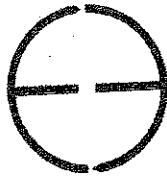


Walter McGuire
CHAIRMAN
Jose Mejia
VICE-CHAIRMAN
Gerald D. Secordy
PRESIDENT
William J. Quinn
CHIEF OPERATING OFFICER
Steve Gross
TREASURER
Randy Fischback
SECRETARY



California Council for Environmental and Economic Balance

100 Spear Street, Suite 805, San Francisco, CA 94105 • (415) 512-7890 • FAX (415) 512-7897

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

BOARD OF DIRECTORS

Bob Antonopolis
William T. Begley
Robert Baigenorth
Michael Barr
Joseph C. Bellas
Russ Burns
Steve Burns
Art Carter
Ken Casarez
Joe Carrell
Thomas Cook
Nichele Corash
Tim Crenins
Greg Feere
Randy Fischback
Steve Gross
Jay Hansen
Tim Henig
Michael Hertel
Michael G. Jackson
Fred John
James (J.P.) Jones
Kenneth L. Khachigian
John T. Knox
Chuck Mack
Kirk Merschwald
Nancy McFadden
Walter McGuire
Jose Mejia
Richard Morrison
Mike Murray
Cressay Nakagawa
Joe Nunez
Mark Posson
Art Pulaski
Ted Reed
Mike Roos
Stuart E. Rupp
Lanny Schmidt
Gerald D. Secordy
Angelo J. Siracusa
Don Solem
Katherine Strehl
Steve Teth
Minnie Tsunozumi
Vic Weisser
Scott Welch

CONSULTANTS

Jackson R. Gualco
THE GUALCO GROUP, INC.

Allan Lind
ALLAN LIND & ASSOCIATES

Robert W. Lucas
LUCAS ADVOCATES

Gov. Edmund G. "Pat" Brown
FOUNDING CHAIRMAN 1973

www.cceeb.org

June 24, 2009

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

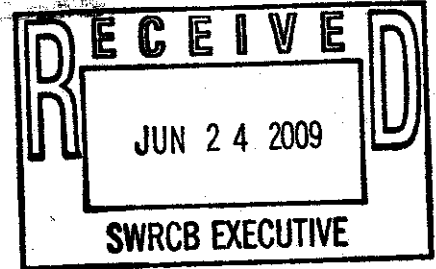
VIA E-Mail: commentletters@waterboards.ca.gov

Subject: Comment Letter – Draft Construction General Permit

Dear Ms. Townsend:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit organization of business, labor and community leaders that seeks to achieve the State's environmental goals in a manner consistent with a sound economy. As such CCEEB has taken an active role in working with the State Water Resources Control Board (SWRCB) to address proposed policies and permits that affect the construction, operation and maintenance of facilities, such as those used by CCEEB's members' companies providing essential public services like natural gas, electricity, and communications.

This letter provides CCEEB's written comments on the April 23, 2009 version of the proposed "Draft National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated With Construction Activities" and the Errata Sheet issued by the SWRCB on June 10, 2009 ("Draft Permit"). CCEEB's comments and recommendations are focused primarily on the general merits and applicability of the Draft Permit to linear projects (otherwise referred to as Linear Underground/Overhead Projects (LUPs)). Comments are also provided on the Draft Permit's applicability to traditional development projects. Since many of the linear project issues are common to both types of projects, to the extent applicable, the comments on the linear project issues should also be considered to apply to the traditional development project issues. CCEEB's comments consist of this letter and the attached Comment Table.



GENERAL ISSUES OF CONCERN

Turbidity Numeric Effluent Limits

The Draft Permit proposes a numeric effluent limit (NEL) and a numeric action level (NAL) for turbidity; 500 NTU and 250 NTU, respectively. For the reasons identified below, we believe that implementation of the NEL is not appropriate in this Draft Permit. Rather, we believe that NAL's should be relied upon as a trigger for review of BMP's and that consideration of establishment of an NEL be put over to another iteration of this permit.

The proposed NEL has not been appropriately justified. The 2008 Draft Permit proposed the maximum NAL and the NEL to be 1000 NTU. However, using the same dataset referenced in that draft, the current Draft Permit concludes that the NEL should be 500 NTU, a 50% decrease in concentration.

