

***Appendix I. Storm Water Ordinance***

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ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 3, DIVISION 3 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 43.0301, 43.0302, 43.0304, 43.0305, 43.0306, 43.0307, 43.0308, 43.0309, 43.0310, AND 43.0311, ALL RELATING TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT, CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION ORDER NO. R9-2013-0001.

**§43.0301 Purpose and Intent**

The purposes of this Division are to restore and maintain the water quality of *receiving waters* and further ensure the health, safety and general welfare of the citizens of the City of San Diego by effectively prohibiting *non-storm water discharges*, including spills, dumping, and disposal of materials other than *storm water* to the *MS4*, and by reducing *pollutants* in discharges from the *MS4* to *receiving waters* to the *maximum extent practicable*, in a manner pursuant to and consistent with the Federal Water Pollution Control Act [Clean Water Act, 33 U.S.C. section 1251 et seq.] and the *MS4 permit*.

**§43.0302 Definitions**

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

*Administrative enforcement order* has the same meaning as in San Diego Municipal Code section 11.0210.

*Best management practices [BMPs]* means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce to the *maximum extent practicable* the discharge of *pollutants* directly or indirectly to *receiving waters*. *BMPs* also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw materials storage.

*Employee training program* means a documented curriculum that a business may be required to be implement pursuant to a *storm water pollution prevention plan* for the purpose of educating its employees on methods of reducing the discharge of *pollutants* to the *MS4*.

*Enforcement agency* means the City of San Diego or its authorized agents charged with ensuring compliance with this Division.

*Enforcement official* means the City Manager or his designee or any agent of the City authorized to enforce compliance with this Division.

*General storm water NPDES permit* means any *NPDES permit* issued by the State Water Resources Control Board in accordance with 40 Code of Federal Regulations section 122.28.

*Groundwater* means subsurface water that occurs beneath the water table in soils and geologic formations that are fully saturated.

*Illicit connection* means any man-made physical connection to the *MS4* that conveys an *illicit discharge*.

*Illicit discharge* means any discharge to the *MS4* that is not composed entirely of *storm water*, except discharges allowed under an *NPDES permit* and discharges conditionally allowed under the *MS4 permit*, as set forth in San Diego Municipal Code section 43.0305. *Illicit discharge* includes irrigation runoff discharged to the *MS4*.

*Maximum extent practicable [MEP]* has the same meaning as defined in *Regional Water Quality Control Board Order No. R9-2013-0001, NPDES No. CAS0109266, Attachment C*.

*Municipal separate storm sewer system [MS4]* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by the City; (ii) designated or used for collecting or conveying *storm water*; (iii) which is not a combined sewer; and (iv) which is not part of the Publicly Owned Treatment Works as defined at 40 Code of Federal Regulations section 122.26.

*Municipal separate storm sewer system permit [MS4 permit]* means *Regional Water Quality Control Board Order No. R9-2013-0001, NPDES No. CAS0109266*, as may be amended.

*National Pollutant Discharge Elimination System Permit [NPDES permit]* means a permit issued by the *Regional Water Quality Control Board* or the *State Water Resources Control Board* pursuant to Division 7 of the California Water Code to control discharges from point sources to *receiving waters*.

*Non-storm water discharge* means any discharge to or from the *MS4* that is not entirely composed of *storm water*, including *illicit discharges* and discharges allowed under an *NPDES permit*.

*Pollutant* means any agent introduced to the *MS4* that may cause or contribute to the degradation of water quality such that public health, the environment, or beneficial uses of *receiving waters* may be affected. *Pollutants* include solid waste, sewage, garbage, medical waste, wrecked or discarded equipment, radioactive materials, dredged spoil, rock, sand, industrial waste, any organic or inorganic contaminant, fecal coliform, fecal streptococcus, enterococcus, volatile organic surfactants, oil and grease, petroleum hydrocarbons, total organic lead, copper, chromium, cadmium, silver, nickel, zinc, cyanides, phenols, and biocides.

*Premises* means any building, lot parcel, land or portion of land whether improved or unimproved.

*Public nuisance* has the same meaning as in San Diego Municipal Code section 11.0210.

