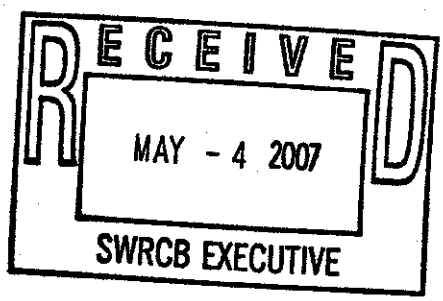
CITY OF RIVERSIDE

Office of the
City Manager

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



May 4, 2007

Ms. Song Her
Clerk to the Board
STATE WATER RESOURCES CONTROL BOARD
1001 I Street, 24th Floor
Sacramento, CA 95814

RE: Comments on the Preliminary Draft General Permit for Construction Activities

Dear Ms. Her:

On behalf of the City of Riverside, I wish to take this opportunity to share the City's concerns on the Preliminary Draft General Permit for Discharges of Storm Water Associated with Construction Activities (Preliminary Draft). The City of Riverside supports the State Water Resources Control Board's collaborative approach in developing the next General Construction Permit, including your stated willingness to reconsider components of the permit. As guardians of public resources, we seek to balance protecting the environment and providing public infrastructure needs.

The City of Riverside supports comments by California Storm Water Quality Association and Riverside County Flood Control and Water Conservation District. Furthermore, the City of Riverside would like to emphasize and add concerns about the unintended consequences likely to result from the Preliminary Draft and specifically oppose the hydromodification, numeric effluent limits and action levels as they relate to transportation projects, particularly as we seek prudent fiscal management of our taxpayers' dollars. This letter outlines some issues and suggestions that the City of Riverside has with the Preliminary Draft.

A summary of the concerns and unintended consequences is as follows:

- Negative safety impacts due to hydromodification, numeric effluent limits and action levels, particularly as these requirements will cause the delay or completely halt construction of transportation projects.

- Negative safety impacts due to the elimination of the exemption for NOI and SWPPP submission prior to emergency and maintenance projects.

- Inefficient use of public resources. Significant schedule and cost delays resulting from a redundant public review period, extended project site protection when regional rain is possible, and inconsistent monitoring data.

- Inappropriately defining risks, since the proposed establishment of a risk-based system does not address the needs of receiving waters. Furthermore, action levels and numeric effluent limits are being proposed without scientific risk studies.

- Negatively altering water bodies through implementation of standardized numeric effluent limits and action levels despite natural background conditions, unknown long-term impacts from required active treatment systems, a lack of sufficient research to establish scientifically justified levels, and likely technical and financial infeasibility.

- Unreconciled requirements between the Facts Sheet and the Permit, such as defining roles and purposes for SWPPPs and REAPs.

The City's primary concern with the Preliminary Draft is the unintended consequences that will result from the hydromodification requirements. These requirements likely will delay or halt numerous public safety projects, such as street widenings and other improvements for increased safety/capacity, bikeways, and pedestrian facilities, due to increased design, property acquisition, construction and ongoing maintenance costs. These additional costs may not be eligible for state and federal transportation funding sources, such as State Gas Tax and SAFETEA-LU. It is recommended that roadway projects along a local agency's existing transportation system be exempt from the hydromodification requirements.

The existing transportation system of a local agency is also part of its Municipal Separate Storm Sewer System (MS4), accepting runoff from adjacent developed properties (developed prior to the implementation of storm water regulations) and undeveloped properties. Any project along the transportation system inherits all runoff that the existing transportation system accepts. Diversion of run-on flows is not usually a good option due to drainage law, cost, and safety.

The hydromodification provision of the Preliminary Draft requires a project that increases impervious area to mitigate the quantity and quality of runoff to preconstruction levels. This is not a practical requirement for projects along a local agency's existing transportation system. To mitigate the increases in runoff due to a project, BMPs will need to be constructed to control both the project effects and the runoff from other sources that drain to the existing roadway. A relatively small street widening project of one acre would require the construction of a BMP to control and treat runoff from possibly a hundred acres. In addition, BMP construction may require acquisition of property within an existing developed area, thereby increasing the project cost and disrupting the neighborhood. These consequences may cause the delay or halt the construction of important safety projects. It is recommended that projects along a local agency's existing transportation system be exempt from the General Construction Permit's hydromodification requirements.

Likewise, negative safety impacts on local agency transportation projects by hydromodification would occur with regard to premature standards for action levels (ALs) and numeric effluent

limits (NELs). For safety, environmental and other reasons, the City strongly advises that the State Board eliminate blanket triggers for ALs and NELs. Instead, once ALs and NELs are established per EPA process and regulations, with consideration to various climatic and receiving water characteristics, then appropriate ALs and NELs could be established that consider various factors, such as natural background turbidity, pH, and TPH levels. The City agrees with California Building Industry Association comments that, given the current lack of data on water quality and natural background, as well as varied factors affecting project sites, it is premature to impose standards for ALs and NELs.

The City also believes it is inappropriate to implement a statewide NEL for turbidity. The Blue Ribbon Panel states in their 2006 recommendations that "natural background turbidity... levels in stormwater runoff are quite high. This is particularly true in semi-arid or arid regions." Therefore, unproven scientific levels of NELs could imply impairment of water bodies that have high natural background due to their semi-arid or arid climates. Because of the possible downstream and receiving water impacts from over-correcting natural background levels, the City recommends that the State Board eliminate the turbidity NEL, at least for projects in semi-arid and arid climate areas. Unintended consequences of the current draft language likely would result in inefficient management of scarce resources to reduce turbidity levels to lower than natural background.

