

January 7, 2015 Draft Storm Water Ordinance and Minimum Residential and Industrial/Commercial Best Management Practices (BMPs) Response to Outreach Comments
Appendices I, IX & X of the Draft Jurisdictional Runoff Management Plan
February 23, 2015

The Draft Ordinance and Draft Minimum Best Management Practices (BMPs) were developed to conform with the revised Municipal Separate Storm Sewer System (MS4) Permit that was adopted by the San Diego, California Water Control Board, Region 9 in May 2013. The revised MS4 permit requires the updating of the existing Municipal Code, Section 43.03 et al and the existing Minimum BMPs. The following comments and the associated responses were received during public workshops prior to the California Environmental Quality Act (CEQA) formal review.

Comment Number	Commenter	Date	Comment	City Response
1	Business Industry Association (BIA)	1/8/2015	They are missing the reference to the current conditional waiver permit that went into effect June 26 2014 that addresses most of the exemptions and permits. Also to address the recycled water facilities it is covered under Conditional Waiver No. 1 - Graywater, short term recycling, and long term recycling.	<p>We have reviewed and considered your comment. No changes are necessary to the January 7th, 2015 Draft Ordinance and Draft Minimum BMPs for the following reasons:</p> <ol style="list-style-type: none"> 1. The Conditional Waivers of Waste discharge Requirements for Low Threat Discharges in the San Diego Region (conditional waiver) primarily refers to discharging water/waste water to land or other surfaces, not to the MS4. The conditional waivers are not referred to in the MS4 permit. 2. The conditional waiver is not referenced in the Ordinance or the Minimum BMPs because any discharges into the MS4 from these types of facilities would be considered illegal discharges unless they are “conditionally allowed” under our Ordinance.
2a	The Coalition ^{*1}	1/6/2015	The Ordinance: The Coalition understands that City staff is attempting to revise the Ordinance in preparation for adoption by the City Council. We further understand that the adoption of the Ordinance is a 'project' subject to the California Environmental Quality Act ("CEQA"). We must therefore request that this office be notified when you intend to issue a Notice of Preparation for the Environmental Impact Report.	An e-mail will be sent to a list of over 8,000 potentially interested parties when the CEQA 30 day comment period has begun. City staff will provide written notice to the Coalition of the Notice of Intent.
2b	The Coalition	1/6/2015	However, as a starting point, the Coalition would like to propose some language clarifications which we believe will assist the City in preparing an adequate project description as required by CEQA Guideline 15124.	The City appreciates the Coalition's offer of assistance. The City is open to suggestions and will carefully consider all comments received during the public comment period.

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3	The Coalition	1/6/2015	Draft Ordinance Section 43.0305(e): The Draft Ordinance Section 43.0305(e) currently reads as follows "Non-storm water discharges from the following categories are allowed if they are addressed with BMPs.." The Coalition believes this section is unnecessarily vague and will likely lead to confusion and/or possible litigation. The language fails to identify which BMPs need to be addressed in order to allow the discharge of non-storm water in compliance with the Ordinance. The Coalition suggests that the language be revised accordingly as follows: Non-storm water discharges from the following categories are allowed if they are addressed with the BMPs as set forth in the most current Jurisdictional Urban Runoff Management Plan adopted by the City Council and approved by the Regional Water Quality Control Board.	Changes were made to the Ordinance Section 43.0305(e) as follows: "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."
4	The Coalition	1/6/2015	Draft Ordinance Section 43.0305(f) suffers from the same infirmity as Section 43 .0305(e). The Coalition believes these infirmities can be addressed through minor revisions to the language as follows: 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 most current Jurisdictional Urban Runoff Management Plan adopted by the City Council and approved by the Regional Water Quality Control Board to prevent the discharge of pollutants to the MS4. (2) Emergency firefighting discharges. BMPs as set forth in the most current Jurisdictional Urban Runoff Management Plan adopted by the City Council and approved by the Regional Water Quality Control Board 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.	Changes were made to the Ordinance Section 43.0305(f)(1) as follows: "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."

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5	The Coalition	1/6/2015	<p>Draft Ordinance Section 43 .0307(a) BMP Implementation suffers from the same infirmity as Section 43.0305(e). The Coalition believes that these infirmities can be addressed through minor revisions to the language as follows: 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</p> <p>most current Jurisdictional Urban Runoff Management Plan adopted by the City Council and approved by the Regional Water Quality Control Board.</p>	<p>No changes were made to the Ordinance. The enforcement official has authority to require BMPs in addition to the Minimum BMPs set forth in the JRMP, as necessary to prevent illicit discharges to the MS4 and reduce the discharge of pollutants to the Maximum Extent Practicable (MEP).</p>
6	The Coalition	1/6/2015	<p>Draft Ordinance 43.0307(e) Compliance with General Storm Water NPDES Permits does not represent the environmentally superior alternative? The draft Ordinance requires dischargers to produce paper copies of documents that are already electronically available to the City through the Storm Water Multiple Application and Report Tracking System ("SMARTS"). The Coalition believes that the environmentally superior alternative is for NPDES dischargers to notify the City electronically whenever the required information is uploaded to SMARTS so that the City can promptly utilize the SMARTS data to analyze Permittee compliance. The Coalition believes that this environmentally superior alternative can be addressed with the following changes to the draft ordinance. 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 notify the City whenever the discharger submits their monitoring data and analytical evaluation/assessment reports to the State Water Resources Control Board or the Regional Water Quality Control Board via the Storm Water Multiple Application and Report Tracking System ("SMARTS").</p>	<p>No changes were made to the Ordinance. Industrial/Commercial inspectors review copies of the reports when performing inspections. This can include reviewing hard copy reports on site or records in SMARTS.</p>

