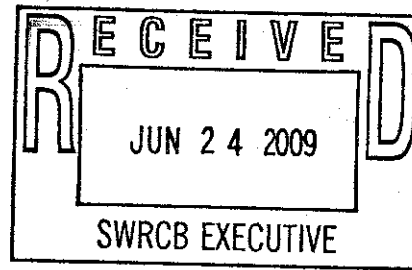




Public Comment
Dft. Construction Gen. Permit
Deadline: 6/24/09 by 5:00 p.m.

June 24, 2009

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, CA 95814



Submitted via email to commentletters@waterboards.ca.gov

Subject: Comment Letter -- Draft Construction General Permit

Dear Ms. Townsend and Members of the Board,

Southern California Edison (SCE) would like to thank the State Board for the opportunity to comment on the Draft Construction Stormwater General Permit (Draft Permit). SCE appreciates the hard work done by the Board and staff, and understands its intent to protect the beneficial use of California's waters; however, there are certain key elements that need to be fully addressed before adoption. The Draft Permit will have significant impact on SCE construction projects (both linear and conventional). In particular, SCE wishes to address the following four main points:

1. The Draft Permit is not consistent with the expert advice of the Blue Ribbon Panel on numeric effluent limits (NEL). The Blue Ribbon Panel created a balanced and objective report on the effect of NEL and recommended a phased approach. SCE recommends removing NEL from this phase of the permit.
2. SCE strongly disagrees with the placement of post-construction requirements in a construction permit. Post-construction requirements should be addressed in a separate permit.
3. While the Draft Permit has significantly increased in complexity from its previous version, it does not provide direct and clear evidence that the added complexity will improve water quality.
4. SCE is concerned about the financial impact to dischargers. The Draft Permit does not adequately address the increased cost associated with: design storms (increased right-of-way or land acquisition to mitigate large design storm volumes), bioassessments (estimated at \$30,000 to \$80,000 per project), staff time (to comply with increased inspection, sampling, paperwork, and reporting requirements), and training (to comply with QSD/QSP requirements).

The scope and extent of the Draft Permit represent a significant regulatory escalation and further review is warranted. SCE has coordinated with the California Stormwater Quality Association (CASQA) and the California Coalition for Environmental and Economic Balance (CCEEB) and fully supports their comment letters. SCE's policy of "Leading the Way in Electricity" is evident in its commitment to the environment and submits this letter and enclosed comments in the spirit of that policy. If you have any questions, please contact Hazem Gabr at (626) 302-3619 or Hazem.Gabr@sce.com.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Gabr".

Hazem Gabr
Senior Environmental Specialist
Southern California Edison
Corporate Environment, Health and Safety

Enclosure: Comments on the Third Draft Construction Stormwater General Permit

P.O. Box 800
Rosemead, CA 91770

**Comments on the Third Draft Construction Stormwater General Permit (CGP)
Issued April 2009**

Introduction

Over the past decades, Southern California Edison (SCE) has emerged as a forward-thinking leader in the US electric power industry. SCE is dedicated to environmental stewardship and responsibility through our commitment to sustainability, renewable energy, and reduced greenhouse gas emissions. Nowhere is this more true than in the field of water quality. SCE has initiated a high profile program to increase the visibility of the environmental programs it has put in place. As a part of this effort, for the last two years SCE has been involved in the development of the Construction General Permit and we believe this is another example of SCE's commitment to "Leading the Way in Electricity."

This comment letter is divided into four sections.

- I. Overall Comments on the Draft Construction General Permit
- II. Linear Underground/Overhead Project Comments
- III. Specific Comments on the CGP Draft Order, Fact Sheet and Errata
- IV. Summary of Recommendations

I. Overall Comments on the Draft Construction General Permit

1. Complexity

The Draft Construction General Permit (Draft CGP or Draft Permit) is highly complex, both as a stand-alone document and in comparison with the current CGP (Order No. 99-08-DWQ). The Draft CGP introduces multiple new concepts and requirements to the construction industry:

- risk assessment
- action levels
- effluent limits
- effluent monitoring
- receiving water monitoring
- bioassessment
- post construction controls
- online document submittal

The Draft CGP will result in substantially higher expense for dischargers to meet the permit requirements. To allow dischargers sufficient time and experience to respond to new permit requirements, the State Board should scale back both the scope of the new requirements and their complexity. As recommended in the 2006 Blue Ribbon Panel report, a phased approach for introducing the new requirements would allow the industry to learn and respond with greater flexibility and less expense.

SCE recommends the State Board reduce the complexity of the permit. SCE provides several examples of specific methods in the subsequent comments. Some methods of reducing complexity include removing the Numeric Effluent Limitations (NEL), receiving water monitoring, and post-construction requirements from the Draft CGP. The remaining permit requirements still represent a significant increase in complexity compared with the current Permit, but are achievable for dischargers during this permit term. Inclusion of NEL, receiving water monitoring and post-construction requirements make the Draft CGP too complex.

