

Construction General
Permit – Stormwater
Deadline: 5/4/07 5pm



Los Angeles Unified School District
Facilities Services Division

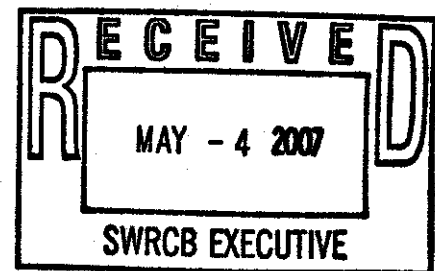
David L. Brewer III
SUPERINTENDENT OF SCHOOLS

JOSEPH A. MEHULA
Chief Facilities Executive
Facilities Services Division

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Deputy Chief Executive
Existing Facilities

May 4, 2007

State Water Resources Control Board
Attn: Ms. Song Her, Clerk to the Board
1001 I Street, 24th Floor
Sacramento, CA 95814



RE: Comment Letter – Draft Construction Permit

Dear State Water Board Members:

The Los Angeles Unified School District (“LAUSD”) has reviewed the State Water Resources Control Board’s (“State Board”) Preliminary Draft General NPDES Permit for Construction Activities (“Draft Permit”) and appreciates this opportunity to provide its preliminary comments based on the Draft Permit. Because this is a preliminary draft permit, LAUSD asks that its comments be considered part of the State Board’s fact finding process. Accordingly, LAUSD reserves its right to provide additional comments once the preliminary Draft Permit is released for further review.

LAUSD has a major program underway to site and construct new school facilities in order to provide adequate classrooms and relieve overcrowding throughout the Los Angeles Region. That effort represents the largest construction program in LAUSD history. The District currently has between 30 and 40 new school projects under review by the Division of State Architect (DSA). Each new project undergoes several years of planning, design and public review before construction begins.¹ The process from inception to the start of construction can take as long as three years. In light of the significant potential impacts that the Draft Permit could have on this program, LAUSD is

¹ For additional information regarding the Draft Permit’s potential impacts on the comprehensive, multi-agency review process and funding allocations for new school construction, please see the letter from Mr. Roger Chang, Los Angeles County Office of Education, to the State Water Resources Control Board commenting upon the Preliminary Draft Permit.

keenly interested in ensuring that the State Board's efforts to protect our water resources are balanced with the urgent need to provide new classrooms for students served by LAUSD. To that end, LAUSD respectfully offers the following comments on the State Board's Draft Permit.

Several aspects of the Draft Permit raise cost and timing concerns and the potential for significant delays in the construction of new schools. LAUSD's primary concerns include the following:

- The Draft Permit calls for an extended public review period and post-review modifications, both of which could have significant ramifications for LAUSD's projects, which take several years to plan and implement.
- The Draft Permit proposes post-construction hydromodification controls on all projects. Given that LAUSD's facilities typically are located in urban areas far from receiving water channels, these types of controls are of questionable efficacy and may create significant hardship to LAUSD with regard to pending projects.
- The Draft Permit's imposition of numerical effluent limits may not be consistent with the suggestions provided by the State Board's Blue Ribbon Panel Report ("BRPR") concerning the feasibility of numeric effluent limits.
- It is unclear how the State Board developed its proposed Sediment Transport Risk Worksheet, and whether the State Board performed any sensitivity analyses in developing that Worksheet.
- It is unclear whether or to what extent new permit requirements may retroactively apply to LAUSD projects that have received design and budget approvals. Because delays in construction could significantly increase project costs, without a demonstrable benefit for water quality, any such requirement could have significant cost and timing implications for LAUSD projects.

1. 90-Day Public Review

It is our understanding that the Draft Permit introduces a 90-day public review period for all permit application documents.² LAUSD understands and appreciates the need for public review of environmental permits, and the benefits of transparency and accountability in any public review process. We are concerned, however, that the length of the proposed review period and, more importantly, the open-ended potential for Regional Board hearings or modifications following that review period, could have a significant, adverse impacts on new school projects.

² Although a 90-day public review period is set forth in the Draft Permit itself, this review period is not addressed in either the Fact Sheet or the summary of significant changes.

Specifically, the proposed review comes at the end of years of LAUSD project planning, design, budgeting and approvals. These approvals include public review under the California Environmental Quality Act (“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 could result in significant delays to new school construction, and substantially increased taxpayer costs. Instead, project design modifications should be addressed early on during the CEQA process to avoid incurring those delays.

In light of these concerns, we encourage the State Board to consider a shorter public review period and to specify (with reasonable limitations) the types of modifications a Regional Board can require after the public review period expires, and/or to provide waivers or exemptions for projects that already have undergone CEQA review and approvals.