The Draft Permit (Fact Sheet at pages 13-14) describes the process used to determine the turbidity limits, including Best Professional Judgment (BPJ) and Best Conventional Pollutant Control Technology (BCT). While the Draft Permit proposes a NEL of 500 NTU there is no evaluation of which Best Management Practices (BMPs) or combinations of BMPs commonly used on construction projects can be used to reliably achieve this limit, considering the application of this limit with the proposed 5 year design storm and the variation in storm patterns, intensity, and antecedent moisture conditions. Therefore, Active Treatment Systems (ATS) may be required in many cases to meet the established NEL. ATS have many limitations and adverse water quality risks, which make it inappropriate for most sites. ATS workshop sessions conducted by the State board have documented the limitations and potential problems including the fact there have been major enforcement actions on projects that used ATS and chemical discharges caused serious downstream problems.

The "Storm Water Panel Recommendations to the California State Water Resources Control Board The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities," June 19, 2006 (or "Panel Report") expressed the concern that without the use of ATS it is not possible to implement a numeric effluent limit. Furthermore, the Panel Report indicated that ATS have only been used on large projects and questioned the economic feasibility of ATS on small projects or within small drainages on large projects. The Permit approach proposes a 500 NTU effluent limit on all projects that have a Risk Level 3 (or linear project with a Type 3 area), regardless of size. This permit approach may end up requiring projects, both large and small, to use ATS even though there has been no evaluation of the applicability of this limit to

small projects. This is contrary to the Panel Report, which is cited as the basis for the BPJ determination.

The Draft Permit (Fact Sheet at page 17) states that an appropriate range for the turbidity NEL is from 500 to 1650 NTU, based on field data. The explanation provided, that turbidity equipment typically measures a maximum of 1000 NTU, is not sufficient justification for selecting the lowest value. We do not agree that identifying Best Professional Judgment (BPJ) is a sufficient reason for selecting a value based on equipment limitations over field data. We strongly believe that there currently is lack of data to set NELs and that a single NEL for high risk areas statewide cannot be scientifically supported.

The proposed NEL also does not include a methodology to account for naturally high sediment production watersheds that produce higher than 500 NTU in receiving waters under five-year and more frequent storm conditions. Setting an artificially low turbidity NEL for these watersheds is unnecessary, unreasonable and could lead to unintended consequences to receiving waters. If NEL's are established there should be a mechanism to account for higher naturally occurring turbidity.

The Panel Report advocated "phasing in" Numeric Effluent Limits (NELs). However, the application of stringent and enforceable NELs in conjunction with a comparatively large design storm does not constitute a gradual "phase in" approach.

The Draft Permit should be revised to remove the turbidity NEL from the permit and implement only the NAL for this permit term. Additionally, the NAL should be increased to 500 NTU. These changes would allow dischargers to gain experience in determining the BMPs ability to achieve the NAL.

Post-Construction Requirements

We believe that inclusion of the proposed post-construction performance requirements within the construction permit is inappropriate. We reiterate CASQA's comment from the 2008 Draft Permit, and reprint 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 we are sympathetic to the difficulty and challenge of finding an appropriate permitting mechanism, the Draft Permit is not the appropriate or default permitting tool. **If post-construction requirements remain in the adopted**

Permit, the adopted Permit should include a grandfathering clause for projects that are past the design stage.

Lack of Clarity Regarding Traditional/ Linear Project Requirements

The Draft Permit has been revised to incorporate all linear projects that require permit coverage. As such, the SWRCB has included language in the Fact Sheet, Findings, Order, Attachments and Appendices to address the uniqueness of linear projects. In some cases, this has caused some confusion where information or requirements for traditional projects is included, but omitted for linear projects. Clarity in the Draft Permit is essential to the ability of a permittee to ensure their compliance with its requirements.

Findings

Section I.C at page 4, identifies "Activities Not Covered Under the General Permit". However, this section does not identify those linear project activities that are not covered (or are not considered "construction activity"). These activities are later identified in Attachment A. Section I.G at page 7, describes the risk assessment process and the requirement for REAPs, however, the risk assessment Finding describes the sediment and receiving water risk approach but omits the initial screening tool for Type 1 LUPs contained in the flowchart on Page 1 of Attachment A.1. Also, REAPs are not required on LUPs, but this is not stated in Finding 47 at page 8. Section I.L at page 11, describes post-construction requirements and implies that all construction sites must comply with these requirements; however LUPs are not subject to post-construction requirements.

The Findings should be revised to clarify what is applicable specifically to traditional projects to LUPs, and to all projects. The Findings also should incorporate equivalent information for LUPs as is presented for traditional projects.

