

August 25, 2021

The Regular Meeting of the Rockingham County Board of Supervisors was held on Wednesday, August 25, 2021, at 6:00 p.m., at the Rockingham County Administration Center, Harrisonburg, Virginia.

The following members were present:

- DEWEY L. RITCHIE, Election District #1
- SALLIE WOLFE-GARRISON, Election District #2
- RICK L. CHANDLER, Election District #3
- WILLIAM B. KYGER, JR., Election District #4

MICHAEL A. BREEDEN, Election District #5 was absent

Also present:

- STEPHEN G. KING, County Administrator
- THOMAS H. MILLER, JR., County Attorney
- CASEY B. ARMSTRONG, Assistant County Administrator
- RHONDA H. COOPER, Director of Community Development
- PATRICIA D. DAVIDSON, Director of Finance
- TERRI M. PERRY, Director of Technology
- PHILIP S. RHODES, Director of Public Works
- KELLY S. GETZ, Zoning Administrator
- KAYLA R. YANKEY, Land-Use Planner
- JESSICA G. KILBY, Deputy Clerk
- DONALD F. KOMARA, Residency Administrator
Virginia Department of Transportation
- C. BURGESS LINDSEY, Assistant Residency Administrator
Virginia Department of Transportation

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**CALL TO ORDER
PLEDGE OF ALLEGIANCE
INVOCATION.**

Chairman Chandler called the meeting to order at 6:00 p.m.

Chairman Chandler provided the invocation, and County Attorney Miller led the Pledge of Allegiance.

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APPROVAL OF MINUTES.

On motion by Supervisor Kyger, seconded by Supervisor Wolfe-Garrison, and carried by a vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board approved the minutes of the regular meeting of August 11, 2021.

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RECOGNITION – LOIS JONES, DIRECTOR OF MASSANUTTEN REGIONAL LIBRARY.

Supervisor Wolfe-Garrison provided remarks in recognition of Lois W. Jones, Director of Massanutten Regional Library, and read the following resolution:

RESOLUTION

WHEREAS, Lois W. Jones began her career on July 1, 1989, as a part-time reference librarian in downtown Harrisonburg for what was then called Rockingham Library Association. At the time Ms. Jones was hired she expressed a desire to prove to herself and others that working mothers of young children could contribute equitably. Prove herself she did; and

WHEREAS, Ms. Jones was soon promoted to a full-time reference librarian and was involved in the 2000 name change to Massanutten Regional Library, as it grew to a system of multiple branches spread across Harrisonburg, Rockingham County, and Page County; and

WHEREAS, Ms. Jones was promoted to the role of Assistant Library Director, taking full responsibility for the management of the Central Branch in downtown Harrisonburg while also supporting the entire system administratively; and

WHEREAS, Ms. Jones became Director in 2010, and during her tenure has overseen a robust library system made up of seven separate branches, which serve a population of 160,000. She has seen the library system go from typed card catalog, and paper check-out systems, to fully electronic service, including downloadable media and resources; and

WHEREAS, Ms. Jones is a hands-on servant-leader who chooses to think of patron and staff needs first in every action she has made as Director. It is not uncommon to see Lois among the library stacks chatting with a patron about what they like to read or helping them discover the perfect material for their research project; and

WHEREAS, Ms. Jones is held in high esteem by the American Library Association, the Library of Virginia, and particularly the Virginia Library Association for her years of service and expertise, as well as her leadership and mentorship in the Mountain Six region of the Commonwealth; and

WHEREAS, in addition to her work with the Library, Ms. Jones, a true public servant, served as chair of the Harrisonburg/Rockingham Historical Society and its Heritage Museum, served on the State Rehabilitation Advisory Council, the Shenandoah Valley Workforce Development Board, the Community Foundation of Harrisonburg & Rockingham County, Harrisonburg City Schools' Special Education Advisory Committee, and the Harrisonburg Planning Commission; and

WHEREAS, during her 32 plus years, Ms. Jones has demonstrated an extraordinary command of the complexity, commitment, service-focus, and deep care required to support her staff and patrons, inspired countless people to love and support libraries, and has worked tirelessly to ensure that the notion and value of a public library, at the local, state, and national level, is not lost in our society.

NOW, THEREFORE, BE IT RESOLVED that the Rockingham County Board of Supervisors, on behalf of the citizens of Rockingham County, does hereby express its great appreciation and gratitude to Lois W. Jones for her commitment, compassion, and dedicated service, and recognizes her outstanding contribution to making Rockingham County and Harrisonburg a *great place to live and read!*

On motion by Supervisor Wolfe-Garrison, seconded by Supervisor Kyger, and carried by a vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board adopted the Resolution recognizing Lois W. Jones.

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REGIONAL BROADBAND AND APPLICATION TO VIRGINIA TELECOMMUNICATION INITIATIVE.

Jimmy Carr, Chief Executive Officer of All Points Broadband, provided a presentation concerning a regional grant initiative through the Virginia Telecommunications Initiative (VATI), to achieve fiber-to-the-home broadband for unserved areas in the County.

Mr. Carr explained that the regional initiative includes All Points Broadband, Dominion Energy Virginia, Shenandoah Valley Electric Cooperative (SVEC), Rappahannock Electric Cooperative and seven Counties. In Rockingham County, the project would serve 7,600 locations that do not currently have access to broadband.

In summary, the project would include fiber infrastructure to those areas in the County that do not have access to broadband. The overall project cost would be \$55M. All Points Broadband would be responsible for \$29.5M of the total project cost. If the VATI application is awarded, it will provide \$17M. The County’s contribution would require a match of \$8.9M, which is eligible by the American Rescue Plan Act of 2021 (ARPA) funding.

All Points Broadband expects the proposed project would be substantially complete withing 24-months of the VATI grant award and after completion of the Dominion and SVEC route work. For customers, there would be a standard installation fee of \$199, and residential service offerings starting at \$59.99.

In conclusion, Mr. Carr explained the grant application is due September 14. If the County intends to pursue the project, the Board will need to authorize All Points Broadband to include the County in the regional VATI project application, which if awarded, will require a local funding match. He said the County will also be required to enter into a formal agreement with All Points Broadband within 90 days to accept the award and proceed with the project.

Discussion ensued. Supervisor Kyger said this is a historic economic development tool available to the County and emphasized that affordable broadband to every home will have a tremendous impact.

On motion by Supervisor Kyger, seconded by Supervisor Wolfe-Garrison, and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board, subject to the Memorandum of Understanding, authorized All Points Broadband to include Rockingham County in the Virginia Telecommunications Initiative (VATI) application, to achieve fiber-to-the-home broadband for unserved areas in the County.

Administrator King explained that if the grant is awarded, the Board will need to determine the source for the local share.

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TRANSPORTATION DEPARTMENT.

The Board heard Mr. Komara’s report on the activities of the Transportation Department, including updates to recent bridge, road, and rural rustic projects.

Supervisor Kyger was appreciative for recent mowing and brush removal between Dayton and Bridgewater and for updated traffic counts on Pleasant Valley Road (Route 623) at the Industrial Park.

Chairman Chandler mentioned that brush is hanging into the roadway in an area on Port Republic Road heading east toward Route 340. He also reminded VDOT of the need to extend the left turn lanes at the intersection of Shen Lake Drive (Route 689) and Spaders Church Road (Route 689) and indicated the passing zones on Spaders Church Road are a major safety concern with new development in that area.

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CLOSED MEETING.

On motion by Supervisor Kyger, seconded by Supervisor Ritchie, and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board recessed the meeting from 6:57 p.m. to 7:06 p.m., for a Closed Meeting – Pursuant to Section 2.2-3711.A(8), Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel.

MOTION: SUPERVISOR KYGER
SECOND: SUPERVISOR RITCHIE

RESOLUTION NO: 21-16
MEETING DATE: August 25, 2021

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Rockingham County Board of Supervisors has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by this Board of Supervisors that such Closed Meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Rockingham County Board of Supervisors hereby certifies that, to the best of each member’s knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies; and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed or considered by the Board of Supervisors.

VOTE:
AYES: CHANDLER, KYGER, RITCHIE, WOLFE-GARRISON
NAYS: NONE
ABSENT: BREEDEN

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PUBLIC HEARING – ORDINANCE AMENDMENT PERTAINING TO ELECTION DISTRICT NO. 4, MT. CRAWFORD PRECINCT (403).

Chairman Chandler opened the public hearing at 7:07 p.m., to receive public comment for a proposed ordinance to amend Section 6A-6 pertaining to the Election District No. 4, Mt. Crawford Precinct (403) polling place in Rockingham County, to change the polling place for the Mt. Crawford Precinct (403) from the Mt. Crawford Ruritan Hall to the Mt. Crawford Town Hall, located at 779 South main Street, Mt. Crawford, Virginia.

County Attorney Miller reported that this is a routine request made by the Electoral Board. He explained that this particular request to move the polling place from the Mt. Crawford Ruritan Hall to the Mt. Crawford Town Hall was made prior to the June 2021 Primary Election; however, in order to eliminate potential confusion during the Primary Election, staff delayed bringing the request to the Board. Since that time, the General Assembly enacted new legislation which became effective July 1, 2021, requiring more specific notice and public comment provisions. County Attorney Miller explained that if the ordinance amendment is adopted, it would become effective November 1, 2021, contingent upon a thirty-day right of appeal period to the Circuit Court, which would begin upon its adoption.

Registrar Lisa Gooden expressed appreciation to the Town of Mt. Crawford for its willingness to allow Election Officials to request the precinct be moved to a new facility. She said the Town Manager has been extremely helpful through the entire process. Mrs. Gooden reported one inquiry was received concerning the relocation. She said the appropriate building

permits have been secured to make sure the polling place will now be fully compliant with the Americans with Disabilities Accessibility (ADA) as far as access, parking, and restrooms.

Mount Crawford Town Manager Libby Clark stated that the Town appreciates the opportunity to maintain all functions in one location so that there is no confusion. She said the Town and Council appreciate the opportunity to have the voting precinct at the new Town Hall.

In response to a question from County Attorney Miller, Ms. Clark stated that she does not foresee any accessibility concerns for any voter getting to the Town Hall as opposed to the Ruritan Hall. She indicated that the proper construction permits had been requested.

County Attorney Miller stated ADA accessibility is important, as is access for all voters. Town Manager Clark reiterated that she sees no issues for any voter finding the precinct, stating that there will be plenty of signage to direct voters and sufficient parking.

No other members of the public spoke regarding the proposed ordinance amendment.

Chairman Chandler closed the public hearing at 7:12 p.m.

