



**Date:** January 22, 2013  
**To:** Thomas Bonfield, City Manager  
**Through:** W. Bowman Ferguson, Deputy City Manager  
Donald F. Greeley, Director, Water Management  
Vicki P. Westbrook, Assistant Director, Water Management  
**From:** Reginald C. Hicks, Superintendent  
Gerald Tyrone Battle, Industrial Pretreatment Program Coordinator  
**Subject:** Implementation of State mandated changes for the City of Durham Enforcement Response Plan (ERP)

### **Executive Summary**

The Federal Pretreatment Regulations in 40 CFR 403.8(f)(5) require Pretreatment Control Authorities to have Enforcement Response Plans that enable a Publicly Owned Treatment Works (POTW's) to effectively enforce applicable pretreatment requirements and standards in their jurisdiction. ERPs developed by North Carolina pretreatment programs must meet the minimum guidelines established by the NC Department of Environment and Natural Resources/Division of Water Quality (DWQ) Pretreatment, Emergency Response and Collection Systems (PERCS) Unit. The proposed amendments to the City of Durham ERP incorporate streamlining modifications and mandated changes to align the City's ERP with the NC DWQ PERCS Model.

### **Recommendation**

The Department of Water Management recommends that the City Council adopt the proposed revisions to the City's Enforcement Response Plan to meet Department of Environment and Natural Resources/Division of Water Quality PERCS Unit requirements.

### **Background**

The Director of the POTW (director of Water Management) is authorized under North Carolina General Statute (NCGS) 143-215.6A and the City's Sewer Use Ordinance (SUO) to implement the pretreatment program and take appropriate enforcement action to ensure the safety of the City's workers, pipelines and treatment facilities. The City's current Enforcement Response Plan (adopted in 1997) was established as an element of the pretreatment program to provide for fair and equitable treatment of all Users for anticipated enforcement situations. In 2008, the PERCS Unit updated their model Enforcement Response Plan. The proposed amendments to the City of Durham ERP implement mandated changes by the PERCS Unit which align the City's ERP with the NC DWQ PERCS Model. This attached amended ERP has been reviewed by the PERCS Unit in 2010. Also during this timeframe, PERCS was in the process of making changes to the state model Sewer Use Ordinance and the 0900 Regulations that govern pretreatment. This proposed ERP incorporates these streamlining changes as mandated by the state.

### **Issues/Analysis**

The Federal Pretreatment Regulations in 40 CFR 403.8(f)(5) require Pretreatment Control Authorities to have an Enforcement Response Plan that reflects the Publicly Owned Treatment Works (POTWs)

primary responsibility to enforce all applicable pretreatment requirements and standards. The NC DWQ Pretreatment, Emergency Response, and Collection Systems (PERCS) Unit has updated the model Enforcement Response Plan required for use by POTWs with a pretreatment program. The proposed amendments to the City of Durham ERP implement mandated changes by the PERCS Unit to align the City of Durham's ERP with NC DWQ PERCS Model. Changes include recodification to align with the current SUO, increasing the maximum penalty from \$10,000 to \$25,000 per day per violation and Notice of Violation issuance.

**Alternatives**

No alternatives have been identified. If Council does not adopt the recommended changes, the City will be in violation of National Pollution Discharge Elimination System (NPDES) permits at the City's two water reclamation facilities as well as other state and federal statutes.

**Financial Impacts**

There are no anticipated financial impacts for the City of Durham as the Enforcement Response Plan is administered by existing staff. Potential financial impacts could be experienced by the industrial facilities regulated by the City's ERP. In such cases the maximum penalty assessed could more than double.

**SDBE Summary**

The Ordinance to Promote Equal Opportunity in City Contracting does not apply to this item.