



SECTION A-4, LEGAL AUTHORITY

A-4.0 LEGAL AUTHORITY

A-4.1 Introduction

The Third Term Permits require implementation of a program to reduce pollutants in storm water discharges from commercial, industrial, and residential areas to the "maximum extent practicable." Central to these programs is the establishment, by the City of Newport Beach, of adequate legal authority to regulate the discharge of pollutants to the municipal separate storm sewer.

In 1993, the Orange County Permittees prepared a Model Water Quality Ordinance to provide a more uniform, countywide approach and a legal underpinning to the area-wide stormwater program. Subsequently, the City of Newport Beach adopted a largely similar version of the Water Quality Ordinance as Ordinance Number NBMC 14.36 and provided certifications of their adoption to the Regional Boards in 1997. A corresponding *Enforcement Consistency Guide (2003 DAMP Exhibit 4.1)* was also developed and implemented by the Permittees in 1997 to accompany the ordinance. In addition, the City has designated the Authorized Inspector(s) responsible for enforcing the Ordinances (Section A-10). The Authorized Inspector is the person(s) designated to investigate compliance with, detect violations of and/or take actions pursuant to the City Ordinance.

A-4.2 Assessment of Water Quality Ordinance

Upon adoption of the Third Term Permit, the City in conjunction with the Principal Permittee and other Permittees, collectively reviewed all applicable ordinances. The specific elements covered were as follows:

- Reviewed the legal authority to enforce the permit requirements;
- Reviewed the grading and erosion control ordinances and recommended model language changes;
- Reviewed the water quality ordinances;
- Reviewed the effectiveness of water quality ordinances on prohibiting discharges;
- Reviewed and revised litter/trash control ordinances;
- Developed and submitted a model statement for signature by legal counsel verifying adequate legal authority to enforce permits (Section A-4.3.1); and
- Developed a long-term strategy for assessing the effectiveness of the legal authority program component.



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As a result, the City has concluded that the City's ordinances (once amendments to those ordinances are final by November 15, 2003) grant the City the adequate legal authority necessary to implement and enforce the requirements of the permit.

A-4.3 City of Newport Beach Authority to Control Pollutant Discharges

The City has undertaken its own review and enacted measures to ensure adequate legal authority within its corporate boundaries. Based on the models, the City incorporated the recommended changes to its Ordinances.

Other local authorities were separately enacted that included controls for specific discharges to the storm drain system. These provisions include:

- 1) The City of Newport Beach Municipal Code, (NBMC 14.36), Water Quality prohibits unpermitted discharges to the municipal storm drain system. Refer to Exhibit A-4.I for a copy of the ordinance. Note the Water Quality Ordinance will be reviewed and revised (if needed) to comply with the NPDES Third Term Permit. Also included is a copy of City Council Policies L-18, Protection of Water Quality: Drainage-Public Rights-of-Way, and L-22, Protection of Water Quality: Water Quality Management Plans for New Development / Redevelopment.
- 2) The City of Newport Beach Municipal Code, (NBMC 15.10), Excavation and Grading regulates excavation, grading, and establishes administrative requirements for the issuance of permits in accordance with the requirements in the Uniform Building Code. The City of Newport Beach Municipal Code, (NBMC 15.10), Excavation and Grading was recently amended to require all Permittees to comply with the relevant provisions of the 2003 DAMP and LIP governing grading activities. Refer to Exhibit A-4.II for a copy of the revised ordinance.

Section 106.4.1 of the California Building Code, which has been expressly adopted by the City of Newport Beach (NBMC 15.04.010) provides:

The application, plans, specifications, computations, and other data filed by an applicant for a permit shall be reviewed by the Building Official. Such plans may be reviewed by other City departments to verify compliance with any applicable laws and ordinances under their jurisdiction. If the Building Official finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this Code *and other pertinent laws and ordinances*, and that the fees specified in section 107 have been paid, he shall issue a permit therefore to the applicant.

The California Building Code and local building ordinances therefore expressly permits the Building Official to include as a condition of the Building Permit compliance with City Ordinances other than the Building Ordinance. This would include the Water Quality Ordinance and the requirements contained in the 2003 DAMP enacted under the Water Quality



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Ordinance. The Building Official, therefore has the authority to enforce the water quality requirements contained in the 2003 DAMP and LIP relevant to construction activities that have been incorporated as part of a building permit both during the grading phase of construction as well as during construction subsequent to completion of grading.

- 3) The City of Newport Beach Municipal Code, (NBMC 6.04), Garbage, Refuse, and Cuttings, prohibits the disposal of any waste material on any public or private property. Note the Garbage, Refuse, and Cuttings Ordinance will be reviewed and revised (if needed) to comply with the NPDES Third Term Permit. Refer to Exhibit A-4.IV for a copy of the ordinance.
- 4) The City of Newport Beach Municipal Code, (NBMC 12.63), Solid Waste Management, regulates where solid and liquid wastes, including hazardous and industrial wastes, may and may not be deposited or discharged. Refer to Exhibit A-4.V for a copy of the ordinance.
- 5) 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.
- 6) The City of Newport Beach Municipal Code, (NBMC 17.32), Waste and Refuse – Small Vessel Moorage, regulates the discharge of solid and liquid wastes from a vessel into the waters of Newport Bay. Refer to Exhibit A-4.VI for a copy of the ordinance.
- 7) The City of Newport Beach City Council Policy, (K-3), Implementation Procedures for the California Environmental Quality Act, ensures City compliance with the California Environmental Quality Act (CEQA). Refer to Exhibit A-4.VII for a copy of the policy.

The detection, elimination and enforcement activities undertaken by the City are described further in **2003 DAMP Section 10.0**. In addition to prohibiting unpermitted discharges, the Water Quality Ordinance also provides the legal authority for requiring BMPs in new development and significant redevelopment found in **2003 DAMP Section 7.0**.

A-4.3.1 Statement of Legal Authority

As a result of the Program Effectiveness Assessment (**2003 DAMP Section 4.3**), a Statement of Legal Authority (Exhibit A-4.III) signed by legal counsel, was completed to certify that the City of Newport Beach has the legal authority to implement and enforce the requirements in 40 CFR 122.26(d)(2)(i)(A-F) and the permit.