On motion by Supervisor Kyger, seconded by Supervisor Ritchie, and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board adopted the following Ordinance Amendment, which shall be effective from the 1st day of November 2021, subject to appeal within thirty days of adoption.

**ORDINANCE
REPEALING AND RE-ENACTING
THE MT. CRAWFORD PRECINCT 403
OF ELECTION DISTRICT NO. 4
PORTION OF
SECTION 6A-6
OF THE CODE OF ORDINANCES
OF
ROCKINGHAM COUNTY, VIRGINIA**

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA:

That Section 6A-6 “Precincts and polling places – Establishment and authority” pertaining to Election District No. 4 be and hereby is repealed and re-enacted as follows:

Election District No. 4

<i>Precinct</i>	<i>Polling Place</i>
401 West Bridgewater	Bridgewater Community Center
402 Montezuma	Montezuma Hall
403 Mt. Crawford	Mt. Crawford Town Hall
404 North River	Massanutten Technical Center
405 Ottobine	Ottobine Elementary School
406 East Bridgewater	Bridgewater Church of the Brethren

All other portions of Section 6A-6 continue as they were, reaffirmed and unaffected.

This ordinance is adopted this 25th day of August 2021, and shall be effective from the 1st day of November 2021, subject to appeal within thirty days of adoption.

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PUBLIC HEARING – REZONING.

Chairman Chandler opened the public hearing at 7:14 p.m.

Zoning Administrator Getz reviewed the following rezoning request:

REZ21-169 Cobblers Valley Development Inc, c/o Dennis Wenger, 2389 Grace Chapel Rd, Rockingham, VA 22801. Request to amend the proffers of +/- 75 acres of the Cobbler’s Valley Subdivision. Property to remain R-5C (Planned Neighborhood District with Amended Conditions) to amend the phasing of the development. Situated on the west side of Pear St. (Rt. 922) approximately 0.15 mile southwest of Erickson Ave. (Rt. 726). Tax Map # 108-(13)- L1 – L3, 108D-(6)- L1 – L28, L91 – L108, L129, L155 – L167, LA, LB, 108D-(7)- LA. Election District 2.

The Planning Commission recommended approval by a vote of 5-0 on August 3, 2021.

Attorney Todd Rhea spoke on behalf of the applicant. Mr. Rhea said the project initially began in 2017 with the original rezoning approved by the Board of Supervisors in October 2018. The single-family home development construction began first, and the applicant wishes to proceed with the townhome development. Mr. Rhea said all infrastructure is already in place. He noted that Cobblers Valley Development and the County entered into an agreement to run a new waterline for water service and said allowing overlap between the phases of development could potentially recoup the waterline cost sooner than expected. Mr. Rhea indicated the request to amend the proffer statement adds flexibility to the project without increasing density or the number of units. He would not anticipate permits for townhomes before 2023.

No other members of the public commented regarding the request.

Chairman Chandler closed the public hearing at 7:27 p.m.

On motion by Supervisor Wolfe-Garrison, seconded by Supervisor Kyger, and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board, subject to the attached proffers, approved REZ21-169 Cobblers Valley Development Inc, c/o Dennis Wenger, 2389 Grace Chapel Rd, Rockingham, VA 22801. Request to amend the proffers of +/- 75 acres of the Cobbler’s Valley Subdivision. Property to remain R-5C (Planned Neighborhood District with Amended Conditions) to amend the phasing of the development. Situated on the west side of Pear St. (Rt. 922) approximately 0.15 mile southwest of Erickson Ave. (Rt. 726). Tax Map # 108-(13)- L1 – L3, 108D-(6)- L1 – L28, L91 – L108, L129, L155 – L167, LA, LB, 108D-(7)- LA. Election District 2.

(Proffers are attached to and made a part of these minutes)

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CAPITAL IMPROVEMENTS PROGRAM AMENDMENTS.

Chairman Chandler opened the public hearing at 7:29 p.m.

The Board of Supervisors adopted the Capital Improvements Program (CIP) Plan on April 14, 2021, which serves as a five-year plan to guide the construction or acquisition of capital projects. Ms. Cooper reviewed two transportation projects for inclusion in the CIP, that

have since been identified for grant funding. Both projects, detailed below, are consistent with the Comprehensive Plan.

No members of the public commented concerning the proposed amendments.

Ms. Cooper also presented two resolutions endorsing the VDOT revenue sharing projects.

Chairman Chandler closed the public hearing at 7:32 p.m.

On motion by Supervisor Kyger, seconded by Supervisor Wolfe-Garrison, and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board authorized the following two projects to be included in the Capital Improvements Program FY 2022-2027.

REVENUE SHARING TRANSPORTATION PROJECT APPLICATIONS

Project # & Name	Location	Project Scope	Funding Program & Status	Cost
#8224 Captain Yancey Road Turn Lane (Route 642)	At intersection with US-340 near Elkton (approx. 0.8 miles)	Construct 200' right-turn lane and 200' taper on Rt. 642 onto US-340 and widen existing railroad crossing to alleviate congestion.	Revenue Sharing Pre-Application submitted 7/1/21. Final application due 10/1; BOS resolution of support and CIP amendment on 8/25.	\$1.5M (local match: \$750K)
#8181 Rawley Springs Road Improvements	Route 847 at US-33 and private road in Rawley Springs	Widen Rawley Springs Road (Rt. 847) to 16-18 feet and make drainage improvements	Revenue Sharing Pre-Application submitted 7/1/21. Final application due 10/1; BOS resolution of support and CIP amendment on 8/25.	\$130K (local match: \$65K total)

RESOLUTIONS ENDORSING VDOT REVENUE SHARING APPLICATIONS

On behalf of Supervisor Breedon, on motion by Supervisor Kyger, seconded by Supervisor Wolfe-Garrison, and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board adopted the following resolution:

**RESOLUTION
ENDORSING THE SUBMISSION OF
VDOT REVENUE SHARING APPLICATION**

WHEREAS, the Board of Supervisors of Rockingham County desires to submit an application for an allocation of funds of up to \$1.5 million through the Virginia Department of Transportation (VDOT) Fiscal Year 2023-28 Revenue Sharing Program; and

WHEREAS, these funds are requested to fund construction of a 200' right-turn lane and a 200' taper on Captain Yancey Road (Route 642) onto S. East Side Highway (US 340), and widen the existing railroad crossing; and

WHEREAS, the Rockingham County Board of Supervisors hereby supports the 50% local match allocation of \$750,000 through the Virginia Department of Transportation Fiscal Year 2023-28 Revenue Sharing Program;

NOW, THEREFORE, BE IT RESOLVED that the Rockingham County Board of Supervisors hereby commits to fund its local share of \$750,000 for preliminary engineering, right-of-way, and construction for the project under agreement with the Virginia Department of Transportation in accordance with the project financial document.

BE IT FURTHER RESOLVED, that the Rockingham County Administrator is authorized to execute all agreements and addendums for this project with the Virginia Department of Transportation.

On motion by Supervisor Kyger, seconded by Supervisor Ritchie, and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board adopted the following resolution:

**RESOLUTION
ENDORISING THE SUBMISSION OF
VDOT REVENUE SHARING APPLICATION**

WHEREAS, the Board of Supervisors of Rockingham County desires to submit an application for an allocation of funds of up to \$130,000 through the Virginia Department of Transportation (VDOT) Fiscal Year 2023-28 Revenue Sharing Program; and

WHEREAS, these funds are requested to fund improvements to widen the existing Rawley Springs Road (Rt. 847) to 16-18 feet, and make drainage improvements;

WHEREAS, the Rockingham County Board of Supervisors hereby supports the 50% local match allocation of \$65,000 through the Virginia Department of Transportation Fiscal Year 2023-28 Revenue Sharing Program;

NOW, THEREFORE, BE IT RESOLVED that the Rockingham County Board of Supervisors hereby commits to fund its local share of \$65,000 for preliminary engineering, right-of-way, and construction for the project under agreement with the Virginia Department of Transportation in accordance with the project financial document.

BE IT FURTHER RESOLVED, that the Rockingham County Administrator is authorized to execute all agreements and addendums for this project with the Virginia Department of Transportation.

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PUBLIC HEARING - ORDINANCE AMENDMENTS.

Chairman Chandler opened the public hearing at 7:35 p.m., and Zoning Administrator Getz reviewed two staff-initiated ordinance amendments:

- OA21-074 Enacting Section 17-315 and amending Tables 17-606 and 17-806, Sections 17-607 and 17-700 to establish a Business Interchange (BX) zoning district, which could be designated at interchanges to allow for the provision of certain services to the interstate-travelling public.

- OA21-177 Amendment to the Rockingham County Code, Chapter 17 (Zoning), Section 17-700.01 (Area Types), Section 17-803 (Setbacks), and Table

17-806.01 (Area, Setback, and Height – Conventional). This amendment would reduce all setbacks in the RV (Rural Village) zoning district.

The Planning Commission recommended approval of both ordinance amendments on August 3, 2021.

Concerning OA21-074, Supervisor Ritchie recommended a revision to the supplemental standards by increasing the hours of operation in the BX district. He explained that services offered in that district, specifically repair shops, would better serve those traveling the interstate at all hours opposed to limited hours.

Related to OA21-177, Supervisor Wolfe-Garrison asked if staff had encountered a specific issue to precipitate the request.

Zoning Administrator Getz provided examples of properties where the current RV setbacks do not work or make sense with the intent of the RV Villages.

For clarification, Ms. Cooper pointed out that the amendment affects only the minimum setback, not the maximum setback.

Supervisor Wolfe-Garrison indicated that although Supervisor Breeden was not in attendance, she was aware he had questions regarding OA21-177.

No members of the public spoke regarding OA21-074 or OA21-177.

Chairman Chandler closed the public hearing at 7:45 p.m.

Supervisor Kyger stated that in order to allow staff an opportunity to modify the operating hours in the BX zoning district, and to allow Supervisor Breeden an opportunity to provide input on the proposed ordinance amendments, he recommended tabling the ordinances until a time certain of September 8, 2021.

On motion by Supervisor Kyger, seconded by Supervisor Ritchie, and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board tabled OA21-074 Enacting Section 17-315 and amending Tables 17-606 and 17-806, Sections 17-607 and 17-700 to establish a Business Interchange (BX) zoning district, which could be designated at interchanges to allow for the provision of certain services to the interstate-travelling public.

On motion by Supervisor Kyger, seconded by Supervisor Wolfe-Garrison, and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board tabled OA21-177 Amendment to the Rockingham County Code, Chapter 17 (Zoning), Section 17-700.01 (Area Types), Section 17-803 (Setbacks), and Table 17-806.01 (Area, Setback, and Height – Conventional). This amendment would reduce all setbacks in the RV (Rural Village) zoning district.