2. Applicability of Turbidity NEL

The dramatic increase in complexity from the current Permit (Order No. 99-08-DWQ) to the proposed Draft CGP is potentially harmful to the construction industry. The Blue Ribbon Panel Report advocated "phasing in" the concept of NEL. The Draft CGP's application of stringent and enforceable NEL, along with a comparatively large design storm, disregards the recommended gradual phased approach. Dischargers need to have the opportunity to gain experience with the new effluent turbidity and pH limits and to understand the results from the application of Best Management Practices (BMP) at a construction site. An alternate approach, from the California Building Industry Association (BIA) and endorsed by SCE, is the appropriately named "bridge approach" that would provide an effective compromise. This approach would remove NEL from the current permit term, while keeping effluent monitoring and Numeric Action Levels (NAL) required in the Draft CGP. This approach would provide the dischargers the opportunity to collect data on construction site discharge through effluent monitoring, while NAL would provide the opportunity to identify the "bad actors."

In previous permit drafts, and in the questions posed by former Vice Chair Wolff, the NEL was identified as a way to identify and punish dischargers with "egregious violations." However, the value chosen for the turbidity NEL is below the statistical mean of the dataset used to derive the limit. By setting the limit this low and therefore spreading the net this widely, over half of the sites will be in violation. The use of this lower value changes the original concept of the NEL entirely. Additional comments on the NEL values will be included later in this comment letter.

SCE recommends the concept of Numeric Effluent Limitations be removed from the Draft CGP. If NELs are not removed, SCE would recommend that the turbidity NEL be increased to 1,000 NTU, which is consistent with the previously stated objective of identifying the worst violations.

3. Applicability of Post-Construction Requirements

Inclusion of post construction performance requirements in a construction permit is inappropriate. SCE supports the California Stormwater Quality Association's (CASQA) comment from the previous Permit Draft, and quotes it here.

"While the post construction hydraulic and hydrologic performance of a project is a valid regulatory concern this should be handled in the project permitting process not the construction permitting process. Clearly permanent stormwater management practices may be installed and utilized as part of the SWPPP but their long-term impact should be considered elsewhere."

While SCE is sympathetic to the difficulty and challenge of finding an appropriate permitting mechanism, adding post construction requirements to a construction permit is not the appropriate or default tool to solve the issue. However, if the post construction requirements are adopted, the Draft Permit needs to provide a grandfathering clause for projects that are past the design stage.

SCE recommends removing post construction requirements from the Draft CGP. A more appropriate regulatory tool would be a local or statewide MS4 Permit.

4. Effective Date

July 1 is the first day of the annual reporting year. Making the first effective date July 1, 2010 would eliminate the need to submit an Annual Report for the brief period from spring 2010 through June 2010.

SCE recommends postponing the effective date of the CGP requirements to July 1, 2010. This would eliminate the need to submit an Annual Report for the brief period from spring 2010 through June 2010.

5. Homeland Security Requirements

Homeland Security is a concern for all public utility service providers and the confidentiality of sensitive infrastructure information must be maintained. It is important to limit public access to certain information, such as the location of facilities and plans. The Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) for example, should remain outside the purview of the public.

Following are draft guidelines of what cannot be disclosed in SWPPPs due to utility security issues.

The following are items that **cannot** be provided due to security concerns:

- Transmission circuit numbers
- Voltages
- Substation names
- Overall circuit maps that show how the new facilities fit into the overall grid
- GIS shape files

The following are items that **cannot** be provided due to affiliate transaction rules:

- Schedules that indicate when associated circuits will be de-energized or energized
- Examples of information that can be provided without creating security or affiliate transaction concerns:
 - Locations of construction activities (e.g., soil disturbance activities, such as access roads, pad and pole locations, wire pulling locations, laydown areas, best management practices to be performed or installed to prevent stormwater pollution during and after construction); and
 - Schedules of construction activities as long as they do not provide information concerning outage information

SCE recommends that utility companies be exempt from having their Permit Registration Documents posted on the internet for public review due to Homeland Security requirements.

6. Financial Impact

As stated on page eighteen of the Blue Ribbon Panel report; the Panel's list of reservations and concerns regarding issuing Numeric Limits includes the following:

"The panel is concerned that the monitoring of discharges to meet either the Action Levels or Numeric Limits may be costly. The Panel recommends that the Board consider this aspect."

The Draft CGP does not adequately consider the cost of compliance with the newly introduced permit requirements. The Draft CGP considers only the *initial* cost of purchasing equipment (pH and turbidity meters) and concludes that the Draft CGP will cost only \$1,000 per site more than the current permit. In reality the equipment purchase cost does not represent the bulk of the financial impact. The Draft CGP does not consider any of the following costs: bioassessment, manpower to perform sampling, lab costs, additional cost to develop SWPPP due to increased training requirements, Permit Registration Document (PRD) development, online submittal, post-construction requirements, and additional inspection requirements. As an example, the California BIA estimates that bioassessment for a single project can cost from \$30,000 to \$80,000.

SCE recommends that a thorough cost impact analysis be developed and made available for review prior to or concurrent with release of next Draft Permit. This will allow the dischargers to adequately prepare for the financial impact to future construction projects.

