



# Los Angeles Unified School District

## Facilities Services Division

DAVID L. BREWER III  
Superintendent of Schools

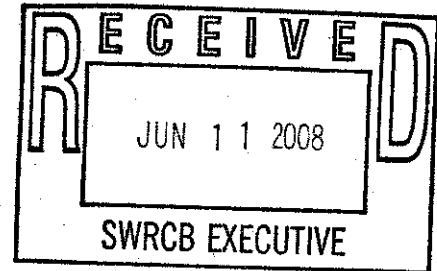
JOSEPH A. MEHULA  
Chief Facilities Executive

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Existing Facilities

June 11, 2008

VIA E-MAIL

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



Re: Draft Construction Permit – LAUSD Comments

Dear Members of the State Board:

The Los Angeles Unified School District ("LAUSD") has reviewed the State Water Resources Control Board's ("State Board") revised Draft General NPDES Permit for Construction Activities ("Draft Permit"). We appreciate the opportunity to provide these comments.

As previously noted, LAUSD continues to implement a major program to site and construct new school facilities throughout the greater Los Angeles area, so as to provide adequate classrooms and relieve overcrowding. This effort represents the largest construction program in LAUSD history, and is among the largest sustained construction programs in Southern California. The District currently has twenty-four (24) new school projects in advanced design stages and under review by the Division of State Architects ("DSA"). Each new project involves substantial planning, design and public review before construction commences. From inception to the start of construction, this process can take several years.

Based on our understanding of its proposed requirements, the Draft Permit will substantially increase costs of compliance with respect to site monitoring and equipment, water sampling, reporting requirements, and training of District personnel for rain event readiness. This comes during a time when LAUSD and other school district are confronting increased costs of education combined with budget cuts. Equally, if not more, importantly, we are very concerned about potential delays and costs associated with

implementing new permit requirements for existing projects. There is a high probability that the Draft Permit will require the redesign of approved projects, and consequently, the Draft Permit has the potential to derail those projects and undo years of prior planning, review and approvals by various agencies and public stakeholders, at great expense to the taxpayers.

Set forth below is a summary of some of our specific concerns.

#### **A. Phase-In Of Permit Requirements**

*Draft Permit References: Section I #10; Section I #28; Section VI #2.b; Section VI #6*

As proposed, new Draft Permit requirements will become enforceable 100 days following State Board approval. We are very concerned about the practical implications of this requirement as applied to current projects in the "pipeline." To the extent school districts are required to evaluate or redesign existing project to comply with the final Construction General Permit ("CGP"), any ensuing delays will potentially result in substantial additional costs, halt certain projects with mandated deadlines, and thereby place an undue burden on taxpayers.

Each construction or modernization project at new or existing LAUSD school sites is subject to vigorous design and environmental review processes, including preparation of Environmental Impact Reports ("EIR") pursuant to the California Environmental Quality Act ("CEQA"). These projects are subject to review by various agencies and public stakeholders, including the DSA, the Office of Public School Construction, the California Department of Education, and the California Department of Toxic Substances Control. To the extent the Los Angeles Regional Water Quality Control Board is also required to review project plans, this will result in delay for existing projects, and likely trigger additional review by the other agencies with respect to any revisions to previously-approved plans.

To mitigate these concerns, LAUSD respectfully requests that the final CGP include an exemption from new permit requirements for school districts that would be applicable to any construction projects in the approval process "pipeline." A similar exemption was provided to school and community college districts in the General Permit for the Discharge of Storm Water from Small Separate Storm Sewer Systems, WQ Order No. 2003-0005-DWQ ("Small MS4 Permit"). Therein, the State Board recognized the school and community college districts are "non-traditional" permittees and, as a result, should not be treated in the same manner as other "traditional" permittees. This same finding should be rendered in connection with the present permit.<sup>1</sup>

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<sup>1</sup> In this regard, LAUSD suggests that the State Board direct school and community college districts to comply with the Six Program Areas/Minimum Control Measures and "Attachment 4," respectively, of the Small MS4 Permit, which set forth policies for areas subject to high growth or serving a population of at least 50,000 for receiving water limitations and design standards. We also request that the Post Construction "no redesign expectation" provision of the final GCP be amended so as to allow the same amount of exemption time (20 months) as the Small MS4 Permit.

## **B. Public Review Requirements**

*Draft Permit References: Section XII #2*  
*Fact Sheet References: Page 45, Section III A #3*

LAUSD recognizes the benefits and need for public review of environmental permits, as well as transparency and accountability in any public review process. However, while we appreciate the State Board's revisions to the previously proposed "90-day waiting period," LAUSD is concerned about provisions allowing for Regional Board hearings or modifications following public review. While this may provide an appropriate mechanism for mitigating the effects of certain projects not otherwise subject to public review, it is not necessary – and, indeed, creates substantial uncertainty – in the context of school site construction.

As noted above, the proposed review process under the Draft Permit comes at the end of years of LAUSD project planning, design, budgeting and approvals. These approvals include public review under CEQA. To the extent the Regional Board might require further project design modifications to address permit requirements, projects could be delayed for months as new designs undergo further review and approval. This, again, could result in significant delays to new school construction, and substantially increased taxpayer costs.

In light of these concerns, we likewise respectfully request that the final CGP include a waiver or exemption from public review requirements, applicable to school and community college districts, with respect to any school construction projects that already have undergone CEQA review and approval.

## **C. Pre-Project Hydrology Requirements**

*Draft Permit References: Page 2, Page 6, Attachment F*

LAUSD recognizes that runoff reduction is an important consideration of project implementation. However, in this respect requirements of the Draft Permit are ambiguous and potentially infeasible.