Order

In Sections II.B through Section XVI (pages 13 to 39), it is unclear what sections, if any, are applicable to LUPs. Some of the information in these sections is duplicative of the information in Attachment A, which is tailored to LUPs (e.g., Sections C, D, E, F, G and H), whereas some of the information in these sections is applicable only to traditional projects (e.g., Sections VIII through XI, and XIII (pages 32 to 35). It is critical that the Order clarify what sections are applicable to LUPs.

Therefore, in addition to stating that LUPs shall comply with Attachment A, A.1 and A.2, Section II.A.1 at page 13, should state that the balance of the Order is not applicable to LUPs except as indicated in Attachment A. This will ensure clarity on what parts of the Order apply to LUPs.

Construction Materials

The Draft Permit establishes Best Management Practices (BMPs) for the various risk levels of traditional land development projects (traditional projects) and different types of LUPs. Good housekeeping BMPs for LUPs, as described in Attachment A, Sections I.1.b.ii.1.d, I.2.b.ii.1.d, and I.3.b.ii.1.d and Section B.1.d in Attachments C, D, and E for traditional projects, establishes the following BMP for construction materials:

"Minimize exposure of construction materials with precipitation."

Both LUPs and traditional projects include materials that are designed to be outdoors and exposed to the environment (e.g., poles, equipment pads, electric equipment cabinets, conductors, insulators, bricks, etc.). These materials should not be subject to this BMP like other materials that may impact storm water (concrete, lime, etc.).

To clarify the application of this BMP, these sections should be revised to state:
"Minimize exposure of construction materials with precipitation (this requirement is not applicable to materials that are designed to be outdoors and exposed to the environment)."

Qualified SWPPP Developers and Qualified SWPPP Practitioners

Risk Level 1/Type 1 Requirements

This permit proposes minimum qualifications for persons responsible for developing Storm Water Pollution Prevention Plans (SWPPPs) and for implementing SWPPPs; these positions are Qualified SWPPP Developers (QSDs) and Qualified SWPPP Practitioners (QSPs), respectively. As written, the same qualifications apply to all Risk Levels of traditional projects and all Types of LUPs.

This requirement makes sense for large complex projects that may pose a significant risk to water quality. However, for Type 1 projects, especially those conducted in existing developed areas, it is an unnecessary use of resources and expertise. These projects, by definition, are low risk and implement simple BMPs such as storm drain inlet protection and stockpile management. Because they are low risk projects they do not require the same level of expertise that is required of Risk Level 2 and 3 traditional projects and Type 2 and 3 LUPs.

Projects that are Risk Level 1 or Type 1 should not be required to have QSDs or QSPs develop and implement their SWPPPs.

Training/ Certification

The Draft Permit requires QSDs and QSPs to have specified certifications. Completion of training sponsored by the SWRCB is also mandatory. However, it is not yet possible to obtain the SWRCB training, nor has the training curriculum been made available to the public for review and comment. To the extent that this proposed training becomes a permit requirement, the date upon which it becomes mandatory (i.e., in order to perform the QSD and QSP functions) should be established based on the date the training becomes available throughout the state. The requirement to have the training should be no sooner than 2 years after the training becomes available throughout the state.

Permit Implementation Start Date

Implementation of the many new proposed requirements in the Draft Permit during the upcoming rainy season will be very difficult. **Therefore, we recommend that the SWRCB provide for an implementation start date of July 1, 2010.**

Receiving Water Monitoring/ Bioassessments

The Draft Permit proposes receiving water monitoring to be conducted for the duration of the coverage under the permit for Risk Level 3 and Type 3 projects that exceed the NEL. Receiving water monitoring is very problematic in terms of obtaining access to appropriate sampling locations. Additionally, when receiving waters are located after the discharges from the project have commingled with runoff from other locations, the usefulness of the information collected is compromised. Therefore, receiving water sampling should not be required.

Certain Risk Level 3 and Type 3 projects are required to conduct bioassessments. The Fact Sheet specifies that pre-project and post-project sample results can be compared, but other than that does not specify how this data will be used or what criteria will be used to evaluate it. Since this monitoring is very expensive, until the specific use of the information is identified in the permit, the requirement should be deleted.

Risk Levels for Sediment TMDL Participants

One of the criteria used in the receiving water risk assessments is whether a project discharges into a water body for which sediment TMDL has been established. In such cases, the receiving water risk is considered high. Where landowners are or will be participating in the TMDL implementation (e.g., funding construction, operation and maintenance of regional sediment control facilities), the receiving water risk for these landowners' projects should be low.

