

COALITION FOR PRACTICAL REGULATION

"Cities Working on Practical Solutions"



8 September 2011

State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Attn.: Jeanine Townsend, Clerk to the Board
commentletters@waterboards.ca.gov

Subject: Comment Letter – Phase II Small MS4 General Permit

Dear Ms. Townsend and Members of the Board:

I am writing on behalf of the Coalition for Practical Regulation (CPR), an *ad hoc* group of small and medium sized cities in Los Angeles County that have come together to work together to improve water quality, to provide comments on the pending reissuance of the Phase II Small MS4 General Permit. We acknowledge that reissuance of this Permit is one of the State Board's highest priorities and we appreciate the opportunity to provide these comments.

We are aware that the California Stormwater Quality Association (CASQA), aided by its Phase II subcommittee, is submitting extensive and detailed comments on the proposed new General Permit, so we will defer to CASQA with respect to many of the technical elements of the Permit. On the general issue of Permit content, we agree with CASQA that the draft Phase II Permit is overreaching and will pose significant challenges to small cities. As drafted by staff, the new General Permit would require newly covered permittees to move from no program to a complex and costly stormwater program in one permit cycle. That is unreasonable. We also agree with CASQA that new requirements should be phased in over several permit terms. The current Draft Permit contains unrealistic expectations for small communities that lack funding, staffing or experience with implementing compulsory stormwater quality programs. The requirements in the General Permit should not be substantially ramped up at this time. Rather, the emphasis in the new permit should be to make implementation of the existing requirements more consistent and effective.

ARCADIA
ARTESIA
BALDWIN PARK
BELL GARDENS
BELLFLOWER
CARSON
CERRITOS
COMMERCE
COVINA
DIAMOND BAR
DOWNEY
GARDENA
HAWAIIAN GARDENS
INDUSTRY
IRWINDALE
LA CAÑADA FLINTRIDGE
LA MIRADA
LAKEWOOD
LAWDALE
LYNWOOD
MONTEREY PARK
NORWALK
PALOS VERDES ESTATES
PARAMOUNT
PICO RIVERA
POMONA
ROSEMEAD
SANTA FE SPRINGS
SAN GABRIEL
SIERRA MADRE
SIGNAL HILL
SOUTH EL MONTE
SOUTH GATE
SOUTH PASADENA
VERNON
WALNUT
WEST COVINA
WHITTIER

Public Schools Require Guidance

One change in the June 7, 2011 draft Order that is a concern for many of our cities is the staff decision to exempt K-12 school districts, not already covered by the existing General Permit¹, from obtaining coverage under the new General Permit. As noted in the Fact Sheet for the new Permit, the existing General Permit listed non-traditional MS4s, including K-8 school districts, which were anticipated to be designated by the end of the Permit term, either by the State or Regional Water Boards. However, neither the State Water Board nor our Regional Water Board chose to designate schools in our area for coverage under the existing General Permit. This poses a problem for our cities, since schools contribute pollutants to our storm drains, but our cities have no authority over them. Cities do not have the authority to review or approve plans for new school facilities within their jurisdictions. Often coordination between school districts and the cities on new facilities and school renovations is limited at best.

We appreciate the financial difficulties facing the school districts, since cities' resources are equally strained the past decade. Although school districts are pressed for operational funds, there have been numerous successful state and local school construction bond measures in recent years. The State law was amended several years ago to lower the Proposition 218 requirement on school facilities bond/tax votes to 55%, as opposed to a 2/3rds vote required for cities and counties. The result of this change, along with passage of several State bond issues for schools, has been an unprecedented investment in new school facilities. However, since most school districts not regulated under the existing General Permit as anticipated, and because school districts were not required by the Division of the State Architect to implement water quality BMPs, very little attention has been given to water quality in the design of new schools, and very few water quality BMPs have been implemented at either newly constructed or existing schools.

The Division of the State Architect provides design and construction oversight for K-12 schools and community colleges throughout California. To date, the Division has not emphasized stormwater quality in its Sustainable Schools program. This may be the result of few school districts being designated by the State and Regional Water Boards as requiring coverage under the existing General Permit. The draft new General Permit will likely perpetuate this situation by excluding school districts not already designated from the list of non-traditional MS4s to be automatically designated as requiring coverage under the new Permit.

