NON-DOMESTIC USERS

ENFORCEMENT RESPONSE PLAN

NEW CASTLE COUNTY, DELAWARE

DEPARTMENT OF SPECIAL SERVICES
ENGINEERING DIVISION
ENVIRONMENTAL COMPLIANCE

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AS AMENDED May 19, 2011

NEW CASTLE COUNTY
DEPARTMENT OF SPECIAL SERVICES
REGULATIONS FOR NON-DOMESTIC USERS
INCLUDING THE
INDUSTRIAL PRETREATMENT PROGRAM, WASTE HAULERS AND COMMERICAL FOOD ESTABLISHMENTS

ENFORCEMENT RESPONSE PLAN

I. General Information

A. **Scope:** This plan applies to all Non-Domestic Users including Commercial Food Establishments (CFEs") of the New Castle County ("County") POTW or City of Wilmington ("City") POTW, which are within the jurisdiction of New Castle County, City of Newark, or Town of Middletown. Dischargers of hauled wastes from domestic sources such as septic tanks, cess pool, holding tanks and temporary toilet facilities shall not be subject to this plan; but dischargers obtaining special approval under Sec. 38.03.008 (A) (4) (a) of the NCC Code shall be subject to this Enforcement Response Plan

B. **Purpose:** This document establishes the enforcement mechanisms for violations of the County Code Chapter 38, Article 2, Division 38.02.700 ("Non-Domestic Regulations") and Wastewater Discharge Permits. Violations of the County's regulations will be assessed points in accordance with their severity and number as described in the Enforcement Response Guide (pages i to iii). Point assessments will be managed in accordance with the Point Assessment Criteria (page 4). The Enforcement Response Timetable (page 2) lists the time frame for initiation of enforcement action by the County.

C. **Responsibilities:**

1. General Manager ("GM") of the Department of Special Services ("Department") - The GM (or other representative authorized by the County Executive) has the approval authority for all County control mechanisms and assigns responsibilities for program management and approval of enforcement actions.

2. Environmental Compliance Manager ("ECM") - The ECM has immediate authority over the Pretreatment Coordinator, Environmental Administrator and FOG Engineer and is responsible for program approvals, and oversight of the pretreatment and commercial food establishment programs.

3. Environmental Engineer I ("EEI") - The EEI serves as the Pretreatment Coordinator and is responsible for management of the pretreatment program in accordance with Federal, State, and local regulatory requirements. The Pretreatment Coordinator is accountable for daily implementation of the pretreatment and Waste Haulers program, including management of monitoring data, inspection of facilities, compliance screening, enforcement actions, and management of appropriate industrial user data in accordance with established EPA guidelines.

4. Environmental Administrator("EA") - The EA serves as the Laboratory Manager and is responsible for assisting the Department with performing initial compliance screening of analysis results and monitoring non-domestic users, including sampling and analysis of non-domestic discharges in accordance with accepted procedures. The EA shall assume the additional responsibilities of the EEI in their absence.

5. Fats, Oils, and Grease ("FOG") Engineer – The FOG Engineer serves as the coordinator of the grease management program. They are responsible for the daily implementation of this program including inspections, special approval

of non-conforming grease traps, and enforcement.

II. Compliance Screening

A. **Self Monitoring** – Industrial Users ("IUs") will conduct self-monitoring as prescribed in the discharge permit and submit reports semi-annually. Compliance screening will be conducted by the Pretreatment Coordinator generally within 30 days of receipt of report.

B. **POTW Monitoring** - Non-Domestic users will be periodically monitored by New Castle County Laboratory personnel as deemed necessary by the County. Results will be submitted to the Pretreatment Coordinator for further action, if necessary.

III. Enforcement Responses

A. **Enforcement Responses** - Informal Responses are listed below and marked with an asterisk (*). Informal responses shall be used to provide notification of minor violation(s) of pretreatment standards or requirements and to seek explanation and correction of the noncompliance. Formal Enforcement Responses are described in Chapter 38, Article 3 of the New Castle County Code. Listed below in order of severity are the types of enforcement actions along with the responding County official and the timetable for action:

Enforcement Response	Responsible Official	Timetable**
*Phone Call	Environmental/FOG Engineer	14 business days
*Non-Compliance Notification	Environmental/FOG Engineer	14 business days
Notice of Violation	Environmental Compliance Manager	14 business days
Compliance Schedule	Environmental Compliance Manager	30 days
Show Cause Hearing	General Manager	60 days
Administrative Order	General Manager	60 days after Hearing
Termination of Service	General Manager	120 days

B. **Indicates the amount of time in which the County shall initiate enforcement action after detection of the deficiencies or violation(s), including but not limited to orders, compliance schedules and permit violations. The timetable for action may be increased by the County due to extenuating circumstances. The County must document these extenuating circumstances in the facility file. Violation(s) or deficiencies which endanger health, property, or the environment are considered emergencies and shall receive immediate attention.

