the town's public water system passes through the meter to the consumer's side, that water is considered part of the private water system.

(11) *Public water system* means the town of Cary water system and includes all of the system for the provision to the public of potable water for human consumption through pipes or other constructed conveyances and includes:

- a. Any collection, treatment, storage or distribution facility and all appurtenance to those facilities under control of the town and used primarily in connection with the town's water system; and
- b. Any collection, treatment, storage or distribution facility and all appurtenance to those facilities not under the control of the town that is used primarily in connection with the town's water system.

(c) *New unprotected cross-connections prohibited, existing cross-connections to be protected.* All consumers and any other person or entity receiving water from the town's public water system shall be in violation of this section if they fail to comply with any of the following:

(1) *New water service connections.* No new residential or nonresidential water service connections to the public water system shall be made unless equipped with an approved backflow prevention assembly. The BPA shall be tested and properly functioning as prescribed herein prior to the issuance of a certificate of occupancy for any building. All new nonresidential construction plans and specifications shall be made available to the town for review to determine the hazard level to the town's public water system.

(2) *Existing water service connections.* An approved backflow prevention assembly shall be installed on all existing cross connections to the town's public water system upon notification of the need for installation by the town. Upon determining that a backflow prevention assembly is required to be installed on an existing water service connection the town will notify the consumer in writing of:

- a. The requirement for installation;
- b. The hazard level which has been established for that consumer by the town based upon the use of their premises;
- c. The type of approved backflow prevention assembly required;
- d. The date by which it must be installed and tested. The consumer will have sixty (60) calendar days within which to install and test the BPA after notice is given.

(d) *Contamination prohibited.* No consumer shall cause or allow any contamination of the town's public water system through uncontrolled backflow or backsiphonage from or through their private water system.

(e) *No cross-connections.* No private water system may be connected to any private well, or to any spring, or to any other water source not approved by the state of North Carolina as a public water supply and commissioned by the town as a public water supply source, or to any other private source of water, or to any plumbing located on private property which may be connected to any of the above. It shall also be unlawful to have plumbing cross-connected or so installed that water from the town's public water system and water from or in any private water system may in any way become intermingled.

(f) *Compliance.* No private water system shall be connected in any manner to the town's public water system nor may any service connection be made or maintained to the town's public water system unless the requirements of this Chapter have been satisfied.

(g) *Approved BPAs and installations required.* Only an approved backflow prevention assembly shall be installed to meet the requirements of this section. Any backflow prevention assembly that is installed that is not an approved BPA, or any installation of any backflow prevention assembly which is not installed in accordance with the provisions hereof shall be a violation of this section.

(h) *Notification of change in use of property.* Within ten (10) calendar days of the date of any change in use of any nonresidential property connected to the town's public water system, the consumer shall notify the town so that the town can reassess the hazard level of that use.

(i) *Certification and testing program.*

- (1) Installation, maintenance, testing and repair of BPAs shall be done only by a certified backflow prevention assembly technician. Consumers shall have a technician test the BPA for proper operation and that technician shall certify the results in writing to the town.
- (2) Any consumer or other person who removes or repairs any cross-connection condition shall notify the town for the purpose of securing an inspection or re-inspection by the town.
- (3) All backflow prevention assemblies required by this section shall be installed in accordance with the manufacturer's instructions.
- (4) All backflow prevention assemblies required by this section must be installed and maintained on the consumer's premises as part of the consumer's water system.
- (5) Ownership, installation, testing and maintenance of a backflow prevention assembly and all costs associated therewith shall be the responsibility of the consumer.
- (6) Each backflow prevention assembly required under this section must be accessible by the town.

- (7) Any bypass around a backflow prevention assembly at any time, including when the BPA is in need of testing, repair or replacement, is prohibited. When it is not possible to interrupt water service, the consumer shall provide for the parallel installation of an approved backflow prevention assembly.
- (8) Backflow prevention assemblies with test ports or test cocks shall not be installed below ground.
- (j) *Testing and repair of backflow prevention assemblies.*
- (1) *Testing/Certification.* A certified backflow prevention assembly technician shall conduct testing of backflow prevention assemblies at the consumer's expense. Tests shall be conducted upon installation, and annually thereafter, with a record of all testing and repairs retained by the consumer. Each consumer shall send a copy of the report, signed by the certified backflow prevention assembly technician, for each test or repair to the town within 30 days after the completion of each test or repair. Such records must also be maintained by the consumer on forms provided by the town for a period of three years.
- (2) *Repairs.* Any time that repairs to a backflow prevention assembly are deemed necessary, whether through annual testing or routine inspection by the consumer or by the town, these repairs must be completed within a time specified below, in accordance with the hazard level.
 - a. Health hazard facilities: Within 14 days of discovery.
 - b. Nonhealth hazard facilities: Within 28 days of discovery.
- (3) *Equipment.* All certified backflow prevention assembly technicians must obtain and employ backflow prevention assembly test equipment which has been evaluated and/or approved by the town. All test equipment shall be registered with the town and shall be calibrated annually, and certified to the town as to such calibration, employing a calibration method acceptable to the town.
- (4) *Records.* It is unlawful for any consumer or certified backflow prevention assembly technician to submit any record to the town which is false or fraudulent in any material respect. It is unlawful for any consumer or certified backflow prevention assembly technician to fail to submit any record, which is required by this section to the town. Such violations may result in any of the enforcement actions outlined in paragraph (m) of this section.
- (k) *Protection of the public water system during bulk water sales.* No bulk water may be taken except as a sale from a fire hydrant through a metered assembly provided by the town which includes a reduced pressure principle backflow prevention assembly. In addition, any truck, tank, or receiving vessel which is directly or indirectly connected to any pipe, hose, or outlet from the town's public water system must be equipped with an approved, permanently installed, air gap designed to create a minimum of 4 inches separation between the receiving tank or vessel and the connection to the town's public water system.

(l) *Backflow prevention assembly protection.* Any backflow prevention assembly which might be subjected to pressure surges or abnormally high pressures shall be protected against possible damage by a device approved by the town, such as a water hammer arrestor or a pressure reducing valve.

(m) *Violations.* Any consumer or other person who fails to comply with any provision of this section, or who fails to comply with any notice, citation, or order made hereunder, or who shall install or alter a private water system in violation of this section or any detailed statement of specifications or plans submitted and approved hereunder, or any certificate or permit issued hereunder, or who shall fail to comply with such a notice, citation, or order within the time fixed therein, or who shall submit a false or fraudulent report, or who fails to submit a report shall be in violation of this section for each such occurrence or noncompliance and shall be subject to enforcement as provided in this section. The remedies provided for violations of this section, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

- (1) The Public Works Director or designee shall serve a written notice of violation to any person who violates this section. Such notice shall be personally delivered, or delivered by certified mail, return receipt requested. A copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, and the regular mail is not returned by the post office within ten (10) days after the mailing.
- (2) Such notice of violation shall set forth the violation and the time period within which the violation must be corrected. The violation must be corrected within the time period specified in the notice of violation. If the town determines that the violation has created or contributed to the existence of an imminent health hazard, the consumer may be required to correct the violation immediately. If the violation is cured or corrected within the time period specified in the notice of violation, then the Town shall take no further action against the person.
- (3) Any person who, after being given a notice of violation pursuant to Section 36-78(m)(1) does not comply within the time period set forth in the notice of violation, and who continues such violation, shall be subject to the penalties and remedies set forth in Section 36-78(m)(4). The following citation procedure shall be used:
 - (A) Citation for Violation. The Public Works Director or designee shall serve a written citation on the alleged violator by any of the methods specified in Section 36-78(m)(1).
 - (B) Content of Citation. The citation shall again describe the nature of the violation and any actions that the alleged violator must take to cure or correct the violation, and shall specify the amount of any civil penalty levied against the alleged violator.
 - (C) Corrective Action Required. The civil penalty shall be paid and the violation shall be cured or corrected, within seventy-two (72) hours of receipt of the citation by the alleged violator, or such other time period, not to exceed thirty (30) days, as the citation may specify.
 - (D) Action for Recovery of Penalty. If payment is not made, or the violation is not cured or corrected, within the time specified in the citation, then the Town may recover the civil penalty together with all costs by filing one or more civil actions in the name of the Town in the nature of a suit to collect a debt. The town attorney is hereby authorized to file suit on behalf of the town to collect any civil penalties.

(E) Suspension or Termination of Water Service; Revocation of Permits. Water service may be suspended or terminated to a consumer, and/or applicable permits revoked, if the consumer fails to correct a violation in a timely manner. Suspension or termination of water service or revocation of permits will be without prejudice to the town's ability to assert any other remedy available to the town against the consumer or any other person responsible for the violation.

(4) Violations of this Section 36-78 shall subject the offender to the following civil penalties:

| Description | Penalty | Frequency |
|--|---------|---|
| Unprotected cross connection – wholesale customers (as defined in Section 36-11) or Unprotected cross connection – public water system not under the control of the town | \$1,000 | With first citation and thereafter for each thirty-day period or part thereof in which the violation persists |
| Unprotected cross connection – non-wholesale customers | \$500 | With first citation and thereafter for each thirty-day period or part thereof in which the violation persists |
| Falsifying records | \$500 | Per occurrence |
| Failing to maintain and test residential irrigation backflow prevention assemblies | \$500 | With first citation and thereafter for each thirty-day period or part thereof in which the violation persists |
| Any other violation of this section | \$500 | Per occurrence |

(5) The town may increase any civil penalty assessed by 50 percent of the maximum civil penalty associated with the violation for a second violation of the same provision within a two-year period. The town may increase any civil penalty by doubling the amount of the penalty for a third violation of the same provision within a two-year period. Water service may be terminated after a third violation of the same provision within a two-year period.

(6) Any person violating any provision of this section shall pay to the town all expenses incurred by the town in repairing any damage to the public water system caused in whole or in part by such violation and any expense incurred by the town in investigating such violation. All such expenses shall be in addition to the civil penalty assessed with the violation.

(7) The application of civil penalties shall not be held to prevent the enforced correction or removal of any prohibited condition.

(8) If a certified backflow prevention assembly technician submits falsified records to the town, the town may permanently revoke that certified backflow prevention assembly technician's town issued certification.

(n) *Administration of program.* The Public Works Director for the town, or designee, shall administer this program.

(Code 1982, § 19-42; Ord. No. 03-014, 11-13-2003; Ord. No. 2018-Code-01, 4-5-2018)

State law reference(s)—Civil penalties, G.S. 160A-175(c).

Sec. 36-79. Turning on water without authority.

No person shall turn on the water from the town water mains into a meter or private connection, which connection has been cut off by the town for the nonpayment of water bill or other justified reason, without authority of the town.

(Code 1976, § 17-13; Code 1982, § 19-43)

Sec. 36-80. Water service provided by town includes only alternate day outdoor irrigation.

(a) *Definitions.* As used in this section, the following terms are defined as follows:

Irrigate the landscape, irrigation of the landscape, and irrigation means the act of applying water to the outdoor landscape by any means involving sprinklers or automatic watering devices, including but not limited to the use of sprinklers attached to hoses, and installed underground sprinkler systems.

Landscape means the natural or modified ground outside the border of the foundation wall of the constructed area of the property.

Person means user of the town's potable water system.

Reclaimed or reused water means the treated plant effluent from a wastewater treatment facility that is further disinfected and piped or distributed in bulk form.

(b) *Irrigation of landscape prohibited except in accordance with this section.* No person shall use potable water supplied by the town water system to irrigate the landscape on any property except on alternate days assigned to that property for irrigating the landscape. The days of the week on which irrigation of the landscape can take place at a particular property shall be determined by that property's street address. The Town Manager or designee shall develop a Standard Procedure setting forth irrigation days for the various street addresses and other details of alternate day watering. Such Standard Procedure shall be developed, maintained and amended as needed to keep the irrigation days and administration procedures consistent with recommendations from area experts such as the North Carolina Agricultural Extension Service and technological advances. The use of "reclaimed" or "reused" water, pond water, rainwater and well water or other nonpotable water is not governed by this section, nor is the watering of plant material and lawns by use of drip irrigation, watering cans, hand-held hoses, and other hand-held watering tools.

(c) *Violations.* Each day a violation occurs is a separate violation. Any person violating this section may be cited for each day on which a violation occurs.

(d) *Penalties.* Penalties for violation of this section are as set forth herein. The town may use any one, or combination, of penalties and enforcement mechanisms. Imposition of one or more penalties for any violation shall not excuse any violation or permit it to continue.

- (1) *Civil penalties.* After the second notice a violation of this section shall subject the violator to a civil penalty as set forth in the town budget fee schedule. Violators shall be issued a written citation that must be paid within two weeks of the service date of the citation. The citation may be served by personal delivery or by certified or registered mail, return receipt requested. The citation shall describe the violation and shall specify the amount of the civil penalty levied. The civil penalty is collectible in a civil action in the nature of debt. The town attorney, or designee, is authorized to file suit on behalf of the town to collect any unpaid citations, and the town manager, the town utilities director, or their designee, is authorized to verify and sign complaints on behalf of the town in such suits. The director of utilities or designee, a police officer, or other town employee duly authorized to enforce the alternate day watering service level may issue a citation for violations of this section.
- (2) *Criminal penalties.* In addition to or in lieu of civil penalties, violation of this section shall constitute a misdemeanor. A police officer may initiate the criminal process as provided by law.

(e) *Emergency suspension of service.* The town manager may restrict or suspend water flow (water service) to any person who violates this section if the manager makes a water shortage declaration and/or that person has failed to comply on numerous occasions. The manager or designee shall make findings of fact to indicate the nature of the water emergency and the actions of that person that exacerbate the emergency situation. The manager may order:

- (1) That such water uses as irrigation of the landscape be suspended entirely for a specified period of time;
- (2) That water flow to that person be restricted; or
- (3) That water service to that person be suspended for a specified period of time.

Suspension of water service shall be performed in accordance with the town's ordinances, policies, procedures and practices. In the event that the manager orders that irrigation of the landscape be suspended for a specified period of time, the manager or designee shall have the right and privilege to access, on private property if necessary, all necessary valves and flow restriction devices to isolate the flow of water to the irrigation system. The manager, or designee, shall also have the right and privilege of access specified above to disconnect water service at the meter, if the manager has ordered that water service be suspended for a specified period of time. The standard reconnection charge shall be paid for the reconnection of any water service terminated at the meter pursuant to the current town ordinances and procedures.

(f) *Exceptions.*

(1) The Town Manager or designee may grant temporary exceptions permits to the provisions of this section 36-80 for periods of up to 45 days for the establishment of new turf year-round or for the re-establishment of turf seasonally. Such temporary exception permits shall be granted based upon the valid application of a customer. The exception permit application process and other details as may be necessary to further define and implement temporary exception permits will be defined in the Standard Procedure referenced in Sec. 36-80(b). Such Standard Procedure shall be developed,

maintained and amended as needed to keep the conditions under which exception permits are granted consistent with recommendations from area experts such as the North Carolina Agricultural Extension Service and technological advances.

(Code 1982, § 19-44; Ord. No. 00-009, 4-13-2000; Ord. No. 02-012, 4-24-2002; Ord. No. 2007-05, § 1, 5-10-2007; Ord. No. 2008-Code-01, 6-12-2008; Ord. No. 2009-Code-07, 5-14-2009; Ord. No. 2010-Code-04, 6-9-2010; Ord. No. 2019-Code-04, 10-10-2019)

State law reference(s)—Penalties for ordinance violations, G.S. 14-4, 160A-175.

