



COMMUNITY COLLEGE FACILITY COALITION

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Jonathan Bishop
Chief Deputy Director, State Water Resources Control Board
Water Quality and Financial Assistance

Dear Mr. Bishop:

On behalf of the Community College Facility Coalition (CCFC), I am writing to provide preliminary feedback on the proposed MS4 Permit ("Informal Draft – Partial Release of Sections, May 30, 2023"). These comments are specific to *Attachment E – Provisions for Non-Traditional Small MS4 Permittees*, which are proposed to apply to community college districts.

CCFC agrees that water quality is a vital goal, and that contaminated water is a critical health and safety risk. However, we disagree with the approach that is taken by the Informal Draft Permit (Permit), which would create monumental new costs to community college districts – at the expense of our core mission to educate students. This letter seeks to address two primary issues that are central to the framework of the Permit: jurisdictional/enforcement issues and significant costs to community colleges.

Under the Permit, community colleges would be required to create and implement a complex stormwater management program that includes program management, enforcement, stormwater asset management, data collection/analysis/reporting, construction pollution prevention and management, post-construction best management practices, trash provisions, and more. These costly new mandates include, but are not limited to:

- Public Education, Outreach, Involvement, and Participation Program (E2)
- Illicit Discharge Detection and Elimination Program (E3)
- Pollution Prevention and Good Housekeeping for Permittee Operations Program (E4)
- Water Quality Monitoring (E8)
- Program Effectiveness Assessment and Improvement (E9) and Reporting Program (E10)

K-12 and Community Colleges Should Be Covered by the Same Permit

The Permit treats K-12 schools and community colleges differently, with K-12 schools subject to a new schools-specific permit in *Attachment F*, and community colleges added to the non-traditional permit outlined in *Attachment E*. K-12 schools and community colleges should be regulated by the same permit structure, as their issues and challenges would be very similar and unique from other public buildings. Both education segments are governed by Education Code and abide by the California Building Code and the Field Act, which stipulates school-specific requirements to ensure K-14 schools are built to some of the highest structural standards in the state. Both K-12 schools and community colleges receive their operational funding from the constitutional formula known as "Proposition 98." See below for more information why this is significant for K-14 schools.

Major Jurisdictional Issues Abound

The Permit mandates community colleges to perform roles that are well outside their statutorily-defined jurisdiction. Community colleges are not an “Authority Having Jurisdiction” to police, certify, or inspect pursuant to the Permit. Such a structure creates policy that is inherently unenforceable and ultimately contrary to the goals of the Permit. Colleges focus their attention and expertise on directly educating students, while hiring experts to perform a myriad of other functions within the law. This protects students, the Board of Trustees, and the Administration from the liability and risk associated with activities that are not central to nor within a college’s core educational mission.

Please see the attachment for specific references to the Permit sections identified below.

Community Colleges are Not Law Enforcement and Do Not Have Police Powers in Statute

The Permit mandates community colleges to directly enforce the new stormwater program. Community colleges do not have the authority to detain violators, enforce codes, or assess fines for third-party violators. The Permit requires a community college to review and revise its ordinances, policies, and other regulatory mechanisms to “obtain legal authority [...] to reduce or eliminate pollutants discharging from its storm drain system pursuant to the requirements of this Order” [E1.1]. Community colleges do not have the executive powers to grant themselves legal authority. Policies adopted by a Board of Trustees help administer existing law and provide internal operational guidance; they cannot be used to expand authority. As written, this appears to require community colleges to pursue amendments to state law to grant such powers. The Permit also requires “responsible parties to promptly cease and desist discharging and cleanup and abate actual and threatened discharges” [E1.1.9]. A community college cannot compel compliance by responsible parties; this duty is the responsibility of an “Authority Having Jurisdiction.”