In addition to the above enforcement actions, the County may exercise its rights to file a civil or criminal suit under existing local, County, State, or Federal law.

IV. Legal Authority

A. **Local** – Non-Domestic Regulations are incorporated into Chapter 38, Division 38.02.700 of the New Castle County Code and empowers the Department with the legal authority necessary to control non-domestic discharges within the County.

B. **State / Federal** - Specifically, the Non-Domestic Regulations satisfy the Federal and State (NPDES) pretreatment requirements for legal authority contained in 40 CFR Part 403.8 as follows:

1. By mandating compliance with applicable Federal, State and local pretreatment standards for Non-Domestic Users.

2. By authorizing New Castle County to inspect and conduct surveillance to verify the compliance status of Non-Domestic Users.

3. By requiring Non-Domestic Users to submit self monitoring reports and other data.

4. By providing authority for New Castle County to bring administrative, civil or criminal actions to remedy noncompliance with pretreatment standards.

5. By giving New Castle County the authority to deny or condition new or increased contributions of pollutants by Non-Domestic Users.

6. By requiring Non-Domestic Users to apply and obtain a Wastewater Discharge Permit if necessary.

7. By empowering New Castle County to establish an implementation schedule for pretreatment facilities in each permit.

By empowering the Department to publish annually in the largest daily newspaper published in New Castle County the list of Industrial Users which in the previous 12 months were in significant non-compliance as required in 40 C.F.R. 403.8(f)(2)(viii)

V. Definition of Significant Noncompliance

A Non-Domestic User is in Significant Noncompliance if its violation meets one or more of the following criteria:

(A) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

(B) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(C) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);

(D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;

(E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(F) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(G) Failure to accurately report noncompliance;

(H) Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local pretreatment program.

VI. Point Assessment Criteria and Definitions

For the purpose of managing point assessments, the following shall apply:

A. Points shall be accumulated on a running 180 day basis.

B. When the total number of points equals or exceeds four (4) points during a 180 day period as specified in Appendix A, the Pretreatment Coordinator/FOG Engineer shall initiate a show cause hearing to determine appropriate enforcement actions which may include assessment of fines, revocation of the permit, and/or termination of service. In general, enforcement actions shall escalate where previous actions have not resulted in compliance. Assessment of fines shall be submitted to the General Manager for approval.

C. When a permit is modified to reflect a change in ownership or a non-domestic user changes ownership, all accumulated points shall be automatically voided. However, this voidance of points shall not apply if the modification only reflects a name change or an attempt to evade the permit requirements or enforcement actions. Determination of the suitability of point voidance shall be at the sole discretion of the County.

D. Deficiencies or violations occurring as a result of circumstances beyond the Permittee's reasonable control as determined by the County shall not be assessed points.

E. For the purposes of calculating timeframes herein, a timeframe of 20 days or less shall be calculated using "business days" excluding weekends and major holidays. Timeframes of 21 days or more shall be calculated using calander days. If the last day falls on a weekend or legal holiday, the next business day becomes the legal "due date".

F. The term "report" shall be defined as any required submission as specified in Chapter 38 of the New Castle County Code.

G. A "recurring" violation shall be defined as all subsequent violations after the first violation during the time period specified.

VII. Basis for Fines

In determining the amount of any fine(s) levied, the General Manager shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the Non-Domestic User's violation, corrective actions taken or to be taken by the Non-Domestic User, the compliance history of the Non-Domestic User, and any other factors the General Manager deems appropriate.

VII. Updates

This document shall be updated at least every five (5) years.