Sec. 36-81. Water shortage response.

(a) *Purpose and intent.* This section 36-81 is designed to maintain and protect the public health, safety and welfare by providing a process for reducing demand for potable water to protect the potable water resources of the town during actual or potential water shortages. This section identifies types of water shortages and authorizes the manager to issue a water shortage declaration and to execute the Town's Water Shortage Response Plan (WSRP). This section shall be liberally construed to implement such purpose and intent.

(b) *Definitions.* The following definitions apply, except where the context clearly indicates a different meaning:

- (1) *Customer* means any person in whose name the town maintains an account for water use, or who is responsible for payment of water passing through a particular meter. All customers are responsible for any use of water that passes through the meter for which they have an account or are otherwise responsible and are deemed to be users hereunder.
- (2) *Manager* means the Town Manager for the Town of Cary or designee, or, in the absence of the Town Manager, the Deputy Town Manager, the Assistant Town Manager or designee.
- (3) *Nonresidential user* means any person who uses town potable water, other than a residential user; nonresidential user includes those who purchase town water in bulk.
- (4) *Person* has the definition found in section 1-2 of this Code and includes all federal, state and local governmental entities.
- (5) *Potable water or treated water* means any treated water introduced by the town into its potable water distribution system, including water purchased from other entities.
- (6) *Raw water* means all water available to the town for treatment by virtue of the town's water rights or withdrawal permits.
- (7) *Residential user* means any person who uses town water received through a meter serving a single or multifamily dwelling unit, but not a meter serving educational or other institutions, hotels, motels, or similar commercial establishments (which are deemed to be 'nonresidential users').
- (8) *Trigger* means conditions defined in the WSRP which will cause a water shortage to be declared or ended, or cause water shortage response stages to be increased or decreased in severity.

- (9) *User* means any person using town potable water, and includes residential users and nonresidential users.
- (10) *Water shortage* means a shortage of potable water in the town due to a raw water shortage, a water system shortage or any other water shortage.

"Raw water shortage" means a shortage of raw water available for the town to treat. Raw water shortages are most commonly caused by drought conditions, but may have other causes, including problems with the raw water intake or pipes.

"Water system shortage" means a shortage of potable water in the town due to problems with the town's water treatment or distribution system or affecting the town's ability to treat, transmit or store treated water.

"Other water shortage" means a shortage of potable water in the town due to causes other than raw water shortage or water system shortage, including any declaration of emergency or call for water use restrictions by state or federal agencies or any unforeseen circumstance such as contamination which may or does result in treated water supply not meeting normal water demand.

- (11) *Water Shortage Response Plan (WSRP)* means a plan to respond to an actual or threatened water shortage, approved as required by N.C.G.S. Section 143-355.2.

(c) *Water Shortage Response Plan.* The town director of utilities ("director") is hereby authorized to prepare a Water Shortage Response Plan (WSRP) to be reviewed and approved in accordance with N.C.G.S. Section 143-355.2. The water conservation measures contained in the WSRP may be more stringent than the minimum water conservation measures required by N.C.G.S. Section 143-355.2. The WSRP, and any amendments to it, shall be adopted by the Town Council.

(d) *Authorization.* The manager is hereby authorized to implement the water shortage measures in the WSRP and to provide such other conditions and provisions as may be necessary to successfully carry out the goals of this section.

(e) *Water shortage rates.* Upon issuance of a water shortage declaration or at such other times as the council deems necessary, the council may, at any regular, special or emergency meeting, adopt water shortage rates designed to encourage water use reduction. Further, due to situations brought on by drought or other special infrastructure needs associated with a water emergency, the town council may adopt special rates that will reflect the additional costs associated with treatment and distribution of water. Any such rates may take effect as directed by council.

(f) *Application, violation, enforcement, penalties.* This section applies to all persons using town water, inside and outside the town limits, regardless of whether they have a contract for water service with the town, provided mandatory schedules or limits shall not apply to any public or volunteer fire department while fighting a fire. A customer of the town shall be responsible for all violations that occur in connection with water that passes through the meter for which the customer is billed by the town. Any person who uses water in violation of a restriction, schedule, or ban imposed on the use of water during a declared water shortage as defined in the Water Shortage Response Plan, or who otherwise violates the provisions of this section, or who impedes or interferes with any action

undertaken or ordered pursuant to this section and policies adopted hereunder, shall be subject to the penalties listed below:

- (1) *Enforcement by police officers.* Upon the declaration of a water shortage, the manager and every police officer of the town may enforce any restrictions or bans imposed on the use of water.
- (2) *Suspicion of violation.* Whenever the town has reasonable cause to believe that a person is violating any of the provisions of this section or any policy or declaration adopted hereunder, the town shall immediately notify that person of the violation by affixing a written notice of the violation to the property where the violation occurred and/or personally delivering or mailing such notice to the customer of record and to any other person known to the town who is responsible for the violation or its correction. Such notice shall describe the violation, order that it be corrected, cured or abated immediately, and warn that more severe measures, such as civil penalties, criminal charges or termination of water service may be brought, assessed or imposed. If the order is not complied with immediately, the manager may undertake enforcement action as follows.
- (3) *Enforcement action.* Any person who, after being given notice of violation, does not comply with this section or policy adopted hereunder immediately shall, at the option of the town, be subject to any of the following: Civil penalties, criminal penalties, termination of water service, injunctive relief, or any appropriate equitable remedy issuing from a court of competent jurisdiction.
 - a. *Criminal penalties.* Any person may be charged with violation of this section or policy adopted hereunder and prosecuted in district court. Any person so charged and found guilty of violating this section or policy shall be guilty of a misdemeanor. Each day's violation shall constitute a separate offense. The penalty for violation shall be a maximum fine of \$50.00 per occurrence. The imposition of one or more penalties for any violation shall not excuse any violation or permit it to continue.
 - b. *Civil penalties.* In addition to or in lieu of criminal prosecution, violation of this section or any policy adopted hereunder may subject the violator or customer to a civil penalty as set forth in the town budget fee schedule per violation per day for so long as the violation exists. Each day on which a violation occurs or continues shall constitute a separate and distinct violation. The town shall serve a written citation on the violator, and the customer, if different, by personal delivery or by certified or registered mail, return receipt requested. The citation shall describe the violation and shall specify the amount of the civil penalty levied. The civil penalty for a first violation of this section shall be deferred and either (1) waived if there has been no subsequent violation of this section during the declared water shortage; or (2) will become due immediately if a subsequent violation of this section occurs during the declared water shortage, in which case it will be assessed in addition to the civil penalty imposed for any subsequent violations. The civil penalty is collectible in a civil action in the nature of debt. The imposition of one or more penalties for a violation shall not excuse any violation or permit it to continue.

[Text continues on p. CD36:35]

c. *Termination of service.* A third violation of this section shall result in termination of service. The standard reconnection charge shall be paid for the reconnection of any water service terminated pursuant to the current town ordinances and procedures.

(4) *Appeal.* Any person against whom enforcement action has been taken, hereafter referred to as "aggrieved party," may seek judicial review of the action by filing a written petition within 30 days of the date of the notice of violation, but not thereafter.

(5) *Variance.* Any person may submit an application to the utilities director for a variance from specific requirements of the WSRP, using the process defined in the WSRP.

(Code 1982, § 19-45; Ord. No. 95-020, 6-8-1995; Ord. No. 96-006, § 1, 7-11-1996; Ord. No. 2007-05, § 2, 5-10-2007; Ord. No. 2008-Code-01, 6-12-2008; Ord. No. 2009-Code-08, 6-10-2009; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 36-82. Installation of meters.

(a) *Time of installation.* Water meters will be installed as soon after the issuance of the building permit as is practical for the town.

(b) *Installation and ownership.* The town shall install and retain ownership of all water meters, which are connected directly to a town maintained water line.

(c) *Responsibility for meter and water usage.* The person or firm to which the building permit is issued shall be responsible for both the meter and the water usage through the meter until such time as a certificate of occupancy is issued.

(d) *Lost, stolen, or damaged meters.* The person or firm to which the building permit is issued shall be responsible for purchasing from the town a replacement meter in case the original meter is lost, stolen, or damaged. The cost of such replacement shall be the actual cost of the meter plus 20 percent for administrative and installation cost. The town shall not issue a certificate of occupancy until such time as all such replacement charges have been paid in full and a fully operational meter of the correct size and type is in place at the location for which the certificate of occupancy is requested.

(e) *Water usage through the meter.* The person or firm to which the building permit is issued shall be responsible for the utility payment for all water usage through the meter. The cost of such usage shall be at the same rate as all other customers as established in the annual operating budget of the town. The town may issue a certificate of occupancy before the utility bill is paid; however, the person or firm to which the building permit was issued may not establish any other utility account with the town until such utility bill is paid in full.

(f) *Penalties for violations.*

(1) *Civil.*

a. Any violation of this section shall subject the offender to a civil penalty in the amount of \$1,000.00, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he has been cited for violation.

- b. The offender shall be issued a written citation by delivery in person or mailed by certified or registered mail. The civil penalty must be paid within 72 hours of receipt of written citation by the offender.

- (2) *Criminal*. In addition to, or in lieu of, the remedies authorized in subsection (e)(1) above, any violation of this section may be prosecuted as a criminal matter.

(Code 1982, § 19-46; Ord. No. 84-24, § 1, 12-13-1984; Ord. No. 01-005, 4-12-2001)

State law reference(s)—Penalties for ordinance violations, G.S. 14-4, 160A-175.

Sec. 36-83. Water waste.

(a) *Definitions*. The following terms, when used in this section, shall have the meanings ascribed herein:

Impervious surface means any artificially created surface which cannot be penetrated by water or which causes water to run off the surface, including streets, driveways, sidewalks and rooftops.

Person means any individual, partnership, firm, corporation, limited liability company, or other legal entity in whose name water is provided and billed by the town.

Repeated or flagrant wasting of water means and includes those situations where persons who have received notice that they are wasting water continue to do so in the same manner. It does not mean those persons who waste water on solitary or isolated occasions.

Town water means all water that passes through the town's water distribution system. This term does not include town water that is sold by the town to other governmental entities.

Water waste means any of the following:

- (1) Using town water so that it falls directly onto impervious surfaces to the extent that running water leaves the property and enters gutters, storm drains, ditches and other conveyances;
or
- (2) Using town water to the extent that it is allowed to accumulate on the surface of the ground and leave the property and enter gutters, storm drains, ditches and other conveyances.
- (3) Knowingly allow town water to escape through leaks, breaks, or malfunctions within the water user's plumbing or distribution system for any period of time beyond which such a leak or break should reasonably have been repaired or corrected.
- (4) Willfully or negligently wasting water in any other manner.

(b) *Water waste prohibited*.

- (1) The utilities director or designee shall identify persons who waste water.
- (2) Whenever the director finds that any person wastes water, the director may give such person oral or written notice of that fact, with recommendations as to how the wasting of

water can be eliminated. Such recommendations might include, but are not limited to, redirection of sprinkler heads, resetting of system timers, addition of devices to prevent water pressure fluctuations, or changes in location of sprinkler systems.

- (3) Whenever the director finds that any person repeatedly or flagrantly wastes water, the director may serve upon such person a written notice ("notice of water waste" or "notice"). Such notice shall be served by personal delivery, by mail, or by certified mail, return receipt requested, and shall identify the person and the location at which water is being wasted while watering, shall identify the manner in which the water is being wasted, and shall specify a time within which the wasting of water shall cease. The notice shall also warn that more severe measures (such as imposition of civil penalties or restriction or termination of water service) may be assessed or brought against the person unless the wasting of water ceases within the time provided. The time given to cease wasting water may range from a requirement for immediate compliance to 30 days, depending upon the facts and circumstances of each case. For instance, if a remedy involves moving a portable hose or sprinkler, immediate compliance may be appropriate; if a remedy involves repairing or replacing a sprinkler head, several days may be required; if the remedy involves more extensive or expensive work, up to 30 days may be necessary. If the remedy is effected, there shall be no further action against that person as to that particular violation.
- (4) Any person who continues to waste water after the period of time specified in the notice for ceasing such activity shall be issued a citation by personal delivery, mail, or certified mail, return receipt requested, and shall be subject to the civil penalty and enforcement procedures specified in subsection (c) below. The civil penalty shall be paid within 30 days of receipt of the citation.

(c) *Penalties.*

- (1) *Civil penalties.* Violations of this section shall subject the offender to a civil penalty as set forth in the town budget fee schedule, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he or she has been cited. Because watering may not take place every day, a violation shall be deemed continuing if the same wasting of water takes place on one or more days at the same location described in the notice and citation.

- (2) *Other enforcement action.* Additionally, the director may restrict or terminate water service in accordance with law.

(Code 1982, § 19-47; Ord. No. 97-027, 6-12-1997; Ord. No. 2008-Code-01, 6-12-2008; Ord. No. 2009-Code-07, 5-14-2009)

State law reference(s)—Civil penalties, G.S. 160A-175(c).

Sec. 36-84. Rain sensors on automatic irrigation systems.

(a) *Definitions.* The following terms, when used in this section, shall have the meanings indicated below. Other terms used herein shall have the same definitions as provided in section 36-83.

Irrigation system means a device or combination of devices having a hose, pipe, or other conduit installed in the landscape which transmits town water, through which device or combination of devices town water or a mixture of town water and chemicals is drawn and applied to residential or commercial lawns, landscapes or greenspace.

Rain sensor means an automatic device that will override the irrigation cycle of an irrigation system, thus turning it off, when a predetermined amount of rain has fallen. To meet the requirements of this section, a rain sensor shall be adjusted to shut off irrigation systems when up to one-fourth inch of rain has fallen.

(b) *Required installation.*

- (1) *New installation.* From and after August 14, 1997, rain sensors shall be required on all automatic irrigation systems that will receive town water.
- (2) *Existing systems.* Rain sensors shall be installed on all existing automatic irrigation systems that receive town water on or before May 1, 1998.

(c) *Required maintenance.* All rain sensors shall be adjusted and set so that they automatically shut off the irrigation system after not more than one-fourth inch of rainfall has occurred. All rain sensors shall be installed according to manufacturer's instructions in a location that will provide full exposure to rainfall such that accuracy of operation is assured and shall be maintained in good working condition. No person shall, with the intent of circumventing the purpose of this section, adjust either the rain sensor or irrigation system so that the rain sensor is not able to override and turn off the irrigation system after one-fourth inch of rain has fallen.

(d) *Enforcement.* The utilities director or designee shall be responsible for enforcing this section. Whenever the director determines that a violation of this section exists, the director shall issue a written citation identifying the date, location and nature of the violation, the person cited, and specifying the penalty and the date by which the penalty must be paid.

(e) *Penalties.*

- (1) *Civil penalties.* After the second notice any person who violates any provision of this section shall be subject to a civil penalty as set forth in the town budget fee schedule for each day thereafter that the violation continues, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within 30 days after he or she has been cited. Because watering may not take place every day, a violation shall be deemed continuing if an irrigation system that was previously the subject of a citation has the same violation on more than one day.

- (2) *Termination of service.* Additionally, the utilities director may restrict or terminate water service in accordance with law.

(Code 1982, § 19-48; Ord. No. 97-032, 8-14-1997; Ord. No. 2007-05, § 3, 5-10-2007; Ord. No. 2008-Code-01, 6-12-2008)

State law reference(s)—Civil penalties, G.S. 160A-175(c).

Secs. 36-85—36-111. Reserved.

DIVISION 2. SERVICE OUTSIDE OF TOWN

Sec. 36-112. Availability of water supply.