*Receiving waters* means waters of the United States, as defined under the Clean Water Act. *Receiving waters* include surface bodies of water that serve as discharge points for the *MS4*, such as creeks, rivers, reservoirs, lakes, lagoons, estuaries, harbors, bays and the Pacific Ocean.

*Regional Water Quality Control Board* means the California Regional Water Quality Control Board, San Diego Region.

*Responsible person* has the same meaning as in San Diego Municipal Code section 11.0210.

*Storm water* means storm water runoff, snow melt runoff, and surface runoff and drainage resulting from precipitation events.

*Storm water pollution prevention plan* means a document that describes the *BMPs* to be implemented by the owner or operator to eliminate or reduce to the *MEP* discharges of *pollutants* to the *MS4*.

**§43.0304** *Illicit Discharges*

- (a) Except as provided in San Diego Municipal Code section 43.0305, it is unlawful for any person to discharge non-storm water to the *MS4*.
- (b) It is unlawful for any person to cause either individually or jointly any discharge into or from the *MS4* that results in or contributes to a violation of the *MS4 permit*.

**§43.0305 Conditionally Allowed *Non-Storm Water Discharges***

The following *non-storm water discharges* are allowed on the condition that they are addressed as follows:

- (a) Any discharge to the *MS4* that is regulated under an *NPDES permit* issued to the discharger and administered by the State of California pursuant to Division 7 of the California Water Code is allowed, provided that the discharger is in compliance with all requirements of the *NPDES permit* and other applicable laws and regulations.
- (b) *Non-storm water discharges* to the *MS4* from the following categories are allowed if: (i) the discharger obtains coverage under NPDES Permit No. CAG919001 (*Regional Water Quality Control Board* Order No. R9-2007-0034, or subsequent order) for discharges to San Diego Bay, or under NPDES Permit No. CAG919002 (*Regional Water Quality Control Board* Order No. R9-2008-0002, or subsequent order) for discharges to surface waters other than San Diego Bay, and the discharger is in compliance with all requirements of the applicable *NPDES permit* and all other applicable laws and regulations; or (ii) the *Regional Water Quality Control Board* determines in writing that coverage under NPDES Permit No. CAG919001 or CAG919002 (or subsequent permits) is not required. Otherwise, *non-storm water discharges* from the following categories are *illicit discharges*:
  - (1) discharges from uncontaminated pumped *groundwater*;
  - (2) discharges from foundation drains when the system is designed to be located at or below the *groundwater* table to actively or passively extract *groundwater* during any part of the year;
  - (3) discharges from crawl space pumps;
  - (4) discharges from footing drains when the system is designed to be located at or below the *groundwater* table to actively or passively extract *groundwater* during any part of the year.
- (c) *Non-storm water discharges* to the *MS4* from water line flushing and water main breaks are allowed if the discharges have coverage under NPDES Permit No. CAG679001 (*Regional Water Quality Control Board* Order No. R9-2010-0003, or subsequent order), and the discharger is in compliance with all requirements of that *NPDES permit* and other applicable laws and regulations. This category includes water line flushing and water main break discharges from water purveyors issued a water supply permit by the California Department of Public Health or federal military installations. Discharges from recycled or reclaimed water lines to the *MS4* are allowed if the discharges have coverage under an *NPDES*

*permit*, and the discharger is in compliance with the applicable *NPDES permit* and other applicable laws and regulations. Otherwise, discharges from water lines are *illicit discharges*.

- (d) *Non-storm water discharges* to the *MS4* from the following categories are allowed, unless the *enforcement official* or the *Regional Water Quality Control Board* identifies the discharge as a source of *pollutants* to *receiving waters*, in which case the discharge is considered an *illicit discharge*:
- (1) discharges from diverted stream flows;
  - (2) discharges from rising *groundwater*;
  - (3) discharges from uncontaminated *groundwater* infiltration to the *MS4*;
  - (4) discharges from springs;
  - (5) discharges from riparian habitats and wetlands;
  - (6) discharges from potable water sources, except as set forth in San Diego Municipal Code section 43.0305(c);
  - (7) discharges from foundation drains when the system is designed to be located above the *groundwater* table at all times of the year, and the system is only expected to produce *non-storm water discharges* under unusual circumstances; and
  - (8) discharges from footing drains when the system is designed to be located above the *groundwater* table at all times of the year, and the system is only expected to produce *non-storm water discharges* under unusual circumstances.
- (e) *Non-storm water discharges* from the following categories are allowed if they are addressed with *BMPs* as set forth in the *Jurisdictional Runoff Management Program*. Otherwise, *non-storm water discharges* from the following categories are *illicit discharges*:
- (1) Air conditioning condensation.
  - (2) Individual residential vehicle washing.
  - (3) Water from swimming pools.
- (f) *Non-storm water discharges* to the *MS4* from firefighting activities are allowed if they are addressed as follows:

- (1) Non-emergency firefighting discharges. Non-emergency firefighting discharges, including building fire suppression system maintenance discharges (e.g. sprinkler line flushing), controlled or practice blazes, training, and maintenance activities shall be addressed by *BMPs* as set forth in the Jurisdictional Runoff Management Program to prevent the discharge of *pollutants* to the *MS4*.
- (2) Emergency firefighting discharges. *BMPs* are encouraged to prevent *pollutants* from entering the *MS4*. During emergencies, priority of efforts should be directed toward life, property, and the environment (in descending order). *BMPs* shall not interfere with emergency response operations or impact public health and safety.
- (g) Notwithstanding the categories of *non-storm water discharges* conditionally allowed by San Diego Municipal Code section 43.0305(a) through (f), if the *Regional Water Quality Control Board* or the *enforcement official* determines that any of these categories of otherwise conditionally allowed *non-storm water discharges* are a source of *pollutants* to *receiving waters*, are a danger to public health or safety, or are causing a *public nuisance*, such discharges shall be prohibited from entering the *MS4*.

**§43.0306 *Illicit Connections Prohibited***

It is unlawful for any person to establish, use, or maintain any *illicit connection* to the *MS4*. This section expressly supersedes any City permit or earlier authorization for said discharge.

**§43.0307 *Reduction of Pollutants in Storm Water***

Any person engaged in activities which may result in discharges to the *MS4* shall, to the *MEP*, undertake all measures to reduce the risk of *non-storm water discharges* and *pollutant* discharges. The following requirements shall apply:

- (a) *BMP* Implementation.

Every person undertaking any activity or use of a *premises* that may cause or contribute to *storm water* pollution or contamination, *illicit discharges*, or *non-storm water discharges* to the *MS4* shall comply with *BMP* guidelines or pollution control requirements, as may be established by the *enforcement official*. *BMPs* shall be maintained routinely throughout the life of the activity. Such *BMPs* include the minimum *BMPs* set forth in the Jurisdictional Runoff Management Program.

- (b) *Storm Water Pollution Prevention Plan*.

The *enforcement official* may require any business or operations that is engaged in activities which may result in *pollutant* discharges to the *MS4* to develop and implement a *storm water pollution prevention plan*, which must include an *employee training program* and the applicable minimum *BMPs* from the Jurisdictional Runoff Management Program.

- (c) Coordination with Hazardous Materials Release Response Plans and Inventory.

Any activity subject to the Hazardous Materials Release Response Plan, Chapter 6.95 of the California Health and Safety Code, shall include in that Plan provisions for compliance with this Division, including the prohibitions on *non-storm water discharges* and *illicit discharges*, and the requirement to reduce release of *pollutants* to the *MS4* to the *MEP*.

- (d) New Developments and Redevelopments.

All new development and redevelopment activities shall comply with Chapter 14, Article 2, Division 1 (Grading Regulations) and Chapter 14, Article 2, Division 2 (Storm Water Runoff Control and Drainage Regulations) of the San Diego Municipal Code.

- (e) Compliance with *General Storm Water NPDES Permits*.

Each discharger that is subject to any *General Storm Water NPDES permit* shall comply with all requirements of such permit. For those activities that discharge to the *MS4* under a *General Storm Water NPDES permit*, the discharger shall submit their monitoring data and analytical evaluation/assessment to the City at the same time their reports are submitted to the *Regional Water Quality Control Board*.

