



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of June 17, 2008**

DATE: June 4, 2008

SUBJECT: Ordinance to amend, reenact, and recodify Chapter 26 (Utilities) of the Arlington County Code to comply with new federal and state pretreatment regulations.

C. M. RECOMMENDATION:

Approve the proposed amendments in Attachment A to Chapter 26 of the Arlington County Code (Utilities).

ISSUE: This is a modification of Arlington County Code, Chapter 26 (Utilities), to comply with the new federal and state pretreatment regulations.

SUMMARY: The Environmental Protection Agency recently approved new requirements for the industrial pretreatment program, which allows more flexibility in regulating commercial users discharging to the Arlington Water Pollution Control Plant. The regulatory changes include allowing the use of best management practices (BMP's) in wastewater permits, the waiving of monitoring for pollutants not present, allowing the County to classify a listed significant user as non-significant based upon having very small process flows, requiring all permitted users to have a spill control plan, and requiring public notice for significant non-compliance to be placed in a newspaper that provides for meaningful public notice. These changes allow Arlington to effectively protect the environment at lower overall costs to the regulated/impacted businesses.

BACKGROUND: The national wastewater pretreatment regulations promulgated by the Environmental Protection Agency require Arlington County to develop, implement, and maintain an Industrial Pretreatment Program. The County adopted the Pretreatment Ordinance Chapter 26 (Utilities), in 1984, which provides the necessary legal authority to control the introduction of toxic and other regulated pollutants into the County's sewage collection system and the Water Pollution Control Plant. The Environmental Protection Agency periodically reviews and revises the national pretreatment regulations, and the proposed changes to the Arlington Code contained in Attachment A are either required or recommended by the national pretreatment regulation revisions.

County Manager: _____

County Attorney: _____

Staff: Lawrence Slattery, Dennis Wisler

DISCUSSION: In general, pretreatment program requirements mandated by the Environmental Protection Agency are very rigid. They specify what must be monitored by regulated commercial users, how the users must report conditions at their facility, and how the treatment plant must enforce and control the regulated users. The new regulations allow the County some flexibility in controlling and monitoring the regulated community.

The first major change is the use of best management practices (BMP's) to control the discharge of pollutants from a regulated user. BMP's are procedures or practices that minimize or eliminate the generation of pollutants that can enter the sanitary sewer. The proposed ordinance change will give the County legal authority to include BMP's as an enforceable permit condition, and treat BMP as a pretreatment standard. This is a beneficial change for both the County as well as the regulated commercial user, as it is generally cheaper to minimize pollutant generation than it is to remove or treat the pollutant in the effluent.

Another proposed ordinance change provides the County authority to classify certain regulated users as non-significant based upon process flow. Under federal regulations, certain commercial processes and activities are considered "categorical processes." Users with categorical processes are mandated to have specific discharge limits, monitoring requirements, and pretreatment technology. The proposed ordinance change allows the County to classify a categorical user as "non-significant," provided the user discharges less than 100 gallons per day of process wastewater, does not discharge any concentrated wastewater, is already meeting the standards for that particular industry, and certifies annually that the operation has not changed. The user would still have to comply with the County sewer discharge limits that protect the Water Pollution Control Plant. This could save the small commercial user between \$5,000-\$10,000 per year, and the County the cost of monitoring and regulating the categorical user.

Additionally, the proposed ordinance change provides authority for the County to waive sampling for pollutants not present. Categorical users are mandated to monitor for certain pollutants depending upon their type of business. As technology changes, some of the pollutants mandated by the EPA to be monitored may not be generated by a categorical user. The proposed ordinance revision allows the County to determine on a case-by-case basis, that a regulated user is not required to monitor for a specific pollutant provided the user can demonstrate that there is no potential for the pollutant to be present.

The proposed ordinance revision specifies that all permits issued to regulated users contain a requirement for the development of a spill control plan. This is an elaboration of the current ordinance requirement that all industrial users develop a spill control plan, contained in §26-47.

The last proposed change for the ordinance concerns how significant non-compliance is advertised. Significant non-compliance is the situation where a regulated user has not complied with the pretreatment standard(s) and a mandated penalty is placing a public notice outlining the regulated user's violation(s). The new federal regulations specify that the public notice shall be placed in a newspaper with "meaningful public notice" within the jurisdictions served by the Water Pollution Control Plant.

FISCAL IMPACT: There are no anticipated increases in pretreatment program costs associated with the proposed ordinance change. Because the County does not have any regulated users that have categorical processes at this time, no cost savings to the County will be seen due to the proposed regulation change.