II. Linear Underground/Overhead Project (LUP) Comments

Introduction

SCE frequently conducts both conventional and linear construction projects. This submission contains comments on the Draft CGP for both methods. This section of the SCE comment letter address linear construction. To begin with, the fundamental differences between linear and conventional construction are clarified.

Linear construction projects are long and narrow, sometimes hundreds of miles in length. Linear projects can cross numerous types of terrain owned by various landowners, go through several types of climates, have hundreds of discharge points, contain many contractors, phases, and discharge to multiple waters. These projects may also have very narrow rights-of-way, sometimes less than 20 feet. Short sections of a linear project may have inherently higher risk of impact to receiving waters and should be required to apply increased construction site controls. However BMPs are sometimes impossible to install on a narrow linear construction site, particularly where the site goes through steep or rough topography or are accessible only by unpaved roads in remote areas. Wet weather sampling can be dangerous or impossible depending on weather and access conditions. Sampling all discharge points in the first hour of a project could require hundreds of sampling personnel on a single project and is often not feasible.

SCE's goal is to work towards a Construction General Permit that adequately acknowledges the different climates, environments, and limits on a linear constructions site and applies the coverage and regulations in a reasonable way.

1. Linear Project Sections

Attachment A Page 1-2, item A.3

"Since a LUP may be constructed within both developed and undeveloped locations and portions of LUPs may be constructed by different contractors, LUPs may be broken into logical permit sections. Sections shall be determined based on portions of a project conducted by one contractor. Other situations may also occur, such as the time period in which the sections of a project will be constructed (e.g. project phases), for which separate permit coverage is possible."

This paragraph is too restrictive. Linear project initiators should be able to divide the sections into reasonable project sections independently.

SCE recommends the last two sentences of Item A.3, Attachment A, starting with "Sections shall be determined based on...." be deleted.

2. Notice of Termination Conditions

Attachment A Page 4, item 2 LUP Termination of Coverage Requirements.

"The LRP shall file an NOT through the State Water Board's SMARTS system. By submitting an NOT, the LRP is certifying that construction activities for an LUP are complete and that the project was in full compliance with requirements of this General Permit during active construction..."

As currently written, this section states that the discharger cannot file the Notice of Termination (NOT) if a project was ever out of compliance with the Draft CGP at any time during construction.

If a project had an NEL violation, even if corrected, the discharger cannot file the NOT and remains in permit status indefinitely. This cannot have been the intent and this section should be corrected or clarified.

SCE recommends Attachment A Item 2 be rewritten to allow dischargers to file an NOT after an NEL violation occurs. Dischargers must have a way to file an NOT regardless of whether a NEL violation occurred, rather than face open-ended permit coverage.

3. Permit Registration Documents

Attachment A Page 8, item 9.a.

"All Permit Registration Documents (PRDs) and Notice of Terminations (NOTs) shall be electronically certified and submitted to the State Water Board by the Legally Responsible Person (LRP). The LRP is the person possessing the title of the land on which the construction activities will occur for the regulated site."

This section seems to be designed for construction sites with only one landowner. Since linear utility projects often cross land owned by multiple landowners, the access rights are granted by easements rather than outright ownership of the land. It would not be feasible to require every landowner involved in a linear project to submit PRDs.

SCE recommends that LUPs be exempt from the requirement that multiple land owners file PRDs on a single project.

4. Turbidity NEL

Attachment A Page 13, Table 1.

The table states that the turbidity NEL for Risk Level 3 projects is 500 NTU. This value and the justification offered for it raise several concerns.

- SCE reiterates that it does not endorse the inclusion of NEL in this permit. However, comments are provided in the event the NEL are adopted. Specifically, the arbitrary choice of 500 NTU as the NAL is discussed. The State Board should consider the following points and remove NEL from this permit term:
 - The Blue Ribbon Panel (selected for its stormwater expertise by the State Board itself) does not recommend placing NEL in the Permit at this time; rather the Panel recommends a phased approach.
 - The vast number of comments received in the previous permit draft
 - The comments received during the June 3, 2009 CGP hearing
 - The feedback received during the stakeholder process
 - Dischargers are not ready for this level of regulation and cannot respond to this requirement without substantial non-compliance and exposure to risk of enforcement
- The 500 NTU value will cause dischargers to be out of compliance. The Draft Fact Sheet states that the 500 NTU was chosen from a dataset with a mean of 540 NTU. This guarantees that the majority of construction site discharges would exceed the turbidity NEL (as it is set 40 NTU above the mean).
- The second Draft Permit set the maximum NAL and NEL at 1,000 NTU, drawing its conclusions from the same dataset as the current Draft Permit. State Board staff should explain how a 50% decrease in the NEL is reasonable or justified when using the same data.
- The Draft Fact Sheet page 17, states that an appropriate range for the turbidity NEL is from 500 to 1,650 NTU, based on field data. It is unclear why the very lowest value in the range was selected without a substantive explanation. The statement provided, that turbidity equipment typically measures a maximum of 1,000 NTU, is not sufficient

justification for arbitrarily selecting the lowest value. During the June 3, 2009 hearing, one commenter provided research showing that many easily obtained turbidity meters can measure up to 5000 NTU and cost no more than meters that measure only up to 1,000 NTU. Identifying best professional judgment is not a sufficient reason for selecting a value based on equipment limitations over accurate field data.

