

4.0 LEGAL AUTHORITY

4.1 Introduction

The Third Term Permits issued by the Santa Ana and San Diego Regional Boards to the Permittees require the implementation of programs to address runoff from commercial, industrial, and residential areas to reduce the discharges of pollutants from the municipal storm drain system to the MEP. Central to these programs is the establishment, by each Permittee, of adequate legal authority to control, as described below, the contribution of pollutants to the municipal storm drain system, sometimes referred to as the “Municipal Separate Storm Sewer System” or “MS4”.

4.2 Regulatory Requirements

Federal regulations, at 40 CFR 122.26 (d)(2)(i), require municipal NPDES Stormwater Permit applicants to demonstrate that they have adequate legal authority to:

- Control the contribution of pollutants to the municipal storm drain system by storm water discharges associated with industrial activity;
- Prohibit illicit discharges to the municipal storm drain system;
- Control the discharge to the MS4 of spills, dumping or disposal of materials other than stormwater;
- Control through interagency agreements amongst the Permittees, the contribution of pollutants from one municipality into the common combined flood control and stormwater conveyance system managed by the Orange County Flood Control District;
- Require compliance with conditions in ordinances, permits, contracts or orders; and
- Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal storm drain system.

4.3 Authority to Control Pollutant Discharges

Local authority to control discharges to the storm drain system significantly pre-dates the Orange County NPDES Stormwater Program.

In 1948 the Orange County Board of Supervisors adopted Ordinance 536, which instituted an industrial waste discharge permitting program. This ordinance, amended in 1954 by Ordinance 703, regulated the disposal of the by-products of industrial processes, except through sanitary sewers, and provided for the issuance of a permit for discharges into storm drains conditional upon the discharge not causing pollution of ground or surface waters. Twenty of the cities in the County adopted similar ordinances and named the County to enforce the ordinance on their behalf. Other cities chose to adopt their own ordinances. Ordinance 703 was rep

Other local authorities that included controls for specific discharges to the storm drain system were also adopted. These provisions, which are still in effect, include:

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- 1) The County Solid Waste Management Ordinance (or comparable City ordinances) regulates where solid and liquid wastes, including hazardous and industrial wastes, may and may not be deposited or discharged;
- 2) The Harbor Sanitation Ordinance of Orange County which prohibits discharge of any refuse matter of any description from shore or sea into the "navigable waters of a harbor"; and
- 3) The Uniform Fire Code, which has been adopted into the codified ordinances of the County and the cities and prohibits the discharge of any waste liquid containing crude petroleum or its products "into or upon" any drainage canal or ditch, storm drain, sewer, or upon the ground.

Stormwater Program Requirements

Although adequate legal authority existed for most potential pollutant discharges at the inception of the Orange County NPDES Stormwater Program, in 1993, the Permittees determined that a Model Water Quality Ordinance should be prepared to provide a more uniform countywide approach and to provide a legal underpinning to the entire Orange County NPDES Stormwater Program.

A consultant law firm was retained for this purpose, and a Model Water Quality Ordinance and accompanying Enforcement Consistency Guide (**Exhibit 4.I**) were prepared under the aegis of the TAC and with input from representative City and County Attorneys, Sanitation Districts of Orange County, the Orange County Building Industry Association (BIA), the Food Sanitation Advisory Council, Western States Petroleum Association (WSPA) and the Permittees.

Subsequently, by 1997, all of the Permittees had adopted largely similar versions of the Water Quality Ordinance and began to implement the corresponding Enforcement Consistency Guide and provided certifications regarding this to the Regional Boards. In addition, each Permittee has designated the Authorized Inspector(s) responsible for enforcing the Ordinance. The Authorized Inspector is the person designated to investigate compliance with, detect violations of and/or take actions pursuant to the Ordinance.

The detection, elimination and enforcement activities undertaken by the Permittees are described further in **Section 10.0**. In addition to prohibiting unpermitted discharges, the Water Quality Ordinance also provides for requiring BMPs in new development and significant redevelopment (see **Section 7.0**). All ordinances will continue to be reviewed in order to determine if any modifications are necessary in order to comply with the Third Term Permit requirements.

4.4 Program Effectiveness Assessment

The overall Program Effectiveness Assessment (PEA) serves as the foundation for the submittal of the Annual Progress Report that is submitted each year to the Principal Permittee and subsequently to the Regional Boards and serves as the basis for evaluating each municipality's individual legal authority efforts (See **DAMP Appendix C**).

By completing the effectiveness assessment, the Permittees will each have a baseline by which

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they can compare subsequent evaluations and identify trends. This information can then be used to determine where modifications within the program may be necessary and ensures that the iterative evaluation and improvement process is applied to the program component and used as an effective management tool.