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ORDINANCE AMENDMENT TO CHAPTER 16A WATER AND SEWERS.

Mr. Miller stated that the proposed ordinance to amend Chapter 16A of the County Code is to make sure the County conforms to the Harrisonburg Rockingham Regional Sewer Authority (HRRSA) Operating Rules and Regulations (Effective September 1, 2021). He noted that all localities that participate in the HRRSA are required to adopt regulations.

On motion by Supervisor Kyger, seconded by Supervisor Ritchie and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE; AYE; WOLFE-GARRISON – AYE; the Board adopted the following Ordinance Amendment:

**ORDINANCE REPEALING
AND RE-ENACTING
SECTION 16A-5
OF THE CODE OF ORDINANCES
OF
ROCKINGHAM COUNTY, VIRGINIA**

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA:

That Section 16A-5. "Use of public sewers" be and hereby is repealed and re-enacted as follows:

Section 16A-5 Use of Public Sewers

SECTION 5.1 - GENERAL PROVISIONS

1.1 Purpose and Policy

These Regulations set forth uniform requirements for discharge into the Wastewater collection and treatment system for Harrisonburg-Rockingham Regional Sewer Authority and enable the Authority to implement the applicable State and federal requirements of the federal Clean Water Act, 33 U.S.C. §§ 1251, et seq., the Virginia State Water Control Law, Va. Code §§ 62.1-44.2, et seq. and the General Pretreatment Regulations, 40 CFR Part 403 & 9 VAC 25-31-730, et seq.

The objectives of these Regulations are:

- 1) To prevent the introduction of pollutants into the Authority's Wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- 2) To prevent the introduction of pollutants into the Wastewater system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system; and
- 3) To improve the opportunity to recycle and reclaim Wastewaters and sludges from the system.

These Regulations provide for the regulation of discharges to the Wastewater system through the issuance of permits to certain non-domestic Users and through enforcement of general requirements for the other Users, authorize monitoring and enforcement activities, and require User reporting.

These Regulations shall apply to the Authority, system Users therein, and to Users within the City of Harrisonburg, County of Rockingham and Towns of Bridgewater, Dayton and Mt. Crawford. Except as otherwise provided herein, the Executive Director of the Authority shall administer, implement, and enforce the provisions of these Regulations.

1.2 Definitions

Unless the context specifically indicates otherwise, the following terms and phrases, as used in these Regulations, shall have the following meanings:

- 1) Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §§ 1251, et seq.
- 2) Authorized Representative of Industrial User. The duly Authorized Representative of an Industrial User who is responsible for the overall operation of the facilities from which the Indirect Discharge originates. See Section 3.3(4).

- 3) Authority. Harrisonburg-Rockingham Regional Sewer Authority, a public body politic and corporate, created pursuant to the Virginia Water and Sewer Authorities Act, or its duly Authorized Representative.
- 4) Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 2.1. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. Note: BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent limits.
- 5) Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20° centigrade expressed in terms of weight and concentration [milligrams per liter (mg/L)].
- 6) Building Sewer. A sewer conveying Wastewater from the premises of a User to the System.
- 7) Categorical Pretreatment Standards or Categorical Standards. National Categorical Pretreatment Standards applicable to a specific category of Industrial Users.
- 8) Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, and to which the only Pollutant added is heat.
- 9) Direct Discharge. The Discharge of treated or untreated Wastewater directly to the Waters of the State.
- 10) End of Pipe. The location at which any private or Industrial User connects to the public sewer (collection) System.
- 11) Environmental Protection Agency, or EPA. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the EPA Regional Administrator or other duly authorized official of said agency.
- 12) Executive Director. The person designated by the Authority to supervise the operation of the System and who is charged with certain duties and responsibilities by these Regulations, or his duly Authorized Representative.
- 13) Gender. The use of "his" or "her" shall include the other.
- 14) Grab Sample. A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of duration.
- 15) Holding Tank Waste. Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.
- 16) Human Waste. Water borne human excrement as may be present from residences, buildings, Industrial Users or other places.
- 17) Indirect Discharge or Discharge. The Discharge or the introduction of Pollutants into the System from any non-domestic source.
- 18) Industrial User. A source of Indirect Discharge.
- 19) Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.
- 20) Interference. The inhibition or disruption of the Authority's Wastewater conveyances, Treatment processes or operations. The term includes prevention of or Interference with sewage sludge use or disposal by the Authority.
- 21) Local Limits. Concentration based or other limits for designated parameters (see section 2.1(13)). Local Limits apply at End of Pipe and are expressed as maximum per day limits, or as otherwise specifically provided.
- 22) Member Jurisdictions. The City of Harrisonburg, the County of Rockingham, and the Towns of Bridgewater, Dayton, and Mt. Crawford which individually collect Wastewater within their respective jurisdictions for Treatment by the Authority.
- 23) National Pretreatment Standard. Any regulation containing Pollutant Discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act (33 U.S.C. 1317) which applies to Industrial Users.

- 24) New Source.
- a) Any building, structure, facility or installation from which there is or may be a Discharge of Pollutants, the construction of which commenced after the publication of proposed National Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that: (i) the building, structure, facility or installation is constructed at a site at which no other source is located; or (ii) the building, structure, facility or installation totally replaces the process or production equipment that causes the Discharge of Pollutants at an existing source; or (iii) the production or Wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site.
 - b) Construction on a site at which an existing source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility or installation meeting the criteria of (a)(ii) or (a)(iii) of this section but otherwise alters, replaces or adds to existing process or production equipment.
 - c) Construction of a New Source as defined under this section has commenced if the owner or operator has (i) begun, or caused to begin as part of a continuous onsite construction program (A) any placement, assembly, or installation of facilities or equipment, or (B) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of New Source facilities or equipment; or (ii) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this section.
- 25) National Pollutant Discharge Elimination System Permit (NPDES or VPDES). A permit issued pursuant to section 402 of the Act (33 U.S.C. § 1342).
- 26) North American Industry Classification System (NAICS). The standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and *publishing* statistical data related to the U.S. business economy. The NAICS industry codes define establishments based on the activities in which they are primarily engaged.
- 27) Pass Through. A Discharge which exits the System into State Waters in quantities or concentrations which, alone or in conjunction with a Discharge from other sources, are a cause of a violation of any requirement of the Authority's VPDES Permit (including an increase in the magnitude or duration of a violation). An Industrial User significantly contributes to such permit violation where it (i) Discharges a daily Pollutant loading or concentration in excess of that allowed by the Authority or by Federal, State or local law; (ii) discharges Wastewater which substantially differs in nature and constituents from the User's average Discharge; (iii) knows or has reason to know that its Discharge, alone or in conjunction with Discharges from other sources, would result in a permit violation; or (iv) knows or has reason to know that the Authority is, for any reason, violating its final effluent limitations in its permit and that such Industrial User's Discharge either alone or in conjunction with Discharges from other sources, increases the magnitude or duration of the Authority's violations.
- 28) Person. Any individual, partnership, firm, company, corporation, cooperative, association, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns.
- 29) pH. The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions.
- 30) Pollution. The man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.
- 31) Pollutant. Any dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.
- 32) Pretreatment or Treatment. The reduction of the amount of Pollutants, the elimination of Pollutants or the alteration of the nature of Pollutant properties in Wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such Pollutants into the System.
- 33) Pretreatment Requirements. Any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard imposed on an Industrial User.
- 34) Publicly Owned Treatment Works (POTW). A treatment works, as defined by section 212 of the Clean Water Act (33 U.S.C. section 1292), which is owned by the Authority. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and

reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

- 35) Significant Industrial User. (i) All Industrial Users subject to Categorical Pretreatment Standards; (ii) any Industrial User that discharges an average of 25,000 gallons per day or more of process Wastewater to the Authority (excluding Human Waste, noncontact cooling and boiler blowdown Wastewater); (iii) any Industrial User that contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the Authority Treatment Plant; or (iv) any Industrial User that is designated as such by the Authority on the basis that the Industrial User has a reasonable potential for adversely affecting the Authority's operation or for violating any Pretreatment Standard or Requirement.
- 36) Significant Noncompliance. A User is in significant noncompliance if its violations meet one of more of the following criteria: (i) chronic violations of Wastewater Discharge limits, defined as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same Pollutant parameter, including instantaneous limits, as defined by 9VAC25-31-10; (ii) technical review criteria (TRC) violations defined as those in which thirty-three percent or more of all of the measurements for each Pollutant parameter taken during a six-month period equal or exceed the product of the daily average maximum limit or the average limit, including instantaneous limits, as defined by 9VAC25-31-10; multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other Pollutants except pH); (iii) any other violation of a Pretreatment effluent limit or requirement as defined by 9VAC25-31-10 (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Authority determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of Authority personnel or the general public); (iv) any Discharge of a Pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Authority's exercise of its emergency authority to halt or prevent such a Discharge; (v) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a Wastewater Discharge Permit or enforcement order for starting construction, completing construction, or attaining final compliance; (vi) 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; (vii) failure to accurately report noncompliance; or (viii) any other violation or group of violations that may include a violation of Best Management Practices which the Authority determines will adversely affect the operation or implementation of the Pretreatment program.
- 37) Slug Loading or Slug Discharge. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 2.1 of this ordinance. Any Discharge of non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.
- 38) Soluble BOD (sBOD). The BOD result on a sample that is filtered through a 0.45 µm pore size filter.
- 39) State. Commonwealth of Virginia.
- 40) Standard Industrial Classification (SIC). A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972.
- 41) Storm Water. Any flow occurring during or following any form of natural precipitation and resulting therefrom.
- 42) System. The Treatment Plant, works and facilities owned by the Authority, including all sewer lines that convey Wastewater to the Treatment Plant, and in addition, such term shall include the sewer lines owned by the Member Jurisdictions.
- 43) Total Kjeldahl Nitrogen (TKN). Organic nitrogen plus ammonia, as defined by the named analytical procedure.
- 44) Total Suspended Solids (TSS). The total suspended matter which floats on the surface of, or is suspended in, water, Wastewater or other liquids, and which is removable by laboratory filtering.
- 45) Toxic Pollutant. Any Pollutant or combination of Pollutants listed as toxic in regulations promulgated by the Administrator of EPA under the provision of section 307(a) of the Act.
- 46) Treatment Plant. That portion of the System designed to provide Treatment to Wastewater.
- 47) User. Any Person who causes or permits the contribution of Wastewater into the System.
- 48) Wastewater. The liquid or water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with all other wastes which may be present, whether treated or untreated, which are contributed into or permitted to enter the System.

