BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

PORT ORDINANCE NO. 4311

ORDINANCE APPROVING AND ADOPTING RULES AND
REGULATIONS TO MEET THE REQUIREMENTS OF THE
GENERAL PERMIT FOR WASTE DISCHARGE
REQUIREMENTS ("WDRS") FOR STORM WATER
DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM
SEWER SYSTEMS.

WHEREAS, the Board of Port Commissioners ("Board") has
reviewed and evaluated Agenda Report Item 6.2 dated November 13, 2014,
and related agenda materials ("Agenda Report"), has received the
expert testimony of Port of Oakland ("Port") staff, and has provided
opportunities for and taken public comment; and

WHEREAS, that acting upon this matter, the Board has
exercised its independent judgment based on substantial evidence in
the record and adopts and relies upon the facts, data, analysis, and
findings set forth in the Agenda Report, and in related agenda
material and in testimony received; and

WHEREAS, the Port under the management and control of the
Board of Port Commissioners of the City of Oakland ("City")
established by Section 701 of the Charter of the City of Oakland, has
certain authority within the Port Area, as such may be revised from
time-to-time; and

WHEREAS, storm water runoff from urban and developed areas
poses a threat to public health, safety and the environment; and

WHEREAS, the 1987 Amendments to the Clean Water Act,
require certain operators of Municipal Separate Storm Sewer Systems
("MS4s") to implement a program managing storm water discharges to and
through their MS4 in accordance with an NPDES Permit; and

WHEREAS, on February 5, 2013, the State Water Resources
Control Board issued an NPDES Permit for MS4s ("MS4 Permit") requiring
the Port to register for and comply with the MS4 Permit; and

WHEREAS, the Port has jurisdiction over storm water and
surface drainage within the Port Area, except for areas under the
storm water jurisdiction of the City pursuant to agreement or other actions of the Port and the City; and

WHEREAS, the Port is required by the MS4 Permit to have legal authority to control discharges to its storm water drainage system; and

WHEREAS, the Board has authority to adopt ordinances promoting public health and safety; now, therefore,

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. The "Port of Oakland Storm Water Ordinance", as shown in Exhibit A to this Ordinance is hereby approved and adopted. That Ordinance shall be referred to as the "Port of Oakland Storm Water Ordinance".

Section 2. This Ordinance and the Port of Oakland Storm Water Ordinance shall be effective on April 1, 2015.

The Board of Port Commissioners, Oakland, California, November 13, 2014. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Colbruno, Hamlin, Head, Parker, Uno and President Yee - 7. Noes: 0.

John T. Betterton
Secretary of the Board

Adopted at a regular meeting held January 15, 2015
by the following vote:

Ayes: Commissioners Butner, Colbruno, Hamlin, Head, Parker and President Yee – 6
Excused: Commissioner Uno – 1.
Noes: 0

Approved as to form and legality:

Port Attorney

President.
Attest:
Secretary.
EXHIBIT A

PORT OF OAKLAND

STORM WATER ORDINANCE
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ARTICLE 1.
Purpose, Definitions and General Provisions

1.1 PURPOSE AND INTENT.

The purpose and intent of this Ordinance is to:

(a) promote the health, safety, and general welfare of citizens;

(b) protect and enhance the water quality of water bodies of San Francisco Bay and its tributaries, in a manner pursuant to, and consistent with, Storm Water Laws by:

1. reducing Pollutants in Storm Water discharges to the maximum extent practicable;

and

2. eliminating unauthorized Non-Storm Water Discharge to the Port Storm Drains; and

(c) support implementation and administration of the Port’s program for managing Storm Water.

1.2 DEFINITIONS.

As used in this Ordinance:

(a) **Best Management Practices ("BMPs")** means practices that are designed to prevent or reduce Non-Storm Water Discharge or the discharge of Pollutants in Storm Water runoff. BMPs encompass activities, procedures, structures and facilities, and may control rates and volumes of Storm Water runoff. BMP examples include: operation and maintenance procedures; erosion and sediment control practices; facility management practices to prevent and clean up spills, ensure proper waste disposal, prevent Non-Storm Water Discharge, and protect stored materials from contact with Storm Water; treatment facilities; and such other practices as the Port determines appropriate for the control of Pollutants in Storm Water.

(b) **Board of Port Commissioners** means the board established by Section 701 of the Charter of the City of Oakland.

(c) **City** means the City of Oakland, a charter city organized and existing under the Constitution of the State of California.

(d) **Construction Activity** means activities related to construction projects in which soil is disturbed, including, but not limited to, clearing and grubbing, grading, excavating, earth moving, digging, underground utility removal or installation, demolition, paving and repaving where soil is exposed, and structure construction. Construction Activity may be subject to Storm Water Permit requirements.

(e) **Director** means the Port of Oakland Executive Director and his/her designated Representatives.
(f) Fees means fees, rates, charges, assessments, or other amounts.

(g) Governmental Authority means any court, Federal, State or local government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority, including the U.S. Environmental Protection Agency, SWRCB, RWQCB, the Port, and any successor agency.