2. Hydromodification Requirements

LAUSD agrees that hydromodification is an important consideration that has not received adequate attention as an element of project implementation. There are, however, several aspects of the hydromodification provisions that we urge the State Board to reconsider. First, we are concerned with the State Board’s proposal to place post-construction hydromodification controls in the Draft Permit for all projects. LAUSD facilities are primarily infill projects in heavily urbanized areas, the majority of which are located at least several blocks, or miles, from receiving water channels. Typically, these storm water channels are concrete-lined. In the case of these projects, it should not be necessary to give hydromodification the same emphasis it would warrant in areas discharging to natural, erodible creeks and streams. We encourage the State Board to consider waivers, tiered criteria, or other measures that could more efficiently satisfy the protective intent of the hydromodification section, while not unreasonably burdening facilities in lower-risk areas.

We also understand there may be a desire to provide hydromodification coverage for those areas not covered by current or proposed Phase I or Phase II MS4 Permits. LAUSD is in a somewhat unique position in that, while fully within the boundaries of an MS4 Permittee (the City and County of Los Angeles), LAUSD is currently identified by the State Board as an (undesignated) non-traditional Small MS4. We request clarification regarding Section VII Provision 7, which appears to apply additional local requirements to projects discharging under the Draft Permit.

Specifically, the Draft Permit should clarify whether the State Board intends to broaden the application of Phase I MS4 Permit performance standards (for new development and redevelopment, including post development hydromodification controls) to all construction projects within the Phase I MS4 physical boundaries, regardless of previous designations by the State Board.

LAUSD also is concerned about potentially conflicting hydromodification requirements imposed by currently proposed MS4 Permits in Southern California and this Draft Permit. As with the 90-day review period, we are concerned that the Draft Permit imposes a planning-level design process through a construction permitting mechanism. We also request further clarification on the definition of “first order” stream and the justification for prohibiting all changes to drainage divides and patterns.

3. Action Levels and Numeric Effluent Limitations

Although the imposition of action levels and numeric effluent limitations raises numerous issues, LAUSD is perhaps most concerned about the potential requirement to monitor receiving waters, and whether the State Board adequately considered issues such as the feasibility of that monitoring and relevance of the data to runoff from the project site. This issue is particularly relevant to LAUSD because the majority of its projects are relatively small infill projects located in urbanized environments.

As mentioned above, receiving waters are sometimes miles away from the project site. Monitoring at these locations not only would be impractical, but the results would include commingled discharges from other (and significantly larger) tributary areas. Any information extracted would need to consider dilution and timing, in addition to naturally-occurring variability. Please see the attached figure as a typical example of such a situation common to LAUSD sites (Attachment 1).

We also urge the State Board to clarify how the Draft Permit implementation of action levels and numeric effluent limitations (“NELs”) is consistent with the State Board’s BRPR conclusions that NELs are only feasible in connection with Active Treatment Systems. LAUSD requests that the State Board explain the basis for this proposal, and specifically the statistical analysis and economic impacts it considered when formulating the proposed effluent limitations. We also are interested in better understanding how background levels were factored into the proposed limits.

4. Risk Based Management

LAUSD agrees with the State Board’s approach of linking site-specific risk factors to appropriate levels of project controls related to those factors. In order to fully consider this aspect of the Draft Permit, however, we request that the State Board provide additional information on how the proposed Sediment Transport Risk Worksheet was developed, and any sensitivity analyses that the State Board may have performed. The State Board also should disclose its assessment of the expected confidence in the worksheet model results. We further request that the State Board describe the evidence and rationale for weighting each factor. For example, should a site with an R value of 5 where work is to be performed outside of the rainy season be given the same weight as a site in a stream channel? Did the State Board consider alternative risk-based systems or a system that links scores on individual risk categories to control requirements relevant to that specific category only?

Finally, we request that the State Board provide information as to how it incorporated other considerations, such as receiving water characteristics and pre-development runoff characteristics, into the process to accurately predict the risk that a construction site poses to water quality.

5. Phase-In of Permit Provisions

As noted above, LAUSD has numerous projects that are in the design-review stage. A major concern with regard to this permit is, therefore, the potential that new requirements for hydromodification or runoff controls will require the District to modify a project's design just prior to the start of construction. The need to modify a project at that late stage, and potentially return the project to the review and approval cycle, could significantly delay new school construction and increase taxpayer costs. As a result, LAUSD urges the State Board to consider a phased approach to implementing a new general construction permit. Additionally, projects that already had been planned and received all necessary approvals before the new permit became final should not be subject to requirements that would necessitate design changes.

We appreciate your consideration of these comments and look forward to working with the State Board and other interested parties on the development of a General Storm Water Permit for Construction Activities that appropriately balances the needs of our communities for more school facilities with the need to protect our natural resources and water quality.

