



# NOTICE

## DEVELOPMENT SERVICES DEPARTMENT

CITY OF SAN DIEGO - 1222 FIRST AVENUE, M.S. 501, SAN DIEGO, CALIFORNIA 92101

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**DATE:** July 27, 2015

**TO:** Distribution

**FROM:** Gregory P. Hopkins, Deputy Director; Development Services Department

**SUBJECT:** 2013 MS4 Permit Storm Water Requirements – Applicability Guidelines

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This Notice provides general guidelines to determine which projects are subject to the 2013 Storm Water Permit requirements adopted in 2013. The intent of this Notice is to provide guidance to City Staff and Project Proponents concerning which projects will be subject to any new requirements. The Notice is not a substitute for case-by-case analysis and should be used as a general guidance document only. Project specific determinations will be made by the Development Services Department, Deputy City Engineer. To request a determination for a specific site prior to permit application, applicants may apply for a Preliminary Review per Information Bulletin 513.

### **Background**

On May 8, 2013, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), adopted Order No. R9-2013-0001, National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements For Discharges From The Municipal Separate Storm Sewer Systems (MS4s) Draining The Watersheds Within The San Diego Region (2013 MS4 Permit). The requirements discussed in this Notice become effective pursuant to the permit provision E.3.e.(1)(a) on December 24, 2015 (Effective Date).

The 2013 MS4 Permit includes major changes to the Development Planning section (Provision E.3), including:

- All development projects are required to implement source control Best Management Practices (BMPs) and Low Impact Development (LID) BMPs
- More projects are included in the definition of a Priority Development Project (PDP), including all projects with 10,000 square feet or more of impervious surfaces
- All PDP's are required to implement LID BMPs to retain pollutants from runoff on site, designed for the 85 percentile storm
- All PDP's are required to implement Hydromodification Management BMPs to achieve pre-development runoff conditions unless otherwise exempted by the Permit (some previous exemptions have been eliminated)
- The "BMP Design Manual" replaces the Standard Urban Stormwater Mitigation Plan (SUSMP)

## **Proposed 2013 MS4 Permit Amendment**

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) is considering an amendment to the 2013 MS4 Permit to address the applicability of the 2013 Permit to projects which have already received some type of permit from a copermittee. On June 23, 2015, San Diego Water Board staff posted revised MS4 Permit language and announced at the June 30<sup>th</sup> workshop that staff expects the following language to be considered by the San Diego Water Board at its November 2015 meeting:

[http://www.swrcb.ca.gov/rwqcb9/water\\_issues/programs/stormwater/docs/2015-0623\\_Second\\_Revised\\_Draft\\_PLA.pdf](http://www.swrcb.ca.gov/rwqcb9/water_issues/programs/stormwater/docs/2015-0623_Second_Revised_Draft_PLA.pdf).

Below is the draft language as proposed by the San Diego Water Board on June 23, 2015

Revise Provision E.3.e.(1)(a) as follows:

### **e. PRIORITY DEVELOPMENT PROJECT BMP IMPLEMENTATION AND OVERSIGHT**

Each Copermittee must implement a program that requires and confirms structural BMPs on all Priority Development Projects are designed, constructed, and maintained to remove pollutants in storm water to the MEP.

#### **(1) Structural BMP Approval and Verification Process**

(a) Each Copermittee must require and confirm that all Priority Development Projects implement the requirements of Provision E.3, except that the Copermittee may allow previous land development requirements to apply to a Priority Development Project if the conditions of Provision E.3.e.(1)(a)(i) or Provision E.3.e.(1)(a)(ii) are met:

(i) The Copermittee has, prior to the effective date of the BMP Design Manual required to be developed pursuant to Provision E.3.d:

[a] Approved<sup>1</sup> a design that incorporates the storm water drainage system for the Priority Development Project in its entirety, including all applicable structural pollutant treatment control and hydromodification management BMPs consistent with the previous applicable MS4 permit requirements;<sup>2</sup>  
**AND**

[b] Issued a private project permit or approval, or functional equivalent for public projects, that authorizes the Priority Development Project applicant to commence construction activities based on a design that incorporates the storm water drainage system approved in conformance with Provision E.3.e.(1)(a)(i)[a], **AND**

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<sup>1</sup>

For public projects, a design stamped by the City or County Engineer, or engineer of record for the project is considered an approved design

<sup>2</sup> Order No's. R9-2007-0001, R9-2009-0002, and R9-2010-0016 for San Diego County, Orange County, and Riverside County Copermittees, respectively

[c] Confirmed that there have been construction activities on the Priority Development Project site within the 365 days prior to the effective date of the BMP Design Manual, **OR** the Copermittee confirms that construction activities have commenced on the Priority Development Project site within the 180 days after the effective date of the BMP Design Manual, where construction activities are undertaken in reliance on the permit or approval, or functional equivalent for public projects, issued by the Copermittee in conformance with Provision E.3.e.(1)(a)(i)[b].

