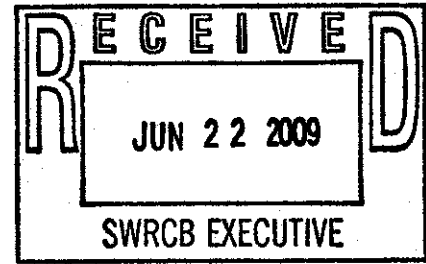




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June 22, 2009

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

Dear Ms. Townsend:

The Coalition for Adequate School Housing (C.A.S.H.) was formed in 1978 to promote, develop and support the enactment of new statewide and local funding alternatives for school construction. C.A.S.H.'s membership is a coalition of public and private interests that believe that school facilities are a critical component of the educational process. C.A.S.H. represents nearly 500 school districts serving 92 percent of California's school children.

C.A.S.H. became aware that schools would be regulated under the State Water Resources Control Board's (SWRCB) revised Small Municipal Separate Storm Sewer Systems (Small MS4) in 2002. In response, the C.A.S.H. Board of Directors created the C.A.S.H. Storm Water Committee to address storm water regulation issues on behalf of our organization. C.A.S.H. brought our members up-to-speed on the implications of the Small MS4 for school districts, and we have worked with SWRCB and your staff throughout the reissuance process to ensure that the concerns of our members were considered. In addition, C.A.S.H. has followed the same process with the previous iteration of the Construction General Permit (CGP) by providing information to our members and working with the SWRCB and your staff to highlight our concerns.

The following is a summary of the challenges unique to the school construction community which C.A.S.H. believes must be recognized as the CGP is developed.

School Construction Funding and Approval Process

As we have stated in previous public comment letters and in public testimony to the SWRCB and your staff, C.A.S.H. believes that it is vital for the SWRCB to recognize that building schools in California requires a complex and often lengthy approval and funding process which poses particular challenges for compliance with the CGP. Specifically, 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 Substances Control and other state agencies to secure 50 percent state funding for the project, and in many instances, school districts must also secure project approval from local agencies. To complete a construction project, school districts must fund the other 50 percent of the project from local funds.

Consequently, delays caused by new requirements to redesign projects, or that require increased levels of oversight, can result in an increase in the time and so cost of school construction projects, making it difficult and in some cases impossible for school districts to

meet their student housing needs. In addition, Financial Hardship projects are funded up to 100 percent from the state because such districts do not have access to sufficient local funds to complete a project. Many of the districts that must apply for Financial Hardship are small school districts with limited access to both local and state funding.

Impact of State Budget Crisis

Under the 2008-09 State Budget signed in February 2009 schools received significant funding reductions, and the 2009-10 State Budget proposals currently being debated by the Governor and Legislature would reduce funding for schools further still. As a result, schools are being forced to make deep cuts to critical educational programs just to remain solvent. In addition to deep funding cuts and eliminating some programs altogether, the first round of state funding reductions forced many school districts to eliminate "low hanging fruit" programs such as maintenance and operations, art and music. Currently, the Governor is proposing drastic options for school districts such as reducing the length of the school year by almost eight days, increasing class sizes and eliminating home-to-school transportation programs. In the past three months, 30,000 teachers in California have received layoff notices.

The State Budget crisis has also directly impacted school district construction programs. Specifically, as a result of the State's cash flow crisis, state funding for infrastructure projects including schools was frozen on December 17, 2008, and access to local bond funds have been limited by the State's fiscal condition and the national credit crisis. Because the State School Facility Program is a state and local matching program, the diminished access to both state and local funding has created significant impediments for school districts in meeting their student housing needs. C.A.S.H. has a demonstrated track record of working to ensure that the education community is doing their fair share to improve water quality; however, in many cases the current CGP may force school districts into the untenable position of weighing delivery of core educational programs against improving water quality.

C.A.S.H.'s Specific Concerns

Grandfathering of Existing Projects

The issue of grandfathering school construction projects that are already in process has been, and continues to be, C.A.S.H.'s most significant concern with the CGP, as school construction projects cannot be easily redesigned to accommodate new requirements once a project has been initiated. For this reason, C.A.S.H.'s public comment letter on the previous iteration of the CGP dated June 11, 2008 included draft time extension language to provide school district projects in the "pipeline" more time to comply with CGP requirements.

