

## COUNCIL AGENDA REPORT

August 18, 2009

**TO:** City Council

**FROM:** City Manager

Prepared by: Director of Utilities 

**SUBJECT: STORM WATER RUNOFF POLLUTION PREVENTION ORDINANCE**

### RECOMMENDATION:

That the City Council introduce an Ordinance adding Chapter 8-12A Storm Water Runoff Pollution Prevention to the Santa Maria Municipal Code.

### BACKGROUND:

The proposed Ordinance is to protect the City's storm water collection system and receiving waters from pollutants; and comply, and require compliance with, Federal and State laws concerning storm water. The Federal Water Pollution Control Act, known as the Clean Water Act (CWA), was enacted in 1972. The CWA established the baseline goals of attaining "fishable/swimmable" waters throughout the United States. The CWA was amended to add a framework for regulating discharges from Municipal Separate Storm Sewer Systems (MS4s) as a special category of point source discharges under the National Pollutant Discharge Elimination System in 1987. The United States Environmental Protection Agency (U.S. EPA) promulgated regulations for permitting MS4s serving a population of 100,000 or more in 1990. These regulations, known as the Phase I regulations, required operators of medium and large MS4s to obtain storm water permits. The U.S. EPA adopted the Phase II Final Rule in December 1999. The Phase II regulations address storm water discharges from MS4s with a population of less than 100,000 (Small MS4s).

The California State Water Resources Control Board (SWRCB) administers both the Phase I and Phase II programs in California, as established by the Porter-Cologne Water Quality Control Act of 1962 and regulated under Title 23 of the California Code of Regulations. The SWRCB adopted the General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, Water Quality Order No. 2003-0005-DWQ (General Permit) on April 30, 2003, and identified the City of Santa Maria as a Small MS4 requiring General Permit coverage.

The Central Coast Regional Water Quality Control Board is one of nine Regional Water Quality Control Boards (RWQCBs) in California and has jurisdiction over Santa Barbara, San Luis Obispo, Monterey, and Santa Cruz Counties, as well as portions of three other counties along California's central coast. The Central Coast RWQCB is responsible for the coordination and control of local water quality in the City of Santa Maria, including compliance oversight associated with the General Permit.

The City of Santa Maria met General Permit requirements by developing and implementing a Storm Water Management Plan that is designed to reduce the discharge of pollutants to the maximum extent practicable and to protect water quality. Best Management Practices (BMPs) have been adopted that facilitate six Minimum Control Measures: 1) Public Education and Outreach, 2) Public Involvement and Participation, 3) Illicit Discharge Detection and Elimination, 4) Construction Site Storm Water Runoff Control, 5) Post-Construction Storm Water Management, and 6) Pollution Prevention/Good Housekeeping for Municipal Operations.

### **DISCUSSION:**

The impervious nature (i.e. pavement and hardscape) of most urban communities has resulted in storm water discharges that have greater volumes, velocity, and pollutant loads than pre-development runoff. Urban runoff is a leading cause of pollution in waterways throughout California, and it contributes pollutants of concern such as: sediments, non-sediment solids, nutrients, pathogens, oxygen-demanding substances, petroleum hydrocarbons, heavy metals, floatables, trash, and pesticides to waterways. The impact of urban runoff includes damaging effects on both human health and aquatic ecosystems.

To attain the Illicit Discharge Detection and Elimination goals of the Storm Water Management Plan, a Storm Water Runoff Pollution Prevention Ordinance is required to be approved and implemented. The Ordinance will be used as a tool for the City to meet storm water management regulations, reduce pollutants in urban runoff, safeguard persons, protect property, and prevent damage to the environment. The Ordinance authorizes the Director of Utilities to:

- Administer, implement and enforce this Ordinance.
- Inspect properties and sample and test storm water where probable cause of an ordinance violation exists.
- Require source control or treatments be implemented.
- Require storm water pollution and contamination hazards be abated.
- Cause violating discharges, practices, and operations to cease and desist.