(h) Hazardous Materials means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, managed, disposed of, or otherwise handled.

(i) Illicit Connections means: (i) Any pipe, drain or conveyance, whether on the surface or subsurface, which conveys anything other than Storm Water to the Port Storm Drains; or (ii) any conveyance which allows any Non-Storm Water Discharge (including sewage, wastewater, or wash water) to enter the Port Storm Drains, such as pipes from indoor drains and sinks, regardless of whether such pipe had been previously allowed, permitted, or approved by a Governmental Authority.

(j) Illicit Discharge means any direct or indirect Non-Storm Water Discharge to any Receiving Waters or Port Storm Drains, except as authorized in Section 2.2 of this Ordinance.

(k) Industrial Activity means activities related to or involving manufacturing, processing or material storage at an industrial facility, including activities described in 40 CFR Section 122.26 (b)(14). Industrial Activity may be subject to Storm Water Permit requirements.

(l) Law means any applicable resolution, order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, policy, program, permit, statute, code, rule or regulation, authorization or other approval by, or other directives issued by, any Governmental Authority, as such may be amended, modified or revised from time to time.

(m) Low Impact Development ("LID") is a development approach to minimize the effect of development on site hydrology and Storm Water quality after Construction Activity is complete. LID includes structures, design features, facilities, or devices, to control Storm Water discharge flows, rates and volumes, or to minimize, and prevent where possible, Storm Water contact with, and transport of, sediment, Pollutants, and, except as expressly permitted by the Port, Non-Storm Water Discharge. LID is an evolving term subject to the interpretation of Governmental Authorities.

(n) MS4 means Municipal Separate Storm Sewer System, including the Port Storm Drains.

(o) MS4 Permit means the State-issued NPDES Permit applicable to and regulating the Port Storm Drains, as such permit is issued, reissued, modified, amended or superseded.

(p) Non-Storm Water Discharge means any discharge to the Port Storm Drains or Receiving Waters that is not composed entirely of Storm Water.

(q) Notice of Penalty ("NOP") means a notice setting a penalty provided by the Director pursuant to Section 5.2(c) of this Ordinance.

(r) Notice of Violation ("NOV") means a notice of alleged violation provided by the Director pursuant to Section 5.2(a) of this Ordinance.
(s) NPDES Permit means a National Pollutant Discharge Elimination System permit issued by a Governmental Authority pursuant to the Clean Water Act (33 U.SC. §1251 et. seq.), including, but not limited to, any permit regulating the discharge of Storm Water from Construction Activity, Industrial Activity or an MS4.

(t) Person means any individual (including, without limitation, the heirs, beneficiaries, executors, legal representatives or administrators thereof), company, corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association, or other entity.

(u) Pollutant means anything which causes or contributes to Pollution. Pollutants include, but are not limited to: toxic materials, paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes; landscaping wastes; washwater; refuse, rubbish, trash, garbage, litter, debris or other discarded or abandoned material, objects, articles, and accumulations, so that same may cause or contribute to Pollution; floatables and sediment; pesticides, herbicides, and fertilizers; Hazardous Materials, hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure (including, but not limited to, sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.

(v) Pollution as defined by California Water Code Section 13050, as such may be amended from time to time, means the human-made or human-induced alteration of the quality of waters by waste to a degree which unreasonably affects, or has the potential to unreasonably affect, either the waters for beneficial uses or the facilities which serve these beneficial uses. Pollution may include impairment of the quality of waters to the degree which creates a hazard to the public health.

(w) Port Area means that area under the Port’s jurisdiction as designated in Section 725 of the Charter of the City.

(x) Port Storm Drains means Port-owned and operated MS4, including facilities that collect, convey or discharge Storm Water runoff, including, but not limited to, catch basins, drainage pipes, streets, gutters, curbs, inlets, piped storm drains, pumping facilities, ditches, swales, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, outfalls, and other drainage structures which are within the Port Area and are not part of a publicly owned treatment works as defined at 40 CFR Section 122.2.

(y) Post-Construction Storm Water Controls means BMPs designed, constructed or installed primarily for the purpose of controlling runoff discharge volumes, flows or rates (reducing hydromodification), or minimizing the generation, transport or discharge to Receiving Waters of sediment, Pollutants and Non-Storm Water Discharge after Construction Activity is concluded. Post-Construction Storm Water Controls include Storm Water Facilities.

(z) Premises means any building, lot, parcel of land, or portion of land, including properties leased by the Port to third parties, whether improved or unimproved including adjacent sidewalks and parking strips.

(aa) Protest means a request for review of an NOV or an NOP submitted to the Port in accordance with Section 5.5 of this Ordinance.