- 49) Waters of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems 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.
- 50) Wastewater Discharge Permit. As set forth in Section 3.2 of these Regulations.

1.3 Abbreviations

The following abbreviations shall have the designated meanings.

- 1) BOD - Biochemical Oxygen Demand
- 2) CFR - Code of Federal Regulations
- 3) COD - Chemical Oxygen Demand
- 4) L - Liter
- 5) mg - Milligrams
- 6) mg/L - Milligrams per liter
- 7) µm - Micrometer
- 8) RCRA - Resource Conservation and Recovery Act
- 9) SWDA - Solids Waste Disposal Act, 42 U.S.C. 6901, et seq.
- 10) U.S.C. - United States Code
- 11) TSS - Total Suspended Solids
- 12) NPDES/VPDES - National/Virginia Pollutant Discharge Elimination System

SECTION 5.2 - REGULATIONS

2.1 General Discharge Prohibitions

No User shall contribute or cause to be contributed, directly or indirectly, any Pollutant or Wastewater which will cause a Pass Through or an Interference with the operation or performance of the System. This general prohibition applies to all Users of the System whether or not the User is subject to National Pretreatment Standards or any other national, State, or local requirements. A User may not contribute the following substances directly or indirectly to the System:

- 1) Any liquids, solids or gases which by reason of their nature or quantity are, or may be sufficient either alone or by interaction with other substances to cause fire or explosion hazard 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. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides.
- 2) Unusual concentrations of Total Suspended Solids (such as, but not limited to, Fullers earth, lime slurries and lime residue), or any solid or viscous Pollutants in amounts that will cause obstruction to the flow in the System.
- 3) Any Wastewater having a pH less than 5.5, or Wastewater having any other corrosive property capable of causing damage or creating a hazard to the System or personnel of the Authority or a Member Jurisdiction.
- 4) Any Wastewater containing or which result in the presence of Toxic Pollutants or gases, vapors or fumes in sufficient quantity, either alone or by interaction with other Pollutants, which injures any Wastewater Treatment process, may cause acute worker health or safety problems, creates a toxic effect in the receiving waters of the Authority, or exceeds the limitation set forth in a Categorical Standard. A Toxic Pollutant shall include, but shall not be limited to, any Pollutant identified as such pursuant to section 307(a) of the Act.
- 5) Any noxious or malodorous liquids, gases or solids which either alone or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent personnel of the Authority or Member Jurisdictions from entering into the sewers for maintenance and repair.

- 6) Any substance which may cause the Authority's effluent or any other product of the Authority such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall any substance discharged to the System cause the Authority to violate any applicable sludge use or disposal criteria, or regulations developed therefore.
- 7) Any substance which will cause the Authority to violate its VPDES Permit or applicable water quality standards of the receiving water.
- 8) Any Wastewater with objectionable color which cannot be removed by the Treatment plant, such as, but not limited to, dye waste and vegetable tanning solutions.
- 9) Any Wastewater having a temperature which will inhibit biological activity in the Treatment Plant resulting in Interference, but in no case Wastewater with a temperature that causes the temperature of the combined Wastewater of all Users at the Treatment Plant to exceed 37° Centigrade (98.6° Fahrenheit).
- 10) Slug Loading(s) prohibited by these Regulations.
- 11) Any Wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Authority.
- 12) Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/L or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees Fahrenheit.
- 13) Any Wastewater, which at the End of Pipe location, exceeds the following Local Limits for the listed parameters:

<u>Parameter</u>	<u>Maximum Daily Limit (mg/L)</u>
Arsenic	0.51
Cadmium	0.09
Chromium	4.4
Copper	1.7
Cyanide	2.2
Lead	1.21
Mercury	0.002
Nickel	1.5
Selenium	0.41
Silver	2.8
Zinc	5.0

Parameter	Maximum Daily Limit (mg/L)	Monthly Average Limit (mg/L)	Monthly Average Concentration (mg/L)
BOD	500	350	NA
TSS	500	350	NA
TKN	100	NA	70.0
Total Phosphorus	20	NA	14.0
Nitrate + Nitrite	10.0	NA	NA
Oil & Grease	100	NA	NA
pH	(Range in standard units) 5.5 - 9.5	NA	NA

The Executive Director of the Authority may impose mass limitations in place of the concentration-based limits above with respect to any User other than a Significant Industrial User. If any measured values of these parameters are over the limits listed above, the Authority will determine if an Industrial User designation is required.

The sample type for Oil & Grease and pH shall be a Grab Sample. The sample type for all other parameters shall be a 24-hour composite sample (or for the time period Discharges occur if less than 24 hours). Compliance with a maximum daily limit shall be based on a single composite sample when there is only one sample in a 24-hour period, or an average of multiple composite samples in a day. Compliance with a monthly average limit shall be based on an average of all of the values for a specific parameter within a calendar month. Under no circumstances may Grab Samples be averaged.

Discharges of each single sample of TKN and Total Phosphorus in excess of the respective monthly average concentration shown in the table above but below the maximum daily limit shall not be considered an exceedance or a violation of the Local Limits. All Discharges of TKN and Total Phosphorus in excess of the respective monthly average concentration shall be subject to the Treatment Cost Recovery Fees in section 2.13.

- 14) Any trucked or hauled Pollutants except at discharge points designated by the Authority, and pursuant to specific authorization of a Wastewater Discharge Permit pursuant to these Regulations or other written Authority authorization.
- 15) Petroleum oil, non-biodegradable cutting oil, or products containing mineral oil in amounts that will cause Interference or Pass Through.
- 16) Any Wastewater containing quantities of Pollutants which exceed the applicable limitations set forth in a National Pretreatment Standard as such standards may be revised from time to time.
- 17) Unusual concentrations of Biochemical Oxygen Demand, at a flow rate or Pollutant concentration that will cause Interference.
- 18) Any Storm Water or water from any roof, foundation, areaway, parking lot, roadway, or other surface runoff or groundwater drains.

2.2 Prohibited Substances and Materials

No Person shall discharge or cause to be discharged, either directly or indirectly, any Wastewater, sewage or waste to the System which will cause a Pass Through or an Interference with the operation or performance of the Treatment Plant or the following described substances, materials, waters, or wastes if it appears likely, in the opinion of the Authority, that such wastes can harm the System, have an adverse effect on the Waters of the State or can otherwise endanger life, limb, public property or constitute a nuisance. Consideration will be given to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage Treatment process, capacity of the Treatment Plant, degree of treatability of wastes in the Treatment Plant and other pertinent factors. The substances prohibited are:

- 1) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit.
- 2) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Member Jurisdiction or the Authority.
- 3) Any waters or wastes containing strong acid iron pickling wastes or concentrated plating solutions, whether neutralized or not.
- 4) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances or wastes exerting an excessive chlorine requirement to such degree that any such material received in the Wastewater at the Treatment Plant exceeds the limits established by the Authority for such materials.
- 5) Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be established by the Authority as necessary, after Treatment of the Wastewater, to meet the requirements of the State, federal or other public agencies of jurisdiction for such discharge to the Waters of the State.
- 6) Materials which exert or cause unusual concentrations of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate) not to exceed seven hundred and fifty (750) mg/L.

When the Authority determines that a User is violating this section, the violator may be subject to the Enforcement Actions in section 4 of these Regulations.

2.3 Federal Categorical Pretreatment Standards

Compliance by existing sources with Categorical Standards is required under federal law within three (3) years of the date the Standard is effective, unless a shorter compliance time is specified within the Standard. Compliance by New Sources is required under federal law on the date the Standard is effective.

1) Non-Significant Categorical Industrial Users

The Authority may determine that a Categorical Industrial User 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 gallons per day (gpd) of total categorical Wastewater (excluding sanitary, non-contact cooling and boiler blowdown Wastewater, unless specifically included in the standard) and the following conditions are met:

- a) The Industrial User, prior to the Authority's finding, has consistently complied with all applicable Categorical Pretreatment Standards and Requirements;
- b) The Industrial User annually submits the certification statement required in 40 CFR § 403.12(q) together with any additional information necessary to support the certification statement; and
- c) The Industrial User never discharges any untreated concentrated Wastewater.

2) Equivalent Limitations to Those Expressed as Mass

When the limits in a Categorical Pretreatment Standard are expressed only in terms of mass of Pollutant per unit of production, the Authority may convert the limits to equivalent limitations expressed either as mass of Pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

In any such case the Authority, in calculating equivalent mass-per-day limitations shall calculate such limitations by multiplying the limits in the Categorical Standard by the Industrial User's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the Industrial User's actual long-term daily production, such as the average daily production during a representative year. For New Sources, actual production shall be estimated using projected production.

Further in any such case the Authority, in calculating equivalent concentration limitations shall calculate such limitations by dividing the mass limitations derived as stated immediately above by the average daily flow rate of the Industrial User's regulated process Wastewater. This average daily flow rate shall be based upon a reasonable measure of the Industrial User's actual long-term average flow rate, such as the average daily flow rate during the representative year.

3) Equivalent Limitations to Those Expressed as Concentration

When the limits in a Categorical Pretreatment Standard are expressed only in terms of Pollutant concentrations, an Industrial User may request that the Authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Authority. The Authority may establish equivalent mass limits only if the Industrial User meets all the following conditions specified below. To be eligible for equivalent mass limits, the Industrial User must:

- a) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its Wastewater Discharge Permit;
- b) Currently use control and Treatment technologies adequate to achieve compliance with the applicable Categorical Standard, and not have used dilution as a substitute for Treatment;
- c) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and long-term average production rate must be representative of current operating conditions;
- d) Not have daily flow rates, production levels, or Pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and
- e) Have consistently complied with all applicable Categorical Standards during the period prior to the Industrial User's request for equivalent mass limits.

Further, an Industrial User subject to equivalent mass limits must:

- f) Maintain and effectively operate control and Treatment technologies adequate to achieve compliance with the equivalent mass limits;
- g) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;
- h) Continue to record the facility's production rates and notify the Authority whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined initially. Upon notification of a revised production rate, the Authority will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
- i) Continue to employ the same or comparable water conservation methods and technologies as those implemented so long as it discharges under an equivalent mass limit.

The Authority, if it establishes equivalent mass limits, will:

- j) Calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average limits for the applicable Categorical Standard and the appropriate unit conversion factor;
- k) Upon notification of a revised production rate, reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and
- l) Retain the same equivalent mass limit in a subsequent Wastewater Discharge Permit if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily

flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for Treatment. The Industrial User must also be in compliance with 40 CFR § 403.17 regarding the prohibition of bypass.

