

April 29, 2009

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, No. 200
Rancho Cordova, CA 95670-6114

Re: Legal Authority to Comply with Federal NPDES Storm Water Regulations and Water Discharge Requirements Order No. R5-2008-0142

This letter shall serve as the statement verifying the authority of the City of Citrus Heights ("City") to implement and enforce certain Federal NPDES Storm Water Regulations and the requirements of Water Discharge Requirements Order No. R5-2008-0142 ("Order") which implements NPDES Permit CAS082597 ("Permit"). The City submits this statement along with its Stormwater Quality Improvement Plan ("SQIP") as required by the Order.

Section D.6 of the Order requires the preparation of a statement "certified by its Chief Legal Counsel," verifying that adequate authority exists to implement the terms of the Order and requirements of federal stormwater regulations. Section D.6 specifies six items that must be included in the statement:

"6. Each Permittee shall provide to the Regional Board a statement certified by its chief legal counsel that the Permittee has adequate legal authority to implement and enforce each of the requirements contained in 40 CFR 122.26(d)(2)(i)(A-F) and this Order, including any modifications thereto in effect when the certified statement is provided. This statement, which shall be included in Permittees' revised SQIP(s), shall include the following:

- a. Citation of urban runoff related ordinances adopted by the Permittee and the reasons the ordinances are enforceable;
- b. Progressive enforcement policy and how it will be effectively implemented;
- c. Identification of the local administrative and legal procedures available to mandate compliance with the Permittees' urban runoff related ordinances, which incorporate the conditions of this Order;
- d. Description of how these ordinances are implemented and how enforcement actions under these ordinances may be appealed;

- e. Description of whether the municipality can issue administrative orders and injunctions or if it must go through the court system for enforcement actions; and
- f. Description of the Permittee's storm water management structure. There might be different departments that are to develop, implement, and enforce various components of the program. Summarize how the various departments communicate and coordinate activities.

As required by the Order, a complete discussion of each issue follows.

- a. Citation of urban runoff related ordinances adopted by the Permittees and the reasons the ordinances are enforceable.

On September 22, 2004, the City adopted Ordinance No. 2004-08, the Citrus Heights Storm Water Ordinance ("City Storm Water Ordinance.") The City's Storm Water Ordinance is the principal ordinance governing discharges to the municipal separate storm sewer system (MS4) of which the City's storm sewer system is a designated part. The City's Storm Water Ordinance further refined the County's Storm Water Ordinance and adopted revisions necessary to expressly authorize the County to enforce the storm water discharge standards in order to ensure compliance with the terms of the Permit. The purpose of the City Storm Water Ordinance is to "protect and enhance the water quality of watercourses, water bodies and wetlands within the unincorporated area of the City in a manner consistent with the Federal Clean Water Act, the Porter-Cologne Water Quality Control Act and Municipal Discharge Permit No. CA0082597 by controlling the contribution of urban pollutants to stormwater runoff which enters the County stormwater conveyance system." The provisions of the City Storm Water Ordinance authorize implementation or enforcement of each mandate of the Order or storm water regulation.

Additionally, the City's Land Grading and Erosion Control Ordinance ("Grading Ordinance"), Chapter 16A.52 of the City of Citrus Heights Municipal Code, regulates grading projects and sets conditions for approval of such projects. The City enacted this ordinance specifically to minimize the degradation of the water quality of watercourses caused by grading, filling and excavation of land, and to control sediment and pollutant runoff from other construction-related activities. These goals are achieved by establishing administrative procedures, minimum standards of review, and implementation and enforcement procedures for controlling erosion, sedimentation and other construction-related pollution.

The Grading Ordinance and the City's Storm Water Ordinance were properly published, introduced and adopted by the City Council and constitute enforceable enactments pursuant to the City's police power.

The City's authority under the Grading Ordinance and the City Storm Water Ordinance is very wide-ranging and is sufficient to address the majority of the mandates contained in the Order. The

Order requires the Permittees to “carry out all inspections, surveillance, and monitoring necessary to determine compliance and noncompliance with local ordinances and permits, including the prohibition of illegal discharges to the MS4.” The City Storm Water Ordinance authorizes inspections and monitoring by the City and requires regular reports from dischargers. Additionally, the Order requires the City to have the legal authority to require “that treatment control BMPs be properly operated and maintained.” City Storm Water Ordinance sections 98-210 through 98-226 require any person engaged in activities which may result in pollutants entering the stormwater conveyance system to implement and maintain BMPs.

The Order and federal storm water regulations require the City to “control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Permittees.” While not specifically covered in any existing interagency agreements, the current Memorandum of Understanding (MOU) between the City and the other permittees implicitly addresses this requirement.

b. Progressive enforcement policy and how it will be effectively implemented.