The town manager is authorized to sell water to persons residing outside the corporate limits of the town and to connect the water lines of such persons to public water lines of the town so long as available water supplies of the town permit such sales (as the manager in his discretion may determine), but such sales shall be subject to the provisions set forth in this division.

(Code 1976, § 17-31; Code 1982, § 19-57)

Sec. 36-113. Rates.

The rates for the sale of water and sewerage services to consumers residing outside the corporate limits of the town shall be as set forth in section 36-8.

(Code 1976, § 17-32; Code 1982, § 19-58)

Sec. 36-114. Disclaimer of liability.

The town shall not be liable to any of the consumers residing outside the corporate limits of the town for damages caused by failure of the town to supply water in any quantity or at any pressure or for damages to any of such consumers caused by too great pressure of water supplied.

(Code 1976, § 17-35; Code 1982, § 19-59)

State law reference—Disclaimer of liability, G.S. 160A-312.

Sec. 36-115. Agreements—Generally.

No person desiring to be supplied with water outside the corporate limits of the town shall be permitted to purchase or use such water until he has agreed, in writing, to the provisions of this division.

(Code 1976, § 17-36; Code 1982, § 19-60)

Sec. 36-116. Same—Annexation.

No water or sewer service shall be provided to any property outside of the municipal limits of the town except upon compliance with one of the following annexation requirements:

- (1) If the property is contiguous to the municipal limits of the town, the property owners shall immediately petition for and obtain annexation of such property into the municipal limits of the town; or
- (2) If the property is not contiguous to the municipal, limits of the town, the property owners shall immediately petition for and obtain annexation of such property into the municipal limits of the town, provided that the town council determines that it is in the best interest of the town and that the town can provide all municipal services; or
- (3) If the town council decides not to immediately annex the property, the property owners shall enter into a written agreement with the town for annexation at such future date as the town council determines that it is in the best interest of the town and that the town can provide

municipal services to the property. The agreement shall include provision for the town to terminate water and/or sewer service if the property owner fails to fulfill all requirements to annex.

(Code 1976, § 17-37; Code 1982, § 19-61; Ord. No. 88-15, § 1, 9-22-1988; Ord. No. 90-55, § 1, 10-11-1990)

Sec. 36-117. Discontinuance.

When the town manager, in his discretion, shall determine that the shortness of water supplies of the town necessitates the discontinuance of the sale of water to consumers residing outside the corporate limits of the town, the manager is authorized and empowered immediately to disconnect the lines of such outside consumers, or any of them, from the public water supply lines of the town and without notice to such consumers.

(Code 1976, § 17-33; Code 1982, § 19-62)

Secs. 36-118—36-149. Reserved.

ARTICLE IV. SEWERS

DIVISION 1. GENERALLY

Sec. 36-150. Connection required.

(a) *Improving property.* Every person improving property located within the corporate limits of the town which requires a new wastewater disposal system or expansions to an existing system shall make an approved connection with the town's sanitary sewer system if either of the following conditions exist:

- (1) Property abuts or adjoins a street or alley along which is located a sanitary sewer line; or
- (2) Property is located adjacent to a town sanitary sewer line.

This connection shall be to all water closets, bathtubs, showers, lavatories, toilets, sinks and all other wastewater generating plumbing units, appliances and sanitary sewer drains located or to be located on the property, provided that no person shall be required to cross the private property of another to make such a connection. In addition, if the property cannot support a wastewater disposal system and the property is within 300 feet of a sewer line, the owner shall make an approved sewer connection as required in the previous sentence.

(b) *Compliance with codes.* All sanitary sewer connections shall be in accordance with the North Carolina State Plumbing Code and the requirements of this Code.

(c) *Fees due.* At the time any connection request made by the property owner to the town has been approved, all sanitary sewer connection charges, development fees and outstanding assessment, or fee in lieu of assessment, shall be due and payable.

(d) *Occupancy.* No person shall occupy any house or building for human habitation after the sanitary sewer supply has been cut off, except in cases where it is cut off temporarily for the purpose of effecting necessary repairs.

(Code 1976, 17-2; Code 1982, § 19-76; Ord. No. 90-26, § 1, 3-22-1990; Ord. No. 93-13, § 1, 3-11-1993; Ord. No. 99-019, 10-14-1999; Ord. No. 02-005, 2-28-2002; Ord. No. 02-016, 6-13-2002)

Sec. 36-151. Septic tank; privy.

(a) Waste disposal systems (septic tanks) which are approved by the county board of health may be constructed within the town where property is located in such a manner that compliance with section 36-150 of this chapter is not possible. If the private waste disposal system fails and/or the property can not support a waste disposal system and the property is within 300 feet of a sewer line, the owner shall make an approved sewer connection as required in section 36-150.

(b) No privy shall be constructed within the corporate limits of the town.
(Code 1976, § 17-19; Code 1982, § 19-77; Ord. No. 02-005, 2-28-2002)

Secs. 36-152—36-170. Reserved.

DIVISION 2. SEWER USE

Sec. 36-171. Purpose and policy.

(a) This division sets forth uniform requirements for users of the wastewater collection and treatment system of the town of Cary (sometimes hereafter "town"), and enables the town to comply with permits and interlocal agreements and all applicable state and federal laws, including the Clean Water Act (33 USC 1251 et seq.) and the General Pretreatment Regulations (40 CFR 403), as amended from time to time. The objectives of this division are:

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

(b) This division regulates all users of the municipal wastewater system through the imposition and enforcement of general requirements for all users and the issuance of wastewater discharge permits to certain users. It authorizes monitoring and enforcement activities, requires user reporting, and provides for the setting of fees for the equitable distribution of costs of the town's POTW and the program described herein.

(c) This division shall apply to all users of the municipal wastewater system, as authorized by G.S. 160A-312. Except as otherwise provided herein, the director of the town department of utilities shall administer, implement, and enforce the provisions of this division. Any powers granted to or imposed upon the director may be delegated by the director to other town personnel. By discharging wastewater into the municipal wastewater system, users located within or outside the town limits agree to comply with, and shall be subject to, the provisions of this division, all rules and regulations established hereunder, and the terms and conditions of any permits, enforcement actions, or orders issued hereunder.

(d) The town through agreement authorized by law including G.S. 160A-313, may delegate or authorize the administration, implementation, and enforcement provision of the pretreatment program in a specified sewer service area of the town to another POTW that has a state approved sewer use ordinance and pretreatment program and is receiving wastewater from significant industrial users. Users whose wastewater is permitted by a POTW other than the town, shall meet sewer use ordinance and pretreatment program requirements as established by the receiving POTW.
(Code 1982, § 19-89; Ord. No. 94-036, 12-8-1994; Ord. No. 2009-Code-04, 3-12-2009; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-172. Definitions; abbreviations.

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

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

Approval authority shall mean the Director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources, or his or her designee.

Authorized representative of the user:

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

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

Building sewer shall mean a sewer conveying wastewater from the premises of a user to the POTW.

Bypass shall mean the intentional diversion of wastestreams from any portion of a user's treatment facility.

Categorical standards. See: national categorical pretreatment standard.

Control authority. Refers to the POTW organization if the POTW has an active and approved pretreatment program or the POTW's approval has not been withdrawn by the approval authority.

Director. See: POTW director.

Discharge of wastewater or discharge shall mean and includes discharging, spilling, leaking, placing, emptying, contributing, or dumping any wastewater into the town's POTW.

Environmental protection agency or EPA shall mean the U.S. Environmental Protection Agency, or, where appropriate, the term may also be used as a designation for the administrator or other duly authorized EPA official.

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

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

Indirect discharge shall mean the discharge of nondomestic wastewater into the POTW from any source regulated under section 307(b), (c), or (d) of the Act (33 USC 1317), including holding tank waste.

Industrial user shall mean any user that is a source of indirect discharge.

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

Kit Creek Pump Station Service Area shall mean the area within which users contribute wastewater to the Kit Creek Pump Station (KCPS), as shown in figure 1.

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

Middle tier significant industrial user shall mean a user who is subject to national categorical pretreatment standards and that meets the qualifications of 40 CFR Part 403.12(e)(3), may be eligible for reduced sampling and inspection requirements.

National categorical pretreatment standard or categorical standard shall mean any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 USC section 1317) which applies to a specific category of users, and which appears in 40 CFR chapter I, subchapter N, parts 405 through 471, as amended from time to time.

National pollutant discharge elimination system permit or NPDES permit shall mean a permit issued pursuant to section 402 of the Act (33 USC section 1342), or pursuant to G.S. 143-215.1 by the state under delegation from the EPA.

National prohibited discharge standard or prohibited discharge standard shall mean absolute prohibitions against the discharge of certain substances. These prohibitions appear in section 36-173 of this division and are developed under the authority of 307(b) of the Act and 40 CFR, 403.5.

New source shall mean as defined in 40 CFR 403.3(m), including any subsequent amendments and additions.

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

Nondischarge permit shall mean a disposal system permit issued by the state pursuant to G.S. 143-215.1(d).

Non-significant categorical industrial user shall mean a user subject to national categorical pretreatment standards and that meets the qualifications of 40 CFR Part 403.3(v)(2).

Pass through shall mean 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 control authority's (and/or POTW's, if different from the control authority) NPDES, collection system, or nondischarge permit, or a downstream water quality standard.

Person has the definition found in Chapter 1, Section 1-2 of this Code and specifically includes all federal, state and local governmental entities.

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

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

POTW. See: Publicly owned treatment works.

POTW director or *director* shall mean the director of public works and utilities or his or her designee. Unless specifically provided otherwise, the utility director for the town may act in the absence of the director, and in the absence of both the public works and utilities director and the utility director, the public works director for the town may act for the director.

POTW treatment plant shall mean that portion of the POTW designed to provide treatment to wastewater.

Pretreatment shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW collection system and/or POTW treatment plant. The reduction or alteration may be obtained by physical, chemical, or biological processes, or process changes or other means, except as prohibited by 40 CFR Part 403.6(d).

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

Pretreatment requirements shall mean any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

Pretreatment standards shall mean prohibited discharge standards, categorical standards, and local limits, including user-specific local limits contained in a wastewater discharge permit.

Prohibited discharge standard. See national prohibited discharge standard.

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

Residual solids shall mean the settled, thickened, biologically reduced semisolid residue containing material removed during the treatment process of municipal wastewater. Residual solids are also known as sludge.

Satellite POTW. See: Publicly owned treatment works (POTW).

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

Significant industrial user or SIU shall mean any industrial user of the POTW who meets any one of the following criteria and is not otherwise exempted pursuant to section 36-187 of this division:

- (1) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters); or
- (2) Contributes process wastewater which makes up five percent or more of the NPDES, Non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS, Ammonia, Total Phosphorus, and Total Nitrogen; or
- (3) Is subject to Categorical Pretreatment Standards under 40 CFR Part 403.6 and 40 CFR chapter I, Subchapter N, Parts 405-471; or 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 violating any pretreatment standard or requirement, for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or for limiting the POTW's sludge disposal options.

Significant noncompliance or SNC is the status on noncompliance of a significant industrial user when one or more of the following criteria are met. Additionally, any industrial user which meets criteria 3, 4, or 8 of this definition shall also be SNC.

- (1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six month period exceeded, by any magnitude, a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);
- (2) Technical review criteria (TRC) violations: defined as those in which thirty-three (33) percent or more of all the measurements taken for the same pollutant parameter during a six month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oils, and grease, and 1.2 for all other pollutants except flow and pH);
- (3) Any other violation(s) of a pretreatment standard or requirement as defined by 40 CFR Part 403.3(l) (long term average, daily maximum, instantaneous limit, or narrative standard) or

condition that the control authority or the POTW, if different from the control authority, determines has caused, alone or in combination with other discharges, interference or pass-through; or endangered the health of the POTW personnel, other town employees, or the public;

- (4) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health or welfare or to the environment or has resulted in the control authority's or the POTW's, if different from the control authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and section 36-179(a)(5) of this division to halt or prevent such a discharge;
- (5) Violations of compliance schedule milestones contained in a wastewater discharge permit or enforcement order, for starting construction, completing construction, or attaining final compliance when such failure to meet schedule milestones exists for 90 days or more after the schedule date;
- (6) Failure to provide reports for compliance schedule, self monitoring data, baseline monitoring reports, 90 day compliance reports, and compliance reports within 45 days of the due date;
- (7) Failure to accurately report noncompliance;
- (8) Any other violation or group of violations that the control authority and/or the POTW, if different from the control authority, determines will adversely affect the operation or implementation of the pretreatment program.

Sludge. See: Residual solids.

Slug load or discharge. Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the POTW's regulations, local limits, or Industrial User Permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that could cause a violation of the prohibited discharge standards contained in section 36-173 of this division.

Standard industrial classification (SIC) shall mean a classification pursuant to the standard industrial classification manual issued by the executive office of the president, office of management and budget, 1987.

Stormwater shall mean any flow occurring during or following any form of natural precipitation and resulting from such precipitation.

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

User shall mean any person, including those located outside the jurisdictional limits of the town, who contributes, causes or permits the contribution or discharge of wastewater into the POTW, including persons who contribute such wastewater from mobile sources, such as those who discharge hauled wastewater.

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

Wastewater discharge permit or *wastewater permit* shall mean a permit as set forth in section 36-175(b) of this division.

Waters of the state shall mean all streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

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

BOD: Biochemical Oxygen Demand.

CBOD: Carbonaceous Biochemical Oxygen Demand.

CFR: Code of Federal Regulations.

COD: Chemical Oxygen Demand.

EPA: Environmental Protection Agency.

gpd: gallons per day.

G.S.: North Carolina General Statutes.

l: liter.

mg: milligrams.

mg/l: milligrams per liter.

NPDES: National Pollutant Discharge Elimination System.

O & M: Operation and Maintenance.

POTW: Publicly Owned Treatment Works.

RCRA: Resource Conservation and Recovery Act.

SIC: Standard Industrial Classification.

SWDA: Solid Waste Disposal Act.

TN: Total Nitrogen.

TKN: Total Kjeldahl Nitrogen

TSS: Total Suspended Solids.

USC: United States Code.

(Code 1982, § 19-90; Ord. No. 94-036, 12-8-1994; Ord. No. 02-011, 4-11-2002; Ord. No. 06-004, 3-9-2006; Ord. No. 2007-20, 12-13-2007; Ord. No. 2009-Code-04, 3-12-2009; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-173. Prohibited discharge standards.

Unless specifically provided otherwise, the prohibited discharge standards set forth in this section shall apply to all users of the POTW, including significant industrial users and users subject to national, state or local pretreatment standards or requirements.

- (1) *General prohibitions.* No user shall discharge wastewater into the POTW, directly or indirectly, which causes interference or pass-through.
- (2) *Specific prohibitions.* No user shall discharge wastewater into the POTW that contains, or has the characteristics of, the following:
 - a. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods specified in 40 CFR 261.21, as amended from time to time.
 - b. Solid or viscous substances which may cause obstruction of the flow in a sanitary sewer or the POTW resulting in interference. This includes, but is not limited to, grease, garbage with particles greater than one-half inch (1/2") in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, and wood.
 - c. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass-through.
 - d. Unless otherwise permitted, any wastewater having a pH less than 5.0 or more than 10.5 or wastewater having any other corrosive property capable of causing damage to the POTW, collection system, or equipment. Any pH above 12.5 is considered hazardous under 40 CFR 261.22.
 - e. Any wastewater containing pollutants, including oxygen-demanding pollutants (BOD, CBOD, COD, etc.), in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to cause interference.