For example, Section I, item number 10 of the Draft Permit states: "This General Permit requires all dischargers to maintain predevelopment hydrologic characteristics in order to minimize post-development impacts to offsite water bodies." On the other hand, in section I item, number 28, the Draft Permit provides that the "requirement for all construction sites to match pre-project hydrology..." It is unclear whether these provisions mean the same thing, although it appears the Draft Permit defines the latter requirement as the amount of rainfall that ends up as runoff.

In certain cases, the requirement to match pre-project hydrology may not be feasible, let alone desirable or environmentally beneficial. Additionally, it is unclear whether or not the Draft Permit is intended to establish a design standard. LAUSD believes that the design of each individual project site should be conferred to the engineers and project designers. In any case, references to pre-project hydrology requirements should be made consistent throughout the final CGP to avoid potential confusion.

#### **D. Numeric Action Levels and Numeric Effluent Levels**

*Draft Permit References: Page 15, Attachment B, Fact Sheet Page 52*

The imposition of numeric action levels ("NALs") and numeric effluent limitations ("NELs") raises numerous concerns, including the need for such determinations to be based on sound science and a technically sound approach. However, LAUSD is perhaps most concerned about the potential requirement to monitor receiving waters, and whether the State Board has adequately considered issues such as the feasibility of such monitoring, and relevance of such data to evaluating the quality of runoff from project sites.

This issue is of particular relevance to LAUSD since the majority of its projects are relatively small infill projects located in urbanized environments. Receiving waters are often miles away from LAUSD's construction sites. Monitoring at these locations not only would be impractical, but the results would clearly include commingled discharges from various other (and significantly larger) dischargers and tributary areas. In such circumstances, the nominal scientific value of any such data is clearly outweighed by the burden and expense it would impose upon LAUSD.

Furthermore, we urge the State Board to clarify how the Draft Permit's implementation of NALs and NELs is consistent with the State Board's Blue Ribbon Panel's conclusions that NELs are only feasible in connection with Active Treatment Systems. At a minimum, LAUSD requests that the State Board explain its basis for this proposal, and specifically, the statistical analysis and economic impacts it considered when formulating the proposed effluent limitations. LAUSD would also appreciate the State Board explaining how background levels were factored into the proposed NALs and NELs.

#### **E. Risk-Based Management**

*Draft Permit References: Attachment A*

LAUSD generally agrees with the State Board's approach of linking site-specific risk factors to appropriate levels of project controls. However, we are unable to discern how the proposed Sediment Transport Risk Worksheet was developed, and any sensitivity analyses that the State Board may have performed.<sup>2</sup> Finally, we request that the State Board provide information as to how it addressed other considerations such as receiving water characteristics and pre-development runoff characteristics into its risk-based management process.

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<sup>2</sup> The State Board also should describe its assessment of the anticipated level of confidence in the worksheet model results. We further request that the State Board describe the evidence and rationale for weighting each factor. For example, we would appreciate further clarification as to whether a site with an "R value of 5," where work is to be performed outside of the rainy season, should be given the same weight as a site in a stream channel. The State Board should further explain whether and how it considered alternative risk-based systems or a system that links scores on individual risk categories to control requirements relevant to that specific category only.

## **F. Sampling Requirements**

*Draft Permit References: Attachment B*

The new sampling requirements under the Draft Permit will be exceedingly burdensome and costly to implement at District sites. For example, it appears likely that the majority of LAUSD construction projects would fall under Risk Level 2 or higher of the Draft Permit. As such, the minimum sampling requirement for a 24-hour storm will be three samples per outfall and a 48-hour storm will require a minimum of five samples per outfall.

While the LAUSD recognizes the need for data points, this approach will impose an unreasonable financial burden on LAUSD, for the reasons discussed above. Instead, LAUSD supports the concept of a "bridge approach," which will allow a uniform third party data collection effort without placing undue burdens on school districts.

In the meantime, LAUSD respectfully requests that the final CGP include an exemption from sampling requirements for school districts or, at a minimum, a reduction in the number of samples and outfall sampling locations required for each storm event. This would be in recognition that the GCP has unique economic implications for school districts and other public agencies with fixed budgets.

## **G. Inspection Reporting**

*Draft Permit References: Section I #20, Section X, Attachment G*

The Rain Event Action Plan ("REAP") is a duplicative process. The Draft Permit already requires a pre-rain and post-rain inspection. However, the Draft Permit states development of REAP is needed "within 48 hours prior to any likely precipitation event," which imposes an additional requirement. LAUSD suggests using the REAP as the pre-rain inspection form.

## **H. Conclusion**

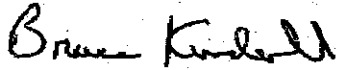
LAUSD fundamentally agrees with the State Board's goal of improving water quality and restoring beneficial uses of our region's receiving waters by complying with its federal and state regulatory obligations. We also agree that a comprehensive plan should consider activities and water quality mitigation measures for LAUSD's project sites as a whole. These goals, however, must be balanced with the need to regulate stormwater discharges from construction sites in a scientifically sound manner, to avoid imposing debilitating requirements on public agencies already.

LAUSD has previously demonstrated a commitment to a rigorous BMP-based approach to improving stormwater quality. In light of the Draft Permit's new requirements, we are concerned that it will be too restrictive and costly to implement on LAUSD projects that have already undergone strenuous approval processes. LAUSD is particularly concerned that the Draft Permit will require the redesign of approved projects, which will waste years of prior planning, review and approvals by various agencies and public stakeholders, at great expense to the taxpayers.

Members of the State Board  
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We appreciate your consideration of our comments, and welcome the opportunity to further discuss them with State Board staff.

Sincerely,



Bruce Kendall  
Deputy Chief Facilities Executive  
Existing Facilities

cc: Guy Mehula, Chief Facilities Executive  
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