- m) The Authority will not express limits in terms of mass for Pollutants such as pH, temperature, radiation, or other Pollutants which cannot appropriately be expressed as mass.

2.4 Modification of Federal Categorical Pretreatment Standards

When the System achieves consistent removal (as defined by 40 CFR § 403.7) of Pollutants limited by Categorical Standards, the Authority may in its discretion apply for modification of specific limits in the Categorical Standards. The Authority may then modify Pollutant Discharge limits in the Categorical Standards to reflect such "Removal Credits" if the requirements contained in 40 CFR § 403.7 are met and prior EPA approval is obtained.

2.5 Specific Pollutant Limitations

The Authority has established Local Limits in section 2.1(13) of these Regulations applicable to all Users. The Authority further reserves the right to set specific numerical limitations on the quantity of Pollutants discharged by any User to the System. Such further limitations may affect a single User, a category of Users, or all Users and will be set at such limits which will further the objectives of these Regulations.

2.6 State Requirements

Any applicable State requirements and limitations on Discharges shall apply in any case where they are more stringent than requirements established by the Authority.

2.7 Authority's Right of Revision

The Authority reserves the right to modify the Wastewater Discharge Permits, limitations or requirements on Discharges to the System as it determines necessary to comply with the objectives in Section 1.1 of these Regulations.

2.8 Excessive Discharge

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 these Regulations, the Categorical Standards or any other federal, State or local law or regulation.

2.9 Accidental Discharges

Each User shall provide protection from accidental Discharge of prohibited Pollutants or other substances regulated by these Regulations. In case of an accidental Discharge, it is the responsibility of the User to immediately telephone and otherwise notify the Authority of the incident. The notification shall include the location of the Discharge, type of waste, concentration, volume, and corrective actions.

- 1) Written Notice. Within five (5) days following an accidental Discharge, the User shall submit to the Authority a detailed written report describing the cause of the Discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the System, fish kills, or any other damage to Person or property; nor shall such notification relieve the User of any civil penalties or other liability which may be imposed under these Regulations or other applicable law.
- 2) Notice to Employees. A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees whom to call in the event of a dangerous or accidental Discharge.

2.10 New or Increased Wastewater

The Authority may deny or condition new or increased contributions of Pollutants, or changes in the nature of Pollutants, to the System by any User where such contributions do not meet applicable Pretreatment Standards or Requirements or where such contributions would cause a risk of Pass Through or Interference to the System.

All Industrial Users shall promptly notify the Authority of any significant changes to the User's operations or systems which might alter the nature, quality, volume, or character of Pollutants in their Discharge including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under section 2.12 at least 30 days before the change. The Executive Director may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 3.2(1) of this ordinance. The Executive Director may issue an individual wastewater discharge

permit under Section 3.2 of this ordinance or modify an existing wastewater discharge permit under Section 3.2(2) of this ordinance in response to changed conditions or anticipated changed conditions.

2.11 Notification of Problem Discharges

All Industrial Users shall notify the Authority immediately of all Discharges that could cause problems to the System, including but not limited to any Slug Loadings by such Users. This notification shall be followed up within five (5) days by written notification as provided in section 2.9. Significant Industrial Users are required to notify the Authority immediately of any changes at its facility affecting potential for a slug discharge.

2.12 Notification of Hazardous Wastes

All Industrial Users shall notify the Authority, the EPA Region 3 Waste Management Division Director, and the Virginia Department of Environmental Quality Division of Land Protection and Revitalization in writing of any Discharge into the System of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261 or 9 VAC 20-60. Such notification must include the name of the hazardous waste as set forth in such regulations, the EPA hazardous waste number, and the type of Discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the System, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed hazardous waste discharges must be submitted to the Authority in advance of any substantial change in the volume or character of Pollutants.

Industrial Users are exempt from the above requirements during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR § 261.30(d) and § 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or any quantity of acute hazardous waste, requires a one-time notification. Subsequent months during which the Industrial User discharges additional quantities of such hazardous waste do not require additional notification.

In the case of new regulations identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the Authority, the EPA Region 3 Waste Management Division Director, and the Virginia Department of Environmental Quality Division of Land Protection and Revitalization of the discharge of such substance within 90 days of the effective date of such regulations.

In the case of any notification made under this section, the Industrial User shall certify that it has a program in place to reduce the volume or toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

Industrial Users who commence discharging hazardous wastes after the effective date of these notification requirements shall provide notification no later than 180 days after the discharge of the hazardous waste.

2.13 Treatment Cost Recovery Fees

In accordance with the formula below, the Authority shall calculate and collect Treatment Cost Recovery Fees for any daily composite sample for BOD, TSS, TKN and Total Phosphorus concentrations in excess of the monthly average Wastewater Discharge Permit limit or monthly average concentration as provided in 2.1(13). Such fees shall be calculated as the sum of each Treatment Cost Recovery Fee calculated during the monitoring period. Treatment Cost Recovery Fees shall be paid by Industrial Users within 45 days of the end of the monitoring period.

$$\text{Treatment Cost Recovery Fee} = 8.345 * (X - Y) * \text{ADF} * Z * U$$

Where:

X is each single sample concentration when in excess of the monthly average Wastewater Discharge Permit limit (BOD=350 mg/L and TSS=350 mg/L) or monthly average concentration (TKN=70.0 mg/L and Total Phosphorus=14.0 mg/L)

Y is the monthly average Wastewater Discharge Permit limit (BOD=350 mg/L and TSS=350 mg/L) or monthly average concentration (TKN=70.0 mg/L and Total Phosphorus=14.0 mg/L)

ADF is the average daily Wastewater flow in million gallons recorded on the day the exceedance occurred

Z is the Pollutant parameter Treatment Cost Recovery Multiplier below

U is the Pollutant parameter Unit Cost for Treatment in dollars per pound

Treatment Cost Recovery Multiplier				
Parameter	1.0	1.5	2.0	3.0
BOD	>350-500 mg/L	>500-1,000 mg/L	>1,000-1,500 mg/L	>1,500 mg/L
TSS	>350-500 mg/L	>500-1,000 mg/L	>1,000-1,500 mg/L	>1,500 mg/L
TKN	>70.0-100 mg/L	>100-125 mg/L	>125-150 mg/L	>150 mg/L
Total Phosphorus	>14.0-20 mg/L	>20.0-25 mg/L	>25-30 mg/L	>30 mg/L
Nitrate + Nitrite	NA	NA	NA	>10.0 mg/L

The Unit Cost for Treatment (U) shall be as determined by the Authority on an annual or other basis and published on the Authority website.

Notwithstanding the above, for Industrial Users whose principal classification is industry 312120 (breweries), 312130 (wineries), 312140 (distilleries), 312111 (soft drinks), and other classifications (as approved by the Authority) pursuant to the North American Industry Classification System (NAICS), the factor X used for calculating the BOD Treatment Cost Recovery Fee may be computed by subtracting sBOD from BOD and using the difference, as determined by the Authority on a case-by-case basis.

Imposition and payment of such fees shall not excuse the exceedance of the underlying Pollutant parameter monthly average limit from section 2.1(13), and any such exceedance shall continue to be subject to Authority enforcement.

2.14 Industrial User Monitoring

Permitted Industrial Users shall be required to monitor their Wastewater Discharges at the following frequencies unless stipulated differently in their individual Wastewater Discharge Permit.

- 1) All Pollutant parameters except as specified below.

<u>Average Daily Flow</u>	<u>Monitoring Frequency</u>
<50,000 gpd	1/week
≥50,000 < 100,000 gpd	2/week
≥100,000 gpd	3/week

- 2) Metals: 1/year.
- 3) Oil & Grease: 2/month.
- 4) pH at least 1/hour each day for the time period of the Discharge.
- 5) If sampling performed by an Industrial User indicates a violation, the User shall notify the Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Authority within 30 days after becoming aware of the violation. Where the Authority has performed the sampling and analysis in lieu of the Industrial User, the Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required if:
 - a. The Authority performs sampling at the Industrial User at a frequency of at least once per month; or
 - b. The Authority performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Authority receives the results of this sampling.

SECTION 5.3 - ADMINISTRATION

3.1 Wastewater Discharges

It shall be unlawful for any Significant Industrial User to discharge without a Wastewater Discharge Permit to the System any Wastewater except as authorized by the Authority in accordance with the provision of these Regulations.

3.2 Wastewater Discharge Permits

All Significant Industrial Users proposing to connect to or contribute to the System shall obtain from the Authority a Wastewater Discharge Permit before connecting to or contributing to the System. The Authority may require any other IU to obtain from the Authority a Wastewater Discharge Permit before connecting to or contributing to the System, if the Authority determines that a Wastewater Discharge Permit is beneficial in implementing these Regulations.

1) Wastewater Discharge Permit Application

A User required to obtain a Wastewater Discharge Permit shall complete and file with the Authority an application in the form prescribed by the Authority. The Authority shall furnish the appropriate Member Jurisdiction with a copy of the application upon receipt. Proposed new Users shall apply at least 90 days prior to their intent to connect to or contribute to the System. The application shall include the following information.

- a) Name, address of the User and the location of the Discharge if different from such address;
- b) SIC number(s);
- c) Wastewater constituents and characteristics, including but not limited to, those identified in subsection 2.1(13) of these Regulations as determined by a reliable analytical laboratory; and sampling and analysis shall be performed in accordance with procedures established in 40 CFR Part 136;
- d) Time and duration of contribution;
- e) Average daily and 30-minute peak Wastewater flow rates, including daily, monthly and seasonal variations if any;
- f) Site plans showing all sewers and sewer connections by the size, location and elevation and any Pretreatment facilities;
- g) Description of Pretreatment facilities and processes on the premises, or those to be installed;
- h) Measurement of Pollutants. (i) The User shall identify the Pretreatment Standards applicable to each regulated process; and (ii) the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by an applicable standard or the Authority) of regulated Pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The samples shall be representative of daily operations. In cases where the standard or local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Authority or the applicable standards to determine compliance with the standard.

Further (iii) a minimum of four (4) Grab Samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other Pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Authority may waive flow-proportional composite sampling for any Industrial User that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) Grab Samples where the User demonstrates that this will provide a representative sample of the effluent being discharged. The User shall (iv) take a minimum of one representative sample to compile the data necessary to comply with the requirements of this section; (v) samples shall be taken immediately downstream from Pretreatment facilities if such exist or immediately downstream from the regulated process if no Pretreatment exists. If other Wastewaters are mixed with the regulated Wastewater prior to Pretreatment, the User shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR § 403.6(e) in order to evaluate compliance with the Pretreatment Standards.