(bb) Receiving Waters means surface waters and groundwater, including Waters of the U.S. as defined under the Clean Water Act (33 U.SC. §1251 et. seq.), and Waters of the State as defined under the Porter-Cologne Act (California Water Code §13000 et seq.), including, but not limited to, San Francisco Bay, the Oakland Harbor, estuary, wetlands, and any tributaries thereto.
Representative means, with respect to any Person, any other Person acting on behalf of, or designated by such Person, including a director, officer, employee, official, partner, member, owner, agent, consultant, engineer, contractor, sub-contractor, sub-lessee, customer, or other Person for whom such Person is at law responsible.

RWQCB means the Regional Water Quality Control Board, San Francisco Bay Region.

Storm Water means any surface flow, runoff, or drainage consisting of water from precipitation.

Storm Water Facilities means structures, devices, facilities or design features, including, without limitation, ditches, vegetated swales, channels, pipes, conveyances, drains, inlets, outfalls, pervious pavements, retention basins, detention basins, and other above-ground and below-ground features sometimes known as “Post-Construction Storm Water Controls,” “green infrastructure,” or “Low Impact Development,” that are designed, constructed or installed primarily to reduce or control Storm Water discharge volumes, flows or rates, or to prevent or minimize Storm Water contact with, transport of, or discharge from the property of, sediment, Pollutants, Non-Storm Water Discharge or other material. Functions of Storm Water Facilities include, without limitation, any one or combination of the following: the collection, conveyance, transport, treatment, retention, detention, or discharge of Storm Water.

Storm Water Laws means the Clean Water Act (33 U.SC. §1251 et seq.), the Porter-Cologne Act (California Water Code §13000 et seq.), the regulations, and Storm Water Permits issued thereunder, and any other Law relating directly or indirectly to Storm Water discharge, or which may be violated by Storm Water discharge or Non-Storm Water Discharge to the Port Storm Drains or Receiving Waters.

Storm Water Permit means any applicable individual or general NPDES Permit or waste discharge requirements, waiver of waste discharge requirements or other authorization by a Governmental Authority issued pursuant to Storm Water Laws that pertain to Storm Water runoff, as such may be amended, modified or revised from time to time. Storm Water Permit includes, without limitation, the general NPDES permits pertaining to Storm Water discharge from Industrial Activity, Construction Activity and MS4s.

SWRCB means the State Water Resources Control Board.

1.3 APPLICABILITY.

This Ordinance shall apply to all discharges to or through the Port Storm Drains generated on any developed or undeveloped land within the Port Area, or generated by activities occurring within the Port Area.

1.4 ADMINISTRATION.

The administration of this Ordinance shall be under the authority of the Director, as delegated to designated Port personnel. Any powers granted or duties imposed upon said Director may be delegated by the Director to Persons or entities acting in the beneficial interest of, or in the employment of, the Port. The Port may also coordinate with other entities to implement programs to implement Storm Water Laws.

1.5 GUIDANCE.

The Director may prepare, and update as appropriate from time-to-time, policies, procedures, specifications, and other guidance to implement this Ordinance, Port programs respecting Storm Water, or requirements of Storm Water Laws. Such guidance may be compiled in a Storm Water Manual or other document(s) containing BMP design standards and performance criteria; minimum BMP requirements; acceptable
treatment practices; maintenance requirements; reporting requirements; procedures for obtaining Port
approval; Post-Construction Storm Water Controls; and alternative compliance options, among other matters.

1.6 REGULATORY CONSISTENCY.

This Ordinance shall be construed to assure consistency with the requirements of Storm Water Laws.

1.7 COMPLIANCE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards. The Port
does not intend or imply that compliance with this Ordinance ensures compliance with Storm Water Laws.
Any Person subject to requirements of Storm Water Laws or Storm Water Permits shall be responsible for
their compliance with such Storm Water Laws or Storm Water Permits. Neither the Port nor any agent or
employee thereof shall be liable for any injury or damages resulting from any Person’s reliance on this
Ordinance or any administrative decision lawfully made thereunder.

ARTICLE 2.
Discharge Prohibitions

2.1 PROHIBITED DISCHARGES.

Except as otherwise provided in Section 2.2, below, the following are prohibited:

(a) Non-Storm Water Discharge.

Non-Storm Water Discharge is prohibited, except as authorized in Section 2.2 of this Ordinance.

(b) Violation of Water Quality Standards.

No Person shall discharge, permit or cause to be discharged to the Port Storm Drains or any Receiving
Waters, either directly or indirectly, any material, including, but not limited to, a Pollutant or water
containing any Pollutant, that constitutes a nuisance, causes or contributes to a violation of applicable State
or federal water quality standards or objectives or otherwise violates Storm Water Laws.

(c) Illicit Connections.

The construction, use, maintenance or continued existence of Illicit Connections to the Port Storm Drains or
Receiving Waters is prohibited. This prohibition expressly includes, without limitation, Illicit Connections
made in the past, regardless of whether the connection was permissible under Storm Water Law or practices
applicable or prevailing at the time of connection.

(d) Illicit Discharges.

Illicit Discharges are prohibited.

(e) Waste Disposal.