Also with respect to NELs, the City is concerned about the suggested use of active treatment systems (ATS), particularly their unknown impacts with regard to toxicity, chemical imbalances (both short and long term) and responsible financial management. The chemical addition for an ATS increases the potential for a large release of toxic chemicals, both through short-term accidents and long-term accumulation. The Blue Ribbon Panel notes that "if chemical addition is not permitted, then Numeric Limits are not likely feasible." Thus, while the State Board and their staff indicated that they were not advocating ATS but simply including it as an option, an unintended consequence of including NELs may chemically alter receiving waters.

As custodians of public finance, the City is concerned that ATS is not technically or financially efficient. The Blue Ribbon Panel states "technical practicalities and cost-effectiveness may make these [ATS] less feasible for smaller sites [less than five acres]... as these technologies have seen limited use at small construction sites... [and] the cost may be prohibitive." The Panel continues, stating that ATS may only become cost-effective for long-term projects extending multiple wet seasons. Therefore, given the lack of scientific evidence supporting the use of a cost-prohibitive option that may alter the chemical balance of receiving waters, ATS is not a responsible use of public funds.

A responsible use of public funds and maintaining public safety necessitates continuing the exemption for emergency and maintenance projects from NOI and SWPPP requirements, as applied in the current General Construction Permit. Significant and hazardous impacts to human health and the environment may result from inherent delays due to the Preliminary Draft's project approval process and 90 day public comments time. Results may include: increased environmental threats from erosion, leaching and cross-contamination, and possibly extending a project into multiple rain events. In addition, since maintenance projects are daily operations of local agencies, inordinate staff time would be required to prepare redundant SWPPPs for

possibly hundreds of maintenance projects, each of which would require Regional Board review and approval. Instead, if the State Board would like to apply a risk-based approach to maintenance projects, then "good actors" who implement proper housekeeping practices would remain exempt, while proven "bad actors" may be required to submit SWPPPs and NOIs.

The City supports a risk-based approach to the Preliminary Draft, as it is the same approach being taken by the City in its MS4 Permit proposal. However, the City urges the Board to utilize a risk-based approach that considers both risk posed by project site as well as impairment levels within the receiving water. Risk factors and requirements should focus on those receiving waters that are highly sensitive to expected construction activity pollutants, such as receiving waters with a TMDL for sediment, not solely the location and characteristics of a construction site. The consequence of focusing risk factors solely on source and not receiving water sensitivity is that resources are directed to the water bodies that may not need protection.

Local agency projects are planned carefully, particularly with consideration to public need and available resources such as funding and staffing. The City urges maintaining the public review period of a project in the Planning stage, not adding an additional public review period at the Construction stage of a project. Local agency projects undergo environmental impact studies and a public comment period both for individual projects and the General Plan, which is the conceptual design and acceptance of all its projects. This public comment process meets the spirit of a public participation process for projects, without requiring redundancy. Therefore, adding an additional public comment period at the construction stage creates duplicity of the public comment process and causes significant unintentional delays that may result in the loss of federal and/or state funding.

The City of Riverside appreciates the collaborative process for information and feedback provided by the Board and staff at the public workshop held April 17th, 2007. Clarifying requirements of the Stormwater Pollution Prevention Plan (SWPPP) as an umbrella housekeeping document and the Rain Event Action Plan (REAP) as a plan by construction stage were helpful; as well as clarification that a compliant REAP could be as short as one page and used for multiple rain events meeting comparable circumstances. However, the Preliminary Draft includes inconsistencies between the Facts Sheet and Preliminary Draft, such as the requirement to have SWPPPs available for public review and Board approval, versus no requirement to design a SWPPP for low risk projects. Clarification of roles, definitions and requirements within the Fact Sheets and the Permit would reduce ambiguity, thereby better enabling compliance while maintaining fiscal responsibility.

Also regarding the REAP, the extensive length of time that a construction site is active as a result of protecting all exposed portions of a construction site within 48 hours of a rain event will cause significant time and cost delays. The unintended consequence of extending project schedules, especially into the rainy season, contradicts the stated goal of minimizing exposure of an active construction site. According to the Preliminary Draft, a protected site would prohibit permitted construction activities, and since rain delays often are less than 24-hour notice, the proposed 48-hour site protection would halt construction activity with little flexibility for rain delays. Schedule delays would be a minimum of three to four workdays per possible event, leading to significant time extensions over the course of the project, including time of active soil

disturbance. This requirement is especially burdensome considering the high frequency of rain delays and relatively few rain events that actualize in the semi-arid and arid environments. Instead, to balance risk mitigation (site protection and schedule delays) and fiscal responsibility (schedule delays), the City recommends a shorter site protection requirements, such as 24-hour preparation, particularly for the semi-arid and arid environments.

The City understands the State Board's goal of performance feedback for construction sites and BMPs. However, the Preliminary Draft's requirement for each project to monitor receiving water will not provide accurate and reliable data. The State is urged to centrally manage and coordinate sampling, monitoring and analysis. Centralized monitoring will increase efficiency through eliminating duplicate efforts (for both sampling and laboratory testing) that would occur when multiple projects are required to sample the same location of receiving water potentially impacted by their projects. In addition to data reliability benefits, centralized monitoring would increase efficient use of scarce resources by improving coordination, site evaluation, access permission and employee safety at receiving water sampling locations.

In conclusion, the City of Riverside has strong reservations about the Preliminary Draft, particularly with regard to its negative impacts on safety, inefficient use of public funds, altering water bodies and inappropriately addressing risk. In particular, the City is concerned when local agency transportation projects that address public safety will be delayed or halted completely due to the lack of available resources required by this Preliminary Draft.

Sincerely,

Michael J. Beck
Assistant City Manager

cc: Riverside County Flood Control and Water Conservation District