

San Marcos Unified School District

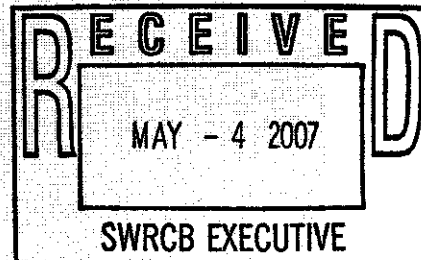
255 Pico Avenue, Suite 250, San Marcos, CA 92069 (760) 752-1299 FAX (760) 471-4928

Construction General
Permit - Stormwater
Deadline: 5/4/07 5pm

May 4, 2007

VIA FACSIMILE AND PDF
(916) 341-5620
commentletters@waterboards.ca.gov

California State Water Resources Control Board
C/O Song Her
Clerk to the Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: Comment Letter - Draft Construction Permit; State Water Resources Control Board
Order No. 2007-XX-DWQ National Pollution Discharge Elimination System General
Permit No. CAR000002

Dear Ms. Her, State Board members and staff:

The San Marcos Unified School District ("District") is a small school district in northern San Diego County serving a growing residential community. Because the surrounding community is currently experiencing a significant amount of growth, the District is continually engaging in construction projects. As such, the District is very concerned about the potential for construction project delays and cost overruns that may result from the changes and upgrades contained in the latest draft of the General Construction Storm Water Permit (State Board Order No. 2007-XX-DWQ) (the "Permit").

The District applauds the State Board's attempts to increase the level of water quality protection at construction sites statewide. The District is very concerned, however, with the number of the changes that the State Board is considering instituting that are included in the current draft of the Permit. The District's overarching concern is that a number of the Permit's requirements are duplicative of other programs, are unnecessary, or are otherwise inappropriate for inclusion in the Permit, which to date has primarily been used to regulate storm water runoff during the construction process. These requirements are likely to increase the time period for school facility construction, and thus limit the ability of the District to bring much needed new school facilities in on time. A more thorough discussion of these concerns is set forth below.

COMMENTS

The Permit approval process has the potential to cause significant delays in school facility construction.

Permit section XIII.2 states that the Regional Water Quality Control Boards ("Regional Boards") will review public comments on new permit applications within a 90-day public review period. Section XIII.2 further provides that, based upon the public comments and Regional Board review of the permit application, "the Regional Boards may take actions that include, but are not limited to: rescinding permit coverage, requiring public hearings or formal Regional Water Board permit approvals, and requesting dischargers to revise their SWPPP and Monitoring Programs".

Governing Board:
Pam Bancells

Mary Borevitz

Beckie Garrett

Sharon Jenkins

David Horacek

Kevin D. Holt, Superintendent

The Permit does not make clear whether construction can begin once the Permit application is filed with the State Board, or if the discharger must wait until the end of the comment period. Either way, allowing the Regional Boards to rescind permit coverage, require public hearings, formal permit approvals, or changes to the storm water pollution prevention plan ("SWPPP") based on a 90-day comment period is likely to result in construction delays.

The District is very concerned with this requirement as it appears unnecessary. According to the Facts Sheet prepared by State Board Staff, the recent court decisions upon which these provisions are based "are not directly applicable to the State Water Board." The District respectfully requests that the State Board consider all of the implications that such unnecessary provisions will have on the ability of public entities, such as the District, to provide vital services to the public.

The Permit's post-construction site-design requirements are inappropriate

The construction and design of school district facilities is subject to the oversight of the Division of the State Architect. (Cal Edu. Code § 17280 et seq.) This oversight creates a system whereby the construction of school facilities is generally exempt from local building and zoning ordinances. (Cal. Gov. Code 53094.) In so doing, the Legislature intentionally limited the ability of other public entities to hinder school facility design and construction. There is an exception for local drainage requirements, (Cal. Gov. Code 53097.) but where drainage requirements, such as the Permit's post-construction and site-design BMP requirements, are so comprehensive that they potentially impact the design of a project, they may conflict with this statutory scheme.

Because the Permit's post-construction site-design requirements go beyond the regulation of construction site storm water runoff, and into the realm of post construction site design, they may likewise conflict with this statutory scheme. These requirements also represent additional steps in the construction process that are likely to add to the time that it takes to get a District facility constructed. The State Board should not disrupt the existing school design regulatory scheme with the Construction General Permit. It should instead let the agencies that are charged with regulating the design and construction aspects of school facilities continue to implement the regulations they have developed. If the State Board feels these controls are inadequate, it should issue Phase II Permits that fit each individual agency's needs and regulate storm water runoff directly, rather than trying to regulate a facility's ongoing storm water impacts with a permit that is designed to regulate construction activity.

Requiring effluent monitoring and reporting will be costly and is likely to cause delays.

The Permit will require effluent monitoring within one business day of an initial ½ inch of precipitation, and every inch thereafter. It will additionally require permittees to draft and submit an "Action Level Exceedance Evaluation Report" whenever effluent monitoring indicates that discharges have caused or contributed to "Action Level" exceedances for the same parameter for two consecutive storm events within the same drainage area.

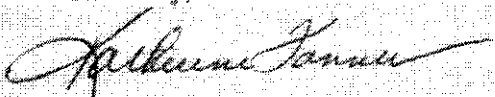
These requirements represent additional steps and costs that the District must incur when engaging new facility construction. Recent comments by State Board staff highlight the District's concerns with these requirements. During the April 17, 2007 Public Workshop on the Construction General Permit, State Board staff, and at least one State Board member, indicated that these requirements were meant to remedy the State Board's current lack of information on water quality and the impacts of construction activity. State Board staff additionally indicated that the State Board was considering including these requirements in the Permit because the State Board currently lacks the funding to survey water quality itself.

The District does not have to explain the precarious financial situation of school districts statewide. Because of the limited ability that school districts have to raise funds, the State Board should not impose comprehensive testing and monitoring programs on them without providing funding. Such requirements add to the costs and delays associated with the construction of new schools and limit the ability of entities such as the District to provide vital services to the public.

CONCLUSION

The District appreciates your attention to these comments. The District intends them to be a constructive part of the ongoing, open dialogue between the public and the State Board. The District wants to play an active role in the development of an efficient and effective Permit that fits the needs of school districts statewide. To that end, if you should have any questions regarding this letter, or the District's position on the Permit, please do not hesitate to contact me directly.

Sincerely,



Katherine Tanner
Executive Director of Facilities Planning and Development
San Marcos Unified School District

KT/ntd

C: Gary M. Hamels, Assistant Superintendent