No Person shall cause or permit any waste, trash, rubbish, debris, litter, garbage, discarded or abandoned
objects or other materials to be located at any place where such would contact Storm Water or be transported
by Storm Water to Receiving Waters.
(f) Landscape Runoff

Non-Storm Water Discharge from landscaped areas shall not exceed incidental levels. Water leaving an intended use area is not incidental if it is part of the facility design, or if it is due to negligence, excessive application, or intentional overflow or application.

2.2 EXCEPTIONS.

(a) Authorized Non-Storm Water Discharge.

Except when specifically determined to be a significant source of pollutants to Receiving Waters, Non-Storm Water Discharges from the following activities are exempt from the prohibitions in Section 2.1 above when Pollutant discharges are identified and managed with effective control measures to minimize adverse impacts to Receiving Waters:

1. potable water line flushing and other discharges from potable water sources;
2. incidental runoff from landscaped areas;
3. diverted stream flows;
4. springs, rising groundwater; uncontaminated groundwater infiltration to the Port Storm Drains, and uncontaminated pumped groundwater;
5. uncontaminated foundation and footing drains;
6. uncontaminated water from crawl space pumps;
7. air conditioning condensation;
8. individual residential car washing;
9. flows from riparian habitats and wetlands;
10. dechlorinated swimming pool discharges; and
11. flows from fire-fighting.

(b) Permitted Discharge.

Discharges regulated under an NPDES Permit, discharge exemption or waiver issued by a Governmental Authority to the Person discharging, are exempt from the prohibitions in Section 2.1 above, provided that the Person is in full compliance with all requirements of such permit and other applicable requirements of Storm Water Laws or Governmental Authorities.

(c) Protection of Health and Safety.

Discharges specified in writing by the Director, RWQCB or SWRCB as necessary to protect public health and safety are exempt from the prohibitions in Section 2.1 of this Ordinance.
(d) Agency Exemption.

The Director may, with written concurrence of the RWQCB, exempt in writing other Non-Storm Water Discharges which are not a significant source of Pollutants to the Port Storm Drains or Receiving Waters.

ARTICLE 3.
Regulations and Requirements

3.1 GENERAL REQUIREMENTS.

(a) Compliance with Laws and Permits.

1. All Persons shall comply with, and shall require such Person’s Representatives to comply with, all applicable requirements of Storm Water Laws, including specifically, prohibitions, limitations and requirements applicable to discharges from Port Storm Drains conveying Storm Water discharge from such Person’s activities, facility or property to Receiving Waters.

2. Persons subject to Storm Water Permit requirements shall apply or register for, implement and comply with such Storm Water Permit(s). Evidence of coverage by a Storm Water Permit shall be provided to the Port in a form acceptable to the Director, at the commencement of coverage and promptly upon request. Evidence of such coverage may be required prior to, or as a condition of, any Port permit, lease or other Port authorization. Notice of Storm Water Permit termination shall be provided to the Port promptly following termination of coverage.

3. All Persons shall cooperate with the Port in protecting water quality, including, without limitation, developing, implementing, operating, maintaining, monitoring and improving BMPs; investigating the source of Pollutants and Illicit Discharges; monitoring water quality; and responding to and correcting any alleged noncompliance with Storm Water Laws.

(b) Best Management Practices.

1. BMPs Required.

Any Person who engages in activities in the Port Area or who owns or occupies property that discharges to Port Storm Drains, shall implement BMPs to reduce, and where possible prevent, Pollutants and Non-Storm Water Discharge from entering the Port Storm Drains or Receiving Waters. At a minimum, such Person shall:

(i) Implement and maintain BMPs appropriate to the activities, operations, facilities and potential Pollutants;

(ii) Operate and maintain existing structures, equipment and vehicles to prevent the release of Pollutants from such structures, equipment and vehicles to Storm Water or Receiving Waters;

(iii) Immediately clean up spills and take all reasonable steps to prevent accidental discharge of Pollutants or Non-Storm Water Discharge into the Port Storm Drains or any Receiving Waters;

(iv) Maintain owned or occupied property so as to prevent erosion of soils;
(v) Keep and maintain owned or occupied property reasonably free of trash, litter, debris, waste or other materials that may cause Pollution in any Receiving Waters; and

(vi) Regularly remove trash and debris from open drainage channels within or running along the boundary of the Premises, facility or area of activity, as applicable.

2. BMP Standards.

The Director may adopt requirements, criteria, performance standards, guidance or recommendations for BMPs for any type of activity, operation, or facility. The requirements promulgated by Governmental Authorities shall otherwise apply as appropriate.

(c) Structural BMPs.

1. Design.

Structural BMPs, including Storm Water Facilities, shall be selected or designed for performance, with appropriate consideration of maintenance needs and costs, the likelihood of failure, vector control and any other factors as may be specified by the Director. Storm Water Facilities shall be designed to meet the more stringent flow, volume and design storm criteria specified by applicable Storm Water Laws.

