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CITY of NOVI CITY COUNCIL

Agenda Item R
July 7, 2008

SUBJECT: Approval of Resolution authorizing the City Attorney to initiate legal action to contest the National Pollutant Discharge Elimination System Phase II General Permits (permit number MIG610000 - watershed, and MIS 049000 - jurisdictional) before the Michigan State Office of Administrative Hearings.

SUBMITTING DEPARTMENT: Engineering/City Attorney

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

The City and other municipalities are currently subject to the State of Michigan's National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge General Permit authorizing the City to discharge its municipal storm sewer system run-off into the surface waters of the State. The Permit addresses discharges the nature of which would not violate federal or state water quality standards-- specifically, those discharges that are generally safe to support continued use of the surface waters for agriculture, navigation and public water supply. More harmful discharges, such as discharge coming directly from industrial users, are subject to and addressed in different and/or additional permits by the state and federal governments.

The State's current Stormwater Discharge General Permit was scheduled to expire on April 8, 2008. The State of Michigan Department of Environmental Quality (MDEQ) proposed a new permit, with additional and/or different inspection, enforcement and planning requirements to be followed by the City beyond those included in the current Stormwater Discharge General Permit. Because the Permit imposes new regulations, MDEQ provided the opportunity for review and comment on the proposed Permit by those to be affected by it. The time period for review and comment by the City and other Permittees was scheduled to expire on December 12, 2007, but the MDEQ extended the time period for additional comments as urged by several groups include the Alliance of Rouge Communities (ARC), the Oakland County Drain Commissioner's Office, and the Southeastern Michigan Council of Governments (SEMCOG).

However, after more than a year of good faith negotiations with MDEQ regarding the proposed Stormwater Discharge General Permits for Municipal Separate Storm Sewer Systems, many counties, municipalities and other interested entities in southeastern Michigan assert that the terms of the proposed Permit are still not in the best interests of the region, the counties, and the local municipalities.

MDEQ was unwilling to further extend the comment period, or to further negotiate revisions to the permit requested by affected parties and issued the "Watershed" and "Jurisdictional" versions of the permit on May 22, 2008. Communities are required to apply for a Certificate of Coverage under one or the other of the two permits on or before August 1, 2008, or alternatively, to contest them by July 21, 2008.

The Oakland County Drain Commissioner's Office and Wayne County's Environmental Services Division have indicated that they will be filing Petitions for Contested Cases, and have provided local communities with copies of the petitions that they intend to file. The ARC, SEMCOG, Oakland and Wayne Counties are urging municipalities subject to the permit to file similar petitions

for a contested case hearing to further object to the terms as unduly burdensome, excessive in cost, and of very little benefit with respect to water quality.

Secret Wardle has researched this issue in detail (Beth Kudla's July 1, 2008 letter, attached) and prepared the attached Resolution, which authorizes the City Attorney to contest these permits.

RECOMMENDED ACTION: Approval of Resolution authorizing the City Attorney to initiate legal action to contest the National Pollutant Discharge Elimination System Phase II General Permits (permit number MIG610000 - watershed, and MIS 049000 - jurisdictional) before the Michigan State Office of Administrative Hearings.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Crawford				
Council Member Gatt				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

July 1, 2008

John P. McCulloch
DRAIN COMMISSIONER
OAKLAND COUNTY

Kevin R. Larsen
CHIEF DEPUTY
DRAIN COMMISSIONER

Subject: Municipal Separate Storm Sewer System (MS4) General Watershed and Jurisdictional Permits Intent to Contest MDEQ Issuance

Dear City Manager:

This letter is to inform your community of Oakland County's intent to administratively contest the Michigan Department of Environmental Quality's (MDEQ) May 22, 2008 issuance of Wastewater Discharge General Permits MIG610000 (Watershed) and MIS049000. If your community is the owner or operator of a municipal separate storm water system, you may be required to obtain a permit or certificate of coverage under a general permit authorizing the discharge of storm water in accordance with the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), Phase II Storm Water Regulations, and Part 31 and 41 of Michigan Act 451 of the Public Acts of 1994, as amended. If so, inasmuch as your community might be adversely affected by MDEQ's action, I am requesting that you consider filing a similar appeal in the hopes of obtaining a comprehensive, yet flexible General Permit structure for our current nationally-recognized watershed program.