On July 30, 2009, a workshop was held at the Santa Maria Public Library to introduce the Ordinance for public review. The workshop was advertised by a news release, email, and paid advertisements in the Santa Maria Times on July 22, 26, and 29, 2009. The Ordinance was also made available for review on the City website. The workshop was attended by 25 local engineers, planners, and environmental advocates. A copy of the Ordinance was provided to all in attendance, and the content was reviewed in a PowerPoint presentation. At the workshop, a number of questions and comments regarding the Storm Water Management Plan and associated Hydromodification Management Plan were considered. The Ordinance has been well received and it did not prompt any concerns at the workshop, nor have there been any negative comments received to date.

### **Fiscal Considerations:**

Any responsible party violating the provisions within the Storm Water Runoff Pollution Prevention Ordinance is guilty of a misdemeanor, and upon conviction thereof, is

punishable in accordance with Chapter 1-6 of the Santa Maria Municipal Code, which includes possible fines not to exceed one thousand dollars.

Impact to the Community:

The Utilities Department is responsible for implementation, administration, and enforcement of this Ordinance. These are new requirements for the City of Santa Maria. The City will use education first and foremost to inform the community of the impacts from urban storm water runoff and proper BMPs to mitigate these impacts. The City will work closely with the community to advance understanding and compliance goals and use enforcement measures if they become necessary.

Other Agency Review:

The Utilities Department worked closely with the City Attorney's Office on the creation of this Ordinance. The Community Development Department has performed an environmental review of the Storm Water Runoff Pollution Prevention Ordinance as required by the California Environmental Quality Act. This project is a Class 8 Categorical Exemption and no further environmental review is required. Class 8 exemptions are actions taken by regulatory agencies for protection of the environment. In accordance with the requirements of the Regional Water Quality Control Board, a draft was posted for review by the public and the Board on July 22, 2009. The Board approved their review of the Ordinance on August 10, 2009.



RICHARD G. SWEET, P.E.  
Director of Utilities

**ORDINANCE NO. 2009-20**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MARIA, CALIFORNIA ADDING CHAPTER 8-12A STORM WATER RUNOFF POLLUTION PREVENTION TO THE CITY OF SANTA MARIA MUNICIPAL CODE**

**WHEREAS**, the Federal Water Pollution Control Act, known as the Clean Water Act, was enacted in 1972 and established baseline goals of attaining "fishable/swimmable" waters throughout the United States; and

**WHEREAS**, the United States Environmental Protection Agency promulgated regulations requiring operators of municipal separate storm sewer systems to obtain storm water permits to address storm water discharges; and

**WHEREAS**, the California State Water Resources Control Board adopted the General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, Water Quality Order No. 2003-0005-DWQ on April 30, 2003 and identified the City of Santa Maria as a Small MS4 requiring General Permit coverage; and

**WHEREAS**, the Central Coast Regional Water Quality Control Board is responsible for the coordination and control of local water quality in the City of Santa Maria including compliance oversight associated with the State General Permit; and

**WHEREAS**, the City of Santa Maria met General Permit requirements by developing and implementing a Storm Water Management Plan designed to reduce the discharge of pollutants to the maximum extent practicable and to protect water quality; and

**WHEREAS**, to attain the goals of the Storm Water Management Plan, a Storm Water Runoff Pollution Prevention Ordinance is required to be approved and implemented by the City of Santa Maria as a tool for the City to meet storm water management regulations, reduce pollutants in urban runoff, safeguard persons, protect property, and prevent damage to the environment;

**NOW, THEREFORE**, the City Council of the City of Santa Maria, State of California, **DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Chapter 8-12A of the Santa Maria Municipal Code is hereby added to read:

Chapter 8-12A Storm Water Runoff Pollution Prevention

**Section 8-12A.01. Purposes**

The purposes of this Ordinance are to:

- (a) Protect the City's storm water collection system and receiving waters from pollutants;
- (b) Comply, and require compliance with Federal and State laws concerning storm water.

**Section 8-12A.02. Definitions**

(a) **Best Management Practices (BMPs)** shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States; also treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks.

(b) **Discharge** shall mean any release, spill, leak, pump, flow, escape, leaching (including subsurface migration to groundwater), dumping, or disposal of any liquid, semi-solid, or solid substance.