2. Operation and Maintenance.

Structural BMPs shall be operated and maintained to ensure they continue to function effectively. The Director may establish operation and maintenance requirements for structural BMPs on a general, categorical or case-by-case basis. Operation and maintenance requirements may encompass operation, cleaning, repair, testing, monitoring, periodic inspection and maintenance. The Director may require preparation and implementation of an operation and maintenance plan, and, upon written request, delivery of records documenting operation and maintenance. Failure to perform or report on operation and maintenance as specified shall constitute a violation of, and be subject to penalties provided by, this Ordinance.

(d) Easements.

The Director may require an easement or other consent for access to inspect or maintain Storm Water Facilities as a condition of approval for development or construction.

3.2 ELIMINATION OF ILLICIT DISCHARGES AND CONNECTIONS.

(a) The Director may require, by written notice, that a Person responsible for an Illicit Discharge immediately, or by a specified date, discontinue the Illicit Discharge and, if necessary, take measures to eliminate the source of the Illicit Discharge to prevent the occurrence of future Illicit Discharges.

(b) Illicit Connections shall be eliminated or expressly authorized by the Director within six (6) months following notification by the Director to the Person owning or occupying property, regardless of whether or not the connection or discharges to it had been established or approved prior to the Effective Date of this Ordinance. The Director may, in his or her discretion and with conditions as appropriate, extend the six (6) month deadline.

(c) If, subsequent to eliminating a connection found to be in violation of this Ordinance, the responsible Person can demonstrate that an Illicit Discharge will no longer occur, said Person may request the Director's approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible Person's expense.
3.3 CONTROL OF POLLUTANTS DURING CONSTRUCTION.

(a) Generally.

Construction Activity at all sites where soil is disturbed shall be managed to minimize and where possible prevent erosion, sedimentation, Non-Storm Water Discharge and release of Pollutants into site runoff. Construction Activity shall be performed in compliance with all applicable Storm Water Permits, including any Port conditions and requirements. The Director may establish general or specific requirements for Construction Activity, and may include conditions with project approval. When two or more requirements are inconsistent, the requirement more protective of water quality shall apply.

(b) Notice.

Except as otherwise required by the Director, any Person who intends to undertake Construction Activity within the Port Area shall notify the Port no less than twenty (20) calendar days prior to commencement of such Construction Activity. Such Persons shall fully cooperate with the Port in the Director's inspection of such Person's Premises and Construction Activity under Section 4.1.

(c) Construction On Port Property.

Port tenants undertaking Construction Activity on Port Property shall be solely responsible for applying or registering for, implementing and complying with, any applicable Storm Water Permit.

(d) As-built Plans.

Within sixty (60) calendar days of completion of any Construction Activity, or such period as may be extended in the Director's discretion, the project proponent shall submit to the Port as-built plans showing the storm drain system, Storm Water Facilities, underground utilities, major structures or any other features as requested by the Director. Except as otherwise reasonably determined by the Director in his/her discretion, the failure of a construction project to conform to plans approved by the Director relating to Storm Water Facilities, shall be a violation of this Ordinance.

3.4 PROJECT DESIGN TO CONTROL POLLUTANTS AFTER CONSTRUCTION.

(a) Post-Construction Storm Water Controls Required.

Development and redevelopment projects, except interior remodeling projects with no exterior work, shall incorporate appropriate Post-Construction Storm Water Controls as required by Storm Water Permits, unless waived.

(b) Scope of Requirements.

Site-specific Post-Construction Storm Water Controls shall be established through processes of project approval or building permit issuance by the Port under Section 708 of the Charter of the City, or the City if so directed by the Port. The Director may condition project approval and building permit issuance on implementation of specified Post-Construction Storm Water Controls, including, but not limited to, specified site design measures, Storm Water Facilities, LID design standards, an alternative management program, and acceptance of, or arrangement for, responsibility for long-term operation and maintenance of such Post-Construction Storm Water Controls. Post-Construction Storm Water Control requirements may by waived in the discretion of the Director or the Board of Port Commissioners as appropriate, as authorized by Storm Water Permits or the RWQCB. Project approval on private property may be conditioned on recordation of an easement for access to Storm Water Facilities in accordance with Section 3.1(d). Storm Water Facilities shall be constructed, reconstructed, installed or retrofitted in accordance with Port-approved plans and must
be inspected and approved in writing by the Director before such Storm Water Facilities may be connected to Port Storm Drains.

(c) Operation and Maintenance.

Storm Water Facilities shall be operated and maintained to ensure effective performance over the reasonable life of the Storm Water Facility. Operation and maintenance may include operation, cleaning, repair, testing, monitoring, maintenance, inspection and reporting. Except as otherwise established by agreement with the Port, operation and maintenance of Storm Water Facilities on Port-owned property, including the costs thereof, shall be the responsibility of the property occupant in accordance with a plan prepared or requested by, and acceptable to, the Port. Responsibility for operation and maintenance on non-Port-owned property shall ultimately be with the property owner.