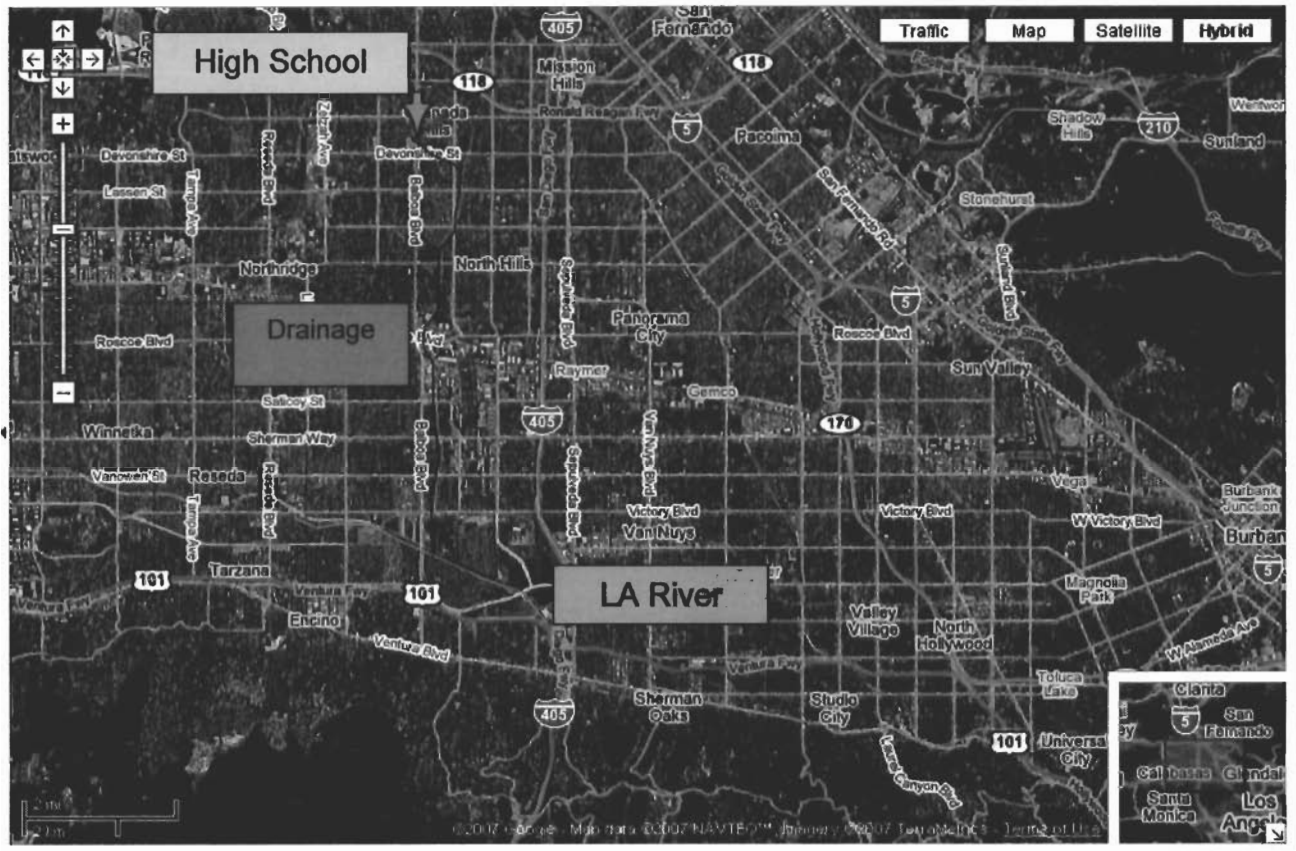
Sincerely,



Bruce Kendall
Deputy Chief Facilities Executive
Existing Facilities

cc: Tam M. Doduc, Chair, State Water Resources Control Board (SWRCB)
Gary Wolf, P.E., PhD, Vice Chair, SWRCB
Arthur G. Baggett, Jr., Member, SWRCB
Charles "Charlie" R. Hoppin, Member, SWRCB
Frances Spivy-Weber, Member, SWRCB
Guy Mehula, Chief Facilities Executive, LAUSD
Angelo Bellomo, Director, Office of Environ. Health and Safety, LAUSD
Jim Cowell, Deputy Chief Facilities Executive, New Construction, LAUSD
Michael Scinto, New Construction, LAUSD
Jay F. Goida, Associate General Counsel, LAUSD
Andrew Cheung, Associate General Counsel, LAUSD
Roger Chang, Los Angeles County Office of Education

ATTACHMENT 1



Example of a typical LAUSD site

Valley Regional High School No. 4, located at 10445 Balboa Blvd in Granada Hills, discharges into a trapezoidal channel which receives numerous acres of additional drainage along its six mile extent before discharging into the Los Angeles River.