

APPENDIX S
LEGAL AUTHORITY



City of Salinas

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June 24, 2013

Statement of Legal Authority

This statement verifies that the City of Salinas has established, maintains, and enforces adequate legal authority to effectively implement all requirements of Regional Quality Control Board, Central Coast Region Order No. R3-2012-0005 (NPDES Permit No. CA0049981) and to control pollutant discharges into and from the City's municipal storm sewer system.

Section S43 of the Order requires the preparation of a statement "certified by the Permittee's chief legal counsel that the Permittee has taken the necessary steps to obtain and maintain full legal authority to implement and enforce each of the requirements contained in (the) Order." Specifically, Section S.3 specifies that five (5) items shall be included in the statement:

- a. Identification of all departments within the Permit coverage area that conduct urban runoff related activities and their roles and responsibilities under this Order and an up-to-date organizational chart specifying these departments and key personnel;
- b. Citation of urban runoff-related municipal codes, ordinances, statutes, standards, specifications, permits, contracts, and other regulations, and the reasons they are enforceable; Identification of the local administrative and legal procedures available to mandate compliance with urban runoff-related municipal codes, ordinances, statutes, standards, specifications, permits, contracts, and other regulations, and therefore with the conditions of this Order;
- d. A description of how urban runoff-related municipal codes, ordinances, statutes, standards, specifications permits, contracts, and other regulations are implemented and appealed; and
- e. A description of whether the Permittee can issue administrative orders and injunctions or if it shall go through the court system for enforcement actions.

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

- a. Identification of all departments within the Permit coverage area that conduct urban runoff related activities and their roles and responsibilities under this Order and an up-to-date organizational chart specifying these departments and key personnel.

The City's Public Works Department oversees the responsibility for compliance with the City's Order and implementation of the City's Storm Water Management Program. The City's Community and Economic Development Department implements the land use planning (development standards and construction site management) related aspects, The Planning Division, Building Division, Inspection Division, Code Enforcement Division, and others participate in the implementation and enforcement of the Order by reviewing private sector project submittals, conditioning projects to comply with the Order and Permit requirements, by issuing permits required for development that are consistent with the Order and Permit requirements, and by generally enforcing the City's Storm Water Program. For public sector projects, the City's Public Works Design Engineering Division conducts these steps.

- b. Citation of urban runoff-related municipal codes, ordinances, statutes, standards, specifications, permits, contracts, and other regulations, and the reasons they are enforceable.

Chapter 29 of the Salinas City Code ("Storm Water Ordinance") is the principal regulation 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 provides the legal authority to implement and enforce the City's Urban Watershed Management Program, as well as to provide for the imposition of penalties for violations of the Storm Water Ordinance and for the recovery of administrative and regulatory costs incurred by the City.

The purpose of the City's Storm Water Ordinance is to "ensure the health, safety and general welfare of citizens, and protect the water quality and watercourses and water bodies in a manner pursuant to and consistent with the requirements of the NPDES permit issued to the City of Salinas by the California Regional Water Quality Control Board and the Federal Clean Water Act (33 USC. Section 125 et seq.) by reducing pollutants in urban stormwater discharges to the maximum extent practicable and by effectively prohibiting non-stormwater discharges to the storm sewer drain system." The provisions of the City's Storm Water Ordinance authorize implementation or enforcement of each mandate of the Order or storm water regulation.

The City's Storm Water Ordinance authorizes the City to conduct inspections to ensure compliance with the City's Storm Water program and authorizes the City to enforce violations of the City's Storm Water Ordinance through criminal prosecution and/or administrative enforcement, in addition to any other legal remedies which may be available to the City under the law. The City's Storm Water Ordinance authorizes escalating administrative enforcement, beginning with a Notice of Violation and progressing to increasing monetary sanctions. Violations of the City's Storm Water program are deemed a nuisance and are subject to abatement by the City.

The City's Grading Standards, adopted by Resolution of the Salinas City Council, regulates grading projects and sets conditions for approval of such projects. The Grading Standards are specifically designed to set forth the guidelines, regulations and minimum standard to control excavation, grading, clearing, erosion control, and maintenance, including cut and fill embankments; require control of all existing and potential condition of accelerated erosion; require protection of surface water quality by prevention of soil erosion and transport of soil sediments or other pollutants; establish administrative procedures for issuance of permits; and provide for approval of plans and inspections during construction and maintenance. The Grading Standards are enforceable and enforced in the same manner as the City's Storm Water Ordinance,

The City's Zoning Code (Salinas City Code Chapter 37) implements the policies of the Salinas General Plan and, more specifically, classifies, designates, and regulates the location, use, and construction of buildings, structures, and land for residence, commerce, trade, industry, or other purposes. The Zoning Code's regulations establish various classes of zoning districts and govern the use of land and the placement of buildings and improvements within the zoning districts. The City's Zoning Code was recently amended, as required by the Order to reference the latest adopted version of the City's NPDES Permit and the City's Stormwater Development Standards.