#### **§43.0308 Containment and Notification of Spills**

Any person owning or occupying a *premises* who has knowledge of any significant release of *pollutants* or *non-storm water discharges* from those *premises* that may enter the *MS4* shall immediately take all reasonable action to contain the release and minimize any *non-storm water discharge*. Such person shall notify the *enforcement agency* within 24 hours of the *non-storm water discharge*.

#### **§43.0309 MS4 Protection**

Any person owning or occupying a *premises* through which the *MS4* passes shall:

- (a) Keep and maintain that part of the *premises* reasonably free of trash, debris and other obstacles which would pollute, contaminate, or retard the flow of water through the *MS4*; and

- (b) Maintain existing structures within or adjacent to the *MS4* so that those structures will not become a hazard to the use, function, or physical integrity of the *MS4*.

**§43.0310 Enforcement Authority**

- (a) The *enforcement agency* and *enforcement official* may exercise any enforcement powers as provided in San Diego Municipal Code Chapter 1, Article 3, as may be necessary to effectively implement and enforce this Division.
- (b) In addition to the general enforcement powers provided in San Diego Municipal Code Chapter 1, the *enforcement agency* and *enforcement official* may exercise any of the following supplemental enforcement powers as may be necessary to effectively implement and enforce this Division:
  - (1) **Sampling Authority.** During any inspection, the *enforcement official* may take samples deemed necessary in order to implement and enforce the provisions of this Division. This may include the installation of sampling and metering devices on private property, or requiring the *responsible person* to supply samples.
  - (2) **Administrative Enforcement Order.** The *enforcement official* may issue an *administrative enforcement order* to any *responsible person* to cease and desist all activities that may cause or contribute to a discharge in violation of this Division. This order may require the *responsible person* to: (i) comply with the applicable provisions and policies that govern this Division; (ii) comply within the designated time frame for compliance; (iii) take appropriate remedial or preventative action to keep the violation from recurring.
  - (3) **Monitoring and Mitigation.** The *enforcement official* may require reasonable monitoring of discharges from any *premises* to the *MS4* and shall have authority to order the mitigation of circumstances that may result in *illicit discharges*.
  - (4) **Storm water pollution prevention plan.** The *enforcement official* shall have the authority to establish elements of a *storm water pollution prevention plan*, and to require any business or operation to adopt and implement such a plan pursuant to San Diego Municipal Code section 43.0307(b).
  - (5) **Employee training program.** The *enforcement official* shall have the authority to establish the elements of an *employee training program* that is part of a *storm water pollution prevention plan*.

- (6) *Best management practices.* The *enforcement official* may establish the *BMPs* required to be implemented for any *premises* pursuant to San Diego Municipal Code section 43.0307(a).
- (c) Jurisdictional Runoff Management Program. The City may establish and adopt a written description of the runoff management measures and programs, including minimum *BMPs*, that the City will implement to ensure compliance with this Division. These documents shall be known collectively as the Jurisdictional Runoff Management Program. Amendments to the Jurisdictional Runoff Management Program shall be approved by the City Manager.

**§43.0311 Enforcement Remedies**

- (a) It is unlawful for any person, business, or association to violate the provisions and requirements of San Diego Municipal Code sections 43.0301 through 43.0309. Violations of these provisions may be prosecuted as misdemeanors subject to the penalties provided in San Diego Municipal Code section 12.0201. The *enforcement official* alternatively may seek injunctive relief or civil penalties in the Superior Court pursuant to San Diego Municipal Code section 12.0202, or pursue any administrative remedy provided in San Diego Municipal Code Chapter 1, Article 2, Divisions 3 through 10.
- (b) Administrative civil penalties assessed pursuant to San Diego Municipal Code Chapter 1, Article 2, Division 8 for violations of any of the provisions and requirements of San Diego Municipal Code sections 43.0301 through 43.0309 shall be assessed at a maximum rate of \$10,000 per day per violation. The maximum amount of civil penalties shall not exceed \$100,000 per parcel or structure for any related series of violations.
- (c) As part of any civil action filed pursuant to San Diego Municipal Code section 12.0202 to enforce any provisions of San Diego Municipal Code sections 43.0301 through 43.0309, a court may assess a maximum civil penalty of \$10,000 per day per violation.