LINEAR PROJECT ISSUES

Nature of Linear Projects vs. Traditional Projects

A linear project, no matter the total soil disturbance area, generally proceeds systematically, with sections of the project active, such that only a small portion of the project is active at any time, which greatly reduces the risk of sediment discharge and receiving water risk.

The Draft Permit now includes LUPs and should ensure that the differences of LUPs v. traditional projects are appropriately addressed as described in this letter and the attached Comment Table.

Project Sections

Attachment A (Linear Underground/Overhead Projects) requires a clearer definition of "linear project".

Attachment A (Section A.3; pages 3-4) describes LUPs as being permitted as "Projects" and "Project Sections." That is, a project does not need to obtain a single permit to cover the entire project. Rather, it can be split into "logical permit sections," with each section obtaining its own permit coverage. CCEEB supports this approach, since there are a number of factors on LUPs, such as developed/undeveloped areas, different contractors, different construction periods, etc., for which it makes sense to be able to obtain separate permit coverage. LUP owners need this flexibility to determine the logical permit sections for their projects.

However, Section A.3 of Attachment A, also states:

"Sections shall be determined based on portions of a project conducted by one contractor."

This is inconsistent with the previous statement that allows LUPs to be split into logical permit sections. The Draft Permit should allow linear project proponents to select the most appropriate project sections for their projects.

Therefore, the sentence referring to contractors should be revised to state:

"Sections may be determined based on portions of a project conducted by one contractor."

Risk Determination

The Draft Permit establishes a risk determination procedure that is unique for LUPs. While CCEEB supports the use of a risk-based approach, there are

several issues that should be resolved in order for it to work successfully for LUPs.

Attachment A.1 contains the risk determination procedure for LUPs and consists of two flowcharts that define the Type (i.e., 1, 2 or 3) of risk. Since the flowchart criteria are based on where the LUP construction activities occur (e.g., paved/unpaved, within a Sediment Sensitive Watershed, within 150 feet of a sediment sensitive water body, etc.), it is important that the Type (or risk) be determined for specific areas within a project or project section.

Type 1 LUPs

Projects or project sections that meet specific criteria in the flowchart on page 1 of Attachment A are considered Type 1. Projects not meeting those criteria must evaluate their combined receiving water risk and sediment risk in the flowchart on Page 2 to determine their Type. Projects using the flowchart on page 2 can also be determined to be Type 1. The Fact Sheet in Section II.J.2.a.i at page 31 should clarify that projects can be determined to be Type 1 based on either flowchart.

Project Area and Project Section Area

Projects using the flowchart on page 2 of Attachment A should be able to evaluate the Type (i.e., 1, 2 or 3) for different areas of the project or project section. It is essential that risk determinations for LUPs be based upon different areas within a permitted segment to have the ability to establish multiple risk Type designations. Since risk varies in different areas of a LUP, it is important to avoid a single Type 2 or 3 designation in one location resulting in that designation for the entire project length.

Therefore, it is imperative that the three questions at the top of the flowchart on Page 2 refer to the "project area or project section area." This will make it clear that the Type(s) is based upon the characteristics of specific areas of the project.

Sediment Sensitive Watershed

The first question asked on the second flowchart (Attachment A.1 at page 2) is:

"Is 50% or more of the project section located within a Sediment Sensitive Watershed?"

Based on this question, a project section that is 50% or more located within a Sediment Sensitive Watershed will require that the whole project section become a medium or high receiving water risk, although 50% of the project

section is located outside of the Sediment Sensitive Watershed (which is a low receiving water risk). Project areas or project section areas should be evaluated for whether they are in a sediment sensitive watershed, not evaluated for whether a specific percentage of the entire project or project section is in the sediment sensitive watershed. **This question should be revised to ask:**

"Is the project area or project section area located within a Sediment Sensitive Watershed?"

In Attachment A.1 at page 3, a Sediment Sensitive Watershed is:

"Defined as a watershed draining into a receiving water body listed on EPA's approved CWA 303(d) list for sedimentation/siltation, turbidity, or a water body designated with beneficial uses of SPAWN, MIGRATORY, and COLD."

This proposed definition is too broad as it includes all areas within the entire watershed that drain to the sediment sensitive water body. As written, this definition is inappropriate to apply to short-term linear construction projects that have relatively short-term potential project impacts and could be located 1, 2, 5, 10, 25 or more miles up-gradient from the sediment sensitive water body. A more relevant definition for a LUP would be to limit the definition to the "hydrographic subarea" in which the sediment sensitive water body is located.

