



CITY OF CAPE CORAL

Office Of The City Attorney

February 26, 2010

Kirk White, Esq., Senior Assistant General Counsel
Office of General Counsel
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS35
Tallahassee, Florida 32399-3000

Re: OCG-06-2345
Second Amended Consent Order

Dear Kirk:

The EMA process continues to progress and continues to appear to moving towards a conclusion with a voting meeting scheduled for March 5, 2010. As these conversations move towards a conclusion the City is also aware that we are rapidly reaching April 7, 2010, which is the end of the three month extension for the conclusion of this process under the Second Amended Consent Order, as previously extended.

Paragraph 17 of the Second Amended Consent Order provides, in part:

If any event, including administrative or judicial challenges by third parties unrelated to the City, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, City shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the City and could not have been or cannot be overcome by City's due diligence Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, City shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which City intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of City, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all

reasonable measures necessary to avoid or minimize delay. Failure of the City to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of City's right to request an extension of time for compliance with the requirements of this Consent Order.

I believe that the committee has worked diligently to complete their work and that the delays that have been encountered are delays which have occurred in spite of diligence by the committee. Simultaneously, I am aware that the public bodies involved in the process must begin their deliberative processes in open public meetings beginning after March 5, 2010. I believe that the public bodies involved in the process will require more than 30 days to act on any issues that come out of the March 5, 2010 NSEMA workgroup meeting. Therefore pursuant to Paragraph 17 I am again asking the Department to recognize that the delay has been or will be caused by circumstances beyond the reasonable control of City and to agree to a 3 month extension of time to complete the EMA process until June 1, 2010. I understand that the suggestion of the City seeking this extension has been circulated to the committee members and there has not been an objection. If this proposal is acceptable I would ask that you kindly confirm this concurrence by the Department in the extension in writing.

Thank you for your attention to this matter and please do not hesitate to contact me if you have any questions.

Yours Truly,

A handwritten signature in black ink, appearing to read 'Mark E. Lupe', with a long horizontal flourish extending to the right.

Mark E. Lupe
Assistant City Attorney