The Director may require revision to any operation and maintenance plan when Storm Water Facilities fail to perform as designed or expected. The Person responsible for operation and maintenance shall annually report all such operation and maintenance activities to the Port each July 1, and at such other times as the Director may reasonably request. If the Person fails to adequately maintain Storm Water Facilities to perform effectively as designed, the Port may, but is not obligated to, undertake the necessary work to improve performance and the Person shall reimburse the Port for all associated costs and pay penalties to the Port as provided by this Ordinance. The Person shall be responsible for its proportionate share of the construction costs, and operation and maintenance costs, of any Storm Water Facilities installed to treat combined Storm Water from the Premises and other properties.

3.5 STORM WATER PROTECTION PLAN.

Any Person who engages in activities in the Port Area, or who owns or occupies property that discharges to Port Storm Drains, and such activity or property has the potential to contribute Pollutants to Storm Water, shall, upon direction by the Director in the Director’s discretion, prepare and submit to the Director a storm water protection plan for such activity or property. Failure to implement such plan shall constitute a violation of this Ordinance.

3.6 NOTIFICATION OF SPILLS AND POLLUTANT RELEASES.

Notwithstanding other requirements of Law, as soon as any Person has information of any known or suspected release of any material which has resulted or may result in a significant quantity of Pollutants or Non-Storm Water Discharge entering into Storm Water, the Port Storm Drains, or Receiving Waters from such facility or operation, such Person shall take all necessary steps to ensure the, containment, abatement and cleanup of such release. In the event of a release of a Hazardous Material, such Person shall immediately notify the Director by phone, and make all other legally required notifications. Except as otherwise required by the Director, in the event of a release of a Pollutant that is not a Hazardous Material, such Person shall notify the Director in person or by phone as soon as practicable, but no later than three (3) calendar days after the release. Notifications in person or by phone shall be confirmed by written notice mailed or e-mailed to the Director within five (5) calendar days of the release. If the discharge of a Pollutant emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for no less than five (5) years.

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ARTICLE 4.
Inspection and Monitoring

4.1 INSPECTIONS.

(a) Port Inspections.

Whenever necessary to make an inspection to assess or enforce compliance with this Ordinance, or whenever the Director reasonably believes a condition exists or potentially exists on a Premises which constitutes a violation of this Ordinance or Storm Water Laws, or poses a threat to water quality, the Director may enter such Premises at all reasonable times, upon reasonable notice, to inspect such Premises, review or copy records related to Storm Water or perform any duty imposed by this Ordinance. The Director may seek assistance from any court of competent jurisdiction in obtaining such entry, as appropriate.

(b) Imminent Threat.

The Director shall be permitted to immediately enter any Premises and inspect, monitor, sample, and undertake other necessary actions when, in the Director's opinion, there exists an immediate threat to the health, safety or welfare of the public.

(c) Documentation.

Any Person who engages in activities in the Port Area or who owns or occupies property that discharges to Port Storm Drains, shall retain for a period no less than five (5) years and provide to the Port upon request, documents and information related to Storm Water, including, but not limited to, plans, records, logs, data, reports, permit registration or termination documents, industrial classification code, or notices or correspondence to or from the RWQCB, the SWRCB or the Port.

4.2 MONITORING.

(a) Observations and Sampling.

During any inspection as provided herein, the Director may photographically record site observations and take samples and perform any testing deemed necessary to investigate or document site conditions, or otherwise support the site inspection or investigation.

(b) Long Term Monitoring.

The Port shall have the right to establish on any Premises, such devices deemed, in the Director's discretion, reasonably necessary and appropriate for monitoring of Storm Water over an extended period. The Port shall minimize interference with the operations and facilities of the occupant in the use and maintenance of such devices. If such devices monitor Storm Water discharges from the Premises, the Director shall, upon request, provide the results of such monitoring to the property owner or occupant.

(c) Requirement to Monitor and Analyze.

The Director may require, in his or her sole discretion upon written notice, any Person who engages in activities in the Port Area or who owns or occupies Premises that discharge to Port Storm Drains and such activities or Premises have the potential to contribute Pollutants to Storm Water, to collect and analyze Storm Water for specified Pollutants at said Person's expense, and furnish the results to the Port.
ARTICLE 5.
Enforcement

5.1 VIOLATIONS.

(a) Acts in Violation of this Ordinance.

It shall be a violation of this Ordinance for any Person to:

1. Fail to comply with any provision of this Ordinance;
2. Conceal a violation of this Ordinance;
3. Fail to timely comply with a directive of the Director issued pursuant to this Ordinance;
4. Fail to comply with conditions of approval for construction projects; or
5. Cause or permit any discharge to the Port Storm Drains or Receiving Waters that constitutes a nuisance, causes or contributes to a violation of applicable Storm Water Laws, including any such prohibitions, limitations, and requirements applicable to discharges from Port Storm Drains conveying Storm Water discharge from such Person’s activities, Premises or facility to Receiving Waters.

(b) Separate Violations.

A separate violation shall be deemed committed on each day during or on which a violation occurs or continues. A person who violates any provision of this Ordinance may also be in violation of Storm Water Laws and may be separately subject to the additional sanctions of such Laws including civil and criminal penalties.