[d] All subsequent private project permits or approvals, or functional equivalent for public projects, that are needed to implement the design initially approved in conformance with Provision E.3.e.(1)(a)(i)[a], must be issued within 5 years of the effective date of the BMP Design Manual. The storm water drainage system for the Priority Development Project in its entirety, including all applicable structural pollutant treatment control and hydromodification management BMPs must remain in substantial conformity with the design initially approved in conformance with Provision E.3.e.(1)(a)(i)[a].

- (ii) The Copermittee does not have the land use authority or legal authority to require a Priority Development Project to implement the full requirements of Provision E.3.

### **Clarifications and Applicability**

1. The effective date of the BMP Design Manual is **December 24, 2015**. The Regional BMP Design Manual has been updated and can be found at:  
<http://www.projectcleanwater.org/index.php>
2. A prior discretionary approval (i.e. development agreement or Vesting Tentative Map, etc.) alone will not qualify the project for exemption from the 2013 MS4 Permit, because it does not authorize construction; ministerial permits (construction permits) are the City of San Diego permits that authorize the commencement of construction.
3. An approved design for the City of San Diego is a Water Quality Technical Report approved by a Development Services Department City Engineer that addresses the pollutant control and hydromodification control requirements for the site in its entirety
4. If a project is currently in the discretionary review phase and is nearing approval, the applicant may request concurrent processing of the ministerial and the discretionary reviews if there have been draft discretionary permit conditions completed by all review disciplines. Please check with the development project manager to confirm if this is an option for your project.
5. If a project has been issued a ministerial permit prior to the Effective Date but construction has not commenced within 180 days of the Effective Date, it must comply with the 2013 MS4 Permit requirements and will need to process a construction change prior to performing the work.

6. If a project is currently in construction but the permit does not include the drainage system in its entirety prior to the Effective Date, it must comply with the 2013 MS4 Permit requirements.
7. Projects that have approved discretionary permits with a design based on the 2007 MS4 Permit may be subject to additional discretionary review and approval if redesign is required to incorporate the 2013 MS4 Permit requirements during the ministerial permit process.

### **Project Scenarios and Applicability of the 2013 MS4 Permit Requirements**

1. Projects with Construction Permits issued prior to Effective Date that meet all of the stated criteria in the proposed revisions to 2013 MS4 Permit Provision E.3.e.(1)(a) - ***2013 MS4 Permit requirements do not apply to the project.***
2. Project has Construction Permits issued after Effective Date - ***The project is subject to the 2013 MS4 Permit requirements.***
3. Construction Permits issued prior to Effective Date and meet all the stated criteria in the proposed revisions to 2013 MS4 Permit Provision E.3.e.(1)(a); however, the project must revise the permit for a non-substantive change as determined by the Development Services Director (i.e., contractor or ownership change). - ***The project does not need to meet the 2013 MS4 Permit requirements.***
4. Construction Permits issued prior to Effective Date and meet all the stated criteria in the proposed revisions to 2013 MS4 Permit Provision E.3.e.(1)(a). After Effective Date, the project proposes a design modification/construction change that increases the footprint of impervious surfaces such that the project is no longer in substantial conformity with the construction permits granted by the City prior to the effective date. – ***The modified portion of the project is subject to the 2013 MS4 Permit requirements.***
5. Construction Permit issued prior to Effective Date and meets all the stated criteria in the proposed revisions to 2013 MS4 Permit Provision E.3.e.(1)(a); however, the Construction Permit has expired before all work is completed and a new permit is required. - ***The remainder of the work to be constructed under the new permit is subject to the 2013 MS4 Permit requirements.***
6. Construction Permit issued prior to Effective Date and meets all the stated criteria in the proposed revisions to 2013 MS4 Permit Provision E.3.e.(1)(a); and the applicant applies for and the City grants a first 180 day extension of time. - ***The permit does not have to comply with the 2013 MS4 Permit requirements.***
7. Construction permit issued prior to the effective date that does not exceed threshold for a PDP and meets all the stated criteria in the proposed revisions to 2013 MS4 Permit Provision E.3.e.(1)(a) applies for a construction plan change after the Effective Date that causes the project to exceed the PDP threshold. - ***The project will be considered a PDP and the additional development in the construction change will be subject to the 2013 MS4 Permit requirements.***

This memo is subject to change in the event that the San Diego Water Board, prior to the Effective Date, adopts and incorporates different language into the 2013 MS4 Permit regarding applicability of the 2013 requirements. Another notice will be issued if the San Diego Water Board adopts an amendment to the 2013 MS4 Permit that differs from the June 23 proposal. For questions regarding this notice contact Akram Bassyouni ([abassyouni@saniego.gov](mailto:abassyouni@saniego.gov)), Sean Torres ([satorres@saniego.gov](mailto:satorres@saniego.gov)) or Amanda Mansour ([amansour@saniego.gov](mailto:amansour@saniego.gov)).