



AGENDA ITEMS #: 19-111  
COUNCIL MTG OF: September 17, 2019  
FROM: David Caron, Town Administrator  
OFFERED BY: Thomas Carrier, Deputy Director of Public Works  
PREPARED BY: Thomas Carrier, Deputy Director of Public Works  
SUBJECT: Revision to Chapter 122 Sewers of the Code of the Town of Derry

STAFF REPORT  
*Public Hearing 10-1-19*

**PURPOSE:** To request Town Council approval of revisions to the Derry Sewer Use Ordinance required for compliance with the NH DES and US EPA regulations.

**TOWN ADMINISTRATOR COMMENTS:**

The Town Council is encouraged to schedule a public hearing for October 1 and thereafter, adopt revisions to Chapter 122, Sewers, as recommended.

**BACKGROUND:**

On December 12, 2018 NHDES conducted a Pretreatment Program Compliance Audit of Derry's Industrial Pretreatment Program. While the Audit found that Derry's program was "being implemented in a manner that is adequate and effective" it did note that certain actions were needed to comply with new rules promulgated by EPA including revisions to the Sewer Use Ordinance: Chapter 122 of the Code of the Town of Derry.

**DISCUSSION:**

1. 40 CFR 403.8(f)(1) and (f)(2) details the Town's responsibilities to enforce all applicable pretreatment standards and requirements. To ensure compliance with this regulation, we propose to revise Article XIII to add:

**Section 122-88 Enforcement Response Plan.**

The Derry Town Council is authorized to adopt and amend an enforcement response plan which shall set forth the manner in which the Town will proceed in enforcement actions as may be required by State or Federal law. The enforcement response plan shall be adopted or amended after public hearing and shall have the same force and effect as this ordinance. The Town reserves the right to act in a manner other than that set forth in the enforcement response plan as circumstances may require.

We further propose that the Council adopt the *Town of Derry, NH Industrial Pretreatment Program Enforcement Response Plan* dated September 2019. This plan is modeled after EPA guidelines and includes existing enforcement remedies provided for by the current Sewer Ordinance.

2. The EPA definition of Significant Industrial User must be revised to meet the requirements of 40 CFR 403.3(v). We therefore propose to revise Article I Section 122-4 as follows:

**Significant Industrial User.**

- a. A user subject to categorical pretreatment standards under 40 CFR 403.8 and 40 CFR Chapter I, Subchapter N; or a user that:
  - i. discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler blowdown wastewater);
  - ii. contributes a process waste stream that comprises five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
  - iii. discharges medical/infectious waste, pharmaceutical waste, or radiological waste; or
  - iv. is designated as such by the POTWs on the basis that it has a reasonable potential for adversely affecting the POTWs' operation or for violating any pretreatment standard or requirement.
  
- b. The Town may determine that an Industrial User subject to categorical Pretreatment Standards under §403.6 and 40 CFR chapter I, subchapter N 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 Pretreatment Standard) and the following conditions are met:
  - i. The Industrial User, prior to the Town's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
  - ii. The Industrial User annually submits the certification statement required in §403.12(q) together with any additional information necessary to support the certification statement; and
  - iii. The Industrial User never discharges any untreated concentrated wastewater.

- c. **Upon determining that a user meeting the criteria in Subsection b.i. or b.ii. has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Town may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.**

3. 40 CFR 403.8(+/-)(1)(iii)(B)(5) Requires that the Town may use criminal prosecution for violations of the ordinance. Therefore, we propose to add:

**Section 122-89 11.14 Criminal Prosecution.**

**Any person who willfully or negligently violates any provision of this ordinance or any order or permit issued hereunder shall be subject to any criminal penalties imposed for such violation pursuant to State or Federal law or local ordinance.**

To correct a reference in the Ordinance, we propose to revise as follows:

**Section 122-70(D)(3) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the Director, using the procedures prescribed in Subsection ~~K~~ J of this section, the results of this monitoring shall be included in the report.**

**FISCAL IMPACT:**

There is no fiscal impact to these revisions.

**RECOMMENDED ACTION BY COUNCIL:**

Town Council is requested to adopt the Chapter 122 of the Code of the Town of Derry as revised to date inclusive of the Derry, NH Industrial Pretreatment Program Enforcement Response Plan.

**RECOMMENDED MOTION:**

Please see Ordinance #2019-011

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