Where a proposed alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula of 40 CFR § 403.6(e), this adjusted limit along with supporting data shall be submitted to the Authority. This paragraph pertains to Users subject to Categorical Standards.

In the case of Users not subject to Categorical Standards, the Authority shall specify on the Wastewater Discharge Permit application which Pollutants are to be sampled (including sample type and number) and tested.

- i) If additional Pretreatment and/or operation and maintenance will be required to meet the Pretreatment Standards or Requirements, the shortest schedule by which the User is able to provide such additional Pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard or otherwise by these Regulations.

The following conditions shall apply to this schedule:

- (i) The schedule shall contain increments of progress 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 or Requirements (e.g. hiring an engineer, completing

preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc).

(ii) No increment referred to in the preceding paragraph shall exceed nine (9) months.

(iii) Not later than 14 days following each date in the schedule and the final date for compliance, the User shall submit a progress report to the Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with such increment of progress, the reason for delay, and the steps being taken by the User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the Authority.

j) A list of products produced;

k) Type of raw material processed; and

l) Any other information as may be required by the Authority to evaluate the Wastewater Discharge Permit application. The Authority will evaluate the data furnished by the User and may require additional information. After evaluation and acceptance of the data furnished, the Authority may issue a Wastewater Discharge Permit subject to the terms and conditions provided herein; or the Authority may decline to issue the Wastewater Discharge Permit.

2) Wastewater Discharge Permit Modifications

The Authority may reopen and modify a Wastewater Discharge Permit for good cause, including without limitation for the following reasons.

a) To incorporate any new or revised Pretreatment Standard or Requirement.

b) To address significant alterations to the User's processes or Discharge.

c) A change in the Authority's facilities or processes or the regulatory requirements applicable to the Authority.

d) To correct typographical or other errors in the Wastewater Discharge Permit.

e) On the request of the permittee for good cause shown.

3) Wastewater Discharge Permit Conditions

Wastewater Discharge Permits shall be expressly subject to all provisions of these Regulations and all other applicable regulations, User charges and fees established by the Authority or the appropriate Member Jurisdiction. Wastewater Discharge Permits shall contain the following:

a) Statement of duration (in no case more than five (5) years);

b) Statement of non-transferability without, at a minimum, prior notification to the Authority, a signed agreement between the current and new permittees stating and agreeing to the date of transfer, and approval of the transfer by the Authority. The Authority may in its discretion require a new Wastewater Discharge Permit application from the proposed new owner;

c) Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards, Categorical Pretreatment Standards, and the requirements of these Regulations;

d) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the Pollutants to be monitored, sampling location, sampling frequency, and sample type;

e) Statement of applicable civil and criminal penalties for violation of the Wastewater Discharge Permit, Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines;

f) Limits on average and maximum rate and time of Discharge or requirements for flow regulations and equalization, if determined necessary by the Authority;

g) Requirements for installation and maintenance of inspection and sampling facilities, if determined necessary by the Executive Director;

h) Requirements for maintaining and retaining plant records relating to Wastewaters and Discharge as specified by the Authority, and affording the Authority access thereto;

i) Requirements for notification of the Authority of any new introduction of Wastewater constituents or any substantial change in the volume or character of the Wastewater

constituents being introduced into the System;

- j) Requirements for immediate notification of all Discharges that could cause problems to the System, including any Slug Loading;
 - k) Requirements for slug discharge control, if determined necessary by the Authority. A slug control plan shall contain, at a minimum, the following elements: description of discharge practices, including non-routine batch discharges; description of stored chemicals; procedures for immediately notifying the Authority of slug discharges, with procedures for a follow-up written notification within five days; and, if necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.
 - l) Statement that the Wastewater Discharge Permit may be reopened and modified as determined necessary by the Authority; and
 - m) Other conditions as determined appropriate by the Authority to ensure compliance with these Regulations.
- 4) Wastewater Discharge Permit Duration

Wastewater Discharge Permits shall be issued for a specified time period, not to exceed five (5) years. The User shall apply for Wastewater Discharge Permit renewal at least 180 days prior to the expiration of the User's existing Wastewater Discharge Permit. The terms and conditions of the new Wastewater Discharge Permit may be subject to modification by the Authority. The User shall be informed of any proposed changes in its Wastewater Discharge Permit at least 30 days prior to the effective date of change. Any changes or new conditions in the Wastewater Discharge Permit shall include if necessary and consistent with legal requirements a reasonable time schedule for compliance.

If the permittee has submitted a complete reapplication no later than the date identified in the immediately preceding paragraph, and the Authority has not, through any fault of the permittee, made a decision on Wastewater Discharge Permit reissuance, the Wastewater Discharge Permit shall be administratively extended and remain in effect until a final decision on the Wastewater Discharge Permit by the Authority.

- 5) Supplemental Wastewater Discharge Permit Provisions
- a) *Performance Bonds Reserve*
 - b) *Liability Insurance Reserve*
 - c) *Payment of Outstanding Fees and Penalties Reserve*
 - d) *Disclosure Statements (compliance information on User and key personnel) Reserve*
- 6) Wastewater Discharge Permit Transfer

Wastewater Discharge Permit shall be issued to a specific User for a specific operation at a specific location. A Wastewater Discharge Permit shall not be assigned, transferred or sold to another Person or User except as provided in subsection 3.2(3)(b), and shall not be applicable to a different premises or a new or changed operation without the approval of the Authority.

3.3 Reporting Requirements

1) Baseline Report

Within 180 days after the effective date of a Categorical Standard, existing Industrial Users subject to such standards and currently discharging to or scheduled to discharge to the System shall submit to the Authority a report which contains the information listed in subparagraphs (a) - (g) below. At least 90 days prior to commencement of discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable Categorical Standard, shall submit to the Authority a report which contains the information listed in subparagraphs (a) - (e) below. New Sources shall also be required to include in this report information on the method of Pretreatment the source intends to use to meet applicable Pretreatment standards. New Sources shall give estimates of the information requested in subparagraphs (d) and (e) of this section:

- a) *Identifying information.* The name and address of the facility including the name of the operator and owners;
- b) *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 SIC of the operation(s) carried out by such Industrial User. This description shall include a schematic process diagram which identifies points of Discharge to the System from the regulated processes;
- d) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the System from each of the following:
 - i. Regulated process streams; and
 - ii. Other streams as necessary to allow use of the combined wastestream formula of 40 CFR § 403.6(e).

The Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

- e) *Measurement of Pollutants.* The Categorical Standards applicable to each regulated process. In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or the Authority) of regulated Pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Authority or the applicable standards to determine compliance with the standard. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection. Samples shall be taken immediately downstream from Pretreatment facilities if such exist or immediately downstream from the regulated process if no Pretreatment exists. If other Wastewaters are mixed with the regulated Wastewater prior to Pretreatment, the User shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR § 403.6(e) in order to evaluate compliance with the standards. Where an alternate concentration or mass limit has been calculated in accordance with these Regulations, this adjusted limit along with supporting data shall be submitted to the Authority.

The Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial Pretreatment measures.

The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected Pollutant Discharges to the System.

- f) *Certification.* A statement, reviewed by an Authorized Representative of the Industrial User and certified to by a qualified professional, stating whether 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 Industrial User to meet the standards; and
- g) *Compliance schedule.* If additional Pretreatment and/or O&M will be required to meet the standards; the shortest schedule by which the Industrial 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 standard.

Where the Industrial User's Categorical Pretreatment Standard has been modified by a removal allowance (40 CFR § 403.7), the combined wastestream formula (40 CFR § 403.6(e)), and/or a Fundamentally Different Factors variance (40 CFR § 403.13) at the time the User submits the report required, the information required by subparagraphs (f) and (g) of this section shall pertain to the modified limits. If the Categorical Pretreatment Standard is modified by a removal allowance, the combined wastestream formula, and/or a Fundamentally Different Factors variance after the User submits the report required by this section, any necessary amendments to the information requested by paragraphs (f) and (g) shall be submitted by the User to the Authority within 60 days after the modified limit is approved.

- 2) *Compliance schedule for meeting Categorical Standards.* The following conditions shall apply to the schedule required by paragraph (1)(g) of this section: The schedule shall contain increments of progress 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 Industrial User to meet the applicable Categorical Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc). No increment shall exceed nine (9) months. Not later than 14 days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps

being taken by the Industrial User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the Authority.

3) Categorical Standard Deadline Compliance

Within 90 days following the date for final compliance with applicable Categorical Standards or in the case of a New Source following commencement of the introduction of Wastewater into the System, the User shall submit to the Authority a report including the information described in subsections (1)(d) – (f) above. For Industrial Users subject to equivalent mass or concentration limits established by the Authority, this report shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to Categorical 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.

4) Periodic Reports on Continued Compliance

After the compliance date of a Categorical Standard or, in the case of a New Source, after commencement of the Discharge into the System, any User subject to a Categorical Standard shall submit to the Authority during the months of June and December, unless required more frequently by the Authority, a report identifying the nature and concentration of Pollutants in the effluent which are limited by such standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period. At the discretion of the Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Authority may agree to alter the months during which the above reports are to be submitted. In cases where the standard requires compliance with a Best Management Practice or other pollution prevention alternative, the User shall submit documentation required by the Authority or the standard necessary to determine the compliance status of the User.

5) Reports and applications submitted by an Industrial User must be signed by a responsible corporate officer or a duly Authorized Representative of that individual. (i) A responsible corporate officer is defined as the president, secretary, treasurer or vice president of the corporation in charge of the principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation. In addition, the manager of one or more manufacturing, production or operating facility(ies) of the corporation, provided, the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other 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 discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. (ii) By a general partner or proprietor if the industrial user submitting the reports required by subsections 3.3(1), (2), and (3) of this section is a partnership or sole proprietorship, respectively. (iii) By a duly authorized representative of the individual designated in (i) or (ii) of this subsection if:

- a. The authorization is made in writing by the individual described in subdivision (i) or (ii) of this subsection;
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and
- c. The written authorization is submitted to the Authority.

(iv) If an authorization under subdivision (iii) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision (iii) of this subsection must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

The following statement shall be used on all reports, application and notices requiring certification, and with all submissions of data;

"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 fines and imprisonment for knowing violations."