Community Colleges Cannot Train, Manage, or Regulate Third Parties

The Permit mandates community colleges train, manage, and/or regulate entities with whom they would interact in the development and implementation of a stormwater management program. This is not within the jurisdiction of community colleges. For example, the Permit expects community colleges to provide education on construction and post-construction requirements to third parties such as developers and contractors [E2.3.2], and to “adequately train” third-party staff such as plan reviewers, stormwater inspectors, and code enforcement staff to implement the runoff control program [E5.5]. Community colleges do not have the capacity or the legal jurisdiction or wherewithal to ensure that third-party professionals are properly trained to perform their own professional duties.

Community Colleges Are Not Inspectors, Engineers, or Plan Reviewers

The Permit mandates community colleges to perform duties that are typically within the jurisdiction of other professionals, such as inspectors, engineers, and plan reviewers. The Permit requires community colleges to “inspect” projects and “enforce the Permittee’s stormwater pollution prevention ordinance(s)” [E5.4.2]. It also stipulates that community colleges shall only “approve” projects that meet specific design standard criteria. However, community colleges do not approve projects; we hire engineers and design professionals to design projects that comply with all statutes and codes, such as the California Building Code et al. and the Education Code. The Division of the State Architect reviews and approves plans to ensure compliance with state requirements.

Exorbitant Costs Would Come at the Expense of Student Instruction and Success

The core mission of community colleges is to educate the future workforce of California, and the north star is the concept of “student success” – improving the rates of degrees, certificates, and transfers to four-year institutions. Unlike other local agencies, K-12 schools and community colleges cannot impose user fees to cover cost increases. If the state does not provide adequate additional funding to implement the costly provisions of a stormwater management program, colleges would have to divert Proposition 98 funds from classroom instruction, classified employees, student supports, and vital services that support disadvantaged students. This is untenable, especially at a time when the state faces a projected \$68 billion deficit in the coming fiscal year, and K-14 is bracing for potential reductions to the Proposition 98 Minimum Guarantee for funding.

Some colleges have local voter-approved bonds to construct and renovate critical facilities like classrooms, labs, and student centers. Most bonds are passed under the provisions of Proposition 39 (2000), requiring K-14 schools to provide voters with a list of projects that could be funded by the proceeds of a bond. Such project lists for previously-approved bonds do not include projects to implement this stormwater program. Additionally, colleges with local bonds have already completed extensive master plans outlining their community’s priorities for use of bond proceeds.

While some of the provisions in the permit would create capital costs, many are operational expenses that could not be funded by local bonds or other capital sources. This includes the hiring and training of internal staff and/or hiring external consultants to perform functions such as developing the multiple required plans and performing water quality tests. The Permit includes extensive requirements that would impact the operations and maintenance of a community college, including overly burdensome employee training requirements [E3.6] and inventories of activities and materials that could potentially discharge pollutants [E4.6].

Because there is no specific funding to do this, it would come at the expense of classroom instruction and other core educational priorities. Additionally, we question whether the existing consulting industry has the capacity to take on the work that would be generated by 115 community colleges and approximately 1,000 school districts with an estimated 10,000 sites.

Regarding the Public Education Program, we question why community colleges should create and implement a costly program to educate students and staff about stormwater, when most people on a community college campus already receive such education from the municipality in which they live. To create a duplicative education program at the expense of the community college’s *core* educational mission seems like a wasteful and misplaced use of taxpayer resources.

Additional Issues

We have many additional concerns about the detailed provisions of the Permit. Below is a brief overview of some of these concerns.

Design Standards are Overwhelmingly Prescriptive

The Permit's design standards contained in "E6.7 Low Impact Development Design Standards" are too prescriptive and should be left to Subject Matter Experts (SMEs) to determine the best way to achieve specific policy goals. In particular, the potential runoff reduction measures contain overly-prescriptive specifications for items such as:

- Maximum paved and rooftop area that may drain into a single vegetated area [E6.7.4.1]
- Landscaping choices such as soil volume per estimated square foot of mature tree canopy, mulch layer specifications, and the prohibition on the use of dwarf and palm trees [E6.7.4.2]
- What types of pervious pavement systems can be used [E6.7.4.3]
- Green roofs [E6.7.4.4] (Note that green roofs are unsuitable for use on most community college buildings because they are prone to water infiltration that can lead to structural damage.)
- Minimum vegetation cover requirements at plant maturity for Bioretention Stormwater Control Measures [E6.7.6.1.a].