Therefore, the definition of Sediment Sensitive Watershed should be revised to state:

"Defined as the Hydrologic sub-area within which a sediment sensitive water body is located."

Sediment Sensitive Water Body

Attachment A.1 at page 3 also includes the proposed definition of "Tributary to Sediment Sensitive Water Body." However, as proposed the exact meaning of the definition is unclear.

The definition should be revised to make sure that it is clear that a "Tributary to Sediment Sensitive Water Body" means:

Tributary to Sediment Sensitive Receiving Water Body – A surface water is "tributary to a sediment sensitive water body" when it meets all three of the following criteria:

1. The surface water body is located up-gradient of and hydrologically connected to either of the following:

- A CWA 303(d) listed water segment (i.e., for sedimentation/siltation, turbidity); or
 - A water body designated with beneficial uses of SPAWN, MIGRATORY, and COLD;
2. The surface water body is located within the same hydrologic subarea as the CWA 303(d) listed water segment (i.e., for sedimentation/siltation, turbidity) or the water body designated with beneficial uses of SPAWN, MIGRATORY, and COLD,
 3. The surface water body is not one of the following:
 - An ephemeral or intermittent surface water (e.g., drainages, creeks, streams, etc.); or
 - A storm drain inlet.

Sediment Risk

Linear projects located in undeveloped areas are required to conduct sediment risk evaluations along the entire length of the linear project. This is a significant issue and was raised in our comments on the 2008 proposed permit. Linear projects can be miles or tens of miles long and may traverse many different terrains and rainfall regimes, and have changing start and completion dates, all of which are variables in determining the sediment risk. This creates a very cumbersome risk determination procedure. Requiring a sediment risk evaluation without delineating where and how many samples should be collected creates additional uncertainty in the procedure. There are three possible outcomes for receiving water risk: "high" (i.e., when the project area is within a specified distance of a Sediment Sensitive Water Body); "medium" (i.e., when the project area is within a Sediment Sensitive Watershed, but outside of a specified distance of a Sediment Sensitive Water Body) and "low" (i.e., when the project area is not located within a Sediment Sensitive Watershed). The sediment risk evaluations should be streamlined to only be required when the project area is considered a medium or high receiving water risk.

This approach ensures that special care is focused on those project areas that have the highest potential for affecting a sediment sensitive water body. Linear project areas that are low receiving water risks due to their distance from sediment sensitive water bodies should be assigned a low sediment risk based on their decreased potential for impacting that water body.

Sampling Requirements

Attachment A, Sections L.4.b.i and Table 4 (at pages 46-47) and L.5.b.i and Table 6 (at pages 54-55) states: "...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." At a minimum, 3 samples shall be collected per day of discharge. According to Footnote 13 at page 47, sampling applies to "...any type of discharge of storm water that goes beyond the property boundary...."

It is impossible for a LUP to comply with these proposed requirements for the following reasons:

First, there could literally be hundreds of sampling locations (e.g., "...any type of discharge of storm water that goes beyond the property boundary..."). It is not clear if this footnote refers to both sheet flow and channelized flow or only channelized flow. If it includes sheet flow, there will be an unlimited number of sample locations.

Second, for all of these discharge locations, numerous qualified samplers would have to be on call for each rain event to sample each of these locations within the first hour of discharge and three times a day every single day until the discharge ends. Additionally, at least some of these sites may not be safely accessible on LUPs. This sampling and analysis effort would then have to be repeated for each rain event during the entire project. The permit also does not make it clear when sampling can be terminated; for example, once earthwork is complete and stabilization BMPs are implemented.

Third, there should be an acknowledgement that the weather does not always behave as expected or as predicted. When a storm ends suddenly and required samples are not taken, dischargers should have the option within SMART to provide an explanation without risk of enforcement.

We believe that sampling should only be implemented in project areas that are active and that are chosen in advance based upon risk and safety considerations. Also, consistent with the revised requirements for traditional projects, the requirement to sample within the first hour of runoff should be eliminated.

The permit should be revised to state:

"LUP Type 2 (and 3) dischargers shall collect storm water grab samples from one representative sampling location within each area designated as Type 2 (or 3) that can be safely accessed during a rain event. Samples shall be taken during normal business hours. A minimum of three samples shall be taken on the sample day, unless the storm water discharge ceases before the end of the day. Sampling shall occur on the first day of discharge and two sample events per rainy season are required."

¹³ A new discharge is defined here as a channelized discharge of storm water that goes beyond the LUP boundary after at least a 48 hour period of no discharge."