- The Draft Fact Sheet, page 13-14, describes the process used to determine the turbidity limits, including Best Professional Judgment (BPJ) and Best Conventional Technology (BCT). However, a logical gap exists in the application of BCT to effluent limitations for turbidity on a construction site. Construction BMPs do not have widely published performance or pollutant removal abilities. Dischargers cannot be in immediate compliance with a NEL without providing BMP performance data and proven methods of reaching the goals that the current iterative approach does not provide. The Draft Fact Sheet simply sidesteps the discussion of conventional construction BMPs and instead discusses the merits of Active Treatment Systems (ATS).
- A technology based effluent limitation (TBEL) should be based on accepted technologies. The State Board should provide the data on construction BMP pollutant removal performance that was used to determine the TBEL. Not only would this help regulated parties understand the proposed limit of 500 NTU, it would provide guidance to dischargers for ensuring that construction sites are in compliance.
- Linear projects will have more difficulty than conventional projects in meeting the 500 NTU NEL. Linear projects follow natural topography, while traditional construction tends to regrade and create new topography. This means that attempting to apply BMPs and controls generally on linear projects may be difficult or impossible if the project right of way is too narrow or too steep.

SCE does not support inclusion of the turbidity NEL, and recommends the turbidity NEL be removed. However, if the NEL is to be included, it should be increased to 1,000 NTU.

The State Board should provide the data on construction BMP pollutant removal performance that was used to determine the TBEL.

5. Design Storm

Attachment A Page 14 item c.

"Discharges of storm water from LUP Type 3 sites shall comply with applicable NELs (above) unless the storm event causing the discharges is determined after the fact to be equal to or larger than the Compliance Storm Event (expressed in inches of rainfall). The Compliance Storm Event for LUP Type 3 discharges is the 5-year, 24-hour storm..."

There are several issues with the design storm selection.

1. The Blue Ribbon Panel report, when referring to design storms, stated that the design storm would be exceeded "several or more times each year." The Draft CGP's use of the 5-year storm appears arbitrary as the 5-year storm has only a 20% chance of occurring more than once in a single year.
2. There has been no development of the design volume or design flow of construction BMPs. The Draft CGP does not specify what storm size or design flow most construction BMPs can accommodate while still preventing erosion and sedimentation.
3. The Draft Fact Sheet addresses the selection of the 5-year 24-hour storm by saying that it occurs "relatively infrequently, and is smaller than the 10-year storm." Both of these conditions are arbitrary and do not provide reasoning for selecting a 5-year 24-hour design storm. BPJ should not be used to select a design storm without clearly explained reasoning. There appears no sound science and research justifying the selection.

SCE recommends reducing the size of the design storm to the 2-year, 24-hour storm for this permit term. This would support the concept of phasing in these new requirements by

using this permit cycle to collect information on performance of construction BMPs. Once additional data have been collected, the State Board can re-evaluate the design storm when the next CGP is written.

6. Sampling Requirements

Attachment A Page 47 (LUP Type 2) and Page 56 (LUP Type 3)

"...dischargers shall collect storm water grab samples from sampling locations characterizing discharges associated with construction activity from the entire LUP disturbed area beginning the first hour of any new discharge and during the first and last hour of every day of normal operations for the duration of the discharge event."

The sampling requirements fail to take into account several real world limitations. First, a single linear project may have hundreds of discharge points along the project length. It would require an impractical number of sampling personnel to meet the requirements of the Draft CGP. Second, during a storm, access to these sites may be unsafe. Third, there should be an understanding that weather does not behave in a rational pattern. Storm events end suddenly and if the required samples are not taken, dischargers are at risk of enforcement action. These basic real world conditions should be taken into account in the Draft CGP.

SCE recommends that the Permit specify a finite number of representative sampling locations rather than requiring effluent monitoring at every discharge point for linear projects. In addition, SCE recommends requiring projects to sample two discrete storms per rainy season rather than requiring sampling of all discharge events. This would still allow the State and Regional Boards to collect effluent information on each site, without placing excessive cost and staffing burdens on the dischargers.

7. Sediment Sensitive Watershed

Attachment A.1 LUP Project Type Determination

The Permit does not provide a workable definition of a sediment sensitive watershed; the definition of a watershed draining to a waterbody listed on the 303(d) list is too narrow. It is unreasonable to provide no distinction between a project that is 10 or 20 miles upstream of a waterbody listed for sediment risk and a project which is discharging directly into a high risk waterbody. Further, not all of a waterbody may be listed as at risk for a pollutant.