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7	The Coalition	1/6/2015	Draft Ordinance 43 .0309(b) appears to require property owners or persons occupying property through which the City's MS4 passes to maintain existing structures within the City's MS4. In many cases, the Coalition believes that this provision requires property owners or persons occupying property to conduct maintenance activities on the City's MS4 when the property owner lacks the legal land use authority to do so. To avoid a challenge to the ordinance as being void for vagueness, the Coalition suggest the following changes to Section 43 .0309(b): Maintain existing structures within or adjacent to the MS4 over which the person owning or occupying the premises has sufficient ownership and control so that those structures will not become a hazard to the use, function, or physical integrity of the MS4.	No changes were made to the Ordinance. Property owners are responsible for maintaining structures on their property so that they do not interfere with the flow of water through the MS4. This provision does not require property owners to maintain the MS4 itself.
8	The Coalition	1/6/2015	Section 43.031 O(c) suffers from several infirmities. First, makes the adoption of a JURMP in conformity with the MS4 Permit permissive. This is a clear violation of the City's duties under the MS4 permit. Second, it fails to identify which version of the JURMP is being referred to. Finally, it allows for amendments to the JURMP by approval of the City Manager (a non-existent position) without the approval of the City Council. However, since the JURMP is the document that describes compliance with the Ordinance, changes to the JURMP are a project subject to CEQA. Thus, only the City Council can approve such changes. In order to rectify these infirmities, the Coalition suggests the following revisions to Draft Ordinance 43.0310(c) Jurisdictional Runoff Management Program: Concurrent with the adoption of this ordinance and from time to time thereafter, the City will 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 and shall become effective upon adoption by the City Council and approval by the Regional Water Quality Control Board. Amendments to the Jurisdictional Runoff Management Program shall be approved by the City Council and shall become effective upon approval by the Regional Water Quality Control Board.	No changes were made to the Ordinance. The revised JRMP is being brought to Council for consideration along with the Ordinance. The Ordinance allows revisions to the JRMP to be made administratively. Any required CEQA review will be conducted when revisions to the JRMP are made. References to the City Manager in the Municipal Code are deemed to refer to the Mayor, per SDMC Section 11.0102.5. The SDRWQCB does not approve the JRMP under the MS4 Permit.

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9	The Coalition	1/6/2015	<p>It is unclear from the City's announcement whether the minimum Residential and Commercial BMPs will be incorporated into the JURMP to be adopted by the City Council. Can you please advise? While the announcement on the City's website denominates these BMPs as minimum requirements for residential and commercial properties, the document itself appears to indicate that these BMPs are also applicable to industrial facilities. Can you please clarify the scope of the proposal? Moreover, if these BMPs are to be applicable to the over 7,000 industrial facilities in the City, the Coalition suggests that you send out announcements to these businesses as well since the website is not clear on the scope of coverage.</p> <p>http://www.sandiego.gov/stormwater/regulations/index.shtml. Last visited January 12, 2015.</p>	<p>The Minimum BMPs for Residential and Industrial/Commercial Sites will be incorporated into the Jurisdictional Runoff Management Plan (JRMP) to be adopted by City Council. They are applicable to industrial facilities as well as commercial. Extensive outreach has been and will continue to be conducted to reach all affected parties. Information can be found at www.sandiego.gov/stormwater/plansreports/jurmp.shtml.</p>
10	The Coalition	1/6/2015	<p>In some places these BMPs are designated as minimum BMPs implying that they are mandatory. However, the document itself uses many permissive verbs such as:</p> <ol style="list-style-type: none"> 1. Contained water should be collected and captured using a wet vacuum or equivalent. 2. Small amounts of grease on cookware should be wiped clean with disposable towels and discarded in the trash. 3. Permanent or temporary capture facilities should be used to direct or pump process or wash water to the sanitary sewer 4. Discharge of vehicle, boat, and equipment wash water to the storm drain system should be contained, captured, and reused, or disposed of to the sanitary sewer, 5. Water associated with washing activities should not be allowed to enter City storm drains, curbs and gutters, or any other part of the City's storm drain system. 6. Wash areas should not include any drains that connect to the storm drain system. 7. When washing is conducted all wash water should be contained, captured, and disposed of appropriately. 8. If wastewater contains powders or solids (e.g., stone- or tile-cutting water, concrete slurry), pretreatment may be necessary to settle out solids before water may be reused or pumped to the sanitary sewer. 9. Designated washing areas may consist of a container, a berm, or a liner to collect and contain liquids and prevent runoff. <p>The Coalition requests that the City provide further clarification as to whether the minimum BMPs are in fact mandatory or simply suggestions.</p>	<p>The Minimum BMPs are written to reflect that BMPs are always required, but in some instances, an incidental discharge to the MS4 may occur even after implementing BMPs. City staff will consider refining or clarifying the draft BMP language as part of the public review process.</p>

