

ANATOMY of a SEWER USE ORDINANCE

Industry Day 2020

SUO Model Language

- Presentation today will review most current DWQ Model SUO language
- A copy of this document is provided
- The State of North Carolina .0900 rules were revised effective April 1, 2011 with the exception of new calculations for SNC and SNC applicability to non-SIUs, which both became effective January 1, 2012.
- There are several dramatic changes in the 2012 regulations that affect the SUO such as the definitions of Significant Industrial User and Significant Non-Compliance.

Legal Authority

- The legal authority is found in Local Law in some form of Ordinance or Code.
- Federal and State regulations state that a municipality must have the authority but this does not grant them the authority.
- Federal Pretreatment Regulations alone are not sufficient to run a local pretreatment program.
- The Ordinance or Code must be passed by the local government.



General Provisions

- Purpose and Policy
 - Why and how the program will be implemented
- Definitions
 - Specific to the Ordinance/Code
- Abbreviations/Acronyms
 - Specific to those used in the Ordinance/Code

Applicability

- Ordinance shall apply to all users of the wastewater system, both inside and outside the corporate limits.
- By discharging wastewater into the municipal wastewater system, industrial users located inside and outside the City limits agree to comply with the terms and conditions established in the Ordinance, as well as any permits, enforcement actions, or orders issued hereunder.

General SUO Requirements

- Prohibited Discharge Standards
 - General Prohibitions [from 40 CFR 403.5(a)]
 - POTW Interference and POTW Pass-Through
 - Specific Prohibitions [from 40 CFR 403.5(b)]
 - Must list the 8 Federal specific prohibitions
 - Heat, pH, solids, fire or explosive, oxygen demanding waste, petroleum, toxic gases, trucked wastes discharged only at designated sites

Specific Prohibitions

- Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21





Specific Prohibitions

- Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0 unless the POTW is specifically designed to accommodate such discharges.



Specific Prohibitions

- Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference





Specific Prohibitions

- Any pollutant, including oxygen demanding pollutants (BOD,etc) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW.
- Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

Specific Prohibitions

- Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40 degrees Centigrade (104 degrees Fahrenheit) unless the Approval Authority (State), upon request of the POTW, approves alternate temperature limits.

Specific Prohibitions

- Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- Any trucked or hauled pollutants, except at discharge points designated by the POTW.



Additional Specific Prohibitions

- EPA model SUO lists 18 prohibitions
- NC model SUO list 23 prohibitions

Examples: Radioactive wastes, sludges from industrial waste, medical waste, detergents, ammonia compounds that produce metallic complexes, hazardous waste and storm water

General SUO Requirements

- Categorical Pretreatment Standards
- Issued by U.S. EPA-Applicable Nationwide
 - 40 CFR Parts 405-471
 - Apply to specific industrial processes identified by EPA
 - These standards are generally placed into SUO by reference.

Categorical Regulations



General SUO Requirements

■ Local Limits

- Established by each POTW using site-specific data and address POTW-specific issues
 - Different NPDES Permit limits at POTW
 - NPDES BOD limits range from 30 mg/l to 4 mg/l
 - Different size/types of POTW receiving streams
 - “Trout Waters”, “Nutrient Sensitive Waters”
 - Different POTW treatment processes
 - Different types of sludge disposal
 - Land application, incineration



Local Limits

- *Once established, local limits become Federal pretreatment standards and must be enforced as such*
- Types of Local Limits
 - Uniform Concentration
 - Every SIU has same limits
 - SIU-specific Limits
 - Every SIU may have a different limit

General SUO Requirements

- State Requirements
 - State Requirements and limitations will be applied where more stringent than Federal requirements
- Right of Revision
 - Local regulations can be more stringent than Federal or State requirements if necessary to protect the POTW

General SUO Requirements

- Dilution
 - No user shall increase the use of dilution water to meet pretreatment regulations
- Pretreatment of Wastewater
 - Users may be required to install treatment to meet Federal, State, or local limits
 - System must be provided, operated and maintained by the user at their expense



Other General Requirements

- Accidental Discharge/Slug Control Plans
- Hauled Wastewater
- Flow Equalization
- Installation of Sampling Equipment/Flow Meters
- Grease Section
 - (Fats, Oils & Grease)





Fees

- A POTW may adopt reasonable fees for reimbursement of costs of setting up and operating a pretreatment program which may include:
 - Permitting fees
 - Application fees
 - Sampling fees
 - High Strength Surcharge fees