ATTACHMENT A

AN ORDINANCE TO AMEND, REENACT, AND RECODIFY CHAPTER 26 (UTILITIES) OF THE ARLINGTON COUNTY CODE, TO CONFORM TO STATE AND FEDERAL REGULATIONS.

BE IT ORDAINED by the County Board of Arlington, Virginia, that Chapter 26 be amended, reenacted, and recodified as follows:

ARTICLE I. IN GENERAL

DIVISION 1. GENERAL PROVISIONS

§ 26-1. Definitions.

Best Management Practices (BMP). Any schedule of activities, prohibitions of practice, maintenance procedures, operational practices, and other management practices to implement the prohibitions listed in §26-35 of this code.

Indirect Discharger. The introduction of pollutants to a wastewater treatment plant from any industrial user regulated under section 307(b), (c) or (d) of the Act.

Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of a discrete or composited sample collected, independently of the industrial flow rate and duration of the sampling event.

Pretreatment standard or pretreatment requirements. Any substantive or procedural requirement related to pretreatment, including national pretreatment categorical standards and prohibitive discharge standards, best management practices and local limits imposed on an industrial user.

Significant industrial user. Except as provided in paragraphs (c) and (d) of this section, the term significant industrial user shall mean:

- (a) Industrial users subject to categorical pretreatment standards; or
- (b) Any other industrial user that:
 - (1) Discharges an average of 25,000 gpd or more of process wastewater; or

- (2) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the treatment plant; or
 - (3) Is designated as significant by the county on the basis that the industrial user has a reasonable potential for causing pass-through or interference.
- (c) The WPCB chief may determine that an industrial user subject to categorical pretreatment standards is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the industrial user never discharges more than 100 gpd of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blow-down wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:
- (1) The industrial user, prior to the WPCB chief's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
 - (2) The industrial user annually submits the certification statement required by 40 CFR 403.12(q), together with any additional information necessary to support the certification; and
 - (3) The industrial user never discharges any untreated concentrated wastewater.
- (d) Upon a finding that a user meeting the criteria in (b) of this section has no reasonable potential for adversely affecting the sanitary sewer collection system, the Water Pollution Control Plant's operation, or for violating any Pretreatment Standard or Requirement, the WPCB chief may determine that the user should not be considered a significant industrial user in accordance with procedures in 40 CFR 403.8(f)(6).

ARTICLE II. WASTEWATER PRETREATMENT

DIVISION 2. GENERAL SEWER USE REQUIREMENTS

§ 26-38. Specific pollutant limitations.

The WPCB chief may impose maximum mass or concentration discharge limits, or BMP's for any pollutant to protect the Water Pollution Control Plant sanitary sewer system from pass-through or interference, or to protect worker health and safety, to protect against damage to the sanitary sewer collection system, or to protect the quality of the Water Pollution Control Plant products (plant effluent, biosolids, off gasses, etc.). Concentrations shall be determined at the point where the industrial waste is discharged to the sanitary sewage collection system. All concentrations for metallic substances are for "total" metal. Compliance with all parameters may be determined from a single grab sample. Where specific prohibitions or limits on pollutants are developed for the sanitary sewage collection system in accordance with this section, such limits are deemed pretreatment standards.

§26-61. Permit Contents

- (a) Wastewater permits will contain the following:
- (1) A statement that indicates the date of issuance, expiration, and effectiveness, permit duration, which in no event shall the duration exceed five (5) years.
 - (2) A statement that the permit is nontransferable without prior notification to and written approval from the county and that the current owner or operator is responsible for furnishing the new owner or operator with a copy of the existing permit.
 - (3) Effluent limits and Best Management Practices, applicable to the user based on applicable standards in federal, state and local law.
 - (4) A statement of self-monitoring, sampling, reporting, notification and record-keeping requirements. These requirements shall include an identification of pollutants or Best Management Practice to be monitored, sampling location, sampling frequency, and sample type based on federal, state and local law.
 - (5) A statement of applicable penalties for violation of pretreatment standards and requirements and compliance schedules.
 - (6) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).
 - (7) A requirement for development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.
- (b) Permits may contain, without limitation, the following:
- (1) Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
 - (2) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.

~~(3)~~ — ~~An outline for development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.~~

~~(3)~~(4) Compliance schedules for meeting pretreatment standards and requirements.

~~(4)~~(5) A statement that compliance with permit terms does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the permit.

~~(5)~~(6) Any other conditions as found necessary by the WPCB chief to ensure compliance with this article and state and federal laws, rules, and regulations.

§ 26-69. Periodic compliance reports.

