

4.0 LEGAL AUTHORITY

4.1 Introduction

The ability of the Permittees to comply with the requirements of the Third Term Permits is contingent upon the establishment, by each Permittee, of adequate legal authority to support control program implementation. **DAMP Section 4.0** discusses the development, starting in 1993, of a Model Water Quality Ordinance that was used by the Permittees as the basis of their local ordinances that were adopted by 1997. It also commits the Permittees to reviewing their ordinances to determine if any modifications are necessary in order to comply with new NPDES Permit requirements.

4.2 Accomplishments

With the adoption of the Third Term Permits in early 2002, the Permittees reviewed and verified the adequacy of their legal authority as the legal basis for the activities required for Third Term Permit compliance, primarily **DAMP Sections 7.0, 8.0, 9.0, and 10.0**. Following this initial review and verification, the responsibility for maintaining the efficacy of this key program element has rested with the Legal and Regulatory Task Force (see **Section 2.3.1**). During the reporting period, this Task Force has focused on a number of key areas including:

- Review and revision of legal authority as necessary regarding the stipulation of mandatory minimum BMPs in the San Diego Region;
- Review of inspection authority and “right of entry” at industrial/commercial facilities;
- Identification and resolution of overlap in legal authority within requirements of the WDR FOG program;
- Examination of the various Total Maximum Daily Load (TMDL) initiatives and their relationship to NPDES permits; and
- Perpetuation of BMP upkeep and maintenance in Water Quality Management Plans (WQMPs) for New Development/Significant Redevelopment.

Arising from the work of the Task Force have been continued findings of legal authority adequacy and the development of a model approach to WQMP recordation.

4.3 Assessment

The program effectiveness assessment outcome level for the **DAMP Section 4.0** is presented in **Table 4.1**. However, beyond confirming compliance with the Permits, the Permittees’ legal authority can also be assessed in the context of the sections of the DAMP that it primarily supports.

4.3.1 Legal Authority to Implement Existing Development and ID/IC Programs

In 2005, an action taken under the Ordinance requiring a property owner to effect the removal of manure from a creek under the authority of the jurisdiction’s water quality

ordinance was formerly challenged under the ordinance's appeal provisions. The jurisdiction prevailed in the third party adjudicated appeal hearing and again at a subsequent trial in an action brought by the Orange County District Attorney. These results, in addition to the numerous successful administrative actions and citations detailed in **Sections 8.0, 9.0 and 10.0** of this report, validate the robustness of the Permittees' legal basis for implementing **DAMP Sections 9.0 and 10.0**.

4.3.2 Legal Authority to Implement New Development Program

The New Development/Significant Redevelopment component of the Program ends with permit close-out and the BMPs implemented in conformance with DAMP Section 7.0 transition to the Existing Development component. As noted in **Section 7.3.1**, the Permittees believe that the BMP approach to stormwater management could be more effectively sustained by ensuring the longevity and enforcement of the approved WQMP against subsequent property owners for ongoing responsibility for BMP maintenance. The ROWD Commitment in **Section 7** to develop guidance on the recordation process and appropriate documentation to enable such enforcement will be fulfilled under the aegis of the Legal and Regulatory Task Force.

4.4 Summary

The Permittees validated the legal basis for implementing the DAMP in early 2002 and over the balance of the period of the Third term Permit continued to review aspects their legal authority under the aegis of the Legal and Regulatory Task Force. This review and the formal legal challenge to this authority in late 2005 and early 2006 have served to affirm the basic robustness of the Permittees' water quality ordinances.

SECTION 4.0, LEGAL AUTHORITY

Table 4.1: Current and Potential Outcome Levels (Legal Authority)

Legal Authority	Effectiveness Assessment Outcome Levels					
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
	Implement Program	Increase Awareness	Behavior Change	Load Reduction	Runoff Quality	Receiving Water Quality
Water Quality Ordinance	✓ Adopt and Maintain Adequate Legal Authority					
Training	✓ Track number/type of training sessions	^P Surveys show improved knowledge				
<p><u>Key:</u> ✓ = Currently Achieved Outcome Level ^P = Potentially Achievable Outcome Level</p>						