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11	The Coalition	1/6/2015	It is not clear whether the City has had an opportunity to analyze either the feasibility or the enforceability of the Minimum BMPs. The Coalition requests that City staff meet with Coalition representatives to discuss conflicts between the minimum BMPs and other NPDES permit requirements, feasibility of discharges to the sanitary sewer and BAT/BCT demonstrations required of Industrial Stormwater Permittees.	City staff met with members of the Coalition and many other stakeholders regarding the Draft Ordinance and Draft Minimum BMPs and is open to continue with the collaborative efforts.
12	The Coalition	1/6/2015	For industrial facilities, the backbone of compliance with the Clean Water Act regarding storm water discharges is their individual SWPPPs. The new Industrial General Permit ("IGP"), which takes effect July 1, 2015, defines the specific BMP obligations of these dischargers. It is not clear that the minimum BMPs proposed by the City comport with those obligations and in some cases may conflict with them. For example the preferred BAT/BCT technology in the IGP is for a facility to be able to file a Non-Exposure Certification ("NEC"). However the minimum BMPs fail to even reference the NEC or whether obtaining an NEC constitutes compliance with the Minimum BMPs. The Coalition offers to provide the City with the expertise of its members to assure that the Minimum BMPs applicable to industrial facilities in the City's JURMP comport with the requirements of the IGP.	<p>The City has analyzed the BMPs required under the Industrial General Permit and compared them with the City's Minimum BMPs and found no conflict.</p> <p>The Industrial General Permit and the City's Minimum BMPs are "parallel" but separate requirements. Obtaining a Non-Exposure Certification (NEC) under the State's IGP does not constitute compliance with the City's minimum BMPs. Many of the City's Minimum BMPs cover areas that are not addressed by the IGP.</p> <p>An example is the City's requirement to sweep parking lots annually. Under the IGP only those parking lots that are used as part of the industrial activities are subject to the IGP. Under the City's Minimum BMPs all parking lots on a site must be cleaned annually whether they are used as part of the industrial activity or not.</p>
13	The Coalition	1/6/2015	In over 40 instances the proposed Minimum BMPs suggest that the preferred method of disposing of non-storm water discharges is to send them to the sanitary sewer. Past experience by Coalition members indicates that the PUD has been very reticent to accept these discharges. Thus, the Coalition is concerned that this is a meaningless option unless PUD is involved in the development of the Minimum BMPs and provides acceptable standards and conditions under which this option is available to dischargers. The Coalition requests that before the City Council approves a JURMP which includes these minimum BMPs that PUD provide the criteria and procedures necessary for individual discharges to avail themselves of this option.	The Storm Water Division works closely with the City's Development Services and the Public Utilities Departments. These Departments ultimately determine whether a connection to the sewer is allowable, if a discharge can be accepted, and if a permit is required. They have established programs in place and the criteria to evaluate and approve potential connections and discharges. At the point of generation, a non-regulated (non-hazardous waste) discharge may be routed to an existing sanitary sewer connection with the permission of the property owner as long as the waste water is generated on site.

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14	California Strategies (BOMA)	1/13/2015	The definition of Illegal Discharge is a bit rough, I would like to see a caveat that states the items from the "Exceptions form Discharge Pollution" are not considered "illegal" if possible.	The definition of "Illicit Discharge" in the Ordinance is substantially the same as the definition of that term in the MS4 Permit.
15	BOMA	1/13/2015	Section 43.0305(b) does not include a discussion on canyon subdrains or drains required for the design and safety of fills and slopes. Based on the language herein, a canyon subdrain and a buttress drain I need to install for slope stability would be considered an illegal discharge and not allowed. These should be included in the list for clarity purposes.	Section 43.0305(b) is substantially the same as the MS4 Permit Section E.2.a(1). The City does not have the authority to add exemptions not included in the MS4 Permit.
16	BOMA	1/13/2015	I would like to get the definition of groundwater in here as well as we attempted for the MS4 permit. The definition we would like is: water that occurs beneath the water table in soil and geologic formations that are fully saturated as evaluated by the geotechnical consultant/geologist.	The definition of groundwater in the Ordinance is substantially the same as the definition of that term in the MS4 permit.

*1: Coalition members include: San Diego Building Industry Association, Building Industry Association of Southern California; Associated General Contractors; Associated Builders and Contractors; San Diego Regional Chamber of Commerce; Business Leadership Alliance; San Diego Association of Realtors; San Diego Apartment Association; NAIOP (National Association of Industrial & Office Properties); BOMA (Building Office & Management Association; San Diego Chapter of the American Society of Landscape Architects.