- f. Any wastewater having a temperature that is greater than 150 degrees Fahrenheit (66 degrees Celsius), or that will inhibit biological activity in the POTW treatment plant resulting in interference. In no case shall a user contribute wastewater, the temperature of which, acting alone or in conjunction with other wastewater, causes the temperature at the introduction into the POTW treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius).
- g. Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health or safety problems.
- h. Any trucked or hauled pollutants or wastewater, unless it is with the approval of the director, and then only at discharge points designated by the director in accordance with subsection 36-173(11) of this division.
- i. Any noxious or malodorous gases, solids, liquids or other wastewaters, which alone or by interaction with other wastes is sufficient to create a public nuisance or hazard to life or is sufficient to prevent entry by authorized town personnel into the sanitary sewer collection system for maintenance or repair.
- j. Any substance which may cause the POTW effluent or any other product of the POTW, such as residues, residual solids, or scums, to be unsuitable for reclamation and reuse or which interferes with the reclamation process. In no case shall a substance discharged or contributed to the POTW cause the POTW to be in noncompliance with residual solids use or disposal criteria, including, but not limited to, guidelines, regulations, or permits issued under section 405 of the Act; the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; or state criteria, guidelines, regulations, or permits applicable to the residual solids management method being used.
- k. Any substance which will cause the POTW to violate its NPDES or nondischarge permit or the receiving water quality standards.
- l. Any wastewater which imparts color which cannot be removed by the treatment process (including, but not limited to, dye wastes and vegetable tanning solutions) and which imparts sufficient color to the POTW effluent to render the waters injurious to public health or secondary recreation or aquatic life and wildlife or which adversely affect the palatability of fish or their aesthetic quality or which impairs the receiving waters for any designated use.
- m. Any wastewater containing any radioactive wastes or isotopes, except as specifically approved by the POTW director in compliance with applicable state and federal regulations.
- n. Any wastewater which causes a hazard to human life or creates a public nuisance.
- o. Stormwater, surface water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water, groundwater from any source, and unpolluted industrial wastewater, unless specifically authorized by the director.

- p. Fats, oils, or greases of animal or vegetable origin in concentrations greater than a level determined by the director, to cause sewer pipe blockages or in amounts causing adverse accumulation in sewer pipes, resulting in sewer blockage.
 - q. Any medical wastes, except as specifically authorized by the director in a wastewater discharge permit.
 - r. Any solids residuals, screenings, or other residues from the pretreatment of industrial wastes.
 - s. Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the POTW.
 - t. Any material that would be identified as hazardous waste according to 40 CFR 261 if not disposed of in a sewer, except as may be specifically authorized by the director.
 - u. Any wastewater causing the POTW effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B .0200, as amended from time to time.
 - v. Wastewater which, acting alone or in conjunction with wastewater from other sources, causes the POTW's effluent to fail a toxicity test.
 - w. Recognizable portions of the human or animal anatomy.
 - x. Any wastes containing detergents, surfaces active agents, or other substances which may cause excessive foaming in the POTW.
 - y. Any wastewater that has two successive readings on an explosion hazard meter of more than five percent or any single reading on such meter more than ten percent of the lower explosive limit (LEL) of the meter. Such readings may be taken at the point of discharge into the system or at any point in the system.
- (3) *Storage of substances/action by director.* Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW. All floor drains located in process or materials storage areas must discharge to the user's pretreatment facility before connecting with the POTW. When the director determines that a user is contributing or discharging to the POTW any pollutant or wastewater which causes interference or pass-through or is contributing or discharging any of the pollutants, substances or wastewater that violate the prohibitions set forth in (2) above, the director may:
- a. Advise the user of the potential impact of the contribution on the POTW in accordance with section 36-179 of this division; and
 - b. Take appropriate action, in accordance with section 36-178 of this division, requiring such user to protect the POTW and sewer collection system from interference, pass-through, blockages, and structural or mechanical failure.

- (4) *National categorical pretreatment standards.* Users subject to National Categorical Pretreatment Standards are required to comply with applicable standards as set out in 40 CFR chapter 1, subchapter N, parts 405 through 471, as amended from time to time, which are incorporated herein by reference.
- a. Where a categorical standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c), as amended from time to time.
 - b. When wastewater subject to a categorical standard is mixed with wastewater not regulated by the same standard, the director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e), as amended from time to time.
 - c. A user may obtain a variance from a categorical standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by the EPA in developing the categorical standard.
 - d. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.
 - e. A user may request a removal credit adjustment to a categorical standard in accordance with 40 CFR 403.7.
- (5) *Industrial waste survey and local limits.* An industrial waste survey is required prior to a user discharging wastewater containing in excess of the following average discharge limits. Industrial waste survey information will be used to develop user-specific local limits when necessary to ensure that the POTW's maximum allowable headworks loading or permitted allocation through interlocal agreement, is not exceeded for particular pollutants of concern. KCPS users are subject to additional lower local limits as listed in Section 36-186.

| <i>Limits (mg/l)</i> | <i>Pollutants</i> |
|----------------------|-------------------|
| 250 | CBOD |
| 250 | TSS |
| 40 | Total Nitrogen |
| 7.0 | Total Phosphorus |
| 0.0046 | Arsenic, total |
| 0.0057 | Cadmium, total |
| 0.072 | Copper, total |
| 0.015 | Cyanide, total |
| 0.0348 | Lead, total |
| 0.000189 | Mercury, total |
| 0.0237 | Nickel, total |
| 0.0190 | Silver, total |
| 0.0279 | Chromium, total |
| 0.1395 | Zinc, total |
| 25 | Ammonia nitrogen |

User-specific local limits for appropriate pollutants of concern shall be included in wastewater permits and shall be considered pretreatment standards. The director may impose mass limits in addition to, or in place of, the concentration-based limits set forth above.

Additionally, domestic sewage limits for parameters other than those listed above may be established by the director and shall be based on either actually measured local domestic sewage levels or literature values.

- (6) *State standards.* State standards and requirements on discharges shall apply in any case where they are more stringent than federal requirements or limitations or those contained in this division.
- (7) *Right of revision.* The town reserves the right to establish and amend standards, including limitations and requirements, which are more stringent than those required by either state or federal regulation if deemed necessary to comply with the objectives set forth in section 36-171 of this division or the general and specific prohibitions in section 36-173 of this division, as is allowed by 40 CFR 403.4.
- (8) *Dilution.* No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards or in this division, unless expressly authorized by an applicable pretreatment standard or by any other pollutant-specific limitation developed by the town or state.
- (9) *Pretreatment of wastewater.*
 - a. *Pretreatment facilities.* Users shall provide wastewater treatment as necessary to comply with this division and wastewater permits issued under section 36-175(b) of this division, and users shall achieve compliance with all national categorical pretreatment standards, local limits, and the prohibitions set out in section 36-173 of this division within the time limitations specified by the EPA, the state, or the director, whichever is more stringent. Any facilities necessary for compliance (pretreatment facilities) shall be provided, operated, and maintained at the user's expense. Detailed plans showing the user's pretreatment facilities and operating procedures shall be submitted to the town for review, and shall be approved by the director before construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the town under the provisions of this division. Any subsequent changes in the pretreatment facility or its method of operation shall be reported to, and be approved by, the director prior to the user's initiation of the changes.
 - b. *Additional pretreatment measures.*
 1. Whenever the director deems it necessary, the director may require users to restrict their discharge during peak flow periods; designate that certain wastewater be discharged only into specific sewers; relocate and/or consolidate

points of discharge; separate sewage wastestreams from industrial wastestreams; and require such other conditions as may be necessary to protect the POTW or to determine the user's compliance with the requirements of this division.

2. The director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow control facility to ensure equalization of flow. The director may issue a wastewater discharge permit solely for flow equalization.
3. Grease, oil, and sand interceptors shall be provided by the user when, in the opinion of the director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand, except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the director and shall be so located as to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned and repaired regularly, as needed, by the user at the user's expense. See also section 36-183 for additional requirements.
4. Users with the potential to discharge flammable substances may be required to install and maintain one or more approved combustible gas detection meters.

(10) *Accidental discharge/slug control plan.* The director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in section 36-172, Definitions. All SIUs must be evaluated within one year of being designated as SIU. The director may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the director may develop such a plan for any user. All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see section 36-176(e), (f).

An accidental discharge/slug control plan shall address, at a minimum, the following:

- a. Description of discharge practices, including nonroutine batch discharges;
- b. Description of stored chemicals;
- c. Procedures for immediately notifying the director of any accidental or slug discharge, as required by section 36-176(f) of this division;
- d. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures shall include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(11) *Hauled wastewater.*

- a. Septic tank waste may not be discharged into the POTW unless the director has given his approval for the discharge. If such approval is granted, septic tank waste may be discharged into the POTW only at locations designated by the director, and only at such times as are established by the director. Such septic tank waste shall conform to the requirements of section 36-173 of this division and any other requirement established by the town. The director may require septic tank waste haulers to obtain wastewater discharge permits.
- b. The director may prohibit the discharge into the POTW of hauled industrial waste. If the director permits such discharge, the director shall require haulers of industrial waste to obtain wastewater discharge permits. The director may also require the generators of hauled industrial waste to obtain wastewater discharge permits. The discharge of hauled industrial waste is subject to all the requirements of this division.
- c. Industrial waste haulers may discharge loads only at locations designated by the director. No load may be discharged without the prior consent of the director. The director may collect samples of each hauled load to ensure compliance with applicable standards. The director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- d. Industrial waste haulers shall provide a waste-tracking form for every load. The information provided on the form shall include, at a minimum, the following:
 1. The name and address of the industrial waste hauler;
 2. The permit number of the industrial waste hauler;
 3. The permit number of the industrial waste generator, if there is one;
 4. The waste hauler truck identification;
 5. Names and addresses of sources of all waste;
 6. Identification of the type of industry that is the source of the waste; and
 7. Volume and characteristics of the waste, including all known or suspected waste constituents and whether any wastes are RCRA hazardous wastes.

(Code 1982, § 19-91; Ord. No. 94-036, 12-8-1994; Ord. No. 02-011, 4-11-2002; Ord. No. 05-005, 3-10-2005; Ord. No. 06-004, 3-9-2006; Ord. No. 2007-20, 12-13-2007; Ord. No. 2009-Code-04, 3-12-2009; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-174. Fees.

(a) *Purpose.* It is the purpose of this division to provide for the recovery from users of the town's wastewater disposal system of costs of the POTW and for the implementation of the program provided for herein. The applicable charges or fees shall be set forth in the town's schedule of charges and fees.

- (b) *User charges.* A user charge shall be levied on, and paid by, all users.
 - (1) The user charge shall reflect, at a minimum, the cost to the town of debt service, and operation and maintenance costs (including, but not limited to, replacement costs) of the POTW.
 - (2) Each user shall pay its proportionate share of cost based on the volume of the user's flow.
 - (3) The town manager shall review annually the sewage contributions of users, the total costs of debt service, and operation and maintenance costs of the POTW (including, but not limited to, replacement costs) and shall make recommendations to the town council for adjustments in the schedule of charges and fees as necessary.

(c) *Surcharges.* All industrial users of the POTW are subject to industrial waste surcharges on all discharges which exceed the following levels:

| <i>Parameter</i> | <i>Levels (mg/l)</i> |
|------------------|----------------------|
| CBOD | 250 |
| TSS | 250 |
| TN | 40 |
| Total Phosphorus | 7 |
| Ammonia nitrogen | 25 |

The surcharge shall be based upon the mass emission rate (in pounds per day) discharged above the levels listed above. The amount charged per pound of excess shall be set forth in the schedule of charges and fees. The imposition or payment of the surcharge shall in no way be construed to constitute an authorization for the user to discharge in excess of the levels set forth above, nor shall it be construed to constitute a waiver of the town's right to strictly enforce the provisions of this division.

(d) *Charge and surcharge determination.* The volume of flow used in determining the total discharge of wastewater for payment of user charges and surcharges shall be based on the following:

- (1) Metered water consumption as shown in the records of meter readings maintained by the town; or
- (2) If required by the director, or if desired by the user with the consent of the director, other flow measuring devices ("alternate metering devices") which measure the actual volume of wastewater discharged to the sewer. Such "alternate metering devices" shall be accessible and safely located, and shall be installed in accordance with plans approved by the town. The alternate metering device shall be installed and maintained at the user's expense according to arrangements that may be made with the town. Certified calibration of the metering device shall be required at least every three months. More frequent calibrations may be required by the director.
- (3) Where any user procures all or part of the user's water supply from sources other than the town, the user shall install and maintain at the user's own expense a flow measuring device of a type approved by the town.

(e) *Surcharge sampling.* The character and concentration of wastewater used in determining surcharges shall be determined by samples collected and analyzed by the town or by state-certified contract laboratory personnel performing permitted self-monitoring activities. Samples shall be collected in such a manner as to be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR 136 by a state-certified laboratory.

(f) *Determination binding.* The determination by the director of the character and concentration the constituents of wastewater discharged shall be binding on the user as a basis for all charges and surcharges.

(g) *Pretreatment program administration charges.* The schedule of charges and fees adopted by the town may include charges and fees for:

- (1) Reimbursement of costs of setting up and operating the pretreatment program;
- (2) Monitoring, inspections and surveillance procedures;
- (3) Reviewing slug control plans, including accidental and slug load discharge procedures and construction plans and specifications;
- (4) Permitting; and
- (5) Other fees as the town may deem necessary to carry out the requirements of the pretreatment program.

The schedule of charges and fees will be set forth in the town's annual budget ordinance. (Code 1982, § 19-92; Ord. No. 94-036, 12-8-1994; Ord. No. 02-011, 4-11-2002; Ord. No. 05-005, 3-10-2005; Ord. No. 2007-20, 12-13-2007; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-175. Wastewater discharge permit, application and issuance.

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

(b) *Permits.* All significant industrial users shall obtain a significant industrial user wastewater discharge permit ("significant industrial user permit" or "SIU permit") prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the director to be significant industrial users shall obtain a significant industrial user permit within 180 days of receiving notification of the director's determination. Industrial users who do not fit the significant industrial user criteria may, at the discretion of the director, be required to obtain a wastewater discharge permit for nonsignificant industrial users (non-SIU permit). Both SIU permits and non-SIU permits are referred to as wastewater discharge permits or permits.

- (1) *Significant industrial user determination.* All persons proposing to discharge nondomestic wastewater, or proposing to change the volume or characteristics of an existing discharge of nondomestic wastewater, shall request from the director a significant industrial user

determination. If the director determines or suspects that the proposed discharge fits the significant industrial user criteria, he will require that the user file a SIU permit application.