Statement of Legal Authority

June 24, 2013

Page 3 of 4

The City's Subdivision Ordinance (Chapter 31) also contributes to the management of storm water by regulating the division of land within the City with respect to the design and improvement of subdivisions. The provisions of the Subdivision Ordinance operate to preserve the public health, safety, and welfare of the community; promote orderly growth and development; and promote open space, conservation, protection, and proper use of land.

With respect to the installation of storm water control devices, the City requires the property owner to record a Maintenance Declaration against the property obligating the property owner and future property owners to maintain the storm water control devices. The City has authority under the Storm Water Ordinance and pursuant to the terms of the Maintenance Declaration to enforce this obligation against the property owner to ensure the devices are maintained and to ensure the protection of storm water quality.

The City's Storm Water Ordinance, Grading Standards, and Zoning Code were adopted by the City Council pursuant to California law and constitute enforceable enactments pursuant to the City's police power.

- c. Identification of the local administrative and legal procedures available to mandate compliance with urban runoff-related municipal codes, ordinances, statutes, standards, specifications, permits, contracts, and other regulations, and therefore with the conditions of this Order.

The City's Storm Water Ordinance provides various enforcement options. The City may prosecute violations criminally or administratively. Criminal violations are prosecuted as misdemeanors which carry a maximum penalty of six months in the County Jail and/or \$1,000 in fines. Administratively, the City can issue a Notice of Violation, which puts the person on notice of the violation and if not corrected the City can issue Administrative Citations through which the City assesses administrative penalties in increasing amounts: \$100 for the first violation, \$300 for the second violation, and \$500 for the third and subsequent violations. The City also has the authority to Issue an Administrative Order which, among other things, sets forth the specific steps and time schedule for compliance. Administrative Orders can carry a penalty of up to \$2,500 per day.

Additionally, the City has declared violations of the City's Storm Water Ordinance to be a nuisance, thereby empowering the City to abate such violations, The City is also authorized by the Storm Water Ordinance to take whatever additional legal action may be necessary to remedy violations of the City's Storm Water Ordinance including a temporary and/or permanent injunction.

- d. A description of how urban runoff-related municipal codes, ordinances, statutes, standards, specifications, permits contracts, and other regulations are implemented and appealed.

The City implements the Storm Water Ordinance, and the associated other regulations, through its Storm Water Program.

The City's Storm Water Ordinance includes a provision for appealing enforcement action brought pursuant to it. Any person who is the subject of an enforcement action may appeal the decision to the

Statement of Legal Authority

June 24, 2013

Page 4 of 4

City Manager by filing a written notice with the City Manager within fifteen days of the effective date of the enforcement action. A hearing will be set to consider the appeal and the basis for the enforcement action, after which the enforcement action may be rejected, affirmed or modified.

If an Administrative Citation or administrative Compliance Order is issued, compelling the payment of a fine or the compliance with a schedule for corrective action, the Citation and/or Order may be appealed to a hearing officer. A hearing will be held during which evidence may be presented from the City and from the person subject to enforcement and the hearing officer will render a decision either rejecting, affirming or modifying the enforcement decision.

Administrative determinations made following an appeal hearing held pursuant to either the City's Storm Water Ordinance of Administrative Remedies Ordinance may be subject to review by the superior court by way of a writ filed by the party appealing the administrative determination.

- e. A description of whether the Permittee can issue administrative orders and injunctions or if it shall go through the court system for enforcement actions.

The Salinas City Code, including the Storm Water Ordinance, contains a variety of options available to enforce against storm water-related violations. Through the City's Administrative Remedies Ordinance (Chapter 2 of the Salinas City Code) the City has authority to issue administrative Compliance Orders which describe the date and location of the violation, set forth the actions required to correct the violation, and set forth the time period during which the corrective actions must be completed before penalties and sanctions will begin to accrue. Following a hearing before an administrative hearing officer, the penalties will be set (up to a maximum of \$2,500 per day) and the person put on notice that failure to comply with the terms of the administrative Compliance Order may result in the City abating the nuisance and assessing its costs against the property owner. The assessment may be collected through a lien placed on the property.

Under the City's Storm Water Ordinance, the City has the authority to seek either a temporary or a permanent injunction from the court, but also has the authority to issue a cease and desist order. The cease and desist order functions as an injunction in that the City may order the person suspected of violating the Storm Water Ordinance to immediately stop the discharge, operation or practice causing the suspected violation. The City has similar authority with respect to its Grading Standards and its building requirements: The City has the authority to issue Stop Work Notices and to deny the issuance of future permits and to abatement violations as nuisances.

This completes the verified statement as required by the Order. If there are additional questions or if additional information is needed, please feel free to contact me.

Sincerely,


Vanessa W. Vallarta

City Attorney

Cc: Public Works Director