SCE recommends that the Draft Permit refer to Hydrologic Sub Areas rather than the entire watershed. This will direct the focus of the permit toward areas that are truly at risk of damage due to sediment discharges rather than imposing an overly protective blanket designation to a whole watershed.

8. Receiving Water Risk

Attachment A.1

Linear projects have receiving water risk LOW, MEDIUM and HIGH, while traditional construction projects only have LOW and HIGH receiving water risk.

SCE recommends removal of the MEDIUM receiving water risk designation for linear-type projects.

9. Post Construction

Draft Order Page 11-12 Finding 71

"The requirement for all construction sites to match pre-project hydrology will help ensure that the physical and biological integrity of aquatic ecosystems are sustained."

The requirement to match pre-project hydrology is not reasonable or appropriate for linear projects. This requirement would make it impossible to grade any construction site, particularly linear projects. Exempting linear projects would take into account the realities of particularly steep or narrow locations common in linear construction. Restrictions against altering the pre-project site hydrology would make the project infeasible.

SCE recommends eliminating the requirement to maintain pre-project hydrology for linear construction projects.

III. Specific Comments on the CGP Draft Order, Fact Sheet and Errata

1. Stormwater Multi Application Reporting and Tracking System (SMARTS)

Online submittal of PRDs, monitoring data, inspection reports, site photos, and annual reports is a new concept for many dischargers. Training and online previews during the "beta" period are common practice when new technologies are rolled out; it would also allow the dischargers to provide feedback and work out any issues in the reporting system.

SCE recommends the State Board provide web-based training for dischargers and grant SCE access to the online and reporting SMARTS system for review and feedback before it goes "live." This will ensure a smooth transition from the current method of submittal to the new SMARTS system.

2. Grandfathering

Draft Order Page 6 Finding 37

"All existing projects covered by 99-08 and beyond the design stage are automatically Risk Level 1."

SCE recommends the Draft CGP also grant Risk Level 1 grandfathering to projects that are currently covered by the Small Linear Underground/Overhead Project Permit (SLUP).

3. Areas of Special Biological Significance (ASBS)

Draft Order Page 7 Finding 41

"Pursuant to the Ocean Plan, discharges to Areas of Special Biological Significance (ASBS) are prohibited unless covered by an exception that the State Water Board has approved."

This finding should be clarified. Does this mean a project discharging into an ASBS needs additional exception and approval from the State Board? If so, what is this process to acquire the exception and approval, how long will it take to gain approval, and how involved is the application? What is the likelihood that projects can obtain the exception?

SCE recommends that a detailed clarification on the Area of Special Biological Significance exception finding be provided.

4. Setbacks

Draft Order Page 7-8 Finding 46

"... this General Permit gives credit to setbacks in the risk determination and post-construction storm water performance standards."

This finding states that credit is given for providing setbacks in the risk determination and post-construction storm water performance standards. There is no credit given in the risk determination worksheet for setbacks.

SCE recommends offering credits in the risk determination worksheet for setbacks from receiving waters.

5. NEL for pH

Draft Order Page 9 Finding 51

"This General Permit includes an NEL for pH that applies only at projects that exhibit a "high risk of high pH discharge." A "high risk of high pH discharge" can occur during the complete utilities phase, the complete vertical build phase, and any portion of any phase where significant amounts of materials are placed directly on the land at the site in a manner that could result in significant alterations to the background pH of any discharges."

This finding appears to imply that the pH NEL applies to any project with a high risk of high pH discharge. Yet in subsequent sections of the Order and Fact Sheet, it states that only Risk 3 and LUP Type 3 projects must monitor effluent.

SCE recommends Finding 51 (NEL for pH) apply only to Risk Level 3 or LUP Type 3 projects.

6. Enforceability

Draft Order Page 9 Finding 52

"Exceedances of the turbidity NEL constitutes a violation of this General Permit."

The Draft CGP should specify the response that will take place in the event of a violation of the General Permit. As any action will be taken by Regional Boards and they have a broad array of enforcement options to address violations, including (but not limited to) Notice of Non-compliance, Notice of Violation (NOV), Cease and Desist Order, Cleanup and Abatement Order, Mandatory Minimum Penalty (MMP), and Administrative Civil Liability (ACL). Dischargers should be made aware of the penalty for violating the NELs set in the permit. In addition, the Draft CGP should clarify whether a violation of the CGP leads to monetary penalty such as MMP or ACL (CWC Section 13385), or some other form of enforcement.

The Draft CGP states that NALs are not "directly enforceable" without defining the term "directly enforceable." The Draft CGP should clearly state the terms of any indirect enforcement.

SCE recommends that the Draft Permit include specific information on the enforcement actions that will follow a NEL violation. In addition, the Draft Permit should address the distinction between NELs that are directly enforceable and NALs that are not directly enforceable. The Draft CGP should also state whether the State Board will set the enforcement policy (or if it will be a Regional Board decision), whether public hearings will be required with enforcement actions and how violations will be resolved.

7. Annual Fee and Permit Fee

The Draft Permit does not specify whether annual fees and permit fees will be increased for the upcoming permit term.