- 6) The reports required in 3) of this subsection must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable local limits, pretreatment standards and requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Authority. Where time-proportional composite sampling or grab sampling is authorized by the Authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Authority, as appropriate.
- 7) For sampling required in support of baseline monitoring and 90-day compliance reports required by 3.3(1) and 3.3(2) of this section, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Authority may authorize a lower minimum. For the reports required by 3.3(3) and 3.3(9) of this section, the Authority shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with applicable local limits, pretreatment standards and requirements.
- 8) The Authority may impose mass limitations on Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by the provisions above shall identify the mass of Pollutants regulated by the standards in the effluent of the User.
- 9) All analyses shall be performed in accordance with procedures established by EPA in 40 CFR Part 136. Sampling shall be performed in accordance with the techniques designed and implemented to obtain representative samples.

If an Industrial User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Authority, using the procedures prescribed above in 8), the results of this monitoring shall be reported.

- 10) Reporting requirements for Industrial Users not subject to categorical pretreatment standards. The Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical pretreatment standards. Significant noncategorical Industrial Users must submit to the Authority at least once every six months (on dates specified by the Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR Part 136 and amendments thereto. This sampling and analysis may be performed by the Authority in lieu of the Significant noncategorical Industrial User.
- 11) Any Industrial User subject to the reporting requirement established in this section shall maintain records of all information resulting from any monitoring activities required by this section including documentation associated with Best Management Practices. Such records shall include for all samples: (i) the date, exact place, method, and time of sampling and the names of the person or persons taking the samples; (ii) the dates analyses were performed; (iii) the individuals who performed the analyses; (iv) the analytic methods used; and (v) the result of such analyses.

Any Industrial User subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to retain for a minimum of three (3) years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying on the request of the Authority. This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or when requested by the Authority.

3.4 Monitoring and Pretreatment Facilities

1) Monitoring Facilities

Each User required to monitor its Wastewater shall provide and operate at the User's 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 when such location would be impractical or cause undue hardship on the User, if approved by the Member Jurisdiction, the Authority may approve a 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.

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.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the Authority's requirements and all applicable local construction standards and specifications, and shall be available for the Authority's inspection and use for sampling.

2) Pretreatment Facilities

Users shall provide necessary Pretreatment as required to comply with these Regulations and shall achieve compliance with all Pretreatment Standards and Requirements within the time limitations as specified by these Regulations, the Wastewater Discharge Permit, any Order or federal Pretreatment Standards, whichever is more stringent. Any facilities required to pretreat Wastewater to a level acceptable to the Authority shall be proven, operated and maintained at the User's expense. Detailed plans showing the Pretreatment facilities and operating procedures shall be submitted to the Authority for review, and shall be acceptable to the Authority before construction of the facility. The review of such plans and operating procedures will in no way relieve the User from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the Authority under the provision of these Regulations. Any subsequent changes in the Pretreatment facilities or method of operation shall be reported to and be acceptable to the Authority prior to the User's initiation of the changes.

All records relating to compliance with Pretreatment Standards and Requirements shall be made available to officials of the EPA, the Virginia Department of Environmental Quality and the Authority upon request.

3.5 Inspection and Sampling

The Authority shall (i) randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in order to identify, independent of information supplied by the Industrial Users, occasional and continuing noncompliance with Pretreatment Standards or Requirements; (ii) inspect and sample the effluent from each Significant Industrial User at least once a year; and (iii) evaluate, at least once every two years, whether each such Significant Industrial User needs a plan to control Slug Loadings. In addition, Significant Industrial Users must be evaluated within one year of being designated a Significant Industrial User. If the Authority determines that a Slug Loading plan is needed, such plan shall contain at a minimum, the elements outlined in Section 3.2(3)(k) and set forth in 40 CFR § 403.8(f)(2)(vi). The Authority may inspect such facilities to ensure compliance. All Users shall allow representatives of the Member Jurisdictions and the Authority access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination (including the right to copy such records) and the performance of any of their duties. The Member Jurisdiction and the Authority shall have the right to set upon the User's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a User has security measures in force which would require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security guards so that upon presentation of suitable identification, personnel from the Member Jurisdiction and/or the Authority will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

In addition, all Users shall pay to the Member Jurisdiction or the Authority all reasonable and necessary costs incurred by the Member Jurisdiction or the Authority in connection with inspections, Wastewater monitoring, sampling and testing.

3.6 Confidential Information

Information and data of a User obtained from reports, questionnaires, Wastewater Discharge Permit applications, Wastewater Discharge Permits, monitoring programs and inspections shall be available to the public without restriction unless the User specifically identifies such information as being business confidential or proprietary and requests that such information remain confidential. Information and data identified and marked by the User as business confidential or proprietary will be held confidential by the Authority to the extent permissible under law. Information and data concerning effluent data cannot be claimed as confidential.

SECTION 5.4 - ENFORCEMENT

4.1 Harmful Contributions

- 1) The Authority may suspend the Wastewater Treatment service or a Wastewater Discharge Permit or cut off the sewer connection when the Authority determines such suspension or cut off to be necessary, in order to stop a Discharge which:
 - a) presents or may present an imminent or substantial endangerment to the health or welfare of persons;
 - b) presents or may present an imminent or substantial endangerment to the environment;
 - c) may cause or actually causes an Interference or Pass Through; or
 - d) may cause the Authority to violate any condition of its VPDES Permit.
- 2) The Authority may reinstate the Wastewater Discharge Permit or the Wastewater Treatment service upon proof of the elimination of the subject Discharge.
- 3) In the event of a suspension or cut-off under this section, within 15 days the User shall submit a written report to the Authority describing the event that caused the conditions of concern and the measures taken to prevent any recurrence.

4.2 Revocation of Wastewater Discharge Permit

The Authority may revoke any Wastewater Discharge Permit if it determines that:

- 1) A User has falsified information or records submitted or retained in accordance with these Regulations or in connection with any Wastewater Discharge Permit issued pursuant to these Regulations;
- 2) A User has violated the conditions of a Wastewater Discharge Permit;
- 3) A User has refused right of entry required by these Regulations;
- 4) A User has failed to timely re-apply for a Wastewater Discharge Permit or request a required Wastewater Discharge Permit modification;
- 5) A User has discharged into the System in violation of these Regulations; or
- 6) Changed circumstance(s) require a temporary or permanent reduction or elimination of the permitted Discharge.

4.3 Notice of Violation

- 1) Issuance. The Authority may issue a written Notice of Violation if there are reasonable grounds to believe that the Person to whom the Notice of Violation is directed has violated:
 - a) These Regulations;
 - b) Any requirement imposed under these Regulations; or
 - c) Any Order or Wastewater Discharge Permit issued under these Regulations.
- 2) Contents. A Notice of Violation issued under this section shall:
 - a) Specify the provision(s) that allegedly has been violated;
 - b) State the alleged facts that constitute the violation;
 - c) Require a written response;
 - d) Require correction of the cause of the violation alleged; and/or
 - e) Require the User's appearance at an informal hearing at a time and place scheduled in order to respond to the charges in the Notice of Violation.

4.4 Issuance of Compliance Order

- 1) In general. After or concurrent with the issuance of a Notice of Violation under these Regulations, the Authority may:
 - a) Issue a Compliance Order that requires the Person to whom the Order is directed to take corrective action within a time set in the Order; and/or
 - b) To appear at an informal hearing at a time and place scheduled in order to respond to the charges in the Order.

- 2) **Effective Date of Compliance Order.** Unless and until the Person subject to the Order makes a timely request for an informal hearing, the Order is according to its terms a final and effective Order. If the Person to whom an Order is directed makes a timely request for a Hearing, the order becomes a final Compliance Order when the Authority renders its decision following the Hearing.
- 3) **Emergency Compliance Order.** Nothing herein shall prevent the Authority from issuing an Emergency Compliance Order, when conditions warrant, which shall be a final Order when it is delivered to the User and during any informal hearing process, subject to later withdrawal or change by the Authority.

4.5 User Informal Hearing Requests

- 1) **Hearing.** Within 10 days after the date of a Notice of Violation or Compliance Order for which the Authority has not scheduled an informal hearing, the Person to whom the Notice of Violation or Compliance Order is directed may request a hearing by written request to the Executive Director.
- 2) Upon such request by a User, the Executive Director shall schedule an informal hearing before such Person as the Executive Director designates, unless he/she determines that the request for a hearing is frivolous or insubstantial.
- 3) Following any such hearing, the Authority may take further enforcement or other action that it determines to be necessary.

4.6 Injunctive Relief.

The Authority may bring an action for an injunction against any Person who violates any provision of these Regulations or any Order or Wastewater Discharge Permit issued under these Regulations.

4.7 Administrative Civil Penalties, Special Orders

In the event of a violation(s) of these Regulations, or an Order or Wastewater Discharge Permit hereunder, the Executive Director or his designee may issue to the offending Person a Special Order assessing an administrative civil penalty and requiring other appropriate relief. No Special Order shall be issued until after the Person accused of the violation has been provided an opportunity for a hearing, except with the consent of such Person. The notice of the hearing shall be served personally or by registered or certified mail, return receipt requested, on such Person or any Authorized Representative of such Person at least 30 days prior to the hearing. The notice shall specify the time and place for the hearing, facts and legal requirements related to the alleged violation, and the amount of any proposed administrative civil penalty. At the hearing the Person accused of the violation may present evidence including witnesses regarding the occurrence of the alleged violation and the amount of the penalty, and may examine any witnesses for the Authority. A verbatim record of the hearing shall be made. Within 30 days after the conclusion of the hearing, the Executive Director or his designee shall make findings of fact and conclusions of law and either issue the Special Order, withdraw the matter, or take other appropriate action.

No Special Order shall assess an administrative civil penalty in excess of \$32,500 per violation, or \$100,000 in total, except with the consent of the subject of the Special Order. The actual amount of any administrative civil penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm or facility damage, the compliance history of the Person, any economic benefit realized from the noncompliance, and the ability of the Person to pay the penalty. In addition to administrative civil penalties, the Special Order may include a monetary assessment for actual damages to sewers, Treatment works and appurtenances and for costs, attorney fees and other expenses resulting from the violations, absent the consent of the Person in the Order. Civil penalties in excess of the maximum amounts established herein may be imposed only by a Virginia court of competent jurisdiction in amounts determined in its discretion but not to exceed the maximum amounts established in Virginia Code section 62.1-44.32.

This section shall not impair the Authority's right to proceed for penalty or other relief on other applicable authorities. Each day during which a violation is found to have occurred shall constitute a separate violation, other than any violation that is by its nature only as to matters occurring over a period in excess of a single day. An admission or finding of liability under this section shall not be deemed an admission in any criminal proceeding, and no civil action authorized by the section shall proceed while a criminal action is proceeding.

