

October 28, 2008

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*Privileged and Confidential Correspondence
From City Attorney*

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City of Rochester Hills
c/o John D. Staran, Esquire
Hafeli Staran Hallahan Christ PC
4190 Telegraph Road, Suite 3000
Bloomfield Hills, MI 48302

**Re: MDEQ NPDES Phase II MS4 Permit
Petition for Contested Case Hearing
Our File No. 54444.217MIS**

Dear Mr. Staran:

As you know, at the October 1, 2008 pre-hearing conference for the consolidated contested cases at the MDEQ Office of Administrative Hearings, the Administrative Law Judge stated that the approximately 70 petitioners must meet and choose a "reasonable" number of representative petitioners to fairly and adequately assert and protect the interests of all petitioners in accordance with Rule 324.59e of the Michigan Administrative Code. He stated that each of the 70 petitioners could not reasonably participate in a hearing and/or attempt to negotiate a settlement of the matter with the MDEQ. He also indicated that if the petitioners could not agree amongst themselves regarding who would be appointed as representative petitioners, he would choose the representative petitioners as permitted by the Rule.

The representatives that appeared on behalf of the 70 petitioners remained in Lansing for approximately two hours after the Pre-hearing Conference in an attempt to resolve the representative petitioner issue. Many of the individual petitioners without counsel or with individual counsel indicated that they may retain either our office or the attorney representing Wayne and Oakland County in an attempt to limit the number of attorneys involved in the contested cases. Many of the individual petitioners were Wayne County communities and their intentions were not clear when they left the hearing room. A few additional Oakland County communities have joined this group.

Rule 324.59e(1)(d) of the Michigan Administrative Code states that the Office of Administrative Hearings may on its own motion choose a reasonable number of representative petitioners. However, since the City is required to exhaust its administrative remedies before proceeding to circuit or federal court, and the Rule

could prevent the City from making its own record and choosing its own counsel, it is arguable that the Rule violates the City's due process rights.

If the City does not choose a representative, the ALJ will likely choose the City's representative. Many of the other petitioners have different policy concerns from the City because they are not the same type of municipal entity. The petitioners include cities, villages, townships, counties, school boards, and road commissions. It is clear that the City is likely to have different concerns about the conditions of the permit than the Macomb County Road Commission. Therefore, so that we may try to proceed as we intended to by working with other Oakland County cities, villages and townships that share many common concerns, we have devised a Resolution that (1) seeks to preserve the due process objection; (2) provides the opportunity for those communities who want to be a representative petitioner to make their preference known; and, (3) provides the ALJ with a list of representative petitioners that may fairly and adequately assert and protect the City's interests.

In the event that the City does not want to be a representative petitioner, we could modify the Resolution to provide just the list of representative petitioners would be acceptable to the City.

In the event the City strongly desires to be a representative petitioner, we could modify the language to make that request stronger.

In the event the City believes it would be satisfied with the ALJ's choice of appointment, or would prefer to file an objection regarding violation of the City's due process rights, the City need not pass a resolution.

If City Council would prefer to object to the ALJ's Order to select representative petitioners, different documentation would be required. We could prepare a motion in this regard at City Council's direction.

Pursuant to the ALJ's Order, the petitioners have until November 12, 2008 to appoint representative petitioners. Therefore, if the City chooses to proceed with the enclosed Resolution, it should be placed on the next City Council Agenda for consideration and approval.

We note that the ALJ's order also indicates that the petitioners should meet to discuss, refine and narrow the issues in the case prior to meeting with the Water Bureau on or before December 12, 2008. Based on the discussions that occurred with the ALJ on October 1, 2008, no formal documentation is required to be filed in this regard at this time. However, we continue to review the materials provided by ECT to ascertain which permit conditions exceed the State's rules and

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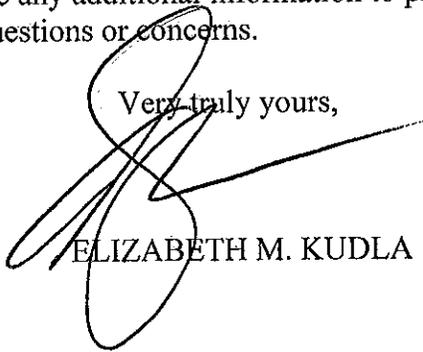
regulations. We are aware that the some of the greatest policy concerns of the communities involve the following issues:

- Post construction standards
- TMDL sampling requirements for Ecoli and Phosphorus
- Discharge Point location (lat/long) and unique IDs
- Dry Weather Screening – under IDEP sampling/analysis
- Pollution Prevention Good Housekeeping
- For Townships, the limited nature of the Township's MS4

It is our intention to identify the State Rules and Regulations pertaining to these specific issues in preparation for the upcoming settlement conference. We may need to meet again before that time, and decide who should attend the conference and the primary issues to be raised.

Please let us know if you would like any additional information to provide to City Council, or if you have any other questions or concerns.

Very truly yours,



ELIZABETH M. KUDLA

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Enclosures

C: Steven P. Joppich, Esquire
Thomas R. Schultz, Esquire

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