(c) **Illicit Connection** shall mean any unauthorized, man-made conveyance or drainage system pipeline, conduit, inlet or outlet, or condition of property whether on the surface or subsurface through which the discharge of any pollutant to the storm drain system occurs or may occur. Illicit connections include, but are not limited to:

(1) Any conveyances which allow sewage, process wastewater, or wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency; or

(2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the City of Santa Maria.

(d) **Pollutant** shall mean anything that causes or contributes to pollution including but not limited to:

(1) Artificial materials, chips, or pieces of natural or man-made materials such as floatable plastics, wood, or metal shavings;

(2) Household waste including trash, paper, plastics, lawn clippings and yard wastes; animal fecal materials; pesticides, herbicides, and fertilizers; used oil and fluids from vehicles, lawn mowers and other common household equipment;

(3) Metals including cadmium, lead, zinc, copper, silver, nickel, and chromium and non-metals including phosphorus and arsenic;

(4) Petroleum hydrocarbons such as fuels, lubricants, hydraulic fluids, surfactants, waste oils, solvents, coolants and grease;

(5) Soil sediment and particulate materials;

(6) Animal waste including animal fecal material from any property, residence, yard, kennel, pen, park, dog park, animal show, animal confinement facility; or any activity involving an animal including keeping, riding, exercising, showing, recreating, walking, or transporting;

(7) Substances having characteristics such as a pH less than 5.5 or greater than 9.5, unusual coloration, turbidity, or pathogens;

(8) Waste materials including those incidental to construction and development activities; those produced by any activities of commercial or industrial businesses, whether mobile or stationary; painting, staining, use of sealants, glues, limes; application of pesticides, fertilizers or herbicides; use of wood preservatives and solvents; disturbance of asbestos fibers, paint flakes or stucco fragments; application of oils, lubricants, hydraulic, radiator, or battery fluids; concrete pouring and cutting slurry wastes; sand blasting residues; or use of chemical degreasing or diluting agents;

(9) Wastewater including any runoff generated by construction and development activities; the activities of any commercial or industrial businesses, whether mobile or stationary; pressure-washing of cars, buildings, walkways, or driveways; application of pesticides, fertilizers or herbicides; use of oils, lubricants, hydraulic, radiator or battery fluids; concrete pouring and cutting slurry wastes; sand blasting residues; use of chemical degreasing or diluting agents; concrete washout or use of concrete detergents or construction equipment washing; or chlorinated water generated by swimming pools;

(10) Materials causing an increase in biochemical oxygen demand, chemical oxygen demand, or total organic carbon; or which contain base/neutral or acid extractable organic compounds; and

(11) Pollutants as defined in § 502 (6) of the Clean Water Act, 33 U.S.C. 1362 (6) or incorporated into California Water Code § 13373.

(e) **Receiving water** shall mean "waters of the United States" as defined in 40 Code of Federal Regulations §122.2 into which the regulated storm water discharges.

(f) **Responsible Party** shall mean any owner, operator, occupant, developer, contractor or sub-contractor of a building, facility or property that emits storm water into the City of Santa Maria storm drain system; or the person(s) identified in and responsible for compliance with the provisions of a Storm Water Pollution Prevention Plan or Storm Water Management Plan.

(g) **Storm Drain System** shall mean the publicly-owned facilities operated by the City of Santa Maria, or within the City of Santa Maria but owned and operated by Santa Barbara County Flood Control and Water Conservation District, by which storm water collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, terminal and detention basins, natural and man-made or

altered drainage channels, reservoirs, and other drainage structures, which are within the jurisdictional area and are not part of a publicly-owned treatment works as defined in 40 CFR Section 122.2.

(h) **Storm water** shall mean surface runoff and drainage associated with storm events.

**Section 8-12A.03. Authority of the Director of Utilities.**

The Director of Utilities or his/her delegate shall have the authority to administer, implement and enforce this Ordinance in order to affect its purposes, whether or not the authority is spelled out specifically elsewhere. Any order of the Director of Utilities may be appealed in the manner specified by Section 8-12.1406.

**Section 8-12A.04. Prohibited Discharges, Exemptions and Limitations.**

(a) Discharges prohibited. No person shall commence or continue, and no responsible party shall permit, any direct or indirect non-storm water discharge to public or private property.

