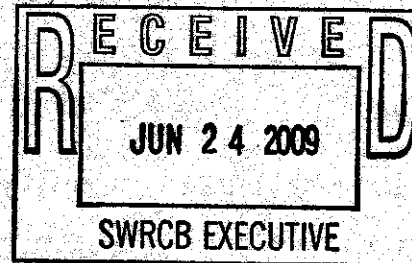


June 24, 2009

VIA EMAIL (commentletters@waterboards.ca.gov)

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: Comment Letter – Draft General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities

Dear Ms. Townsend, State Board Members and Staff:

The San Marcos Unified School District ("District") is located in north San Diego County serving a growing residential community. The District is concerned about the potential for construction project delays and cost overruns that may result from the proposed changes contained in the latest draft of the General Construction Storm Water Permit ("Permit"). The District's overarching concern is that a number of the Permit's requirements are duplicative of other programs, or are otherwise inappropriate for inclusion in the Permit. These requirements are likely to increase the time for school facility construction, and thus limit the ability of the District to bring much needed new facilities on line.

The District submitted written comments on the previous draft of the Permit. This letter sets forth additional concerns not addressed in the most recent draft of the Permit. A discussion of the District's specific concerns follows.

Comments

Post-Construction Requirements

The Permit's post-construction requirements are inappropriate and should be removed from the Permit. The assumed purpose of the Permit is to prevent discharges from construction activities from impacting the waters of the State. Impacts from post construction conditions, such as hydromodification, are not within the purview of the Permit. These impacts are more appropriately regulated through municipal storm water permits, individual project requirements imposed at the local level, or mitigation measures imposed through the California Environmental Quality Act approval process. Each of these regulatory schemes imposes site design requirements on large scale projects. Adding another layer of regulation will only add confusion to the process, and is unlikely to improve water quality.

This is especially true for school projects. Building and modernizing schools requires a complex and often lengthy approval and funding process. School district construction projects must be approved by the California Department of Education (CDE), the Division of the State Architect (DSA), the Office of Public School Construction (OPSC), and the Department of Toxic

Jeanine Townsend
June 24, 2009
Page 2

Substances Control. This oversight creates a system whereby the construction of school facilities is generally exempt from local building and zoning ordinances. (Cal. Gov. Code 65004) In so doing, the Legislature intentionally limited the ability of other public entities to hinder school facility design and construction so that school facilities could be provided concurrent with the needs of students. Where drainage requirements, such as the Permit's post-construction and site design BMP requirements, are listed they may conflict with this statutory scheme. School districts should have a defined means to apply to the Regional Board for a waiver of the post-construction standards.

Grandfathering

Projects that are already under design and in the school approval process, should receive grandfather status. Pursuant to the current draft of the Permit, existing dischargers must obtain coverage within 100 days of the Permit's adoption. This immediate change in Permit coverage will cause substantial hardship for school districts, as it will impact the timeline of approvals for many of the required administrative and agency approvals necessary for project construction. As described above, school districts must obtain approvals from numerous state agencies before beginning construction of a school facility. A change in a project to meet the Permit's requirements could jeopardize those approvals and any associated funding, and at the very least will cause substantial delays in beginning the project construction.

The District therefore requests that the Permit be revised to provide an exemption from compliance with the Permit's post construction requirements for school projects that either have coverage under the existing construction general permit, or have already been approved by at least one state agency. The District further requests that the Permit's risk-based permitting exemption for existing projects be extended to school projects that have been approved by at least one state agency. It is infeasible for these types of projects to redesign to meet the Permit's post construction requirements. Redesign would be prohibitively costly and could jeopardize previously obtained regulatory approvals and funding. Providing an exemption will allow school districts to obtain the approvals they need while still providing adequate water quality protection.

Numeric Effluent Limitations and Action Levels

The Permit includes numeric effluent limits ("NELs") and numeric action levels ("NALs") for turbidity and pH. Both requirements have the potential to significantly increase the cost of compliance with questionable benefit to water quality. The District believes that neither condition is appropriate for inclusion in the Permit.

The NELs are likely to lead to significant confusion and provide a potentially false assessment of compliance. The Permit's Fact Sheet states that the NEL represents the minimal level of control and does not necessarily represent compliance with the narrative effluent limitations or the receiving water language in areas with more protective water quality objectives. The State Board has received numerous comments and testimony indicating that existing data does not

Jeanine Townsend
June 24, 2009
Page 3

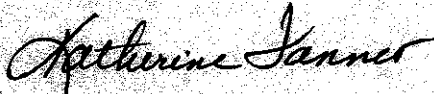
support an NEL approach at this time. Given this testimony, and the overall lack of data supporting NELs, the District respectfully requests that the Permit be revised to remove the NEL provisions.

The NALs present a similar challenge. The challenge for the NALs at this time is the ability to determine accurate effluent limitations that would justify any liability. With the existing knowledge, it appears that effective implementation of traditional BMPs during construction will have equivalent or superior benefits to water quality as the implementation of NALs. Compliance with the Permit's testing requirements will cost time and money that could be dedicated to implementing such BMPs at the project site. The District therefore requests that the State Board remove the NEL and NAL requirements from the Permit.

Conclusion

The District appreciates your attention to these comments and would like to continue to participate in the development of an efficient and effective Permit that fits the needs of school districts statewide. The District intends these comments to be a constructive part of the ongoing, open dialogue between the public and the State Board. If you 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
Facilities Planning and Development

KT/ntd