Landscape architects, engineers, and other design professionals should create design solutions that are unique to local conditions and standards, such as weather, water availability, climate, soil, topography, and other factors specific to each campus. While this section specifies measures that *may* be used, we believe it is a bad precedent to set stringent and restrictive standards that will inhibit the use of such tools if full compliance cannot be achieved.

Implementation Timeline is Unreasonable

Throughout the draft Permit, community colleges are required to achieve most items in one to three years, and some in five years. This timeline is overly aggressive and will be difficult if not impossible to achieve. With a large budget deficit looming, and a probable reduction in Proposition 98 Minimum Guarantee funding, K-14 schools will struggle to maintain their current level of educational service while likely receiving *less* funding from the state within the time period of implementation for this Permit.

We appreciate the opportunity to provide these comments, and look forward to continuing the conversation. We hope that a resolution can be found that addresses the important goal of clean water while recognizing the unique nature of schools and community colleges.

Sincerely,



Rebekah Kalleen
CCFC Executive Director

cc: Mary Boyd, Municipal Storm Water Unit, State Water Resources Control Board
Paul Levy, Municipal Stormwater Unit, State Water Resources Control Board

Attachment

Sections Referenced from Informal Draft Attachment E – Provisions for Non-Traditional Small MS4 Permittees

Community Colleges are Not Law Enforcement and Do Not Have Police Powers in Statute

Examples include but are not limited to:

- E1.1 & E1.2 – Legal Authority – Renewal and New Permittees – This section indicates that a Permittee’s ordinances, policies, or other regulatory mechanisms shall be reviewed and revised to “obtain legal authority [...] to reduce or eliminate pollutants discharging from its storm drain system pursuant to the requirements of this Order” and shall include authority to prohibit dumping, non-stormwater discharges, and illegal connections to the Permittee’s storm drain system. Community colleges do not have the executive powers to grant themselves legal authority. Policies adopted by a Board of Trustees help implement existing law and provide internal operational guidance; they can’t be used to expand authority. As written, this appears to require community colleges to pursue amendments to state law to grant such powers. Absent this authority, community colleges cannot update their policies pursuant to this section.
- E1.1.9 – This section requires “responsible parties to promptly cease and desist discharging and cleanup and abate actual and threatened discharges,” with specific requirements outlined. These activities should be the job of an “Authority Having Jurisdiction” as a community college cannot compel compliance by responsible parties.

Community Colleges Cannot Train, Manage, or Regulate Third Parties

Examples include but are not limited to:

- E2.3.2 – Construction and Post-Construction Education – This section requires the community college to “develop and implement a strategy to educate project proponents, designers, and implementors of Regulated Construction and Post Construction projects. This shall include providing training to “key stakeholders, including developers, contractors, construction site operators, and owner/builders on the Permittee’s post-construction requirements and permitting process.” Community colleges do not have the expertise or jurisdiction to provide such training.
- E5.5 – Permittee Construction Staff Training – This section indicates that “the Permittee shall ensure that all Permittee and Third-Party Plan Reviewers, Permitting, Stormwater Inspectors, and Code Enforcement staff” implementing the runoff control program are “adequately trained.” Community colleges do not have the capacity or the jurisdiction to ensure that third-party professionals such as Code Enforcement and inspectors are properly trained to perform their own professional duties.

Community Colleges Are Not Inspectors, Engineers, or Plan Reviewers

- E5.4.2 – Construction Site Inspection – This section requires the Permittee to inspect all Regulated Construction Projects and “enforce the Permittee’s stormwater pollution prevention ordinance(s).” The section specifically identifies the minimum inspection requirements.