All significant industrial users shall, at a frequency determined by the WPCB chief, which shall not be less frequent than two (2) times per year, submit a written report indicating the nature, concentration and flow of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flow for the reporting period. All periodic compliance reports must be signed and certified in accordance with section 26-56.

(a) The user shall report all monitoring results collected at the proscribed monitoring point as specified in the wastewater permit.

~~(b)~~(a) The industrial user shall be responsible for ensuring that all wastewater samples are representative of the industrial 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 an industrial user to properly operate and maintain ~~keep~~ its monitoring facility ~~in good working order~~ shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.

~~(c)~~(b) In the event an industrial user's monitoring results indicate that a violation has occurred, the industrial user must immediately notify the WPCD chief and resample its discharge. The industrial user must report the results of the resampling within thirty (30) days of discovering the first violation.

(d) In cases where the Pretreatment Standard or permit requires compliance with a Best Management Practice or pollution prevention alternative, the User must

submit documentation required by the WPCB Chief or the Pretreatment Standard necessary to determine compliance status of the user.

- (e) The WPCB chief may authorize an industrial user subject to categorical pretreatment standards to forgo sampling of a pollutant regulated by a categorical standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the facility's discharge, or is present only at background levels from the intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions:
- (1) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.
 - (2) The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit.
 - (3) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.
 - (4) The request for a monitoring waiver must be signed by an authorized representative as defined in section §26-1 of this Chapter, and include the certification statement specified in §26-56.
 - (5) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.
 - (6) Any grant of the monitoring waiver by the WPCB Chief must be included as a condition in the User's permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the WPCB Chief for 3 years after expiration of the waiver.
 - (7) Upon approval of the monitoring waiver and revision of the User's permit by the WPCB Chief, the Industrial User must certify on each report with the statement in §26-56 of this Chapter, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User.

(8) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the User's operations, the User must immediately notify the WPCB Chief and comply with the monitoring requirements of this Section, or other more frequent monitoring requirements imposed by the WPCB Chief.

(9) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

§ 26-70. Report of changed conditions.

Each industrial user shall notify the WPCB chief of any planned significant changes to the industrial user's operations or pretreatment systems which might alter the nature, quality or volume of its wastewater including, but not limited to, increased potential for spills or slug loading, or, the listed or characteristic hazardous waste for which the industrial user has submitted initial notification under 40 CFR 403.12(p). In the event of any such changes:

- (a) The WPCB chief may require the industrial user to submit such information as the WPCB chief may deem necessary to evaluate the changed condition, including the submission of a wastewater permit application under section 26-55, if necessary.
- (b) The WPCB chief may issue a wastewater permit under section 26-57 or modify the existing wastewater permit under section 26-63.
- (c) No industrial user shall implement the planned changed condition(s) until and unless the WPCB chief has responded to the industrial user's notice in writing.
- (d) For purposes of this requirement, flow increases of ten (10) percent or greater and the discharge of any previously unreported pollutant shall be deemed significant.

§ 26-77. Record-keeping.

Industrial users shall retain and make available for inspection and copying all records and information required to be retained under 40 CFR 403.12(a), including documents associated with required Best Management Practices. These records shall remain available for a period of at least three (3) years. This period shall automatically be extended for the duration of any litigation regarding the discharge of pollutants by the industrial user or concerning compliance with this article, or where the industrial user has been specifically notified of a longer retention period by the WPCB chief or the EPA.

§ 26-85. Publication of significant violators.

The county shall annually publish, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, with the largest daily circulation in the area where the sanitary sewage system is located a list of the industrial users which during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall mean:

- (a) Sixty-six (66) percent or more of wastewater pretreatment measurements taken during a six-month period exceed the discharge limit for any one (1) pollutant a numeric pretreatment standard or requirement including instantiations limits;
- (b) Thirty-three (33) percent or more of wastewater measurements taken during a six-month period equals or exceeds the product of the numeric pretreatment standard or requirement including instantaneous limits, daily maximum limits or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- (c) Any ~~The user is responsible for any~~ other discharge violation that the county determines it has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of county personnel or the general public);
- (d) Any ~~The user is responsible for any~~ discharge of pollutants that has caused imminent danger to the public or to the environment, or has resulted in the county's exercise of its emergency authority to halt or prevent such a discharge;
- (e) The user has failed to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (f) The user has failed to provide, within forty-five (45) ~~thirty (30)~~ days after the due date, any required reports, including baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (g) The user has failed to report noncompliance; or
- (h) The user is responsible for any other violation(s), which may include a violation of Best Management Practices, which the county has reason to believe will adversely affect the operation or implementation of the pretreatment program, or is otherwise significant.