SCE recommends that the schedule of permit and annual fees be released prior to adoption of the Draft Permit.

8. Bioassessment

Draft Order Page 10 Finding 61 and Appendix 5 Page 1-2 Site Locations and Frequency

"Macroinvertebrate samples shall be collected both before ground disturbance is initiated and after the project is completed. The "after" sample(s) shall be collected after at least one winter

season resulting in surface runoff has transpired after project-related ground disturbance has ceased."

For projects that are required to perform bioassessment, the "after" project sample may be significantly delayed due to the requirement to wait until after the following rainy season. Does this mean a project that ends in the spring cannot file for a NOT until bioassessment is completed the following winter? This will result in an additional annual report payment for the project in addition to the site remaining in permit status over a year after completion of construction while waiting for the sampling window. The bioassessment timing requirements should be clarified.

Appendix 5 Page 1 Bioassessment Exception

Additional guidance should be given regarding the cost impacts of bioassessment and how the Bioassessment Exception costs in Appendix 5 were calculated. Does the required payment of \$7500.00 per number of required samples approximate the cost of a single bioassessment sample?

The bioassessment requirements on a 30 acre construction site should apply to the project area discharging to a single waterbody. If the entire project is 30 acres in total but spans more than one watershed (as linear projects often do), the project should be exempt from the bioassessment requirement. This will apply mainly to linear projects, but could have broad application for conventional projects as well.

Additional consideration of the cost of bioassessment monitoring should be included in the permit. Preliminary estimates of bioassessment costs are anywhere from \$30,000 to \$80,000 per site.

SCE recommends that the bioassessment requirements be clarified. Specifically, the Draft CGP should investigate per-project bioassessment costs and should require projects over 30 acres to conduct bioassessment only if 30 or more acres discharges to a single receiving water. This is particularly applicable to linear projects, where a 30-acre disturbed area may span multiple watersheds.

9. Non Visible Pollutant Sampling

Draft Order Page 10 Finding 63

"This General Permit contains sampling, analysis and monitoring requirements for non-visible pollutants at all sites subject to this General Permit."

The current CGP only requires non-visible pollutant monitoring where the presence of non-visible pollutants is suspected.

SCE recommends that Finding 63 be amended as follows:

"This General Permit contains sampling, analysis and monitoring requirements for non-visible pollutants at all sites where presence of non-visible pollutants is suspected subject to this General Permit."

10. Post Construction

Appendix 4-1 Post Construction Worksheet

The Post Construction Worksheet is confusing, needlessly complicated and cumbersome to use. For example, the first cell in the first worksheet directs the user to look for orange- or brown-filled cells; however there are NO orange or brown cells in the spreadsheet. A spreadsheet this complex should be clean and easy to use, with no errors.

SCE recommends troubleshooting and streamlining the post construction worksheet (Appendix 4-1), and reevaluating the need for such complex requirements.

11. Obtaining Permit Coverage

Draft Order Page 14 Item 4.a

"... and mail the appropriate annual fee no later than seven days prior to the commencement of construction activities. Permit coverage shall not commence until the PRDs are accepted and the annual fee is received by the State Water Board."

In large companies the check request procedure takes longer than seven days.

SCE recommends that the Draft CGP allow thirty days rather than 7 days for permit fees to be submitted.

12. SWPPP Requirements

Draft Order Page 36

One of the most useful features of the Small Linear Underground/Overhead Permit was the inclusion of a standardized SWPPP template. The current CGP (Order No. 99-08-DWQ) includes a detailed list of elements to include in a SWPPP. However, the linear SWPPP template has not been included in the Draft CGP nor is there a template of required SWPPP contents. In addition, the specific requirements for a conventional SWPPP have been substantially reduced.

With SWPPPs now being subject to public review, SCE recommends that the State Board provide a specific outline or template of the required SWPPP contents.

13. Online Rainfall Erosivity Calculator

Draft Fact Sheet page 11 Item 3

"Dischargers can access the calculator from EPA's website at:
www.epa.gov/npdes/stormwater/cgp."

The erosivity calculator is not at this web address as stated in the Draft Permit. Additional guidance should be provided on the new location of the calculator or users should be automatically redirected. This could be a useful tool and should be easy to find. In addition, the reference websites, especially the Web Soil Survey, are frequently unavailable or broken.

SCE recommends the permit provide the correct link to the rainfall erosivity calculator, and work with the reference websites to stabilize the online tools.

14. Checklists

SCE recommends that the State Board develop an inspection checklist, a PRD submittal checklist, and a summary table of all site inspection requirements. Also develop a matrix of responsibilities for the Qualified SWPPP Developer, Qualified SWPPP Practitioner, and Legally Responsible Person).

15. Receiving Water Monitoring

Draft Fact Sheet page 23 item d

"In order to ensure that receiving water limitations are met, discharges subject to numeric effluent limitations (i.e. Risk Level 3 and ATS) must also monitor the downstream receiving water(s) for turbidity, SSC (if NEL exceeded) and pH."

The Draft Permit should provide justification for receiving water monitoring. Many sites in Southern California discharge to an MS4 and the discharge stays underground for many miles.

