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File No. 82477.01000

September 5, 2018

Ms. Katie DiSimone
Water Resources Control Engineer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Re: City of El Paso de Robles, City Attorney Statement of Legal Authority to
Implement Pretreatment Program per 40 CFR 403.8

Dear Ms. DiSimone:

I am the City Attorney for the City of El Paso de Robles (City). The following statement is submitted pursuant to the requirements set forth at 40 Code of Federal Regulations (CFR) Section 403.9(b)(1) regarding the legal authority for the City to implement a Pretreatment Program.

It is the opinion of the undersigned that the City has the authority to carry out the program described in 40 CFR 403.8 based on authority, including, but not limited to, the California Constitution Article XI Section 7, California Government Code Sections 54725 et seq. and the Paso Robles Sewer Use Ordinance (SUO), Chapter 14.10.

The following references to the legal authority requirements of 40 CFR 403.8(f)(1) are correlated with the appropriate sections of the City's SUO which provide the required authority. Where the authority is not apparent from a reading of the SUO provision, an explanation is provided.

General: Section 14.10.010 of the SUO provides that all users of the Paso Robles POTW service area, whether within or without the City boundaries are subject to such terms and conditions as the City may prescribe. The Paso Robles City Council adopted Section 14.08.040 and Chapter 14.10 of the Paso Robles Municipal Code setting forth the terms and conditions upon which industrial users may connect to the City's sewer system.

403.8(f)(1)(i) Industrial Users (IUs) must submit a wastewater survey or an application to determine whether an Industrial Wastewater Discharge Permit (permit) is required (Section



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14.10.300 and 310). When a permit is required, the permit contains the conditions and prohibitions (Section 14.10.320). If there has been an increase or change in a IUs contribution to the system, the discharger is required to notify the City in advance of any substantial changes to the IU's operations or systems which might alter the nature, quality, or volume of its wastewater (Section 14.10.430). IUs may only discharge in accordance with permit conditions and must obtain a modification of the permit if discharge conditions change. (Section 14.10.340).

403.8(f)(1)(ii): In order to require compliance with applicable Pretreatment Standards, the City must be able to require compliance with EPA's listed general prohibitions (403.5(a)), specific prohibitions (403.5(b)), and the local limits developed to implement the general and specific standards (403.6). Section 14.10.580 of the SUO prohibits the discharge to a sewer which will result in a nuisance, including contamination or pollution. Section 14.08.030 states it is unlawful to discharge to any waters of the state any sewage, industrial wastes or other polluted waters, and Section 14.10.040 of the SUO prohibits any discharge of wastewater which creates a toxic effect in the receiving waters. Sections 14.10.070 and 14.10.080, prohibit discharges which violate any statute, rule, regulation or ordinance of any public agency, (including the EPA). These sections empower the City to enforce the general and specific prohibitions contained in 40 CFR 403.5(a) and (b). When local discharge limits are developed pursuant to 403.5 (c) and (d), they may be imposed by the Director of Public Works (Director) or the Director's designee as a permit condition pursuant to Section 14.10.320. National categorical pretreatment standards may also be imposed as a permit condition per Section 14.10.080, which empowers the Director to regulate discharges regulated by the EPA.

403.8(f)(1)(iii): The City has control via a permit system authorized by Sections 14.10.290, 14.10.300, and 14.10.310. A Wastewater Survey and Industrial Wastewater Discharge Application are located in Appendices G and H of the Paso Robles Pretreatment Program.

403.8(f)(1)(iv)(A): The Director may, to remedy or avoid a violation of the SUO or Industrial Wastewater Discharge Permit, require an IU to develop a compliance schedule for installation of control technology under Sections 14.10.390(C)(7) and 14.10.400. Additionally, the Director may require a compliance schedule as part of the required information under Section 14.10.310 as a condition of obtaining a Discharge Permit.

403.8(f)(1)(iv)(B): The Director may require a user to submit all notices and self-monitoring reports required by EPA regulations through authority granted in Sections 14.10.320, 14.10.390, 14.10.410, and 14.10.420.

403.8(f)(1)(v): The Director may carry out inspection, surveillance and monitoring procedures under authority granted in Section 14.10.380.



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403.8(f)(1)(vi)(A): The City may seek remedies of noncompliance with pretreatment standards and requirements. As a matter of general law and Section 14.10.710, the City may seek injunctive relief for noncompliance since any such noncompliance might result in irreparable harm to the treatment plant, to the health and safety of plant workers, and to the environment; and since damages at law would not be an adequate remedy. Section 14.10.700 provides that intentional violations of the SUO is a misdemeanor which is punishable by a fine not to exceed \$1,000, imprisonment not to exceed one year, or both. Additionally, a civil liability is imposed by Section 14.10.690 for intentional or negligent violation of City requirements relating to (1) pretreatment of industrial waste which would otherwise be detrimental to the treatment works or its operation, and (2) the prevention of entry of such waste into the collection system or treatment works. Under state law, including California Government Code section 54740.5, civil liability may equal a sum not to exceed \$5,000 per violation day. Under Section 14.10.690, civil liability may equal a sum of \$1,000 per day per violation, for a maximum civil penalty of \$25,000.

403.8(f)(1)(vi)(B): The Director may, under Section 14.10.650, temporarily suspend a Discharge Permit or impose temporary restrictions on discharges where continued discharges would jeopardize the ability of the treatment system to meet water quality standards, threaten damage to the sewerage system, or cause a nuisance or an unsafe condition to occur. In the case of imminent or substantial endangerment to the health or welfare of persons, the typical waiting period to revoke a permit may be dispensed with and a permit may be suspended immediately. (Section 14.10.650).

403.8(f)(1)(vii): Confidentiality requirements are provided for in Section 14.10.540.

As stated above, the City will implement the requirements of its pretreatment program and apply pretreatment standards to individual industrial users through use of a Discharge Permit system, and by direct enforcement of its SUO. A description of the exact procedures to be used in implementing the pretreatment program is provided in the Pretreatment Program and associated appendixes.

The City intends to ensure compliance with pretreatment standards and requirements through an inspection and sampling program authorized under Section 14.10.380 of the SUO which would allow for the determination of noncompliance with discharge limitations and sampling program described in the City Pretreatment Program document and appendixes independent of information supplied by the IU. The inspection and sampling program is described in the Program Procedures portion of this submission.



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Those violating permit conditions are subject to a cease and desist order (Section 14.10.640), and are subject to having service terminated (Section 14.10.660), and their permit revoked (Section 14.10.670). The City is prepared to take court action where necessary to enforce compliance with its ordinance, permit or orders.

Sincerely,

A handwritten signature in cursive script that reads 'Iris P. Yang'.

Iris P. Yang
for BEST BEST & KRIEGER LLP

cc: Patti Gwathmey, Industrial Waste Manager (via email)