Turbidity Numeric Effluent Limits

As discussed above, NELs are not appropriate for this Permit. In terms of linear projects, they are even more untenable. LUPs are substantially different from traditional projects. The same set of standards should not apply to the two categories. For example, where a traditional project may have a single discharge point, a linear project may have hundreds of discharge points. Application of the same requirements could have devastating cost implications for these projects. Alternatively, implementation of a turbidity numeric action level of 500 NTU on Type 2 and 3 projects could be useful in confirming the effectiveness of the BMPs.

Security

Due to Homeland Security concerns and guidelines, the confidentiality of certain infrastructure information is essential to public utility services. Therefore it is important to limit public access to information regarding the details and locations of their facilities. Additionally, Federal Energy Regulatory Commission rules limit the disclosure of certain information regarding the schedules of utility projects. Since the SWRCB intends to automatically post PRDs on the Internet for public viewing, it is important that certain information not be included in utility project PRDs. This information includes, but may not be limited to:

- Transmission circuit numbers
- Voltages
- Substation names
- Overall circuit maps that show how the new facilities fit into the overall grid
- GIS shape files
- Schedules that indicate when associated circuits will be de-energized or energized

The Draft Permit should be revised to include a Finding for linear projects that clarifies that certain information that would cause a security or other regulatory issue does not have to be included in PRDs.

Inspections

The Draft Permit states: "LUP Type 1 dischargers shall perform weekly inspections and observations, and at least once each 24-hour period during extended storm events, to identify BMPs that need maintenance to operate effectively, that have failed, or that could fail to operate as intended. Inspectors shall be the QSP or be trained by the QSP."

In addition to proposed requirements for weekly and rain event inspections, daily visual inspections must also be conducted. Overall these inspection

requirements are actually more intensive than those required for traditional projects (i.e., weekly and pre-, during and post-rain event inspections).

Type 1

Under Order 2003-0007, Tier I projects are not required to conduct weekly or rain event inspections because Tier I projects are required to be "buttoned up" at the end of the work day and to conduct visual inspections "...daily during working hours and in conjunction with other daily activities in areas where active construction is occurring." However, in addition to daily inspections, the Draft Permit would also require Type 1 LUPs to conduct weekly inspections and rain event inspections, which are not appropriate for low risk projects.

These sections should be revised to state:

"Type 1 LUPs shall conduct visual inspections daily during working hours and in conjunction with other daily activities in areas where active construction is occurring. These inspections are not required to be recorded."

Types 2 & 3

Type 2 & 3 LUPs should also be required to conduct unrecorded daily visual inspections along with pre- and post-rain event inspections.

These sections should be revised to state:

"Type 2 & 3 LUPs shall conduct visual inspections daily during working hours and in conjunction with other daily activities in areas where active construction is occurring. These inspections are not required to be recorded. Additionally, Type 2 and 3 LUPs shall conduct inspections within 2 business days prior to each qualifying rain event and within 2 business days after each qualifying rain event to identify BMPs that need maintenance to operate effectively, that have failed, or that could fail to operate as intended. Inspectors shall be the QSP or be trained by the QSP."

LUP Permittee

Attachment A.2 ("Who Must Submit") states: "The LRP must obtain coverage under this General Permit for its LUP construction activities where the total disturbed land area is greater than 1 acre."

The Draft Permit requires that the LRP is responsible for obtaining permit coverage. Often, there are cases where linear construction activities are covered under another permittee's construction stormwater permit.

Therefore, the above sentence should be revised to state:

"The LRP must obtain coverage under this General Permit for its LUP construction activities where the total disturbed land area is greater than 1 acre unless its construction activities will be covered by another permitted project."

LRPs

The Draft Permit defines "Legally Responsible Person" (or LRP), "Approved Signatory" and "Duly Authorized Representative" and dictates that Permit application documents and permit termination documents must be certified by the LRP. Many companies that own and operate LUPs have large service territories and multiple divisions of responsibility.

Therefore, the Draft Permit should clarify that there can be multiple LRPs, Approved Signatories and/or Duly Authorized Representatives per company.

Flow Charts

The Draft Permit references a series of flowcharts ("Linear Underground/Overhead Project Flowcharts") that are referred to as guidance. These flowcharts clarify fundamental requirements and significant attributes of the linear portions of the permit and should be included as part of Attachment A or A.1. The detailed comments table also contains additional comments on these flowcharts.

Attachment A or A.1 should be revised to include these flowcharts and the specific revisions detailed in the Comment Table need to be incorporated.