As you may be aware, for some time now a coalition of southeastern Michigan communities have worked with MDEQ to develop two General Permits authorizing storm water discharges in compliance with the federal Water Pollution Control Act. One permit is watershed based, the other jurisdictional. In November 2007, MDEQ first issued drafts of the General Permits to the communities for comment. Since that time, and despite more than a year of good-faith negotiations, it is Oakland County's opinion that the final General Permits issued by the MDEQ are not in the best interest of the communities and are inconsistent with the authorizing laws and regulations. Some conditions of the permits are overly-burdensome, overbroad, too bureaucratic, too costly, and fail to recognize the substantial progress and investment the Oakland County communities have made in water quality over the past 20 years.

Oakland County will be filing its petition for contested case hearing with the State of Michigan by July 21, 2008. That will assure that its opposition to the final issuance of the two General Permits is preserved.

In the meantime, Oakland County will continue to discharge storm water under its current discharge permit pending resolution of the appeal. If the administrative appeal does not result in changes to the permits, Oakland County likely will seek a judicial resolution to the dispute.

If your community is authorized to seek coverage under MDEQ's new permits, I urge you to file a contested case petition. I have attached a template for a contested case hearing appeal and a model resolution for your board's consideration. By filing collectively, we show a unified dissatisfaction with these new permits as we work together toward a program that protects and enhances water quality.

If you have any questions, please contact Joseph Colaianne at 248-452-2027 or colaiannej@oakgov.com.

Sincerely,

A handwritten signature in blue ink that reads "JP McCulloch". The signature is written in a cursive, flowing style.

John P. McCulloch



PETITION FOR CONTESTED CASE HEARINGS

Permit or Application NO: (On permit or application as assigned by MDEQ)

The procedural authority for a contested case hearing is the Michigan Administrative Procedures Act, 1969 PA 306, as amended; MCL 24.201 et seq.; MSA 3.560 (101) et seq.

Information requested on this form may be provided in an alternative, written format or additional pages may be attached.

Form with fields for PETITIONER'S NAME or AGENT'S NAME, STREET ADDRESS, CITY, STATE, ZIP CODE, and TELEPHONE No.

Form with fields for MAILING ADDRESS (If different from street address), CITY, STATE, and ZIP CODE.

Statement of Authority:

I petition a contested case hearing be initiated under the authority of: NATURAL RESOURCES and ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, as amended. MCL 324.101 et seq.; MSA 13A.101 et seq., PART(s): 31, specifically MCL 324.3113

ADMINISTRATIVE RULE:

MAC R 323.2192, MAC R 324.1 - 324.75

Statement of matters asserted, including the site location and other pertinent facts:

See attached Exhibit A.

Petitioner's relationship/interest to the activity or proposed project:

Petitioner owns and operates a municipal separate storm sewer system and an eligible permittee under NPDES General Permit No. MIG 610000.

Relief sought by Petitioner:

Petitioner seeks issuance of General Permit for Municipal Separate Storm Sewer Systems - Watershed General Permit and related Certificate of Coverage in conformance with Michigan law and in consideration of disputed areas of concern as identified in the letter dated May 8, 2008 addressed to Mr. Steve Chester attached as Exhibit B.

A copy of MDEQ's General Permit No. MIG 610000 issued on May 22, 2008 is attached as Exhibit C.