5.2 ENFORCEMENT ACTIONS.

Whenever the Director finds or has reason to believe that a violation of this Ordinance has occurred or is occurring, the Director may take all appropriate action and pursue all available legal remedies to enforce this Ordinance, including, but not limited to, the following:

(a) Notice of Violation ("NOV").

The Director may issue a written NOV describing the violation, requiring action, specifying the time period or deadline for such action, and notifying the alleged violator of his or her right to protest the order as provided in Section 5.5 of this Ordinance. The written NOV may, at the Director’s discretion, include one or more of the following:

1. An order to abate a nuisance or correct a violation, including immediate action to clean up any spill or abate any violation that poses an immediate threat to public health, safety or the environment. The Director may require abatement of uncontrolled sources of Pollutants within thirty (30) calendar days of notification if such Pollutants could pose an environmental threat. The Director may, as appropriate, require a spill, discharge or Pollutant release cleaned up and abated within seventy-two (72) hours of notification. An order to abate and/or clean up shall set forth a deadline for completion, and shall further advise that, should the violator fail to abate or clean up by the established deadline, the work will be done by the Port or a contractor designated by the Director and the expense thereof shall be charged to the violator pursuant to ARTICLE 5;
2. An order to construct, implement, operate, repair, maintain and/or replace source control or treatment BMPs;

3. An order to cease and desist specified discharges, practices, activities or operations within a specified time frame if Pollutant sources or activities are not abated;

4. An order to investigate and/or eliminate Illicit Discharges or Illicit Connections;

5. An order to inspect and/or monitor. Monitoring may include sampling and analysis;

6. An order to prepare and/or submit documents or reports;

7. An order to reimburse costs, including administrative, abatement, remediation, sampling and analysis, legal and staff time costs; or

8. An order to undertake any other action to eliminate a violation.

(b) Inspections.

The Port may perform inspections to confirm a Person has addressed an NOV to the Director’s satisfaction.

(c) Notice of Penalty (“NOP”).

The Director may issue a written NOP describing the violation and ordering the recipient to pay, within a specified period of time, a penalty as provided in Section 5.4 of this Ordinance. The NOP must notify the violator of his her right to protest the penalty as provided in Section 5.5 of this Ordinance.

(d) Extension of Time.

If an extension of time is required to clean up or abate a spill, discharge or Pollutant release, or take other action directed in an NOV or NOP, the Director may establish a new time frame and notify appropriate Governmental Authorities of such revised timeframe as may be required by Storm Water Laws.

(e) Legal Action.

Whenever any condition is caused or permitted to exist in violation of any of the provisions of this Ordinance that the Director determines is a threat to public health, safety, or the environment, and declares to be a nuisance, the Director may, in addition to the enforcement processes and penalties herein provided, commence legal actions and/or equitable proceedings in a court of competent jurisdiction to abate, enjoin, or otherwise compel the cessation of such nuisance or abatement of the nuisance at the violator’s expense. If the Port prevails in such action and/or proceeding, it shall be entitled to recover costs, attorneys’ fees, and costs of Port attorneys and staff in addition to any taxes, fees, assessments, penalties and interest.

(f) Written Enforcement Notices.

Any written notice provided under this Section 5.2 shall be served personally by hand delivery, certified mail or email to the owner or occupant of the Premises where the violation occurred, or to the Person believed responsible for the violation, or both.

(g) Notice to State and Federal Authorities.

Notwithstanding any other provision of this Ordinance, the Director may report known or suspected violations of Storm Water Laws, to Governmental Authorities.
5.3 **ABATEMENT BY THE PORT.**

(a) **Failure to Abate.**

If a nuisance has not been abated as required by the NOV, or if a spill or release has not been abated or cleaned up as required by the NOV, the Port may enter upon the subject Premises and abate and/or clean up the nuisance or spill at the expense of the Port and the Port may recover the amount or such expense, including the cost of inspection, enforcement and correction to the full extent permitted by Government Code Section 54988, as it may be amended from time to time.

(b) **Emergency.**

When, in the Director’s discretion, a condition exists which poses an immediate threat to the public health, safety or the environment, or an immediate threat of significant violation of Storm Water Laws affecting public health, safety or the environment, the Director may immediately enter the subject Premises and inspect or perform or cause to be performed work necessary to abate such danger or threat or to clean-up a release.

(c) **Reimbursement.**

The costs of abatement or clean-up performed by the Port shall be fully reimbursed by the Premises owner, occupant and/or responsible Person as appropriate. Any relief obtained under this Section 5.3 shall not prevent the Port from seeking other and further relief authorized under this Ordinance, other applicable Laws or any agreement with the Port. Failure to reimburse the Port within a reasonable time shall constitute a violation of this Ordinance.

5.4 **PENALTIES.**

(a) **Penalties.**

In addition to all other costs, a Person who violates or fails to comply with a NOV or any provision of this Ordinance shall, upon written NOP as provided in Section 5.2(c) above, be subject to a penalty of up to and including Five Hundred Dollars ($500.00) per day for each violation, as such amount may be modified from time to time in the Charter of the City.

