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City of Grand Junction, Colorado 81501

250 North Fifth St.

January 11, 1984

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sewer

Mr. Patrick J. Godsill
Chief, Compliance Branch
Water Management Division
U. S. Environmental Protection Agency
Region VIII
1860 Lincoln St.
Denver, CO 80294

RE: Statement of Legal Authority, City of Grand
Junction, Colorado Industrial Pretreatment
Program, Federal Sewage Works Grant CO-80337-26,
NPDES Permit CO-0026417; CDPS Permit CO-0040053

Dear Sir:

This opinion letter constitutes the statement from the City Attorney of the City of Grand Junction for the pretreatment program submission and approval request as required by 40 CFR 403.9(a)(1).

- I. The City of Grand Junction has adequate legal authority to carry out the substantive industrial pretreatment program requirements described in 40 CFR 403.8 in the manner described in the attached January, 1984 Industrial Pretreatment Program Report.

The City of Grand Junction has authority to adopt and implement this program based on statutory authorization contained in C.R.S. 1973 Sections 31-15-709, -710, as amended, and under the City's Home-Rule Charter which serves as a grant of plenary governmental police powers under the Colorado Constitution.

- Pursuant to such authority, the Code of Ordinances of the City of Grand Junction contains provisions in Chapter 25, "Sewers" (discussed below) which are basis for wastewater regulation and for specific industrial pretreatment requirements. This Chapter applies both within the City of Grand Junction, where most of the Interim Wastewater Treatment Plant and potential significant industrial users are located, as well as to persons outside of the City, whose wastewater flows through the City or enters City's and County's treatment facilities.

In the City's capacity as the designated Manager/Operator for the regional wastewater treatment facility owned by the City and Mesa County, the City possesses "complete authority" on behalf of the County to "do whatever is necessary and proper to administer" the joint sewage system, with regard to the discharge of sewage into the facility. Part I, Section 6 of the Joint Sewage Service Agreement of May 1, 1980 establishing this relationship specifically declares that "no waste oil, acid, and other matter detrimental to the treatment process employed in (the) Joint Sewage Treatment Plant, nor any storm or ground waters, shall be permitted to be discharged ..." into it. The general administrative powers accorded the City by the Agreement are sufficient to legally protect the receiving waters of the State from pass-through, sludge by-products of the plant from contamination, and the treatment process from interference or upset.

All other agreements with active connector sanitation districts contain the same or similar language and grant of authority, in return for permission to discharge wastewater into the wastewater treatment works. (The agreements referred to above have been previously submitted to the Colorado Dept. of Health as Industrial Pretreatment Program Submittal #1, and are also included in Appendix F of this Report.)

The laws contained in the City Code of Ordinances, Chapter 25, are therefore applicable to the regional wastewater treatment works and all individual or governmental connectors to it, either by 1) direct municipal jurisdiction; 2) through contractually delegated authority to apply Chapter 25 in other jurisdictions; or 3) contractually through permits required prior to connection.

The City enacted Articles I-IX of Chapter 25 of the Code of Ordinances in March of 1980 in order to update and implement a comprehensive, grant-eligible sewage treatment program. The City's Department of Public Works and Utilities has prepared an Ordinance revising and re-enacting Article X of Chapter 25 in order to strengthen and clarify the existing legal authority presently contained in the Code. This Ordinance is a specific expression of the general authority to condition or deny new connections, or to prevent harmful discharges, that presently exists in Chapter 25. The City Council passed this Ordinance for final publication on January 4, 1984 and it will become effective 30 days thereafter.

Table 9 of the Pretreatment Program Report, "Legal Authority Evaluation," is attached and incorporated by reference as a comparison of the pretreatment program requirements of 40 CFR 403.8(f)(1), and the parallel City Code provisions which most specifically authorizes or enables the City to apply and enforce those requirements. Those provisions denominated as proposed are now existing sources of actual authority.