(b) Exemptions from discharge prohibition. Subject to the limitation in subsection (c), the following activities shall not be a prohibited discharge under this ordinance:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated groundwater infiltration (as defined at 40CFR §35.2005{20}) to separate storm sewers;

- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensate;
- (10) Irrigation water;
- (11) Springs;
- (12) Water from crawl space pumps;
- (13) Footing drains;
- (14) Lawn watering;
- (15) Individual residential car washing;
- (16) Flows from riparian habitats and wetlands;
- (17) Dechlorinated swimming pool discharges;
- (18) Discharges and flows from emergency fire fighting activities.
- (19) Any non-storm water discharge permitted or approved under a National Pollutant Discharge

Elimination System permit, waiver, or waste discharge order issued to the discharger and administered by the State of California under the authority of the Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations and provided that written approval has been granted by the City of Santa Maria for any discharge to the storm drain system.

With written concurrence of the Central Coast Regional Water Quality Control Board, the City of Santa Maria may exempt in writing other non-storm water discharges which are not a source of pollutants to the storm drain system or Waters of the U.S.

(c) Limitation. No person shall take any action that may result in contamination, pollution, or unauthorized discharge of pollutants or fail to take any action that may prevent contamination, pollution, or unauthorized discharge of pollutants. This Ordinance shall not create liability on the part of the City of Santa Maria, any agent or employee thereof for any damages that result from any discharger's reliance on this Ordinance or any administrative decision lawfully made under it.

**Section 8-12A.05. Illicit Connections Prohibited; Exception.**

(a) No person shall establish, use, maintain, or continue illicit drainage connections to the storm drain system.

(b) This prohibition expressly includes, without limitation, illicit drainage connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(c) Exception. If, subsequent to eliminating a connection found to be in violation of this Ordinance, the responsible person can demonstrate that the offending illicit discharges will no longer occur, said person may request City approval to reconnect. The reconnection or reinstallation of the connection shall be at the expense of the responsible party.

**Section 8-12A.06. Waste Disposal Prohibited.**

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. It is a violation of this Ordinance to cause or permit any dumpster, solid waste bin, or other waste receptacle to leak such that any pollutant may enter public property or the storm drain system.

**Section 8-12A.07. Compliance Required with Industrial National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permits.**

Any person subject to any industrial NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Director of Utilities upon submittal of improvement plans prior to issuance of any grading, building, occupancy, or operating permits, upon inspection of the facility, during any enforcement proceeding or action, or for any other reasonable cause.

**Section 8-12A.08. Requirement to Prevent, Control, and Reduce Storm Water Pollutants**

(a) Requirement to Implement Best Management Practices (BMPs). All responsible parties shall implement appropriate BMPs adopted by the City of Santa Maria for any activity, operation, or facility, which may cause or contribute to pollution or contamination of the storm drain system or receiving waters.

(b) New Development and Redevelopment. All responsible parties shall implement City of Santa Maria BMPs to control the volume, rate, and potential pollutant load of storm water runoff from new development and redevelopment projects to minimize the generation, transport, and discharge of pollutants.

(c) Responsibility to Implement BMPs. Notwithstanding the presence or absence of requirements promulgated pursuant to subsections (a) and (b) above, any person engaged in activities or operations, or owning facilities or property which will, or may, result in pollutants entering storm water, the storm drain system, or receiving waters shall implement BMPs to prevent and reduce such pollutants to the maximum extent practicable.

(1) Activities, operations, and facilities include, but are not limited to: operation, maintenance, and repair of vehicles; use and disposal of chemicals such as paints, pool chemicals, pesticides, herbicides, and fertilizers; parking lots, gasoline stations, and loading docks; trucking, transportation, manufacturing, and processing facilities; waste disposal, recycling, scrap and used parts operations; mobile steam or pressure washing operations; and construction projects.

(2) Construction activities which may result in the release of pollutants to storm water include, but are not limited to: grading, paving, pouring concrete, painting, and landscaping. Pollutants to be controlled at construction sites include in particular, but are not limited to, soil sediments released by tracking and erosion during and immediately following construction.