One answer to this dilemma would be to automatically designate all K-12 school districts serving areas covered by Phase I MS4s and areas of traditional small MS4s covered by the new General Permit as being required to obtain coverage under the new General Permit. However, the K-12 school districts could be phased into the program with an

¹ Water Quality Order 2003-0005 DWQ

initial tiered compliance and implementation level. During their first permit term, the school districts could be required to comply with the six minimum control measures in the existing General Permit. At the same time, the State Water Board could work with the Division of the State Architect to develop low maintenance BMPs that could be incorporated into new and remodeled schools. The BMP packages could emphasize low impact development BMPs appropriate to the size and location of the school sites. In recognition of the fact that small traditional MS4s being designated for coverage under the General Permit for the first time face similar budget constraints as the school districts do, the new General Permit could provide a similar first permit term tiered compliance and implementation level for these MS4s.

If school districts are not included in the reissued Permit, cities will be forced to assume responsibility for the storm water discharges from all school district sites – despite the fact that the cities will be entirely unable to control or make any changes to the level of storm water quality management at those sites. This puts municipalities in an untenable position, and one that could expose them to third-party litigation. True responsibility for a multiple facility entity is possible only when it goes along with the authority to make changes, when necessary. Cities do not have that authority. School districts do.

The potential inclusion of school districts as Non-Traditional Small MS4s is a difficult decision facing the State Water Board, to be sure. The economic challenges facing school districts in California are widely known. The school district serving two Southern California cities held “lemonade stands” during the spring and summer of 2010 to raise money to help save teachers’ jobs, when state cut-backs threatened numerous positions. In truth, though, we are all extremely strapped for funds. As the financial situation in California has worsened over the last several years, the State has used monies promised to the cities, and cities have had to face extremely difficult funding decisions that have impacted numerous municipal programs and services. No level of agency or government is immune to the impact of ongoing financial challenges.

There has been an argument voiced that school districts do not have the ability to levy fees or raise money through other measures, such as taxes. In the post-Proposition 218 era, however, that argument does not truly set school districts apart from cities. Numerous attempts by cities to enact stormwater fees have ended in threats of litigation and have not been passed by the required 2/3rds majority. School districts have found broad general support for their facilities bond issues and cities have supported their efforts to upgrade their facilities.

Cities, like school districts, would like to see the State and Regional Boards streamline processes, so that we can avoid the added fiscal strain caused by redundant regulations and duplicative inspections. Areas of regulatory overlap should be addressed. As Non-Traditional Small MS4 Permittees, school districts could work with other co-permittees

to help identify some of the stormwater program redundancies and help the Water Boards work to eliminate those duplications.

We all want to keep California's school system strong – it benefits our communities to have both municipal services and school districts thriving. However, we all need to share in responsibilities such as the larger goal of protecting and improving water quality. As uncomfortable as it is to say, it is time for school districts to step up. Many of them have the capital funds to install BMPs. School sites inevitably contain numerous potential pollutant sources, including those associated with facility and grounds maintenance, parking lots and drop-off/pick up areas, athletic events, outdoor eating areas, auto shops used for educational purposes, and facilities in which animals are kept. These sites should be permitted, as would be any other facility category with those potential pollutant sources.

We support the State Water Board's designating K-12 school districts as Non-Traditional Small MS4s, as it had originally planned. There is no easy or comfortable solution to the necessity of funding stormwater permit compliance efforts. However, it is possible to have an equitable approach. As co-permittees, school districts would shoulder their share of the financial burden of complying with stormwater permits. Such a scenario is not only fair, but is critical to cities' abilities to fund municipal stormwater programs while maintaining basic municipal services at reasonable levels.

The State Water Board should recognize that, in the current economy, cities and school districts both face serious financial challenges, and treat them equally. One way to reduce the financial burden on K-12 school districts brought under the Phase II General Permit is to reduce the financial burden on all permittees through modifying Permit requirements to use a tiered, less burdensome approach that creates less of a strain on cities and others.

Thank you again for the opportunity to provide these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Forester".

Larry Forester
Mayor, City of Signal Hill
CPR Steering Committee