- (2) *Application.* Users required to obtain a wastewater discharge permit, including a SIU permit, shall complete and file with the town an application in the form prescribed by the director, which shall be accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Users required to renew a wastewater discharge permit shall renew such permit in accordance with the procedures for renewal described in the permit. Significant industrial users shall apply for a SIU permit within 90 days of receiving notification of the director's determination in (b)(1) above. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:
- a. Name, address, and location (if different from the address);
 - b. Standard industrial classification (SIC) codes or expected classification for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated;
 - c. Types and concentrations or mass of pollutants contained in the discharge including, but not limited to, those mentioned in section 36-173 of this division and any of the priority pollutants (section 307(a) of the Act) which the applicant knows or suspects are present in the discharge as determined by a state-certified analytical laboratory, and any other pollutant of concern to the POTW. Sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Act and as contained in 40 CFR, 136, as amended; and as required in section 36-176(k) and (l)(i)-(iii) of this division.
 - d. Time and duration of discharge;
 - e. Average daily and 30-minute peak wastewater flow rates, including daily, monthly and seasonal variations, if any;
 - f. Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow, and appurtenances by the size, location and elevation and discharge points or locations;
 - g. Description of activities, facilities and plant processes on the premises, including all materials which are, or could be, discharged;
 - h. Where known, the nature and concentration or mass of any pollutants in the discharge which are limited by any town, state, or federal pretreatment standards and a statement regarding whether or not the 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 for the user to meet applicable pretreatment standards;
 - i. 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. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:

1. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine months;
 2. No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a written progress report to the director which shall include, at a minimum, a statement as to whether or not the user complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between progress reports to the director;
- j. Each product produced or services performed by type, amount, process or processes and rate of production;
 - k. Type and amount of raw materials processed (average and maximum per day) or stored;
 - l. Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
 - m. If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15 NCAC 2H.0908(a), as outlined in section 36-176 of this division;
 - n. Description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g);
 - o. Description of existing on-site pretreatment facilities; if applicable, including operation and practices performed; and
 - p. Any other information as may be deemed by the director to be necessary to evaluate the permit application.
- (3) *Application signatories and certification.* All wastewater discharge permit applications and user reports must be signed by the current representative of the user on file with the Town of Cary as defined in section 36-172; "Authorized Representative User" and must contain the following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of

my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(4) *Application review and evaluation.*

- a. The director is authorized to accept applications for the town and may refer all applications to the POTW staff for review and evaluation.
- b. Within 60 days of receipt, the director shall acknowledge and accept the complete application, or if the application is not complete, the director shall return the application to the applicant with a statement as to what additional information is required.

(5) *Tentative determination and draft permit.*

- a. The POTW staff shall review the application and shall conduct an on-site inspection of the significant industrial user, including any pretreatment facility. An on-site inspection of other users, including pretreatment facilities, may also be conducted. The POTW staff shall prepare a written evaluation and tentative determination to issue or deny the wastewater discharge permit.
- b. If the staff's tentative determination in subsection (5)a. above is to issue the permit, the following additional determinations shall be made in writing:
 1. Proposed discharge limitations for those pollutants proposed to be limited;
 2. A proposed schedule of compliance, including interim dates and requirements for meeting the proposed limitations; and
 3. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
- c. The POTW staff shall organize the determinations made pursuant to paragraphs (5)a. and (5)b. above, along with the town's general permit conditions, into a wastewater discharge permit.

(6) *Permit supporting documentation.* The control authority staff shall prepare the following documents for all significant industrial user permits.

- 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 by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.
- b. The basis, or rationale, for the pretreatment limitations, including the following:

1. Documentation of categorical determinations, including documentation of any calculations used in applying categorical pretreatment standards, and;
2. Documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).

(7) *Final action on applications.*

- a. The director shall take final action on all applications and shall notify the applicants of the action taken not later than 90 days following receipt of a complete application.
- b. The director is authorized to take any one or more of the following actions:
 1. Issue a wastewater discharge permit containing such conditions as are necessary to effectuate the purposes of this division and G.S. 143-215.1;
 2. Issue a wastewater discharge permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
 3. Modify any permit upon not less than 60 days' notice and in accordance with section 36-175 of this division;
 4. Revoke any permit pursuant to section 36-179 of this division;
 5. Suspend a permit pursuant to section 36-179 of this division;
 6. Deny a permit application when, in the opinion of the director, such a discharge may cause or contribute to pass-through or interference or where necessary to effectuate the purposes of G.S. 143-215.1.

(8) *Permit modification.*

- a. *Procedural requirements.* Modifications of permits shall be subject to the same procedural requirements as the issuance of permits, except as listed below. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance attainment.
 1. Changes in the ownership of the discharge when no other change in the permit is indicated.
 2. A single modification of any compliance schedule not in excess of four months.
 3. Modification of compliance schedules in permits for new source's construction schedules where the new source will not begin to discharge until the discharge characteristics can meet the requirements of this division.

- b. *Categorical standards revisions.* Within nine months of the promulgation of a National Categorical Pretreatment Standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user subject to a National Categorical Pretreatment Standard has not previously submitted an application for a wastewater discharge permit as required by subsection (b), the user shall apply for a wastewater discharge permit within 180 days of the promulgation of the applicable National Categorical Pretreatment Standard.
 - c. *User request for modification.* A request for a modification by the user shall constitute a waiver of the 60-day notice for modifications required by G.S. 143-215.1(b).
- (9) *Permit conditions.*
- a. The director shall have the authority to grant a permit with such conditions attached as the director believes necessary to achieve the purpose of this division and G.S. 143-215.1. Permit conditions shall include the following:
 - 1. A statement of duration (in no case more than five years);
 - 2. A statement of nontransferability;
 - 3. Applicable effluent limits based on categorical standards or local limits, or both;
 - 4. Applicable monitoring, sampling, reporting, notification, and recordkeeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling locations, sampling frequency, and sampling type based on federal, state, and local law;
 - 5. Notification requirements for slug loads or accidental discharge as identified in section 36-172(a), "Definitions - Slug Load or Discharge";
 - 6. A statement of applicable civil and/or criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule;
 - 7. Requirements to implement a Plan or other controls for prevention of accidental discharges or slug load as defined in section 36-172(a) "Definitions - Slug Load or Discharge", if determined by the director to be necessary for the user, and
 - 8. Requirements for immediately notifying the director of any changes at its facility affecting the potential for spills and other accidental discharges or slug load as defined in section 36-172(a) "Definitions - Slug Load or Discharge". Also see section 36-176(e), (f).
 - b. In addition, at the discretion of the director, wastewater discharge permits may contain other conditions which may include, but are not limited to, the following:

1. Limits on the average and maximum rate of discharge, and requirements for flow regulation and equalization;
2. Limits on the instantaneous, daily and/or monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties;
3. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, and similar requirements designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW;
4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
5. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
6. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system;
7. Requirements for installation and maintenance of inspection and sampling facilities and equipment;
8. Specifications for a monitoring program which may include sampling locations, sampling frequency, number, types, and standards for tests, and reporting schedules;
9. Requirements for immediate reporting of any instance of noncompliance and for automatic and resampling and reporting within 30 days, where self-monitoring indicates a violation(s);
10. Compliance schedules for meeting pretreatment standards and requirements;
11. Requirements for submission of periodic self-monitoring of special notification reports;
12. Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in section 36-176(m)[n] and affording the director or his representatives, access thereto;
13. Requirements for prior notification and approval by the director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction into the POTW;
14. Requirements for the prior notification and approval by the director of any change in the manufacturing and/or pretreatment process used by the permittee;
15. Requirements for immediate notification of excessive, accidental, or slug discharges, or any discharge which could cause any problems to the POTW;

16. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective after the issuance of the permit; and
 17. Other conditions as deemed appropriate by the director to ensure compliance with this division, and state and federal laws, rules, and regulations.
- (10) *Permit duration.* Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period of time that is less than a year and may be drafted to expire on a specific date.
- (11) *Permit transfer.* Wastewater discharge permits shall be issued to a specific user for a specific operation. A wastewater discharge permit shall not be assigned or transferred or sold to any person, including a new owner or new user, nor shall it be assigned or transferred to a different premises, or to a new or changed operation.
- (12) *Permit reissuance.* A user shall apply for permit reissuance by submitting a complete permit application in accordance with subsection (b) at least 90 days prior to the expiration of the existing permit.

(Code 1982, § 19-93; Ord. No. 94-036, 12-8-1994; Ord. No. 06-004, 3-9-2006; Ord. No. 2007-20, 12-13-2007; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-176. Reporting requirements.

- (a) *Baseline monitoring reports.*
- (1) Within 180 days after either the effective date of a categorical pretreatment standard or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, users subject to a categorical pretreatment standard who are currently discharging to, or scheduled to discharge to, the POTW shall submit to the director a report which contains the information listed in subsection (a)(2) a. through h. below. At least 90 days prior to commencement of their discharge, new sources, and sources that become subject to categorical pretreatment standards subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report which contains the information listed in subsection (a)(2)a. through h. below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
 - (2) Users described above shall submit the information set forth below:
 - a. *Identifying information.* The name and address of the facility, including the name of the operator and owner.
 - b. *Environmental permits.* A list of any environmental control permits held by or for the facility.

- c. *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 processes.
- d. *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).
- e. *Measurement of pollutants.*
 - 1. The categorical pretreatment standards applicable to each regulated process.
 - 2. The results of sampling and analysis identifying the nature and concentration, and/or mass of regulated pollutants in the discharge from each regulated process, where required by the standard or by the director. Instantaneous, daily maximum, and long-term average concentrations or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in subsection (j) of this section.
 - 3. Sampling must be performed in accordance with procedures set out in subsection (l) of this section and 40 CFR 403.12(b)and(g), including 40 CFR 403.12(g)(4).
- f. *Certification.* A statement, reviewed by the user's current authorized representative as defined in section 36-172, Definitions: "Authorized Representative User" and certified by a licensed professional engineer, 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.
- g. *Compliance schedule.* If additional pretreatment and/or O & M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O & M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in subsection (b) of this section.
- h. *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with section 36-175(b)(3) of this division.

(b) *Compliance schedule progress reports.* The following conditions shall apply to the compliance schedule required by section 36-176(a)(2)g.:

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

standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

- (2) No progress increment referred to above shall exceed nine months;
- (3) The user shall submit a progress report to the director no later than 14 days following each date in the schedule and the final date of compliance, including in such report, at a minimum, statements as to whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
- (4) In no event shall more than nine months elapse between such progress reports to the director.

(c) *Reports 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 director a report containing the information described in subsection (a)(2)d. through f. of this section. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with section 36-175(b)(3).

(d) *Periodic compliance reports.*

- (1) All users required to obtain a wastewater discharge permit shall, at a frequency determined by the director but for SIU's in no case less than once every six months, submit a report to the director indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in section 36-176(k) and (l) of this ordinance. All periodic compliance reports must be signed and certified in accordance with section 36-175(3) of this ordinance.
- (2) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring and flow measurement facility in good working order shall not be grounds for the user to claim that sample results are not representative of its discharge.
- (3) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the director, using the procedures prescribed in subsection (j) of this section, the results of this monitoring shall be included in the report.

(e) *Reports of changed conditions.* Each user must notify the director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 45 days before the change. The permittee shall not begin the changes until receiving written approval from the control authority and/or the POTW, if different than the control authority. See section 36-176(a)(2)f.4. for other reporting requirements.

- (1) The director may require the user to submit such information as the director may deem necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under section 36-175(b).
- (2) The director may issue a wastewater discharge permit under section 36-175(b) or modify an existing wastewater discharge permit under section 36-175(b) in response to changed conditions or anticipated changed conditions.
- (3) For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of 20 percent (20%) or greater, and the discharge of any previously unreported pollutants; increases or decreases in production; discharge of pollutants not previously reported to the control authority and/or POTW; new or changed product lines; new or changed manufacturing processes; or new or changed chemicals used or stored.

(f) *Reports of potential problems.*

- (1) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load as defined in section 36-172: Definitions, "Slug Load or Discharge" that may cause potential problems for the POTW, the user shall immediately notify the director by telephone of the discharge. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- (2) Within five days following such discharge, the user shall, unless the user receives a written waiver from the director, submit a detailed written report describing the cause(s) of the discharge and the measures taken, or to be taken, by the user to prevent future similar occurrences. Such notification shall not relieve the user of any liability for any expense, loss, damage, personal injury, or other claim which may be suffered or incurred as a result of damage to the POTW, damage to natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this division.
- (3) A notice shall be permanently posted on the user's bulletin board or some other prominent place advising employees of whom to call in the event of a discharge described in subsection (f)(1) above. Employers shall ensure that all employees who may cause such a discharge to occur are advised of the emergency notification procedure.
- (4) All SIUs are required to notify the director immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch, or slug load as defined in section 36-172 Definitions: "Slug Load of Discharge".

(g) *Reports from unpermitted users.* All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the director as the director may require. All users classified as non-significant categorical industrial users under section 36-187 of this division shall provide appropriate reports to the director as the director may require. At a minimum this shall include the annual certification of continuing to meet the non-significant categorical industrial user criteria as required under 40 CFR 403.12(q).

(h) *Notice of violation/repeat sampling and reporting.* If sampling performed by a user indicates noncompliance or any other violation, the user must notify the director within 24 hours of becoming aware of the violation. The user shall also immediately repeat the sampling and analysis and submit the results of the repeat analysis to the director within 30 days after becoming aware of the violation. If allowed by the director, the user is not required to resample:

1. If the director monitors at the user's facility at least once a month,
2. If the director samples between the user's initial sampling and the time when the user receives the results of this sampling.

(i) *Control authority repeat sampling in lieu of permittee self-monitoring.* If the director does not require the user to perform any self-monitoring and the POTW sampling of the user indicates a violation, the director shall repeat the sampling and obtain the results of the repeat analysis within thirty (30) days after becoming aware of the violations, unless one of the following occurs:

1. The director monitors at the user's facility at least once a month; or
2. The director samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or
3. The director requires the user to perform sampling and submit the results to the director with the 30 day deadline of the POTW becoming aware of the violation.

(j) *Notification of discharge of hazardous waste.*

- (1) If a user wishes to commence discharge of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261, such user shall not commence such discharge until written approval from the director has been received, unless such discharge is exempt under subsection (j)(2) below. To obtain such approval, the user shall notify the director, the EPA regional waste management division director, and state hazardous waste authorities, in writing, of the desired discharge, and make application to the director for approval of such discharge. Such notification must include the name of the hazardous waste, as set forth in 40 CFR 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other) proposed. If the user desires to discharge more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information, to the extent such information is known and readily available to the user:

- a. An identification of the hazardous constituents contained in the wastes;

- b. An estimation of the mass and concentration of such constituents in the wastestream discharge during the first calendar month; and
- c. An estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months.

All notifications and applications must be submitted to the director for his review and assessment at least 180 days prior to the date the user desires to commence the discharge. The user shall not begin the discharge until receiving written approval from the director. The notification and application under this paragraph need be submitted only once for each hazardous waste discharge; however, notifications of changed conditions must be submitted under subsection (e) of this section. The notification and director approval requirement in this section does not apply to pollutants already reported by industrial users subject to categorical pretreatment standards under the self-monitoring requirements of subsections (a), (c), and (d) of this section.

- (2) Users are exempt from the requirements of subsection (j)(1) above for discharges that contain 15 kilograms or less of hazardous wastes, unless the wastes are acute hazardous wastes, as specified in 40 CFR 261.30(d) and 261.33(e). The discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or the discharge of any quantity of acute hazardous wastes, as specified in 40 CFR 261.30(d) and 261.33(e), requires the prior written approval of the director.
- (3) In the case of any new regulation under section 3001 of the RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the director, the EPA regional waste management waste division director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.
- (4) In the case of any notification and application made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (5) This subsection does not create a right to discharge any substance not otherwise permitted to be discharged by this division, a permit issued thereunder, or any applicable federal or state law.

(k) *Analytical requirements.* All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed by a laboratory certified by the state to perform the wastewater analyses in accordance with the techniques prescribed in 40 CFR 136, unless otherwise specified in an applicable categorical pretreatment standard or otherwise performed in accordance with procedures approved by EPA or the director. If 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA and the director.