Southern California Edison
Comments on the Draft Construction Stormwater General Permit

Often the storm drain outlet location to daylight is not possible to determine. In addition, a receiving water may not have an access point until it reaches the ocean. Justification for receiving water monitoring at these project should be provided. Simply gaining access to the receiving water to take samples could be dangerous or impossible. Upstream and downstream access points could be many miles apart. A project's discharge at that point would be commingled with hundreds or thousands of other discharges between the upstream and downstream sampling points. With these challenges, the impact of a single discharge on the receiving water would not be clear, and the benefit of receiving water monitoring is lost. The expense and risk of receiving water monitoring is not appropriate if the benefit is not clear. The receiving water monitoring requirements for sites without receiving water access should also be removed. Conversations with MS4 and Flood Control Agencies have supported this conclusion; these agencies do not have the time, funding, or inclination to issue encroachment permits to all construction permit dischargers. These circumstances are particularly important to consider in southern California where most surface waters are concrete lined and have restricted access.

SCE recommends removing receiving water monitoring requirements from the Permit. If receiving water monitoring is not removed, the next Draft Permit should include safety and accessibility provisions and exemptions, along with a more clear definition of receiving waters.

16. NAL Exceedance Report

Draft Fact Sheet page 25 item 3b

"In the event that any effluent sample exceeds an applicable NAL, all Risk Level 2 and LUP Type 2 dischargers must electronically submit all storm event sampling results to the state and regional water boards no later than 10 days after the conclusion of the storm event."

Other sections of the permit state that both Risk Level 2 and 3 dischargers must comply with NALs. The excerpt above appears to exempt Risk Level 3 dischargers from the requirement to submit a NAL Exceedance Report.

SCE recommends clarifying the requirement that Risk Level 3 dischargers are also subject to NAL exceedance reporting requirements.

17. KLS Map

Draft Fact Sheet Page 27

The KLS map in the Draft Fact Sheet is difficult to use as provided. The color gradations are not distinct and there are very few identifying landmarks such as highways or county lines to use when determining a project's location. A Geographical Information System (GIS) map would provide detail on sediment sensitive waterbodies and the information on the 5-year, 24 hour storms. In addition, Catalina Island and several other islands off the California coast are not assigned a KLS value, despite the fact that these locations often have active construction projects.

SCE recommends that State Board provide a GIS map to replace the KLS map. In addition, the State Board should provide a GIS map of sediment sensitive waterbodies and the 5-year, 24-hour storm maps.

18. Errata

Page 1, changes to Table 4 and 5

The errata changes for Risk Level 3 sites appear to fundamentally change the monitoring requirements in the Draft CGP. As written in the errata, Risk 3 sites only need to perform effluent and receiving water monitoring if the NEL is exceeded. This is a major departure from the Draft CGP. In addition, the errata appears to create a paradox by stating that NEL monitoring is only required after an NEL has been exceeded.

SCE recommends that the State Board review the first page of the errata to ensure greater clarity in monitoring requirements.

19. Risk Calculation Worksheet

The risk calculator sum in Appendix A is incorrect. The formula was carried over from the previous draft permit, and still identifies the possibility of "extreme" sediment risk.

SCE recommends that the State Board review the risk calculation worksheet, and provide corrections.

IV. Summary of Recommendations

This table provides a summary of the recommendations made in the comment document.

I. Overall Comments on the Draft Construction General Permit		
Number	Topic	Recommendation
1	Complexity	SCE recommends the State Board reduce the complexity of the permit. SCE provides several examples of specific methods in the subsequent comments.
2	Applicability of Turbidity NELs	SCE recommends the concept of Numeric Effluent Limitations be removed from the Draft CGP. If NELs are not removed, SCE would recommend that the turbidity NEL be increased to 1,000 NTU, which is consistent with the previously stated objective of identifying the worst violations.
3	Applicability of Post-Construction Requirements	SCE recommends removing post construction requirements from the Draft CGP. A more appropriate regulatory tool would be a local or statewide MS4 Permit.
4	Effective Date	SCE recommends postponing the effective date of the CGP requirements to July 1, 2010. This would eliminate the need to submit an Annual Report for the brief period from spring 2010 through June 2010.
5	Homeland Security Requirements	SCE recommends that utility companies be exempt from having their Permit Registration Documents posted on the internet for public review due to Homeland Security requirements.
6	Financial Impact	SCE recommends that a thorough cost impact analysis be developed and made available for review prior to or concurrent with release of next Draft Permit.

