



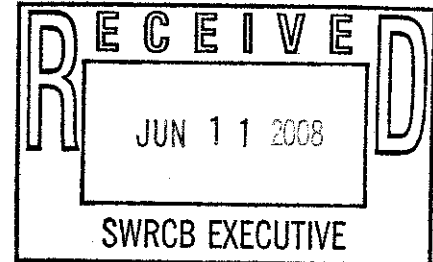
San Marcos Unified School District

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June 11, 2008

VIA EMAIL (commentletters@waterboards.ca.gov)

Jeanine Townsend
Clerk of 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 a school district in northern San Diego County. In the last several years, our community has experienced significant growth. To facilitate this growth, the District has engaged in a number of facility upgrades including the construction of several new schools and modernization of existing education facilities. Because similar upgrades are ongoing, the District is very concerned about the potential impacts that the Draft General Construction Storm Water Permit ("Permit") could have on the District's current and future projects.

On May 4, 2007, the District submitted written comments on the first draft of the construction Permit. Our letter set forth several concerns regarding the Permit. Rather than repeat those concerns here, we incorporate our prior comments into this letter. In addition to our previous comments, we take issue with other aspects of the Permit. As an initial matter, however, the District commends the State Board for its efforts to engage stakeholders through public workshops and public comment opportunities. There can be no question that everyone who wanted to participate in the Permit development and renewal process was afforded that opportunity. A discussion of the District's specific concerns is set forth below.

COMMENTS

UNLESS MODIFIED, THE PERMIT'S PUBLIC COMMENT AND REGIONAL BOARD REVIEW REQUIREMENTS WILL CAUSE SIGNIFICANT, UNNECESSARY DELAYS IN SCHOOL FACILITY CONSTRUCTION.

Section XII.2 of the Permit allows the public to review and comment on new Permit applications. It further provides that the Regional Boards may, based upon public comments and Regional Board review of the Permit application, rescind permit coverage, require public hearings or formal Regional Board approval or require revisions to the SWPPP and/or Monitoring Program. The open ended nature of these requirements creates an unnecessary

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level of uncertainty regarding Permit coverage. It also creates the potential for significant delays in the construction process. This is especially true for schools where activists may attempt to halt or delay much needed projects to serve our community's students.

For that reason, the District strongly urges the State Board to revise Section XII.2 to require that all public comments be submitted within thirty (30) days of the filing of the Permit application. Additionally, comments on the Permit application should be limited to whether the application materials, including the SWPPP, comply with the technical requirements of the Permit. Lastly, there should be no hearing on a given Permit application if no comments are submitted within the thirty day period. These changes will ensure that the public has an opportunity to comment on project coverage regarding storm water compliance, while at the same time providing a limit on abuse of the public comment and hearing process.

The District also believes that the Regional Boards' discretion to hold hearings and make changes to individual SWPPPs and Monitoring Plans under the new Permit should be limited to focus on Permit compliance. This will avoid the possibility that individual Regional Boards would create, de facto, regional construction permits. If the Regional Boards' discretion is not limited in this manner, it will obviate the need for a statewide permit.

SCHOOL DISTRICT PROJECTS THAT ARE ALREADY UNDERWAY SHOULD RECEIVE GRANDFATHER STATUS UNDER THE NEW PERMIT.

As the Permit is currently drafted, existing dischargers must obtain coverage under the new Permit 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 many administrative and agency approvals that are involved with a redesign of a school district project. For example, new construction and modernization projects at schools must be reviewed and approved by at least four state agencies in order to receive the 50% state funding that most projects are absolutely dependant on. A change in a project to meet the new Permit's requirements could jeopardize that funding.

The District therefore requests that the Permit be revised to provide phased coverage for school district projects. Specifically, the District recommends that because of the approval considerations involved with construction and funding, that any high school project that has received at least one approval at the state level prior to the date the Permit is adopted receives a twenty-four (24) month grace period to obtain the necessary approval changes. The District recommends that all other school projects receive an eighteen (18) month grace period. This will allow school districts statewide to obtain the necessary approvals they need for construction while still providing adequate water quality protection under the existing Construction General Permit.

THE NUMERIC EFFLUENT LIMITATIONS SHOULD BE DELETED FROM THE PERMIT

Section IV.B.1 of the draft permit establishes numeric effluent limits for turbidity and pH. The State Board has received numerous comments and testimony indicating that existing data does not support an NEL approach at this time. Indeed, Eric Strecker, a member of the Blue Ribbon Storm Water Panel on Numeric Limits, testified before the State Board on June 4, 2008, that numeric limits are only currently feasible for large construction sites using an Active Treatment System. Mr. Strecker's testimony is supported by the draft fact sheet, which acknowledges at page 29 that the State Board lacks "a comprehensive set of monitoring / measurement tools to evaluate the overall performance of the storm water program (or the whole organization, for that matter.)" 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.

NUMERIC ACTION LEVELS SHOULD INCLUDE BACKGROUND LEVELS

Section VIII and Table 1 of the Permit set forth numeric action levels for pH and turbidity. Presently, neither the NALs for pH nor turbidity account for the presence of elevated background levels at a site. This approach is flawed, not only because it potentially penalizes a discharger for levels of pollution that he or she did not create, but it assumes that water bodies statewide have the same chemical and biotic makeup. To correct this flaw, the NALs should include background conditions that are calculated in a manner that accounts for seasonal differences. This could be achieved by requiring Permit applicants to test for pH, and by incorporating a "natural erosion" factor into the turbidity NAL worksheet.

RESPONSIBILITY FOR COMPLIANCE AT SCHOOL SITES SHOULD BE PLACED WITH THE PRIMARY CONSTRUCTION CONTRACTOR

The Permit holds the owner of any construction site seeking coverage under the Permit responsible for Permit compliance. Although this scheme is used under the current permit, it is flawed as applied to school districts. School districts are not in the business of building large scale construction projects. When they do, it is to provide upgraded or new education facilities to the community. School districts have no profit motive, and limited expertise in project management or storm water compliance. Moreover, school districts are required by law to bid out their projects. Consequently, a significant segment of the construction industry has developed that is exclusively dedicated to building schools and other education related facilities.

The District requests that the Permit's enforcement provisions be revised to hold the contractors and construction managers, who are in charge of construction on school district projects, responsible for Permit compliance; these contractors and construction managers specialize in this area, and will move from one school district project to another, taking their construction practices with them. Because the Permit currently holds the property owner (e.g. the school district) responsible for compliance, if the contractor's practices are nonconforming and violate the Permit's requirements, they will be carried from site to site,

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with little incentive for improvement. When violations occur, it is the school district who is held responsible, and the ability to pass along any fines imposed as a result of non-compliance is limited. Additionally, because the construction contracts governing school district projects require the public entity to cede authority over the methods and means of construction to the contractor or the construction manager, a school district has limited authority to dictate storm water compliance at a project site. It is, therefore, reasonable to hold the contractor responsible for Permit compliance rather than the school district.

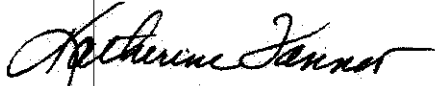
POST-CONSTRUCTION REQUIREMENTS

The District has reviewed comments regarding the Permit's post-construction requirements from the California Association of Storm Water Quality Agencies (CASQA) and the California Building Industry Association (BIA). The District concurs with both CASQA's and the BIA's comments, and hereby incorporates them into this comment letter.

CONCLUSION

The District appreciates your attention to these comments. 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, and intends these comments to be a constructive part of the ongoing, open dialogue between the public and the State Board. 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
Facilities Planning & Development

KT/ntd