- (l) *Grab and composite sample collection.*
- (i) 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.
- (ii) Grab samples must be used for temperature, pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The POTW shall determine the number of grabs necessary to be representative of the user's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for BMR and 90 Day Compliance Reports. Additionally, the [POTW director] may allow collection of multiple grabs during a 24-hour period which are composited prior to analysis as allowed under 40 CFR 136.
- (iii) Composite samples: All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the [POTW director]. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

(m) *Timing.* Written reports to the director shall be deemed to have been submitted on the date postmarked. For reports which are not deposited, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report by the director shall govern.

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

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

These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the town, or where the user has been specifically notified of a longer retention period by the director.

(o) *Electronic reporting.* The director may develop procedures for receipt of electronic reports for any reporting requirements of this ordinance. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under section 36-179.

(p) *Special reporting requirements for industrial users in satellite POTWs.* In the case of industrial users located in satellite POTW organization's jurisdiction, all information required to be reported to the industrial user's pretreatment program control authority shall be reported to the POTW treatment plant organization.

(Code 1982, § 19-94; Ord. No. 94-036, 12-8-1994; Ord. No. 06-004, 3-9-2006; Ord. No. 2007-20, 12-13-2007; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-177. Compliance monitoring.

(a) *Monitoring facilities.* The user shall provide and operate, at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the town may, when such a location would be impractical or cause undue hardship for the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

- (1) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.
- (2) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the town's requirements and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the town.
- (3) The director may designate a minimum frequency for calibration of monitoring equipment; however, the user is responsible for ensuring the accuracy of the equipment at all times.

(b) *Inspection and sampling.* The town may inspect the facilities of any user to ascertain whether the purposes of this division are being met and whether all requirements of the division, and permits and orders issued hereunder, are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the town, approval authority and EPA, or their representatives, ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, or for the performance of any of their duties. Such access shall be given to the town, approval authority and EPA Monday through Friday during regular business hours and at all other times the user is discharging to the POTW. The town, approval authority and EPA shall have the right to set up, on the user's property, such devices as are necessary to conduct sampling inspection, compliance monitoring and metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into the user's premises, the user shall make necessary arrangements with their security guards so that, upon presentation of suitable identification, personnel from the town, approval authority and EPA shall be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the town's, approval authority's, or EPA's access to the user's premises shall be a violation of this division. Unreasonable delays in permitting entry may constitute denial of access.

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

(Code 1982, § 19-95; Ord. No. 94-036, 12-8-1994; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-178. Confidential information.

(a) Information and data on a user obtained from reports, questionnaires, permit applications, permits, reports and monitoring programs, and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests, and is able to demonstrate to the satisfaction of the director, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted by the user at the time of, or prior to, initial submission of the information or data to the director.

(b) When timely requested by the person furnishing a report, the portions of a report which might disclose trade secrets shall not be made available for inspection by the public, but shall be made available to governmental agencies, upon their written request, for uses related to this division, the national pollutant discharge elimination system (NPDES) permit, nondischarge permit and/or pretreatment programs. The alleged trade secret portions of a report shall also be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics shall not be recognized as trade secrets.

(c) All records relating to compliance with pretreatment standards and requirements shall be made available to officials of the approval authority and EPA, upon request.

(Code 1982, § 19-96; Ord. No. 94-036, 12-8-1994; Ord. No. 2011-Code-09, 12-15-2011)

State law reference—Trade secrets not public records, G.S. 132-1.2.

Sec. 36-179. Enforcement.

(a) *Administrative remedies.*

(1) *Notification of violation.* Whenever the director finds that any person has violated or is violating this division, a wastewater discharge permit, or any prohibition, limitation or requirement contained therein, the director may serve upon such person a written notice stating the nature of the violation ("notice of violation"). Within 30 days of the date of the notice of violation, a plan for the satisfactory correction of the violation shall be submitted to the town by the person. Submission of this plan does not relieve the person of liability for any violations occurring before or after receipt of the notice of violation.

(2) *Consent orders.* The director is hereby authorized and empowered to enter into consent orders, assurances of voluntary compliance, or other similar agreements with any person

responsible for violation of, or noncompliance with, this division or a permit issued hereunder (hereafter referred to as noncompliance). Such orders shall specify action to be taken by the person to correct the noncompliance within a time period that shall be specified in the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to subsection 36-179(a)(4) below.

- (3) *Show cause hearing.* The director may order any user who causes or is responsible for an unauthorized discharge, who has violated this division or is in noncompliance with a wastewater discharge permit, to show cause why a proposed enforcement action should not be taken. In the event the director determines that a show cause order should be issued, a notice that substantially notifies the user of the specific time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken shall be issued by the director ("show cause hearing notice"). The show cause hearing notice shall be served on the user at least ten days before the hearing. Service may be made on any agent or officer of a corporation. The director shall review the evidence presented at the hearing and shall determine whether the proposed enforcement action is appropriate. A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under section 36-179(b), nor is any action or inaction taken by the director under this section subject to an administrative appeal under section 36-188.
- (4) *Administrative orders.* When the director, or his duly authorized representative, finds that a user has violated or continues to violate this division, the prohibitions or discharge limitations of this division, or those contained in any wastewater discharge permit or order issued hereunder, the director, or his duly authorized representative, may issue an order to cease and desist, and direct those persons in noncompliance to do any of the following:
 - a. Immediately comply with all requirements;
 - b. Comply in accordance with a compliance time schedule set forth in the order;
 - c. Take appropriate remedial or preventative action in the event of a continuing or threatened violation;
 - d. Disconnect from the POTW, or cease discharging into the POTW, unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.
- (5) *Emergency suspensions.* The director, or his duly authorized representative, may suspend wastewater treatment service and/or the wastewater discharge permit when the director believes suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the POTW, or causes the POTW to violate any condition of its NPDES permit. Any user notified of a suspension of their wastewater treatment service and/or their wastewater discharge permit shall immediately stop or eliminate the discharge. A hearing shall be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the user's wastewater discharge permit terminated. In the event of a failure of the person to comply voluntarily with the

suspension order, the director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any person or property. The director shall reinstate the wastewater discharge permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge and the payment of all user charges, surcharges, penalties and other costs assessed hereunder. The user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the director prior to the date of the above-described hearing.

- (6) *Termination of permit or permission to discharge.* Any user who violates any condition of this division, or applicable state or federal regulations, is subject to having its permit terminated. The director may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:
- a. Failure to factually and accurately report the wastewater constituents and characteristics of the user's discharge;
 - b. Failure to report significant changes in operations, or wastewater constituents and characteristics;
 - c. Refusal to allow reasonable access to the user's premises to the director, approval authority, or EPA for the purpose of inspection or monitoring; or
 - d. Violation of conditions of the wastewater discharge permit or permission to discharge, conditions of this ordinance, or any applicable state or federal regulations.

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

(b) *Civil penalties.* Any user who is found to have failed to comply with any provision of this division, or the orders, rules, regulations and permits issued hereunder, may be assessed a civil penalty by the director up to \$25,000.00 per day per violation. Penalties between \$10,000.00 and \$25,000.00 per day per violation may be assessed against a violator only if:

- i. For any class of violation, only if a civil penalty has been imposed against the violator within the five years preceding the violation, or
- ii. In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this ordinance, or the orders, rules, regulations and permits issued hereunder, only if the POTW director determines that the violation was intentional and a civil penalty has been imposed against the violator with the five years preceding the violation.

Such assessments may be added to the user's next scheduled sewer service charges and the POTW, in addition to all other remedies, shall have such remedies for the collection of such assessments as it has for collection of other service charges.

(c) *Penalty determination.* In determining the amount of the civil penalty, the director shall consider the following:

- (1) The degree and extent of the harm to natural resources, the public health, or to public or private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The effect on ground or surface water quantity or quality or on air quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money the user saved by noncompliance;
- (6) Whether the violation was committed willfully or intentionally;
- (7) The prior record of the violator in complying or failing to comply with the pretreatment program;
- (8) Other fines and penalties assessed to user for previous violations; and
- (9) The costs of enforcement to the town.

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

- (1) *Criminal violations.* The district attorney for the 10th Judicial District (the judicial district encompassing the county) may, at the request of the town, prosecute noncompliant persons and users who violate the provisions of G.S. 143-215.6B.
- (2) *Injunctive relief.* Whenever a user is in violation of the provisions of this division or an order or permit issued hereunder, the director, through the town attorney, may petition the county superior court for the issuance of a restraining order or a preliminary and permanent injunction, which restrains or compels the activities in question.
- (3) *Water supply severance.* Whenever a user or person is in violation of the provisions of this division or an order or permit issued hereunder, water service to the user or person may be severed and service will only recommence, at the user's or person's expense, after it has satisfactorily demonstrated ability to comply.
- (4) *Public nuisances.* Any violation of the prohibitions or discharge limitations of this division, or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the director. Any person(s) creating a public nuisance shall be subject to the provisions of the Code of Ordinances of the Town of Cary governing such nuisances, including reimbursing the town for any costs incurred in removing, abating or remedying such nuisance.

- (5) *Remedies nonexclusive.* The remedies provided for in this division are not exclusive. The director may take any, all, or any combination of these actions against a noncompliant user or other person. Enforcement of pretreatment violations will generally be in accordance with the town's enforcement response plan; however, the director may take other action against any user or other person when the circumstances warrant. Further, the director is empowered to take more than one enforcement action against any noncompliant user of the POTW and sewer collection system.

(Code 1982, § 19-97; Ord. No. 94-036, 12-8-1994; Ord. No. 02-011, 4-11-2002; Ord. No. 06-004, 3-9-2006; Ord. No. 2007-20, 12-13-2007; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-180. Annual publication of significant noncompliance.

At least annually, the director shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of those industrial users which were found to be in significant noncompliance, also referred to as reportable noncompliance in 15A NCAC 2H .0903(b)(10), with applicable pretreatment standards and requirements, during the previous 12 months.

(Code 1982, § 19-98; Ord. No. 94-036, 12-8-1994; Ord. No. 2007-20, 12-13-2007; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-181. Affirmative defenses to discharge violations.

- (a) *Upset.*

- (1) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (2) below, are met.
- (2) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:
- a. An upset occurred and the user can identify the cause(s) of the upset;
 - b. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
 - c. The user has submitted the following information to the director within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):
 1. A description of the discharge and cause of noncompliance;
 2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 3. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

- (3) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- (4) Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- (5) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(b) *Prohibited discharge standards defense.* A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section 36-173(1) of this division or the specific prohibitions in section 36-173(2)(b), (c), and (e-g) of this division if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass-through or interference and that either:

- (1) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass-through or interference; or
- (2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the town was regularly in compliance with its NPDES permit, and, in the case of interference, was in compliance with applicable residual solids use or disposal requirements.

(c) *Bypass.*

- (1) *Allowance.* A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (2) and (3) of this subsection.

(2) *Notice.* Notice of a bypass shall be provided as follows:

- a. If a user knows in advance of the need for a bypass, it shall submit prior notice to the director at least ten days before the date of the bypass, if possible.
- b. A user shall submit oral notice to the director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours of the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(3) *Prohibited except in certain cases.*

- a. Bypass is prohibited, and the director may take an enforcement action against a user for a bypass, unless:
 1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 3. The user submitted notices as required under subsection (2) of this subsection.
- b. The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three conditions listed in subsection (c)(3)a.1. through 3. of this section.

(Code 1982, § 19-99; Ord. No. 94-036, 12-8-1994; Ord. No. 02-011, 4-11-2002; Ord. No. 2007-20, 12-13-2007; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-182. Notices.

(a) Unless specifically provided otherwise, any notice required or permitted to be given by the director or the town pursuant to this division shall be deemed to have been properly given on the date it is deposited in the U.S. mail, postage prepaid, and addressed to the user or applicant at the address shown on any application, permit, bill, or other information available to the director.

(b) Unless specifically provided otherwise, any notice required or permitted to be given by a user or applicant shall be deemed to have been properly given when received by the director.

(c) Unless specifically provided otherwise, any notice or communication required or permitted to be served pursuant to this division shall be deemed to have been properly served if personally delivered to or served upon the user or applicant; or, if mailed registered or certified mail, return receipt requested, and delivered to the user or applicant; or by any other method of service set forth in Rule 4 of the North Carolina Rules of Civil Procedure.

(Code 1982, § 19-100; Ord. No. 94-036, 12-8-1994; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-183. Fat, oil, and grease control.

(a) *Scope and purpose.* The objective of this section is to aid in preventing the introduction and accumulation of fats, oils, and greases into the municipal wastewater system which will or tend to cause or contribute to sanitary sewer blockages and obstructions. Food service establishments and other industrial or commercial establishments generating wastewater containing fats, oils or greases are subject to this section. This section regulates such users by requiring that grease interceptors and other approved strategies be installed, implemented, and maintained in accordance with the provisions hereof.

(b) *Definitions.* The definitions contained in section 36-172 and the following terms, when used in this section, shall apply.

Action level means the concentration based numeric value that the grease interceptor effluent, at the device's outlet tee and prior to mixing with any other waste water from the contributing establishment's property, are expected to achieve on a consistent or stipulated basis.

Common interceptor means one or more interceptors receiving FOG laden wastewater from more than one establishment. Common interceptors may be located at shopping centers, malls, entertainment complexes, sporting arenas, hotels, multi-tenant "flex" spaces, mixed use spaces, and other sites where multiple establishments are connected to a single grease interceptor. The owner of the property on which the common grease interceptor is located shall be primarily responsible for the maintenance, upkeep, and repair of the common interceptor.

Fats, oils, and greases means organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CFR 136, as may be amended from time to time. All are sometimes referred to herein as "grease" or "greases" or "FOG".

Food service establishments or "FSE" means those establishments primarily engaged in activities of preparing, serving, or otherwise making available for consumption foodstuffs and that use one or more of the following preparation activities: Cooking by frying (all methods), baking (all methods), grilling, sauteing, rotisserie cooking, broiling (all methods), boiling blanching, roasting, toasting, or poaching, and infrared heating, searing, barbecuing, and any other food preparation or serving activity that produces a consumable food product in or on a receptacle requiring washing to be reused.

FOG enforcement response plan means the document and written plan and procedures by which the director implements an enforcement strategy applicable to the FOG control and management program established herein. The plan applies to FOG program violations and matters of program noncompliance. Stipulated penalties for specific and programmatic infractions are addressed in the plan and set forth in the town's annual budget ordinance. The director shall make site and case specific determinations of program non-conformance in accordance with this Division 2.

Grease trap or interceptor means a device for separating waterborne greases and grease complexes from wastewater and retaining such greases and grease complexes prior to the wastewater exiting the trap and entering the sanitary sewer collection and treatment system. Grease traps also serve to collect solids that settle, generated by and from activities that subject users to this section, prior to the water exiting the trap and entering the sanitary sewer collection and treatment system. Grease traps and interceptors are sometimes referred to herein as "grease interceptors".

Minimum design capability means the design features of a grease interceptor and its ability or volume required to effectively intercept and retain greases and settled solids from grease-laden wastewaters discharged to the public sanitary sewer.

Noncooking establishments means those establishments primarily engaged in the preparation of precooked foodstuffs that do not include any form of cooking, but that may produce a consumable food product in or on a receptacle requiring washing to be reused.

On-site grease interceptor treatment (sometimes "onsite treatment") means mechanisms or procedures utilized by a user to treat grease interceptor contents on the user's site, followed by the reintroduction of such treated wastewater back into the interceptor. On-site grease interceptor treatment may only be accomplished by a user if the user or the user's contract service provider is permitted by the NC Division of Waste Management as a septage management firm or service provider.