Any Special Order issued by the Authority, whether or not assessing an administrative civil penalty, shall inform the Person of his right to seek reconsideration or review by the Executive Director and of his right to judicial review of any final Special Order. Reconsideration or review shall be initiated by written request to the Executive Director filed within 30 days of the date of the Special Order. The Executive Director's decision on reconsideration or review shall be provided in writing. Judicial review shall be available only if the subject of the Special Order has first exhausted his opportunity for administrative reconsideration or review. An appeal shall be to Circuit Court on the record of proceedings before the Authority. To commence an appeal, the Person shall file a Petition in Circuit Court within 30 days of the date of the final decision on the Special Order on reconsideration or review,

and failure to do so shall constitute a waiver of the right to appeal. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support such findings.

4.8 Surcharge

The Authority may impose a surcharge on each Member Jurisdiction, User or Discharge which exceeds the limitations specified in section 2, sufficient to recover any costs that result either directly or indirectly from such exceedance. The assessment or payment of any such surcharge shall not constitute an acceptance of such wastes by the Authority, and shall not prevent the Authority from any other enforcement or other actions under these Regulations in response to such exceedance.

4.9 Defenses to Wastewater Discharge Permit Violations

1) Upset. For the purposes of this section, Upset means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards or Pretreatment Requirements because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed Treatment facilities, inadequate Treatment facilities, lack of preventive maintenance, or careless or improper operation. An Upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards or Pretreatment Requirements if the requirements of subsection 4.9(1)(a) are met.

a) Conditions necessary for a demonstration of Upset. An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An Upset occurred and the Industrial User can identify the cause(s) of the Upset;

(ii) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

(iii) The Industrial User has submitted the following information to the Authority within 24 hours of becoming aware of the Upset (if this information is provided orally, a written submission must be provided within five days):

A description of the Indirect Discharge and cause of noncompliance;

The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

b) Burden of Proof. In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.

c) Reviewability of Authority consideration of claims of Upset. No determinations made in the course of the review shall constitute final Authority action subject to judicial review. Industrial Users will have the opportunity for a determination on any claim of Upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.

d) User responsibility in case of Upset. The Industrial User shall control production or all Discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of its Pretreatment 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 Pretreatment facility is reduced, lost or fails.

e) The treatment cost recovery fees, outlined in section 2.13, still apply regardless of the cause or length of the Upset.

2) Bypass. Bypass means the intentional diversion of wastestreams from any portion of an Industrial User's Pretreatment facility. Severe property damage means substantial physical damage to property, damage to the 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.

a) Bypass not violating applicable Categorical Standards or Pretreatment Requirements. An Industrial User may allow any Bypass to occur which does not cause Categorical Standards or Pretreatment Requirements to be violated, but only if it also is for essential

maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (b) and (c) of this subsection.

- b) Notice. If an Industrial User knows in advance of the need for a Bypass, it shall submit prior notice to the Authority, if possible at least ten days before the date of the Bypass. An Industrial User shall submit oral notice of an unanticipated Bypass that exceeds applicable standards to the Authority within 24 hours from the time the Industrial User becomes aware of the Bypass. A written submission shall also be provided within 5 days of the time the Industrial 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 Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
- c) Prohibition of bypass. Bypass is prohibited, and the Authority may take enforcement action against an Industrial User for a Bypass, unless;
 - (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (ii) 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 back-up 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 preventative maintenance; and
 - (iii) The Industrial User submitted notices as required under subsection 4.9(2)(b). The Authority may approve an anticipated Bypass, after considering its adverse effects, if the Authority determines that it will meet the three conditions listed in this subsection (c).
- d) The treatment cost recovery fees, outlined in section 2.13, still apply regardless of the cause or length of the Bypass.

SECTION 5.5 - PUBLIC NOTICE OF SIGNIFICANT NONCOMPLIANCE

At least annually the Authority shall give public notification in the largest daily newspaper published in Rockingham County (Daily News-Record), of Industrial Users which were in significant noncompliance with applicable Pretreatment Standards or other Pretreatment Requirements. For the purposes of this provision, a User is in significant noncompliance if its violations meet one of more of the following criteria: (i) chronic violations of Wastewater Discharge limits, defined as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same Pollutant parameter, including instantaneous limits, as defined by 9VAC25-31-10; (ii) technical review criteria (TRC) violations defined as those in which thirty-three percent or more of all of the measurements for each Pollutant parameter taken during a six-month period equal or exceed the product of the daily average maximum limit or the average limit, including instantaneous limits, as defined by 9VAC25-31-10; multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other Pollutants except pH); (iii) any other violation of a Pretreatment effluent limit or requirement as defined by 9VAC25-31-10 (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Authority determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of Authority personnel or the general public); (iv) any Discharge of a Pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Authority's exercise of its emergency authority to halt or prevent such a Discharge; (v) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a Wastewater Discharge Permit or enforcement order for starting construction, completing construction, or attaining final compliance; (vi) 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; (vii) failure to accurately report noncompliance; or (viii) any other violation or group of violations that may include a violation of Best Management Practices which the Authority determines will adversely affect the operation or implementation of the Pretreatment program.

SECTION 5.6 - SEVERABILITY

If any provision, paragraph, word, section or article of these Regulations 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.

This ordinance shall be effective from the 25th day of August, 2021.

Adopted the 25th day of August, 2021.

COUNTY ADMINISTRATOR’S STAFF REPORT.

PERSONAL PROPERTY TAX RELIEF

Administrator King reported that the staff recommendation is to use 40 percent as the Personal Property Tax Relief percentage for 2021.

On behalf of the Finance Committee, on motion by Supervisor Kyger, seconded by Supervisor Wolfe-Garrison, and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board set the Personal Property Tax Relief percentage for 2021 at 40 percent.

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ASSISTANT COUNTY ADMINISTRATOR STAFF REPORT.

The Board received and reviewed Mr. Armstrong’s staff report dated August 25, 2021.

Assistant County Administrator Armstrong reported that the Economic Development Authority received a request from Sentara Healthcare Affiliates for a refinancing of existing bonds. The EDA will hold a public hearing on the matter on September 8, 2021 at 9:00 a.m. in the Board of Supervisors meeting room, he said.

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FINANCE DIRECTOR’S STAFF REPORT.

The Board received and reviewed Mrs. Davidson’s staff report dated August 25, 2021.

Mrs. Davidson reported that the 2022 reassessment is going well. She indicated Pearson Appraisal has completed all residential properties in the County and most of the commercial properties. She also noted that the auditors will be on-site September 7 – 17, 2021, and will be available to meet with staff.

FINANCE COMMITTEE

On behalf of the Finance Committee, on motion by Supervisor Kyger, seconded by Supervisor Ritchie, and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board approved the following FY2021-2022 Supplemental Appropriation:

Shenandoah Rail Trail

The Conservation Fund (a501C3) agreed to finance and help negotiate the project with Norfolk Southern. They need an appraisal of the property (which involves 87 parcels and includes the condition of existing bridges) to negotiate with Norfolk Southern. Miller Long and Associate in Roanoke has agreed to do the appraisal for \$60,000. The Conservation Fund is paying half, several individuals from Shenandoah County are pledging \$15,000. The Conservation Fund requests \$15,000 from Rockingham County.

Supplemental Appropriation: \$15,000

\$15,000 1001-00000-15201-000-352000-000 General Fund: Fund Reserve
\$15,000 1001-09103-00000-000-505699-000 General Fund: Other Contributions

On behalf of the Finance Committee, on motion by Supervisor Kyger, seconded by Supervisor Wolfe-Garrison, and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-

GARRISON – AYE; the Board approved the following FY2021-2022 Supplemental Appropriation:

District Court Building Renovation

A supplemental appropriation in the amount of \$225,000 for the renovation of the District Court Building, Phases 3g. Moseley Architects designed the renovation and Harman Construction was the low bidder. Half of the funding is provided by the City of Harrisonburg.

Supplemental Appropriation: \$225,000

- \$112,500 GL Code: 1001-09301-00000-000-509511-000 Transfer to Capital Projects Fund
- \$112,500 GL Code: 1001-00000-15201-000-352000-000 General Fund: Fund Balance
- \$112,500 GL Code: 1101-00000-11899-000-318600-000 Share of Costs: City
- \$112,500 GL Code: 1101-00000-15102-000-351000-000 Transfer from General Fund
- \$225,000 GL Code: 1101-09401-00000-000-508396-000 District Court Renovation Phase 3

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COMMUNITY DEVELOPMENT DIRECTOR’S STAFF REPORT.

The Board received and reviewed Ms. Cooper’s staff report dated August 25, 2021.

Chairman Chandler stated that Board members and staff continue to review the proposed solar facility policy and ordinances.

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COMMITTEE REPORTS.

The Board heard the following committee reports from Board members and staff.

COMMUNITY CRIMINAL JUSTICE BOARD (CCJB)

Chairman Chandler reported the next CCJB meeting is scheduled on Monday, September 13, 2021. He plans to distribute a revision to the by-laws for review prior to the meeting.

HARRISONBURG-ROCKINGHAM METROPOLITAN PLANNING ORGANIZATION (MPO)

Supervisor Wolfe-Garrison reported that the MPO participated in a recent event in Harrisonburg, where Senator Mark Warner discussed the Infrastructure Bill and how it will impact Interstate 81 improvements.

VIRGINIA ASSOCIATION OF COUNTIES (VACo) LIAISON

Supervisor Kyger reported that he attended a successful VACo County Officials’ Summit in Richmond and remarked that there was a great deal of discussion regarding solar energy. He also reminded Board members of the upcoming annual VACo meeting in November.

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CLOSED MEETING.

On motion by Supervisor Kyger, seconded by Supervisor Ritchie and carried by a roll call vote of 4 to 0, voting recorded as follows: BREEDEN – ABSENT; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board recessed the meeting from 8:07 p.m. to 8:45 p.m., for a Closed Meeting - Pursuant to Section 2.2-3711.A(7), Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body.

MOTION: SUPERVISOR KYGER
SECOND: SUPERVISOR RITCHIE

RESOLUTION NO: 21-17
MEETING DATE: August 25, 2021

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Rockingham County Board of Supervisors has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by this Board of Supervisors that such Closed Meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Rockingham County Board of Supervisors hereby certifies that, to the best of each member’s knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies; and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed or considered by the Board of Supervisors.

VOTE:
AYES: CHANDLER, KYGER, RITCHIE, WOLFE-GARRISON
NAYS: NONE
ABSENT: BREEDEN

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ADJOURN.

Chairman Chandler declared the meeting adjourned at 8:46 p.m.

_____,
Chairman