Bioassessments

Linear Type 3 dischargers that meet the project criteria in Appendix 5 shall comply with the proposed Bioassessment requirements prior to commencement of construction activity. As described earlier, this requirement should be removed from the permit. **However, to the extent this requirement is retained in the permit, it should only apply to Type 3 LUPs when:**

- The project area or project section area that is determined to be a Type 3 LUP meets Criteria 1 and 2 of Appendix 5 (i.e., using the definition of "Tributary to Sediment Sensitive Water Body" contained in Attachment A.1); and
- There are more than 30 acres of soil disturbance in the project area or project section area designated as Type 3.

These criteria should be added as a footnote to Table 8 in Attachment A.

Post- Construction Requirements

The Fact Sheet and Permit state that post-construction requirements apply to all projects. However, post-construction requirements do not apply to LUPs (see Attachment B.H.1.a at page 2, which states that linear projects are excluded from having to submit a completed Post-Construction Water Balance Calculator).

The Fact Sheet and Permit documents should clarify that post-construction requirements do not apply to LUPs.

Perimeter Controls

The Draft Permit, at pages 22, 28 and 35 of Attachment A states: "LUP Type 1 (2 & 3) dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits sufficiently to control erosion and sediment discharges from the site."

It is not reasonable to require a large linear project to implement perimeter controls along miles of linear construction. This would result in a hydrologic barrier across miles of landscape in natural areas, and would be impracticable on active city streets. Alternatively, appropriate sediment control BMPs should be placed where necessary to protect storm drains and/ or receiving waters.

Construction access points are constantly moving along large linear projects; thus, stabilization of each "entrance" is unreasonable and may not be safe at some locations. Alternative BMPs, such as sweeping, should be allowed.

This section should be revised to state:

"LUP dischargers shall establish and maintain effective perimeter controls, as needed, to protect water quality and implement effective BMPs for construction entrances and exits to minimize and/or manage sediment tracking."

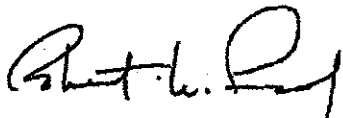
COMMENT TABLE

Attached are CCEEB's detailed comments on the requirements of the Draft Permit. The comments are arranged in the same order as the documents provided by the SWRCB (i.e., Fact Sheet, Order, Attachment A, etc. and by section number within each document). Issues that specifically affect linear projects have a "YES" in the table column labeled "Will This Impact Linear Projects?" Other comments in the table are applicable to all projects that could be regulated by the Permit.

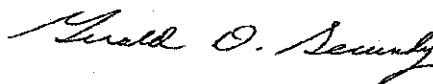
We appreciate the opportunity to provide these comments on the Draft Permit and we look forward to working with the State Board and staff to develop a Construction General Permit that works for both traditional and linear

construction projects. If you have any questions, please contact Bob Lucas at 916-444-7337.

Sincerely,



Robert W. Lucas
Waste & Water Quality Project Manager



Gerald D. Secundy, President
CCEEB

Attachment:

- Comment Table

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

The Following Table contains CCEEB's comments on the requirements of the SWRCB's Proposed Construction Storm Water General Permit. The comments are arranged sequentially (i.e., by Permit Document type, such as Fact Sheet, Permit, Attachment A, etc. and by section number within each Permit Document). Those issues that specifically affect linear projects have a "YES" in the table column labeled "Does This Affect Linear Projects?" If the same comment applies to more than Type or Risk Level, where possible the comment is made once and the applicable sections are referenced. The other comments in the table are more generally applicable to all projects that could be regulated by the permit, but could also be applicable to linear projects. Comments in the table are primarily focused on the linear conditions in the permit; however to the extent that the same issue applies to traditional projects and is not otherwise addressed, the comment is applicable to traditional projects as well.

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
1	Yes	Overall Comment		Complexity The Draft CGP 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 to the construction industry, including risk assessment, action levels, effluent limits, effluent monitoring, receiving water monitoring, bioassessment, post construction controls, and online document submittal. Moreover, the permit will require dischargers to spend substantially more money on permit compliance than currently required.	We recommend removing the Numeric Effluent Limitations (NEL), receiving water monitoring, and post-construction requirements from this permit. The remaining permit requirements represent a significant increase in requirements from the current permit, but may be achievable for dischargers in this permit term. We request that the State Board apply the recommendations of the Blue Ribbon Panel and phase in some of these new requirements rather than adopting them all at once.
2	Yes	Overall Comment		Establishment of a Turbidity NEL A 500 NTU for Risk Level 3 Projects and Type 3 Project areas is based on inadequate justification for the selected limit. A turbidity NEL is not economically feasible for linear projects.	<ul style="list-style-type: none"> We do not support the inclusion of a NEL in this permit and believe that this requirement should be removed from the permit. We are also concerned about how the NEL value was selected. The Blue Ribbon Panel, selected for its expertise in stormwater by the State Board, does not recommend placing a NEL in the Permit. The State Board should consider the Blue Ribbon Panel's recommendations, the numerous comments and feedback received in response to the previous permit drafts, and remove the NEL requirements from