**Section 8-12A.09. Requirement to Remediate**

Whenever the Director of Utilities finds that a discharge of pollutants is taking place or has occurred, which will result in, or has resulted in, pollution of storm water, the storm drain system, or Waters of the U.S., the Director may require by written notice to the responsible person that the pollution be remediated and the affected property restored within a specific timeframe.

**Section 8-12A.10. Requirement to Monitor and Analyze**

The Director of Utilities may require by written notice of requirement that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution, illicit discharges, and/or non-storm water discharges to the storm drain system or Waters of the U.S., to undertake at said person's expense such monitoring and analyses and furnish such reports as the Director deems necessary to determine compliance with this Ordinance. The burden, including costs, of these activities, analyses, and reports shall be borne by the responsible party.

**Section 8-12A.11. Notification of Spills**

Notwithstanding other requirements of law, if any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting, or may result, in illicit discharges or pollutants discharging into the storm drain system, said person shall immediately take all necessary steps to ensure the discovery, containment, and cleanup of such a release. In the event of a release of materials, said person shall notify the City of Santa Maria in person, by phone, or by FAX at 2065 East Main Street, Santa Maria, 805-925-0951, ext. 7270, or (FAX) 805-928-7240, no later than 5:00 p.m. the

next business day. Notifications in person or by phone shall be confirmed by follow-up correspondence addressed to the City of Santa Maria, Department of Utilities, 2065 East Main Street, Santa Maria, CA, 93454 within three days of the initial notification.

**Section 8-12A.12. Authority to Inspect**

Whenever it is determined to be necessary to inspect or enforce any provision of this Ordinance, or whenever the Director of Utilities has probable cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Ordinance, the Director, with permission from the responsible party, may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to storm water compliance. In the event the responsible party refuses entry after a request to enter and inspect has been made, the Director is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

**Section 8-12A.13. Authority to Sample, Establish Sampling Devices, and Test**

During any inspection as provided herein, the Director of Utilities may, with permission of the responsible party, take any samples deemed necessary to aid in the pursuit of the inquiry or to record site activities. Subject to the access provisions of Section 8-12A.12 of this chapter, the Director may establish on any property such devices as are necessary to conduct sampling or metering and may perform smoke or dye tests to determine the source of a discharge.

**Section 8-12A.14. Notice of Violation**

Whenever the Director of Utilities finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Director may order compliance with this Ordinance by written Notice of Violation to the responsible person that:

- (a) Requires monitoring, analyses, and reporting be performed;
- (b) Illicit connections or discharges be eliminated;
- (c) Violating discharges, practices, or operations cease and desist;
- (d) Source control or treatment BMPs be implemented; and/or
- (e) Any storm water pollution or contamination hazard be abated and remediated and any affected property restored.

**Section 8-12A.15. Violations Deemed a Public Nuisance**

In addition to the enforcement processes and penalties herein provided, any condition caused or allowed to exist in violation of any of the provisions of this Ordinance is a public nuisance and subject to abatement as otherwise provided in this Code.

**SECTION 2.** This Ordinance shall be in full force and effect thirty (30) days after its passage. Within fifteen (15) days following its passage, the Chief Deputy City Clerk shall cause this Ordinance to be published in a newspaper of general circulation in accordance with State Law; or when deemed necessary due to the length or complexity of the Ordinance, cause a summary of the Ordinance to be prepared and published at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. If a summary is published at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted, then within fifteen (15) days after adoption of the Ordinance the Chief Deputy City Clerk shall publish a summary of the Ordinance with the names of those City Councilmembers voting for and against the Ordinance and shall post a certified copy of the full text of such adopted Ordinance along with the names of those City Councilmembers voting for and against the Ordinance.

**INTRODUCED** at a regular meeting of the City Council held this 18<sup>th</sup> day of August, 2009 and **PASSED AND ADOPTED** at a regular meeting held September 15, 2009 by the following roll call vote:



AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Chief Deputy City Clerk

APPROVED AS TO FORM:

BY:  \_\_\_\_\_  
City Attorney

CONTENTS:

BY:  \_\_\_\_\_  
Department Head

BY:  \_\_\_\_\_  
City Manager