Attachment

Community colleges do not have the jurisdiction or legal authority to inspect projects in this manner, nor do they have the authority to “enforce” the program.

- E6.7 – Low Impact Development Design Standards – This section indicates that the “Permittee shall only approve projects that meet” specific design standard criteria. Community colleges do not approve projects; they hire engineers and design professionals to design projects that comply with all codes, such as the California Building Code, California Education Code, and other statutory requirements. These plans are reviewed and approved by the Division of the State Architect to ensure compliance with such requirements.

Exorbitant Costs Would come at the Expense of Student Instruction and Success

Examples include but are not limited to:

- E3.6 – Illicit Discharge Detection and Elimination Staff Training – The Permittee shall “implement a biennial training program for all Permittee staff who, as part of their normal job responsibilities, may be notified of, come into contact with, or otherwise observe a spill, illicit discharge or illegal connection to the storm drain system.” There are additional requirements related to staff assessment and the timeline for conducting such training for new employees. Biennial training is onerous given the multitude of other training requirements for community college employees.
- E4.6 – Permittee Operations and Maintenance Activities – The Permittee “shall assess its operation and maintenance for potential discharge pollutants in stormwater,” with very prescriptive requirements outlined. The Permittee “shall identify all materials that could be discharged from each of these operation and maintenance activities, and the pollutant characteristics of the materials” and shall “develop, implement, and document best management practices” to “reduce or eliminate pollutants in stormwater and non-stormwater discharge.” This is excessive, especially given a lack of resources to complete these activities. This would come at the expense of other mission-critical operations, such as student-focused learning outcomes.

Design Standards are Overwhelmingly Prescriptive

Below are examples of runoff reduction measures that may be used per “E6.7 Low Impact Development Design Standards.”

- E6.7.4.1 Impervious Connection to Vegetated Areas – This section sets maximum paved area and maximum rooftop area that may drain to a single vegetated area. This will present major design issues on campuses that have already been designed and built out. Such policy will exponentially impact inner city, urban, suburban, and low socio-economic areas. The section also states that “vegetated areas shall be [...] free of erosion,” which is not reasonable nor possible to achieve.
- E6.7.4.2 Interceptor Tree Planting and Preservation – This section is too prescriptive, with detailed descriptions about soil volume per estimated square foot of mature tree canopy, mulch layer specifications, etc. This section also indicates that “Dwarf, palm, and invasive species are not acceptable.” Some geographic or climate zonal regions of the state are significantly limited by the type of vegetation they can successfully grow. A duly licensed landscape architect should determine the appropriate specifications to achieve runoff reduction measures for a specific site.

Attachment

- E6.7.4.3 Pervious Pavement Systems – This section provides a specific definition of the types of systems that could be used. Specificity of this should be in due consideration of the unique soil classification at the respective site, informed by a soils report outlining the stratigraphy and soil mechanics. Lack of flexibility does not allow for consideration of unique variables on a school site.
- E6.7.4.4 Green Roofs – This section provides specifications for the use of green roofs. However, the permit should not provide design requirements to achieve this. Green roofs are cost prohibitive for many schools; they create significant additional maintenance obligations and impact insurance rates and overall insurability. They are prone to water infiltration that can lead to structural damage and/or failure. It should also be known that water infiltration is the preeminent claim for latent/patent defects associated with design.
- E6.7.6.1.a Selection of Permanent Stormwater Control Measures for Stormwater Retention and Treatment – This section states that Bioretention Stormwater Control Measures “shall be vegetated and include at least 51 percent vegetation cover at plant maturity.” It also provides specific requirements for Bioretention Stormwater Control Measures, such as specifications on minimum planting medium depth, sand mixtures, mulch, and more. Such details should be determined by engineering disciplines and landscape architects based on local conditions and standards. Such prescriptive policy implies compromise of the “standard of care” for design professionals.