SIGNATURE OF PETITIONER/AGENT

DATE

Submit this completed Petition and attachments to:

OFFICE OF ADMINISTRATIVE HEARINGS
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
PO BOX 30473
LANSING MI 48909-7973

NOTICE:
COPY OF DEPARTMENT'S FINAL ACTION ON AN APPLICATION OR PERMIT MUST BE ATTACHED TO THIS OR ANY ALTERNATIVE WRITTEN PETITION

EXHIBIT A

(1) Petitioner asserts that MDEQ's findings in support of its issuance of NPDES General Permit No. MIG 610000 on May 22, 2008 is not supported by competent, material and substantial evidence is arbitrary and capricious and/or an abuse of unwarranted exercise or discretion and is contrary to Michigan law.

(2) Petitioner asserts that MDEQ's issuance of NPDES General Permit No. MIG 610000 on May 22, 2008 is not supported by competent, material and substantial evidence is arbitrary and capricious and/or an abuse of unwarranted exercise or discretion, and is contrary to Michigan law as it (i) would produce significant risk of noncompliance to Petitioner; (ii) produce excessive financial burden without demonstrated water quality benefit; (iii) remove local control and decision-making authority in water resource management; (iv) disregards fundamental principals of water resource management; and (v) improperly disregards and/or disrupts existing financial and institutional agreements previously developed and implemented for watershed base storm water management under regulatory framework approved by the United States District Court, in addition to other consequences inconsistent with proper and lawful storm water management practices.

(3) Petitioner asserts that while it can only obtained coverage under General Permit No. MIS049000 or General Permit No. MIG610000, this petition is appropriate as a proper alternative to its similar petition disputing General Permit MIS049000 filed contemporaneously with this appeal.

RESOLUTION

At a regular meeting of the City Council of the City of Novi, Oakland County, Michigan (the "City"), held on the ____ day of _____, 2008.

PRESENT: _____

ABSENT: _____

WHEREAS, in order to comply with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.) and Part 31 and 41 of Michigan Act 451 of the Public Acts of 1994, as amended, the City, as the owner or operator of a municipal separate storm system, is required to obtain a permit or certificate of coverage under a general permit authorizing the discharge of storm water; and,

WHEREAS, on or about November 12, 2007 the Michigan Department of Environmental Quality (MDEQ) issued a draft National Pollutant Discharge Elimination System Phase II Watershed Permit, Permit No. MIG 610000 for public comment; and,

WHEREAS, during the comment period for the General Permit and extension of the public comment by the MDEQ, the City independently and/or through the Alliance of Rouge Communities and Southeast Michigan Council of Governments ("interested stakeholders") submitted comments identifying areas of concern with the proposed draft General Permit, specifically requesting MDEQ to adopt revised permit language to achieve watershed-wide improvements and greater flexibility to improve water quality and reporting requirements; and,

WHEREAS, despite concerns raised by interested stakeholders, on May 22, 2008 the MDEQ issued NPDES General Permit No. MIG 610000 (Watershed) and NPDES General Permit MIS 049000 (Jurisdictional); and,

WHEREAS, the City maintains that MDEQ's issuance of NPDES General Permit No. MIG 610000 and NPDES General Permit MIS 0490000 on May 22, 2008 are not supported by competent, material and substantial evidence, is arbitrary and capricious and/or an abuse of unwarranted exercise or discretion, and is contrary to Michigan law as it:

- (i) would produce significant risk of noncompliance to the City;
- (ii) produce excessive financial burden without demonstrated water quality benefit;
- (iii) remove local control and decision-making authority in water resource management;
- (iv) disregards fundamental principles of water resource management; and
- (v) improperly disregards and/or disrupts existing financial and institutional agreements previously developed and implemented for watershed-based storm water management under regulatory framework approved by the United States District Court, in addition to other consequences inconsistent with proper and lawful storm water management practices.

NOW THEREFORE BE IT RESOLVED the City Council hereby authorizes its legal counsel to initiate legal action to contest the aforementioned General Permits before the Michigan State Office of Administrative Hearings.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

MARYANNE CORNELIUS, CITY CLERK

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this ____ day of _____, 2008, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

MARYANNE CORNELIUS, CITY CLERK

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