(b) **Penalty Alternative.**

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the Director may require alternative compensatory actions, including but not limited to, monitoring, installing Storm Water Facilities, storm drain stenciling, attendance at compliance workshops, shore cleanup, and other measures as appropriate in the Director’s discretion.

(c) **Revocation of Port Authorizations.**

The Director may, in his/her discretion, revoke or modify Port authorizations, terminate a Person’s tenancy agreement or right of occupancy of Port Premises, or revoke or modify any license, authorization or other privilege conferred by the Port, for significant or chronic violation of Storm Water Laws.
5.5 APPEAL.

(a) Filing a Protest.

Any Person named in an NOV or NOP may protest such order or penalty or attorneys’ fees and costs by sending by certified mail or hand delivering to the Director’s office a written request for review within twenty (20) calendar days of receipt of such NOV or NOP. Such Protest shall specify all reasons why the order or penalty or assessment of attorneys’ fees should be rescinded or modified.

(b) Review and Decision.

Within twenty (20) calendar days of receipt of a Protest, the Director shall send a written decision by certified mail to the Person filing such Protest. The Director’s decision shall be final, unless, within ten (10) calendar days of receipt of such decision, the Person requests in writing, by certified mail or hand delivery, that a hearing be held on the matter.

(c) Hearing.

Within ten (10) calendar days of receiving a request for a hearing, the Director shall send a written notice of the date and time of a public hearing to the requesting Person. At any such hearing, the requesting Person may attend, give testimony, and present evidence. The issues addressed at the hearing shall be limited to those specifically raised in the hearing request. The hearing is an administrative process, not a criminal proceeding or a civil court of law proceeding. Costs of transcription of any testimony taken shall be borne by the Person requesting transcription. The Director may affirm, modify or reverse any aspect of the written notice under review. The Director shall issue a final decision within twenty (20) calendar days of the hearing.

(d) Liens.

Notwithstanding any other provision of this Ordinance to the contrary, the costs incurred by the Port in the abatement of a violation or nuisance may be placed against any privately owned and affected property as either a nuisance abatement lien or a special assessment lien pursuant to Government Code Section 38771, et seq., as amended from time-to-time or a lien pursuant to Government Code Section 54988 as amended from time-to-time. The Port may enforce a lien under this Ordinance in any manner permitted by Law, including filing a civil action to either foreclose on its liens or to obtain a money judgment or both, or pursuing non-judicial foreclosure. The Port may elect, upon thirty (30) calendar days written notice to all known and record owners of the privately owned and affected Premises, to convert any nuisance abatement lien authorized by this Ordinance to a special assessment lien, or vice versa. Costs recoverable under this Ordinance shall include those categories of costs and fees set forth in Civil Code Section 3496, regardless of the type of nuisance involved.

5.6 REMEDIES NOT EXCLUSIVE.

The remedies provided for in this Ordinance shall be cumulative and not exclusive of any other remedies and shall not preclude the Port from any other relief which otherwise is available.
ARTICLE 6.
Fees

6.1 FEES.
The Director may establish Fees to recover the reasonable costs of services and infrastructure provided by the Port for the management of Storm Water.

6.2 FEES IN LIEU.
The Director may establish a fee-in-lieu to apply when any requirement of this Ordinance is waived, reduced, extended, or otherwise suspended.

6.3 FAILURE TO PAY FEES A VIOLATION.
Failure to timely pay Fees shall be a separate violation of this Ordinance.

ARTICLE 7.
Miscellaneous Provisions

7.1 WRITTEN NOTICE.
Except as otherwise provided in this Ordinance or by the Director, any written notice or request provided under this Ordinance may be delivered by hand delivery, mail or email.

7.2 CONFLICT OF LAW.
This Ordinance is not intended to interfere with, abrogate or annul any other ordinance, resolution rule, or regulation, statute, or other provision of Law. The requirements of this Ordinance establish minimum requirements, and if any provision of this Ordinance imposes restrictions different from those imposed by any other Port ordinance, resolution, rule, or regulation or other provision of Law, the provision that is more restrictive or imposes a higher protective standard for the Port, human health, safety or the environment shall take precedence.

7.3 LIABILITY OF PORT.
Persons subject to Storm Water Laws shall be solely responsible for compliance with such laws. The Director, including any Port official or employee, acting under authorization of this Ordinance, if acting in good faith and within the course and scope of his/her employment of the Port, shall not be liable for any damage that may accrue to Persons or Premises as the result of or by reason of any act or omission occurring in the good faith discharge of the duties of employment.

7.4 SEVERABILITY.
The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any Person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

7.5 EFFECTIVE DATE.
This Ordinance shall be in full force and effect on April 1, 2015.
7.6 RELATIONSHIP TO TARIFF 2-A.

The foregoing provisions shall supersede any provisions in Tariff No. 2-A that are in direct conflict with the storm water provisions of this Ordinance.