II. The City now has complete authority to carry out the programs and procedures described in 40 CFR 403.8. Specifically, the provisions of the Code which provide or will provide the basis for the procedures required by 40 CFR 403(8)(f)(2) include the following:

- (i) Identify and locate all possible Industrial Users which might be subject to the Pretreatment Program: Section 25-59 of Article X, "Industrial Cost Recovery", is a former provision which was not specifically implemented. Article VII provides general authority to identify industrial users subject to pretreatment requirements. New Section 25-60(b) authorizes an Industrial Waste Survey.
- (ii) Identify the character and volume of pollutants contributed to the WWTP by the Industrial Users identified under 403.8(f)(2)(i):
Sections 25-59, - 33, - 37.
New Section 25-62(b)(2).
- (iii) Notify Industrial Users identified under 403.8(f)(2)(i) of applicable Pretreatment Standards and any applicable requirements under Section 204(b) and 405 of the Act and Subtitles C and D of the Resource Conservation and Recovery Act:
Section 25-34(a)(b), in connection with Section 25-33(n),(t).
New Section 25-60(b)(7).
- (iv) Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with self-monitoring requirements under 403.12.
Sections 25-36, - 37, - 38, - 39.
New Sections 25-62(c), (d).
- (v) Randomly sample and analyze the effluent from Industrial Users and conduct surveillance and inspection activities in order to identify, independent of information supplied by Industrial Users, occasional and continuing non-compliance with Pretreatment Standards:
Sections 25-41, - 43.
New Sections 25-62(b)(5)(g) - (n), 25-62(e).
- (vi) Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under 403.12, or indicated by analysis, inspection, and surveillance activities described in 403.8(f)(2)(v):
Sections 25-34, - 38, - 41, - 43 together provide authority to expand sampling and inspect facilities in order to investigate non-compliance.
New Sections 25-62(b)(5)(g)-(n), 25-62(e).

- (vii) Comply with the public participation requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards.

No specific Code authority is required to enable public participation in enforcement of National Pretreatment Standards. Proposed Section 25-62(f)(2), (3) in conjunction with the definition of significant violator, Section 25-58(cc), will mandate the public notification concerning significant violations in accordance with 40 CFR Part 25.

- III. Grand Junction will implement the pretreatment requirements set forth in 40 CFR 403.8 and in its Industrial Pretreatment Program through existing provisions of Chapter 25 of the Code of Ordinances, and through the repealed and re-enacted provisions of Article X of Chapter 25.

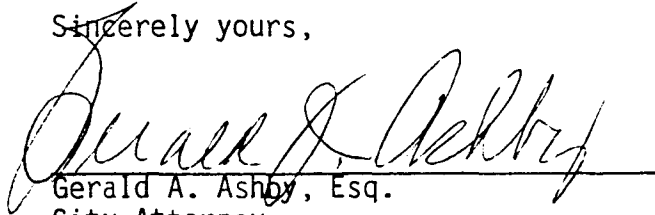
The Pretreatment Standards and Requirements will be applied to individual Industrial Users by order of the Director of Public Works and Utilities pursuant to these laws, and primarily through the proposed Industrial Waste Permit and monitoring system of Section 25-62 of Article X as re-enacted.

The City of Grand Junction intends to ensure compliance with Pretreatment Standards and Requirements through its Industrial Waste Program and will enforce the standards and requirements in the event of non-compliance by Industrial Users. Enforcement mechanisms include existing provisions of Article I, and Section 25-34 of Article VI, of Chapter 25 of the Code of Ordinances, together with new Sections 25-63 and 25-64 of Article X. These provisions provide for notice, compliance orders, hearings on appeals or show cause orders, and injunctive and legal relief. Under common law the City may also request ex parte issuance of immediate injunctive relief, in addition to pursuing self-help remedies including disconnection in the event a public nuisance.


In the event that the City's new Industrial Pretreatment Program requirements are not also adopted and implemented by contributing connector districts and the County through service agreement addendums, as requested by the City Council in Section 25-65 of the new Ordinance, Grand Junction may obtain specific performance of any sewer service agreement provision which may be violated. In addition, the City may bring suit, if necessary, to restrain or enjoin any prohibited discharge by any "person" causing the violation, including by definition individual dischargers and political subdivision under the proposed Ordinance.

For your information, I am enclosing draft copies of the resolutions and supplemental agreement that we are sending to the districts and County.

Sincerely yours,



Gerald A. Ashby, Esq.
City Attorney
Grand Junction, CO



Stephen B. Johnson, Esq.
Administrative Assistant to the
Director of Public Works & Utilities

Attachments