Fees Continued

- Monitoring, inspection, and surveillance procedures fees
 - including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by user
- Fees for reviewing and responding to accidental discharge procedures and construction
- Any other fee that the control authority deems necessary to carry out the requirements on the pretreatment program

Wastewater Discharge Permit

- SUO will include:
 - Who Needs A Permit to Discharge Wastewater?
 - All Significant Industrial Users
 - Other Industrial Users [optional by POTW]
 - How to Apply for an SIU Permit
 - Permit Application Contents
 - SIU Permit Application Review and Evaluation
 - Draft Permit/Permit Synopsis/Final Action/Appeals Process

Permit Modification

- To incorporate any new or revised Federal, State, or local pretreatment standard
- To address significant changes in the user's processes
- A change in the POTW that requires either a temporary or permanent reduction of discharge
- Information that discharge poses a threat to the POTW, personnel, or the receiving waters

Modification Continued

- Violation of limits or conditions of permit
- Failure to disclose all relevant facts in application form
- Correct typographical or other errors
- To reflect a transfer of ownership or operation to a new owner
- A change in compliance schedule

Permit Conditions

- 15 Separate Conditions listed in Model SUO including:
 - Statement of duration, transfer and reissuance
 - Limits
 - Compliance Schedules
 - Requirement to submit reports
 - Monitoring Requirements

General Reporting Requirements

- Periodic Compliance Reports
- Reports of Changed Conditions
- Reports of Potential Problems
- Notice of Violation/Repeat Sampling and Reporting
- Reports from Unpermitted Users
- Notification of the Discharge of Hazardous Waste



Other Requirements

- Analytical Requirements
 - 40 CFR Part 136
- Sample Collection
 - Authority to Require
- Document Submittal
 - Due dates and accepted method(s) of submittal
- Record Keeping
 - Maintain for 3 years
 - Electronic Reporting



Compliance Monitoring

- Compliance monitoring covers not only sampling requirements but also inspection requirements
 - Right to enter at reasonable times
 - Right to inspect for compliance
 - Right to take independent samples
 - Right to require installation of monitoring equipment
 - Right to inspect and copy records



Search Warrant

- IF an SIU refuses access to the property and the POTW is able to demonstrate probable cause to believe that there may be a violation of the ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance, or to protect the overall public health, safety and welfare of the community, then a search warrant may be sought.

Confidential Information

- Information and data from reports, surveys, wastewater discharge permit applications, wastewater discharge permits and monitoring programs and from inspections and sampling activities, shall be available to the public without restriction unless it has been deemed confidential
- *Effluent data can never be deemed confidential*

Confidential Information

- Request must be made at the time of submission of the information or data.
- If the user requests, and is able to demonstrate that the release of such information would violate trade secrets, such information should be held confidential.

Enforcement

- SUO should list enforcement options available to POTW
 - Notice of Violation
 - Consent Orders
 - Show Cause Hearing
 - Administrative Orders
 - Emergency Suspensions
 - Cease & Desist Orders
 - Termination of Permit



Civil Penalties

- Civil penalties may be assessed if a user violates any provision of the SUO, wastewater discharge permit, or order issued, or any other pretreatment standard or requirement.
- Maximum civil penalty of \$25,000 per violation per day.
- In the case of a monthly or long-term average discharge limit, penalties may accrue for each day during the period of the violation.

Other Available Remedies:

Criminal Prosecution

- Suspected Criminal Violations may be directed to the POTW Attorney/District Attorney and/or EPA Criminal Investigative Division
 - User who willfully or negligently violates any provision of the ordinance, a wastewater discharge permit, or order issued, or other pretreatment requirement
 - User who willfully or negligently fails to apply for a pretreatment permit

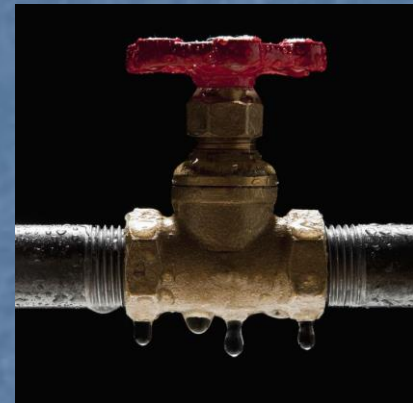
Other Available Remedies:

Criminal Prosecution

- User who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage
- User who knowingly makes false statements, representations, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained pursuant to the ordinance, permit, or order or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or methods

Other Enforcement Options

- Remedies Nonexclusive
- Injunctive Relief
- Water Supply Severance (Optional)
- Performance Bonds (Optional)
- Liability Insurance (Optional)
- Informant Rewards (Optional)
- Environmental Education (Optional)



Annual Publication

40 CFR Part 403.8(f)(2)(vii)

- The POTW must publish annually, in a newspaper of general circulation that provides meaningful public notice with the POTW's jurisdiction(s), a list of the users which, during the previous twelve (12) months, were in significant noncompliance (SNC) with applicable pretreatment standards and requirements.