The City’s Storm Water Ordinance provides various levels of enforcement, which are discussed further below. The City may issue a notice of violation to any person found in violation of the City’s Storm Water Ordinance. If an issue is not resolved voluntarily after the notice of violation, the City has administrative enforcement options, including the ability for the administrator to issue an administrative compliance order which, among other things, sets forth the specific steps and time schedules for compliance and the measures necessary to implement the BMPs in accordance with the City’s Storm Water Ordinance. Additionally, if a violation constitutes an immediate threat to public health or safety, including for example, significant harm to human or aquatic life, the City may issue a cease and desist order requiring the immediate end to the activities causing the threat. The City also has the ability to impose administrative civil penalties up to \$5,000 for each violation of the storm water ordinance.

c. Identification of the local administrative and legal procedures available to mandate compliance with the Permittees’ storm water related ordinances, which incorporate the conditions of this Order.

The City Storm Water Ordinance has several administrative procedures available to mandate compliance with the requirements contained in the ordinance. As discussed further below, these options include issuing notices of non-compliance, administrative enforcement orders and cease and desist orders. In addition to administrative enforcement options, the City may seek civil and criminal penalties against a violator and may seek nuisance abatement through the court system. Lastly, Section 22-226 of the City Storm Water Ordinance allows the City General Services Director to promulgate regulations for the implementation of the City’s Storm Water Ordinance. This section gives the City the ability to further refine its administrative compliance options.

d. Description of how these ordinances are implemented and how enforcement actions under these ordinances may be appealed.

The City will implement the City Storm Water Ordinance through the stormwater program detailed in the SQIP.

The City Storm Water Ordinance sets forth a detailed process for appealing enforcement action brought pursuant to it. Section 98-240 provides that any person receiving a notice of non-compliance, an administrative compliance order or otherwise suffers an adverse determination under the ordinance may request an administrative hearing before an administrative hearing officer designated by the City Council. The Ordinance requires the appellant to file with the Director, within 30 days of receipt of notice of an adverse determination, a written request for an administrative hearing, accompanied by an administrative hearing fee as established by resolution of the Council. The City then holds a hearing on the matter before a hearing officer within 45 days of the filing of the written request unless, in the reasonable discretion of the hearing officer and pursuant to a request by the appealing party, a continuance of the hearing is granted. The hearing officer must issue his or her final decision within ten days of the hearing.

e. Description of whether the municipality can issue administrative orders and injunctions or if it must go through the court system for enforcement actions.

As stated above, the City Storm Water Ordinance includes an extensive section on enforcement actions (giving the City a wide variety of administrative options in case of violations). The administrative enforcement options include issuing a notice of non-compliance, administrative compliance orders, and cease and desist orders. Issuance of a cease and desist order functions as an injunction in that it allows the Director to direct the owner or occupant of any premises, or any other person responsible for any violation of the proposed ordinance, to take one or more of the following actions: (1) Immediately discontinue any prohibited discharge to the City stormwater conveyance system; (2) Immediately discontinue any other violation of the ordinance; and (3) Clean up the area affected by the violation. The Director may direct by a Cease and Desist Order that any person immediately cease any activity that may lead to a violation of Receiving Water Limitations.

The City has similar authority under the Grading Ordinance. The powers include the issuance of stop work notices, denial of future grading permits and the abatement of nuisance conditions.

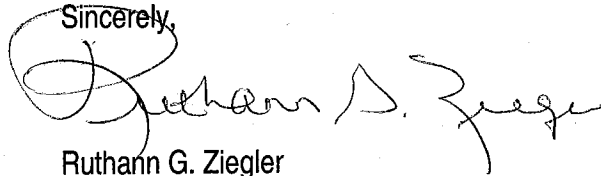
f. Description of the Permittee's storm water management structure. There might be different departments that are to develop, implement, and enforce various components of the program. Summarize how the various departments communicate and coordinate activities.

The City's General Services Department ("GSD") oversees the responsibility for compliance with the Storm Water Quality Improvement Plan and the Order. The Planning Division of the Community Development Department participates in the implementation and enforcement of the Order by enforcing and reviewing environmental documents and conditioning projects to comply with the Order

and Permit requirements. GSD works closely with the members of the City's Code Enforcement department for the enforcement aspect of the Order, as the Code Enforcement division has an appeals process and the ability to lien properties for unpaid fines.

Based on the foregoing discussion, the City Attorney respectfully submits this certification. Please do not hesitate to contact me if you need further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruthann G. Ziegler". The signature is written in a cursive style with a large initial "R".

Ruthann G. Ziegler
City Attorney

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