C.A.S.H. recognizes that the CGP under current consideration proposes to designate projects that have already commenced as "Risk 1" to address the grandfather issue; nevertheless, C.A.S.H. is concerned that Regional Boards have the authority to "...either direct the discharger to reevaluate the Risk Level for the project or terminate coverage under this General Permit." C.A.S.H. agrees with the California Stormwater Quality Association (CASQA) that the CGP should include a grandfathering provision for projects currently permitted, or for which design has been approved, and strongly urges the SWRCB to include

an exemption for school construction projects in the "pipeline". For reference, in the Small MS4 permit, the SWRCB granted schools an exemption for projects in the "pipeline", recognizing the difficulty associated with halting projects that are in process for the purposes of complying with new requirements.

Numerics

The question of whether or not to include Numeric Effluent Limitations (NELs) in the CGP has been a primary question for the SWRCB and its staff, as well as for the regulated community. Since schools became regulated under the Small MS4 permit, they have focused on establishing Best Management Practices (BMPs) to comply with the permit, and many schools have made significant progress in improving water quality utilizing this approach. The ongoing discussion concerning the inclusion of NELs in the CGP, however, is of significant concern for school districts who do not have the expertise or the additional resources to integrate NELs into their already extensive approval and funding process.

For this reason, C.A.S.H. opposes inclusion of NELs in the CGP for the same reasons that the California Building Industry Association (CBIA), CASQA and the vast majority of the regulated community opposes inclusion of NELs. Specifically, C.A.S.H. bases its opposition to inclusion of NELs in the CGP because they would cause significant confusion for schools to implement, as well as create monetary liability under the mandatory minimum penalty provision of the Water Code. In addition, we agree with the CBIA and CASQA that, while the available data sets appear sufficient to justify establishing Numeric Action Levels (NALs), the data is insufficient to establish an effluent limitation at this time.

Moreover, in *Cities of Arcadia, et.al. v. State Water Resources Control Board, et.al.*, on July 2, 2008 the Orange County Superior Court issued a writ of mandate ordering the SWRCB and the Los Angeles Regional Water Quality Control Board (LARWQCB) to suspend all activities relating to the implementation, application and enforcement of water quality standards in the LARWQCB's Basin Plan. The Court based its decision on Water Code Section 13241 which requires that each regional water board in the process of establishing water quality objectives must consider a number of factors including but not limited to "past, present and probably future beneficial uses of water," as well as economic considerations and water quality conditions that "could reasonably be achieved." While we recognize that this case applies only to the LARWQCB's Basin Plan, C.A.S.H. strongly urges the SWRCB to include similar considerations of "economic considerations" and "water conditions that can reasonably be achieved" in developing water quality standards in the CGP.

Post-Construction Requirements

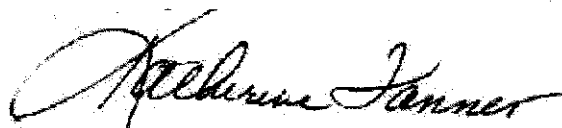
C.A.S.H. concurs with CASQA and the CBIA that the post-construction requirements are inappropriate in the CGP, and would be more appropriately addressed in the context of MS4 permits. If the SWRCB chooses to include post-construction requirements in the CGP, however, C.A.S.H. requests that more detail be provided concerning the provision which allows publicly-funded projects to apply to the Regional Board for a waiver of the post-construction standards. Providing school districts with a specified process concerning the type of information required to justify a waiver and the timeline required for a regional

board review, would provide an increased level of certainty for school districts who believe they have a legitimate circumstance for requesting a waiver of post-construction requirements.

Finally, school districts have been willing partners in efforts to improve water quality before, during and after construction of school facilities. C.A.S.H. urges the SWRCB to recognize the unique challenges that the CGP poses for the school facilities community in the final version of the CGP. C.A.S.H. has been pleased to work with the SWRCB and your staff on water quality issues in educational environments, and looks forward to working with you in the future to ensure that the objectives of improved water quality and student housing needs are achieved.

If you have questions or would like to discuss particular aspects of C.A.S.H.'s concerns and recommendations in more depth, please do not hesitate to contact me at (760) 290-2650 or Ian Padilla from our staff at (916) 204-5459.

Sincerely,



Kathy Tanner, San Marcos Unified School District
Chair of the C.A.S.H. Storm Water Committee and C.A.S.H. Board Member

cc: Mr. Charles R. Hoppin, Chair, SWRCB
Ms. Francis Spivy-Weber, Vice Chair, SWRCB
Mr. Arthur G. Baggett Jr., Member, SWRCB
Ms. Tam M. Doduc, Member, SWRCB
Ms. Dorothy R. Rice, Executive Director, SWRCB
Assembly Member Julie Brownley, Chair of the Assembly Education Committee
Senator Gloria Romero, Chair of the Senate Education Committee