Program acknowledgement certificate means program confirmation documentation issued by the director. The user is required to keep program acknowledgement certificate on premises and produce it upon request of Town of Cary.

Service provider means any third party not in the employment of the user that performs maintenance, repair, and other services on a user's grease interceptor at the user's directive.

User is as defined in section 36-172 for the purpose of this section. Users include property owners who provide common interceptors for one or more independent establishments, including tenants.

- (c) *Grease interceptor installation, maintenance, recordkeeping, and grease removal.*
- (1) Grease interceptors shall be installed and maintained at the user's expense, when a User operates a food service establishment. Grease interceptors may be required in noncooking or cold dairy and frozen foodstuffs establishments and other industrial or commercial establishments when the establishment generates wastewater containing fat or grease and the director determines an interceptor is necessary to prevent contribution or accumulation of grease to the sanitary sewer collection and treatment system. Upon notification by the director or designee that the user is subject to the terms of an enforcement action, as stipulated in the FOG enforcement response plan, said user shall not allow wastewater discharge concentration from subject grease interceptor to exceed an establishment action level of 200 milligrams per liter, expressed as hexane extractable material. All grease interceptors shall be of a type, design, and capacity approved by the director and shall be readily and easily accessible for maintenance and repair, including cleaning and for town inspection. All grease interceptors shall be serviced and emptied of accumulated waste content as required in order to maintain minimum design capability or effective volume of the grease interceptor, but not less often than every 60 days or as permitted in a valid program modification. Users who are required to pass wastewater through a grease interceptor shall:
- a. Provide for a minimum hydraulic retention time of 24 minutes at actual peak flow between the influent and effluent baffles, with 25 percent of the total volume of the grease interceptor being allowed for any food-derived solids to settle or accumulate and floatable grease-derived materials to rise and accumulate, identified hereafter as a solids blanket and grease cap respectively.
 - b. Remove any accumulated grease cap and solids blanket as required, but at intervals of not longer than 60 days at the user's expense, or in accordance with a valid program modification or other director's requirements. Grease interceptors shall be kept free of inorganic solid materials, such as grit, rocks, gravel, sand, eating utensils, cigarettes, shells, towels, rags, etc., which could settle into this solids blanket and thereby reduce the effective volume of the grease interceptor.

- c. If the user performs on-site grease interceptor treatment pursuant to a modification granted under subsection 36-183(g)(5) below, user shall:
 1. Prior to commencement of onsite treatment obtain written approval by and from the director of all processes utilized in said onsite treatment.
 2. If any pumped wastes or other materials removed from the grease interceptor are treated in any fashion on-site and reintroduced back into the grease interceptor as an activity of and after such on-site treatment, the user shall meet the criteria contained in (c)(1)c.3. below.
 3. Attain and adhere to the criteria listed below:
 - a. After 30 minutes of settling time, not more than 3.0 ml/L of settleable solids, as measured in a one liter Imhoff cone shall be allowed, and;
 - b. Within and not more than 24 hours after onsite grease interceptor servicing, not more than two inches of settleable solids and/or grease shall be allowed to have accumulated therein as a result of said operations.
 - c. Service vehicles and equipment used in onsite grease interceptor servicing shall be registered with the utilities department, and as required by the North Carolina Division of Waste Management.
 - d. When servicing grease interceptors service vehicles and equipment shall have onboard, at all times, a certificate of approval for the operations and methods used, issued by the director.
 - e. Any tanks, tankage, or vessel(s) associated with a modification shall be empty upon arrival at the initial FSE user site for which this modification is intended to be applied.
- d. Operate and maintain the grease interceptor to achieve and consistently maintain any applicable grease action level. "Consistent" shall mean any wastewater sample taken from such grease interceptor must meet the terms of numerical limit attainment described in subsection (c)(1). If a user documents that conditions exist ("space constraints") on their establishment site that limit the ability to locate a grease interceptor on the exterior of the establishment, the user may request an interior location for the interceptor. Such request shall contain the following information:
 1. Location of town sewer main and easement in relation to available exterior space outside building.
 2. Existing plumbing layout at or in a site.
 3. A statement of understanding, signed by the user or authorized agent, acknowledging and accepting conditions director may place on permitting an identified interior location. Conditions may include requirements to use alternative mechanisms, devices, procedures, or operations relative to an interior location.

4. Such other information as may be required by the director.
 - e. The use of biological or other additives as a grease degradation or conditioning agent is permissible only upon prior written approval of the director. Any user using biological or other additives shall maintain the trap or interceptor in such a manner that attainment of any grease wastewater, action level, solids blanket or grease cap criteria, goal or directive, as measured from the grease interceptor outlet or interior, is consistently achieved.
 - f. The use of automatic grease removal systems is permissible only upon prior written approval of the director, the lead plumbing inspector of the town, and the Wake County Department of Environmental Services or the US Department of Agriculture. Any user using a grease interceptor located on the interior of the site shall be subject to any operational requirements set forth by the North Carolina Division of Waste Management. Any user using this equipment shall operate the system in such a manner that attainment of the grease wastewater discharge limit, as measured from the unit's outlet, is consistently achieved as required by the director.
 - g. The director may make determinations of grease interceptor adequacy need, design, appropriateness, application, location, modification(s), and conditional usage based on review of all relevant information regarding grease interceptor performance, facility site and building plan review by all regulatory reviewing agencies and may require repairs to, or modification or replacement of grease interceptors.
- (2) The user shall maintain a written record of grease interceptor maintenance for three years. All such records will be available for inspection by the town at all times. These records shall include:
- a. FSE name and physical location;
 - b. Date of grease interceptor service;
 - c. Time of grease interceptor service;
 - d. Name of grease interceptor service company;
 - e. Name and signature of grease interceptor service company agent performing said service;
 - f. Established service frequency and type of service: full pumpout, partial pumpout, on-site treatment (type of nature of operations);
 - g. Number and size of each grease interceptor serviced at FSE location;
 - h. Approximated amount, per best professional judgement of contract service provider, of grease and solids removed from each grease interceptor;
 - i. Total volume of waste removed from each grease interceptor;

- j. Destination of removed wastes, food solids, and wastewater disposal;
 - k. Signature and date of FSE personnel confirming service completion;
 - l. Such other information as required by director.
- (3) No nongrease-laden sources are allowed to be connected to sewer lines intended for grease interceptor service.
- (4) Access manholes shall have an installed diameter of 24 inches, a maximum weight of 50 pounds, and shall be provided over each chamber, interior baffle wall, and each sanitary tee. The access penetrations, commonly referred to as "risers" into the grease interceptor shall also be, at a minimum, 24 inches in diameter. The access manholes shall extend at least to finished grade and be designed and maintained to prevent water inflow or infiltration. The manholes shall also have readily removable covers to facilitate inspection, grease removal, and wastewater sampling activities.
- (5) A user may request a modification to the following requirements of this section. Such request for a modification shall be in writing and shall provide the information set forth below.
- a. The user's grease interceptor pumping frequency. The director may modify the 60-day grease interceptor pump out frequency when the user provides data, and performance criteria relative to the overall effectiveness of a proposed alternate and such can be substantiated by the director. Proposed alternatives may include: Grease interceptor pumping or maintenance matters, bioremediation as a complement to grease interceptor maintenance, grease interceptor selection and sizing criteria, onsite grease interceptor maintenance, and specialized ware washing procedures.
 - b. Grease interceptor maintenance and service procedures. The director may modify the method(s) or procedure(s) utilized service a grease interceptor when the user provides data, and performance criteria relative to the overall effectiveness of a proposed alternate method or procedure and such can be substantiated by the director. If a modification to maintenance and service procedures is permitted it shall be a conditional discharged permit approval.
 - c. Any modification must be approved by the director in written form before implementation by the user or the user's designated service provider. The user shall pay modification fees as set forth in the budget ordinance fee schedule.

(Code 1982, § 19-104; Ord. No. 98-021, 12-10-1998; Ord. No. 06-014, 8-10-2006; Ord. No. 2011-Code-09, 12-15-2011; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 36-184. Severability.

If any provision, paragraph, word, section or article of this division is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

(Ord. No. 06-004, 3-9-2006; Ord. No. 06-014, 8-10-2006; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-185. Conflict.

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this division are hereby repealed to the extent of such inconsistency or conflict.
(Ord. No. 06-004, 3-9-2006; Ord. No. 06-014, 8-10-2006; Ord. No. 2011-Code-09, 12-15-2011)

Sec 36-186. Amendment to certain sections of sewer use ordinance for users in Kit Creek Pump Station Service Area.

(a) At present, the Triangle Wastewater Treatment Plant ("TWWTP"), owned and operated by Durham County treats wastewater that flows to the Kit Creek Pump Station ("KCPS") pursuant to an interlocal agreement. The interlocal agreement imposes certain requirements on the town to ensure that the TWWTP meets its requirements under its NPDES permit and state and federal laws and regulations. To ensure that the town complies with its obligations under the interlocal agreement and any permits, approvals or limits issued thereunder, the following additional uniform requirements apply to users of the wastewater collection and treatment system of the town discharging wastewater to the KCPS and who are located in the KCPS Service Area. Such KCPS Service Area is delineated on Figure 1.

(b) *Industrial Waste survey and local limits.* In addition to the requirements contained in Sec. 36-173(5), users in the KCPS Service Area are subject to the following additional local limits that are more restrictive than those prescribed in Sec. 36-173(5):

| <i>Limits (mg/l)</i> | <i>Pollutant</i> |
|----------------------|------------------|
| 250 | BOD |
| 0.000142 | Mercury, total |
| 0.003 | Arsenic, total |
| 0.003 | Cadmium, total |
| 0.061 | Copper, total |
| 0.021 | Nickel, total |
| 0.005 | Silver, total |

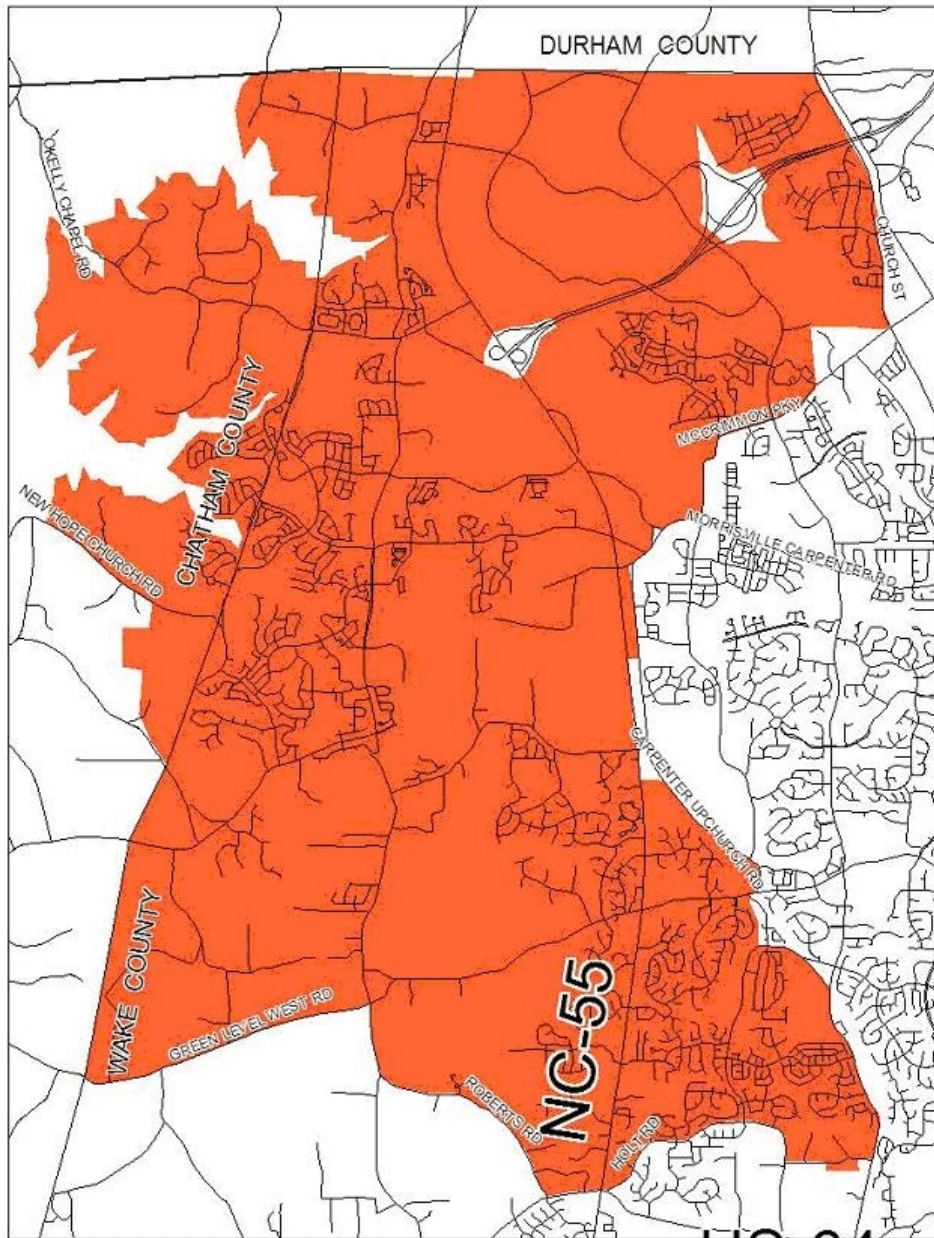
(c) *Prohibited discharge standards.* In addition to the requirements of Sec. 36-173(2), no users in the KCPS Service Area shall discharge wastewater into the POTW that contains, or has the characteristics of, the following:

1. Any wastewater having a pH less than 5.0 or more than 9.5 or wastewater having any other corrosive property capable of causing damage to the POTW, or equipment, unless permitted to do so.
2. Any wastewater containing mercury in concentrations greater than 142 ng/L as measured by EPA test method 1631 and sampled by EPA method 1669.

(d) *Surcharges.* In addition to the requirements of Sec. 36-174(c) all industrial users in the Kit Creek Pump Station Service Area are subject to industrial waste surcharges on all discharges that exceed the following levels or as specified in the Durham County Sewer Use Ordinance, whichever is more stringent:

| <i>Parameter</i> | <i>Levels (mg/L)</i> |
|------------------|----------------------|
| BOD | >250 |
| TSS | >180 |
| Total Phosphorus | >5 |
| TKN | >40 |

(e) All requirements of the town sewer use ordinance that are not amended by this Section 36-186 apply to users located in the KCPS Service Area.



Kit Creek Pump Station Service Area Figure 1.

(Ord. No. 2009-Code-04, 3-12-2009; Ord. No. 2009-Code-10, 8-13-2009; Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-187. Exceptions to definition of significant industrial user.

Subject to Division approval under 15A NCAC 02H .0907(b), the control authority may determine that:

- (a) an industrial user meeting the criteria in part (1) and (2) of the definition of significant industrial user contained in section 36-172 of this division, has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standards or requirements, the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options, and thus is not a significant industrial user.
- (b) an industrial user meeting the criteria in part (3) of the definition of significant industrial user contained in section 36-172 of this division meets the requirements of 40 CFR Part 403.3(v)(2) and thus is a non-significant categorical industrial user.
- (c) an industrial user meeting the criteria in parts (1), (2), or (3) of the definition of significant industrial user contained in section 36-172 of this division meets the requirements of 40 CFR Part 403.12(e)(3) and thus is a middle tier significant industrial user. Sampling and inspection requirements may be reduced as per 40 CFR Parts 403.8(f)(2)(v)(C) and 403.12(e)(3).