Annual Publication

40 CFR Part 403.8(f)(2)(vii)

Usually consider only SIUs for this

- As of April 2011...EPA said
 - Significant Non-Compliance and publication for *any Industrial User* that...
 - Causes interference or pass-through
 - Causes POTW to use emergency suspension of service
 - Has other violation that is deemed SNC by POTW

Appeals and Hearings

- An applicant whose permit is denied, terminated, suspended or granted subject to conditions he deems unacceptable, or a user assessed a civil penalty, or administrative order shall have the right to an adjudicatory hearing before a hearing officer.

Appeals and Hearings

- Must have a process for appeal of actions or decisions made by the Control Authority
 - A written request must identify the issues to be contested and must be submitted within the specified time frame
 - Control authority chooses the level of the adjudicatory hearing
 - Appeal process must be conducted in accordance with Control Authority hearing procedures

Appeals and Hearings

EXAMPLES OF APPEAL PROCESS FOR POTW ACTIONS

Appeal Directly to superior court	Appeal to City Council or Board of Commissioners	Appeal to POTW Director	Reconsideration Petition to Pretreatment Coordinator
	Appeal to superior court	Appeal to City Council or Board of Commissioners	Impartial Hearing Officer (PT Coordinator from another City) recommends action to POTW Director
		Appeal to superior court	Appeal to City Council or Board of Commissioners
			Appeal to superior court

Affirmative Defense

[from 40 CFR 403.5(a)(2)]

- User has “affirmative defense” IF
 - User did not know or have reason to know that its discharge alone or in combination with other sources would cause pass through or interference (at the POTW)
 - User was in compliance with local limit designed to prevent pass through/interference
 - If no local limit was developed and user’s discharge did not change substantially from when POTW was in compliance with NPDES permit limits

Affirmative Defense

[from 40 CFR 403.5(a)(2)]

- Affirmative Defense ***applies*** to:
 - Pass through/interference
 - Solids, oxygen demanding pollutants, heat, petroleum, toxic gases
- Affirmative Defense **DOES NOT** apply to:
 - Fire or explosion hazard, pH, hauled waste

Affirmative Defenses

- For temporary noncompliance with pretreatment standards (40 CFR Part 403.16)
 - **Upset** means an exceptional incident in where there is unintentional and temporary noncompliance with effluent limitations of permit because of factors beyond the control of the user. *Upset does not include noncompliance caused by operational error, improperly designed facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.*

Bypass of Treatment Units

- Bypass is prohibited and enforcement can be taken unless:
 - Unavoidable to prevent loss of life, personal injury, or severe property damage.
 - No feasible alternatives to the bypass, such as auxiliary treatment, holding capability or maintenance during normal periods of equipment downtime.



Bypass of Treatment Units

- Aware of Bypass
 - A user may bypass treatment units only if it is for essential maintenance and the discharge is in compliance with pretreatment standards
 - If a user knows in advance of the need for a bypass, it must provide notice to the POTW at least 10 days before the bypass, if possible

Bypass of Treatment Units

- Unanticipated Bypass
 - A user must provide oral notice of an unanticipated bypass that exceeds pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass.
 - Written report must be provided within five (5) days of the time the user becomes aware of the bypass.

Severability

- This section means that if any part of the ordinance is found invalid by a court, the remaining sections are valid and in full force.



Conflict

- All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of any inconsistency or conflict.

Effective Date

- This section simply provides a date at which time the legal authority or ordinance will become effective.



State Approval

- 15A NCAC 2H .0907 requires that any modification to a SUO must be approved by the State.
- The State often takes several months (~90 days) to approve the SUO changes.
- POTWs will usually hold a public meeting or public hearing on proposed changes to the Sewer Use Ordinance.
- Most POTWs also separately notify SIUs of the proposed changes

QUESTIONS???