II. Linear Underground/Overhead Project Comments		
Number	Topic	Recommendation
7	Linear Project Sections	SCE recommends the last two sentences of Item A.3, Attachment A, starting with "Sections shall be determined based on...." be deleted.
8	Notice of Termination Conditions	SCE recommends Attachment A Item 2 be rewritten to allow dischargers to file an NOT after an NEL violation occurs. Dischargers must have a way to file an NOT regardless of whether a NEL violation occurred, rather than face open-ended permit coverage.
9	Permit Registration Documents	SCE recommends that LUPs be exempt from the requirement that multiple land owners file PRDs on a single project.
10	Turbidity NEL	SCE does not support inclusion of the turbidity NEL, and recommends the turbidity NEL be removed. However, if the NEL is to be included, it should be increased to 1,000 NTU.
11	Design Storm	SCE recommends reducing the size of the design storm to the 2-year, 24-hour storm for this permit term. This would support the concept of phasing in these new requirements by using this permit cycle to collect information on performance of construction BMPs. Once additional data have been collected, the State Board can re-evaluate the design storm when the next CGP is written.
12	Sampling Requirements	SCE recommends that the Permit specify a finite number of representative sampling locations rather than requiring effluent monitoring at every discharge point for linear projects. In addition, SCE recommends requiring projects to sample two discrete storms per rainy season rather than requiring sampling of all discharge events.
13	Sediment Sensitive Watershed	SCE recommends that the Draft Permit refer to Hydrologic Sub Areas rather than the entire watershed. This will direct the focus of the permit toward areas that are truly at risk of damage due to sediment discharges rather than imposing an overly protective blanket designation to a whole watershed.
14	Receiving Water Risk	SCE recommends removal of the MEDIUM receiving water risk designation for linear-type projects.
15	Post Construction	SCE recommends eliminating the requirement to maintain pre-project hydrology for linear construction projects.

III. Specific Comments on the CGP Draft Order and Fact Sheet		
Number	Topic	Recommendation
16	Stormwater Multi Application Reporting and Tracking System (SMARTS)	SCE recommends the State Board provide web-based training for dischargers and grant SCE access to the online and reporting SMARTS system for review before it goes "live." This will ensure a smooth transition from the current method of submittal to the new SMARTS system.
17	Grandfathering	SCE recommends the Draft CGP also grant Risk Level 1 grandfathering to projects that are currently covered by the Small Linear Underground/Overhead Project Permit (SLUP).
18	Areas of Special Biological Significance (ASBS)	SCE recommends that a detailed clarification on the Area of Special Biological Significance exception finding be provided
19	Setbacks	SCE recommends offering credits in the risk determination worksheet for setbacks from receiving waters
20	NEL for pH	SCE recommends Finding 51 (NEL for pH) apply only to Risk Level 3 or LUP Type 3 projects
21	Enforceability	SCE recommends that the Draft Permit include specific information on the enforcement actions that will follow a NEL violation. In addition, the Draft Permit should address the distinction between NELs that are directly enforceable and NALs that are not directly enforceable
22	Annual Fee and Permit fee	SCE recommends that the schedule of permit and annual fees be released prior to adoption of the permit
23	Bioassessment	SCE recommends that the bioassessment requirements be clarified. Specifically, the Draft CGP should investigate per-project bioassessment costs, and should require projects over 30 acres to conduct bioassessment only if 30 or more acres discharges to a single receiving water. This is particularly applicable to linear projects, where a 30-acre disturbed area may span multiple watersheds.
24	Non Visible Pollutant Sampling	SCE recommends that Finding 63 be amended as follows: "This General Permit contains sampling, analysis and monitoring requirements for non-visible pollutants at all sites where presence of non-visible pollutants is suspected subject to this General Permit."

III. Specific Comments on the CGP Draft Order and Fact Sheet – cont.		
Number	Topic	Recommendation
25	Post Construction	SCE recommends troubleshooting and streamlining the post construction worksheet (Appendix 4-1), and reevaluating the need for such complex requirements
26	Obtaining Permit Coverage	SCE recommends that the Draft CGP allow thirty days rather than 7 days for permit fees to be submitted
27	SWPPP Requirements	With SWPPPs now being subject to public review, SCE recommends that the State Board provide a specific outline or template of the required SWPPP contents
28	Online Rainfall Erosivity Calculator	SCE recommends the permit provide the correct link to the rainfall erosivity calculator, and work with the reference websites to stabilize the online tools
29	Checklists	SCE recommends that the State Board develop an inspection checklist, a PRD submittal checklist, and a summary table of all site inspection requirements. Also develop a matrix of responsibilities for the Qualified SWPPP Developer, Qualified SWPPP Practitioner, and Legally Responsible Person).
30	Receiving Water Monitoring	SCE recommends removing receiving water monitoring requirements from the Permit. If receiving water monitoring is not removed, the next Draft Permit should include safety and accessibility provisions and exemptions, along with a more clear definition of receiving waters.
31	NAL Exceedance Report	SCE recommends clarifying the requirement that Risk Level 3 dischargers are also subject to NAL exceedance reporting requirements
32	KLS Map	SCE recommends that State Board provide a GIS map to replace the KLS map. In addition, the State Board should provide a GIS map of sediment sensitive waterbodies and the 5-year, 24-hour storm maps
33	Errata	SCE recommends that the State Board review the first page of the errata to ensure greater clarity in monitoring requirements
34	Risk Calculation Worksheet	SCE recommends that the State Board review the risk calculation worksheet, and provide corrections