(Ord. No. 2011-Code-09, 12-15-2011)

Sec. 36-188. Adjudicatory hearings.

a. *Administrative hearings.* An applicant who receives notice that an application for a permit has been denied; an applicant who receives notice that a permit has been granted subject to conditions the applicant deems unacceptable; a user who receives notice of an assessment of a civil penalty under section 36-179(b); or a user who receives notice of the issuance of an administrative order under section 36-179(a)(4) (all of whom are hereafter referred to as "aggrieved applicant or user") shall have the right, upon filing written demand, to a hearing before a hearing officer designated by the director. In the absence of a designation by the director, the hearing officer may be the town manager or assistant town manager. Such written demand for a hearing shall identify with particularity the aggrieved applicant or user contesting the action; the specific permit provisions or conditions or other issues contested; the reasons for the objection; and any alternate provisions, conditions or terms the aggrieved applicant or user proposes. The written demand for a hearing shall be filed with the director within 30 days of the date of the notice of the action that is being contested. Unless such written demand is filed within the time specified herein, the contested action shall be final and binding and further appeal is barred. For modified permits, only those parts of the permit being modified may be adjudicated. The hearing officer shall conduct a hearing and make a final decision on the contested action within 45 days of the receipt of the written demand for a hearing. The director shall serve a copy of the hearing officer's decision (notice of the decision) on the aggrieved applicant or user in accordance with section 36-182. The decision is a final decision for the purposes of seeking judicial review. The terms and conditions of the permit under appeal shall be:

1. *New permits.* Upon appeal, including judicial review in the general courts of justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit shall be stayed and the permit shall not be in effect until either the conclusion of the appeals process or until the parties reach a mutually agreeable resolution.

2. *Renewed permits.* Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed permit, the terms and conditions of the old permit shall remain in effect until either the conclusion of the appeals process or until the parties reach a mutual resolution; provided, however, that if an application for a renewed permit has been denied, it shall be treated as a new permit.
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. *Official record.* When a decision by the hearing officer is appealed under section 36-188(c) below, 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.
 4. A copy of the final decision of the hearing officer.
 - c. *Judicial review.* Any person against whom a final order or decision of the hearing officer is entered pursuant to the hearing conducted under section 36-188(a) above may seek judicial review of the order or decision by filing a written request within 30 days after the date of the notice of the decision, but not thereafter, with the Superior Court of Wake County. A copy of the written request shall be served on the town, in accordance with the rules of civil procedure. Within 30 days after receipt of the copy of the written request for judicial review, the hearing officer shall transmit to the reviewing court the original official record, or a certified copy thereof, unless otherwise agreed to by the parties or ordered by the court.
(Ord. No. 2011-Code-09, 12-15-2011)

Secs. 36-189—36-202. Reserved.

ARTICLE V. RECLAIMED WATER SYSTEM

Sec. 36-203. Purpose and intent.

It is the town's purpose and intent to establish a reclaimed water system and to extend such system to certain areas of the town where the town council determines that the extension of such a system is practical and economical. Once such reclaimed water is made available to a property, use of reclaimed water will be required for landscape and grounds irrigation systems and will be permitted for other authorized uses. The reclaimed water distribution system will be constructed in sections and phases to provide reclaimed water service to designated areas as determined by the town council and pursuant to the terms and conditions set forth herein.

(Code 1982, § 19-10; Ord. No. 99-013, § 1, 8-12-1999)

CARY CODE OF ORDINANCES

Sec. 36-204. Reclaimed water system part of town utility system and other definitions.

(a) The reclaimed water system is a part of the town of Cary utility system. Reclaimed water facilities are generally recognized by federal and state regulations as part of the sewer system because of their reliance on highly treated wastewater effluent as a supply source. Reclaimed water is, however, a valuable resource that offsets potable water demand, and thus has a relationship with both water and sewer systems. All provisions of Articles I, II and III of Chapter 36, Utilities, shall apply to the reclaimed water system unless otherwise indicated herein. To this end, the terms water system, water pipe, town water, waterworks, water service, water distribution system, water, water meters, water mains and other references to the water system contained in Articles I, II and III shall be deemed to include and mean such portions of the reclaimed water system, unless in conflict with the provisions contained in this Article V, or specifically excluded herein. Among the sections that do not apply to the reclaimed water system are sections 36-34 and 36-81.

(b) For the purpose of this article, the definitions contained in this section shall apply unless otherwise specifically stated.

Available means that a reclaimed water distribution main is or will be located at a property line of a property on which an irrigation system is installed or proposed, or a property proposed to be serviced with reclaimed water.

Cross-connection means any physical connection or arrangement which would allow the movement of fluids between the potable water system and any other piping system, such as the reclaimed water system.

Customer means the town of Cary reclaimed water customer and the actual user of the reclaimed water.

Department means the department of utilities.

Director means the Director of utilities of the town of Cary and his or her designee.

Distribution mains means those conduits used to supply reclaimed water to service lines from transmission mains.

Irrigation system means a device or combination of devices having a hose, pipe, or other conduit installed in the landscape which transmits town water, through which device or combination of devices town water, or a mixture of town water and chemicals is drawn and applied to residential or commercial lawns, landscapes or greenspace.

North Carolina rules means the regulations for reclaimed water and water reuse as stated in the North Carolina administrative code section 15A NCAC 2H.0200 as amended from time to time.

Potable water means potable water treated, produced, purchased and/or delivered by the town of Cary water system.

Reclaimed water means water that has received at least advanced secondary treatment, meets water quality requirements defined by the North Carolina rules and is reused after flowing out of a wastewater treatment facility.

Reclaimed water system means all equipment, piping, valves and associated hardware and other appurtenances, including meters, from the customer's reclaimed water meter back to, and including the reclaimed water production and pumping facility.

Service line means that conduit for reclaimed water from the distribution main to the property line.

Transmission mains means those conduits used to supply reclaimed water from the pumping station or treatment plant to the distribution mains.

(Code 1982, § 19-106; Ord. No. 99-013, § 1, 8-12-1999; Ord. No. 2010-Code-07, 9-16-2010; Ord. No. 2018-Code-03, § 1, 6-28-2018; Ord. No. 2019-Code-04, 10-10-2019)

Sec. 36-205. Generally.

(a) Once reclaimed water is available to property, the property owner may connect to the reclaimed water system upon submission of a fully executed application as required by the director, and upon compliance with all other town requirements. Reclaimed water may be used for irrigation purposes and for other nonpotable water purposes in accordance with federal, state and local ordinances, rules, and regulations. If reclaimed water is to be used for any purpose other than land irrigation, the customer shall obtain prior approval of such use from the director.

(b) As an incentive to development of an initial demonstration phase of this project, customers that have signed letters of intent for the initial phase of the reclaimed water project may have conditions in their agreements with the town that are different from the conditions in this article.
(Code 1982, § 19-107; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-206. Mandatory use of reclaimed water for irrigation systems.

It is unlawful to use potable water for irrigation systems 90 days after a property owner or water customer has been notified by the director that reclaimed water is available to a particular property or site ("notification of availability").

(Code 1982, § 19-108; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-207. Connection to reclaimed water system.

(a) *Customers with existing irrigation systems.* When reclaimed water becomes available to a property, the director shall provide written notice to the town water customer located on that property of such availability. Customers with existing irrigation systems using potable water who desire to continue to maintain such systems using town water, must apply for reclaimed water in accordance with the application procedures specified in this article and must disconnect said systems from the town potable water system and connect to the reclaimed water system within 90 days of such written notice of availability. The director shall have the authority to grant temporary exemptions from this section in the event of reclaimed water shortages or for other good cause, in which case the temporary exemption shall not exceed 180 days.

(b) *Customers with new irrigation systems.* All new irrigation systems designed to use town water constructed after the effective date of this article must connect to the reclaimed water system at construction, if reclaimed water is available to the property. Such connection must be made prior

to, or contemporaneously with connection of other improvements on the property to the town's potable water system. If reclaimed water is not available to a property at the time of construction of an irrigation system, connection to the reclaimed water system must be made within 90 days of notice of availability from the director.

(Code 1982, § 19-109; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-208. Reclaimed water service application requirements.

Applications for reclaimed water service shall be made and will be accepted in the same manner as applications for water and sewer service, subject to the provisions of this article. articles I, II, and III of chapter 36, Utilities outlines the requirements for service. In addition, the town of Cary finance department and the department of development services, inspections and permits division have specific procedures and policies in place for servicing, regulating, billing, and collecting of bills of utility customers. Such policies, along with all policies and procedures concerning enforcement and fining and setting standards for the design and installation utility pipelines and other appurtenances apply to the reclaimed water system, including its design, installation, and maintenance.

(Code 1982, § 19-110; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-209. Installation of lines and easement dedications.

The town will be responsible for reclaimed water service lines to the applicant's property line, provided easements or other access is available to the town. The applicant shall be responsible for all costs and expenses of installation and maintenance of the reclaimed water line and all appurtenances from their property line on their property. In the event the town is required to locate the reclaimed water meter or any other part of the town reclaimed water system on applicant's property, the applicant shall dedicate land or perpetual easements on, over and through applicant's land for the reclaimed water transmission and distribution facilities as necessary to provide reclaimed water service to applicant's property. No reclaimed water lines or other facilities will be installed or accepted by the town for maintenance unless such lines or facilities are in a dedicated public right-of-way or dedicated public easement. Any new easement shall be adequately sized to accommodate construction and maintenance of the reclaimed water line or system component. No obstruction of any kind shall be planted, built, or otherwise created within the limits of the easement or right-of-way without written permission of the director. Details of the town's requirements for easements can be found in this chapter, utilities and the applicable sections of the towns technical specifications. Delays by applicant in granting easements or dedications will result in the loss of potable water for irrigation, if more than 90 days have passed from notification of availability and if no good cause is shown for the failure to grant the necessary easements.

(Code 1982, § 19-111; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-210. Meter requirements.

Metering of reclaimed water is mandatory. There will be no exceptions to this requirement. Metering requirements are outlined in this chapter and in the towns standard specifications.

(Code 1982, § 19-112; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-211. Permits.

All applicants for reclaimed water, at the applicant's own cost and expense, shall apply for, obtain and meet all requirements of all necessary permits, licenses, conditions, and approvals for the initial construction and the operation of the onsite reclaimed water facilities and the use of reclaimed water.

(Code 1982, § 19-113; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-212. Authority to adopt rules and regulations.

The town council may by resolution establish reasonable rules and regulations concerning the reclaimed water system and the use of reclaimed water. Additional standard policies and procedures may be adopted concerning the reclaimed water system. Insofar as there is not conflict with the provisions of this article, town policies and procedures pertaining to potable water service shall apply.

(Code 1982, § 19-114; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-213. Authority to adopt rates, fees and charges.

The town council may by resolution, duly adopted after a public hearing, establish rates, fees and charges for the reclaimed water system and provide terms and conditions for the payment and collection of same. After the initial establishment of a reclaimed water rate, and fee or charge for connection to the reclaimed water system, these rates, fees and charges will normally be reviewed and adjusted annually as part of the annual budgeting cycle, as provided in article I.

(Code 1982, § 19-115; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-214. Priorities for extending reclaimed water service.

The town council will establish priorities for extension of the reclaimed water system, as it does for water and sewer system extensions. The town council may establish priorities for extension of service outside the utility service boundaries. Provision of reclaimed water service outside the town limits will be considered on a case-by-case basis and may be time limited to benefit the town.

(Code 1982, § 19-116; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-215. Conditions of reclaimed water service use.

(a) *General.* The town may terminate, discontinue, or suspend reclaimed water service in accordance with this chapter and town policies and procedures in the event of (i) a violation of this article or town regulations, policies or procedures, (ii) failure to pay bills by the due date, (iii) tampering with any utility service, (iv) the existence of a plumbing cross-connections with another water source, or (v) any customer condition or action that may be detrimental to the town's potable water system, its reclaimed water system, or its wastewater collection and treatment system. The town may, at its option, suspend service until the condition is corrected and all costs due the town are paid. These costs may include delinquent billings, connection charges, and payment for any

damages caused to the potable water, reclaimed water, or wastewater collection or water distribution system. The details of the town's procedures for discontinuing service are found in this chapter and in appropriate town policies and finance department procedures.

(b) *Cross-connection control.* There shall be no cross connections between the reclaimed water system on a customer's property and the town potable water system. In all premises where reclaimed water service is provided, the public or private potable water supply shall be protected by an approved cross-connection control plan. The plan for cross-connection control must be submitted with the application for reclaimed water service and must receive the prior approval of the director. In the event a cross-connection is found, the cross-connection shall be immediately disconnected, and reclaimed water service will be suspended. Before reconnection of the reclaimed water service, the public potable water system shall be protected against the possibility of future cross connections to the director's satisfaction. Additional protection against cross-connection may be required as specified by the director at the customer's expense before reclaimed water service is resumed.

(c) *Right of entry.* In addition to the authority to enter property contained in section 36-12, the director may enter any premises to determine the presence of any cross connections or other potential hazards to the town potable water system. Each customer of reclaimed water service shall, by completing the reclaimed water application, give written consent to such entry upon the customer's premises.

(Code 1982, § 19-117; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-216. Service interruption.

The town reserves the right to temporarily discontinue service to any portion or all of the reclaimed water system as deemed necessary by the director. In addition, the director shall have the authority to establish schedules which restrict the use of reclaimed water at certain times in order to reduce maximum pressure demands on the system and to regulate usage during periods of limited reclaimed water availability. This authority is in addition to the water conservation provisions of article III of this chapter, and the disclaimer of liability contained in section 36-10.

(Code 1982, § 19-118; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-217. Maintenance by customer.

The property owner and/or customer shall be responsible for the maintenance of all reclaimed water lines and appurtenances on the customer's property, unless the meter was, of necessity, located beyond the customer's property line, in which case the customer shall be responsible for all reclaimed water lines and appurtenances beyond the meter. The town reserves the right to disconnect the service to any property when the reclaimed water system and appurtenances are not properly maintained. In addition, should the customer require reclaimed water at different pressures, or different quality, or in any way different from that normally supplied by the town, the customer shall be responsible for the necessary devices to make adjustments and for obtaining approval by the director.

(Code 1982, § 19-119; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-218. Conservation of water resources.

It is the policy of the town of Cary to wisely use natural resources. In addition to all other conservation measures contained in this chapter the town may terminate, suspend or discontinue reclaimed water service if customer usage of reclaimed water varies substantially from the overall loading rates outlined in the customer's application for service.

(Code 1982, § 19-120; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-219. Right to refuse service.

The town makes no guarantees that reclaimed water service will be provided, or, once provided, continued. The town may, at any time, and from time to time, refuse to extend or suspend or terminate service on the basis of a use detrimental to the system, an inadequate supply of reclaimed water, the failure to pay required fees, or for any other reason which, in the judgment of the director, will cause the extension not to be to the benefit of the town.

(Code 1982, § 19-121; Ord. No. 99-013, § 1, 8-12-1999)

Sec. 36-220. Ownership by town.

In accordance with articles I, II and III, all reclaimed water facilities and appurtenances within dedicated public easements when constructed or accepted by the town, shall become and remain the property of the town. No person shall by payment of any charges provided herein, or by causing any construction of facilities accepted by the town, acquire any interest or right in any of these facilities or any portion thereof, other than the privilege of having their property connected thereto for reclaimed water service in accordance with this article and any amendments thereof.

(Code 1982, § 19-122; Ord. No. 99-013, § 1, 8-12-1999)