Approved: A/ General Manager, Department of Special Services

Date: 5/26/11

Appendix A to Enforcement Response Plan

Enforcement Response Guide

Noncompliance	*Nature of Violation*	*Point(s)*	*Enforcement Response(s)*
Technical Violations			
1. Illegal Discharge (Nonpermitted Facilities)	a. IU unaware of requirement; No harm to POTW/Environment	0.5	NCN with Application
	b. IU aware of requirement (evidence of intent); No harm to POTW/Environment	1.0	NOV
	c. IU unaware of requirement; Harm to POTW/Environment	3.0	Compliance Schedule
	d. IU fails to apply for permit after notice from POTW	3.0	Compliance Schedule
	e. IU aware of requirement (evidence of intent); Harm to POTW/Environment	4.0	Refer to Point Assessment Criteria, Item B
2. Nonpermitted Discharge (Permitted Facilities)	a. Permit Application not submitted by IU within required time frame or failure to notify of additional or changed waste stream	1.0	NOV
	b. IU fails to apply for permit addendum after receiving notice	3.0	Compliance Schedule
3. Exceedance of Local/Federal Standard or Permit Limit	a. Isolated, nonsignificant - Including pH	0.5	NCN
	b. Isolated, significant No harm to POTW/Environment	1.0	NOV
	c. Recurring - during previous 12 months No harm to POTW/Environment	2.0	Compliance Schedule
	d. Harm to POTW/Environment	4.0	Refer to Point Assessment Criteria, Item B
4. pH Excursions	a. Monthly monitoring indicates noncompliance 3 consecutive months	1.0	NOV
	1.) Isolated, nonsignificant	0.0	NCN
	b. Continuous monitoring indicates below 5.0 or above 11.0 for a period of greater than one (1) hour during reporting period; No harm to POTW/Environ	1.0	NOV
	c. Continuous monitoring indicates below 5.0 or above 11.0 for a period of greater than one (1) hour during reporting period; Harm to POTW/ Environment	4.0	Refer to Point Assessment Criteria, Item B
5. Failure to Analyze or Reanalyze	a. Failure to monitor all pollutants as required on permit	0.5	NCN
	b. Recurring Failure to Monitor during previous 12 months	3.0	Compliance Schedule

Key to abbreviations
NCN = Noncompliance Notification
NOV = Notice of Violation
Non-Domestic User

Appendix A to Enforcement Response Plan

Enforcement Response Guide

Noncompliance	*Nature of Violation*	*Point(s)*	*Enforcement Response*
Technical Violations, continued			
6. Failure to Install Monitoring Equipment	a. Initial Violation	1.0	NOV
	b. Recurring violation during previous 6 months	3.0	Compliance Schedule
7. Dilution used in lieu of Treatment	a. Initial Violation	1.0	NOV
	b. Recurring during previous 12 months	3.0	Compliance Schedule
8. Failure to mitigate noncompliance or halt production	a. No harm to POTW/Environment	1.0	NOV
	b. Harm to POTW/Environment	4.0	Refer to Point Assessment Criteria, Item B
9. Failure to properly operate and maintain pretreatment equipment (including monitoring and metering)	a. No harm to POTW/Environment	1.0	NOV
	b. Harm to POTW/Environment	2.0	NOV
10. Improper Sampling	a. Unintentional sampling at improper location or improper sampling technique	0.5	NCN
	b. Evidence of intent	3.0	Compliance Schedule
11. Best Management Practice Violation	a. Initial Violation	1.0	NOV
	b. Recurring during previous 12 months	3.0	Compliance Schedule
12. Waste Hauler Violations impacting the Waste Depository and the POTW	a. Initial Violation	1.0	NOV
	b. Recurring during previous 6 months	2.0	Compliance Schedule
Reporting Violations			
13. Report improperly signed or certified, or not submitted in prescribed format;	a. Initial	0.5	NCN
	b. After notification	1.0	NOV
14. Late submittal of report	a. 24 hr notification or 5 day letter for self-monitoring violation	0.5	NCN
	b. Less than 30 days	0.5	NCN
	c. More than 30 days	1.0	NOV
	d. Recurring	3.0	Compliance Schedule
15 . Failure to report spill or new/changed discharge	a. No harm to POTW/Environment, No evidence of intent	1.0	NOV
	b. Harm to POTW/Environment, No evidence of intent	3.0	Compliance Schedule
	c. Evidence of intent (Harm or no harm), or recurring failure to report	4.0	Refer to Point Assessment Criteria, Item B

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Enforcement Response Guide

Noncompliance	*Nature of Violation*	*Point(s)*	*Enforcement Response*
Reporting Violations, continued			
16. Compliance Schedules	a. Late submittal of compliance schedule and/or required milestone updates		
	Less than 30 days	0.5	NCN
	More than 30 days	1.0	NOV
	b. Milestone delayed by less than 30 days with sufficient cause	0.5	NCN
	c. Milestone delayed by more than 30 days with sufficient cause	1.0	NOV
	d. Milestone delayed by less than 30 days without sufficient cause	2.0	NOV
	e. Milestone delayed by more than 30 days withou sufficient cause	4.0	Refer to Point Assessment Criteria, Item B
17. Entry denial, limited access, and/or refusal to present records	a. Initial	2.0	NOV
	b. After Notification	4.0	Refer to Point Assessment Criteria, Item B
18. Recordkeeping	a. Failure to maintain required records	0.5	NCN
	b. Recurring failure to maintain records	3.0	Compliance Schedule
	c. Falsification	4.0	Refer to Point Assessment Criteria, Item B
19. Failure to report additional monitoring	a. No violations of permit limits	1.0	NOV
	b. Violation(s) of permit limits	2.0	NOV
	c. Recurring failure to report	3.0	Compliance Schedule
20. Failure to pay required fees or fines	a. Within 30 days	2.0	NOV
	b. More than 30 days	4.0	Refer to Point Assessment Criteria, Item B

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