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
					<p>this permit.</p> <ul style="list-style-type: none"> The proposed NEL does not allow for compliance. The Fact Sheet states that the 500 NTU was chosen from a dataset with a mean of 540 NTU. This means that the majority of construction site discharges would be greater than the NEL, and these sites would be out of compliance. State Board staff must, explain how a 50% decrease in the NEL is justified based on the same dataset used to justify the 1000 NTU NEL in the 2008 proposed permit. The Draft Permit (Fact Sheet at pages 13-14), describes the process used to determine the turbidity limits, including Best Professional Judgment (BPJ) and Best Conventional Pollutant Control Technology (BCT). While the Draft Permit proposes a NEL of 500 NTU for turbidity, it does not provide any detail on which Best Management Practices (BMPs) or combinations of BMPs can be used to reliably achieve this limit. Therefore, the ability of projects to reliably comply with this effluent limit is not known. The "Storm Water Panel Recommendations to the California State Water Resources Control Board The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities", June 19, 2006 (or "Panel Report") expressed the concern that without the use of Active Treatment Systems (ATS) it is not possible to implement a numeric effluent limit. Furthermore, the Panel Report indicated that ATS have only been used on large projects and questioned the

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
					<p>economic feasibility of ATS on small projects or within small drainages on large projects. The Draft Permit proposes a 500 NTU effluent limit on all projects that have a Risk Level 3 (or linear project with a Type 3 area), regardless of size. This permit approach may end up requiring projects, both large and small, to use ATS, even though there has been no evaluation of the applicability of this limit to small projects. This is contrary to the Panel Report, which is cited as the basis for the BPJ determination.</p> <p>The Draft Fact Sheet, p. 17, states that an appropriate range for the turbidity NEL is from 500 to 1650 NTU, based on field data. It should be explained why the very lowest value in the range was selected. The explanation provided, that turbidity equipment typically measures a maximum of 1000 NTU is not sufficient justification for 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 5,000 NTU, and are no more expensive than meters measuring only up to 1,000 NTU. Citing BPJ does not in of itself provide an appropriate justification for the revised NEL. The concern expressed regarding limited measuring equipment is not valid and should not be used to over-ride the field data.</p> <p>The Proposed Permit's 500 NTU limit, in many cases, may require the use of an Active Treatment System (ATS) to ensure compliance. However, the Blue Ribbon Panel found that use of an ATS on small projects</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
					<p>(e.g., < 5 acres) or large projects with small basins may not be economically feasible. The report states that "For small sites or smaller drainages within larger sites, or where chemicals cannot be used, the Panel recommends that Action Levels be specified". Therefore, a NEL should not be applicable to projects with less than five acres of disturbed soil that drains to a single point on a construction site.</p> <ul style="list-style-type: none"> A technology based effluent limitation should be based on accepted technologies. Please provide the data on construction BMP pollutant removal performance that was used to determine the TBEL. Not only would this help explain the 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 to meet the 500 NTU NEL. Linear projects usually follow natural topography, rather than conducting mass grading and re-creating new topography. This means that BMPs and controls may be difficult or impossible to place if the project right of way is too narrow or too steep. Additionally, in most cases, linear projects are made up of multiple small areas of soil disturbances for which it would be economically infeasible to use ATSS. Therefore, the turbidity NEL for LUPs should be removed from this permit. <p>Additional comments on the NEL values will be included later in this Comment Table.</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
3		Overall Comment		<p>Applicability of Post-Construction Requirements</p> <p>The permit requires all dischargers to maintain pre-project hydrology to ensure that the physical and biological integrity of aquatic ecosystems are sustained</p>	<p>We believe that inclusion of post construction performance issues with the construction permit is inappropriate. We reiterate CASQA's comment from the previous Permit Draft, and reprint it here. <i>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.</i></p> <p>While we are sympathetic to the difficulty and challenge of finding an appropriate permitting mechanism, this is not the appropriate or default permitting tool. In addition, if post-construction requirements are adopted, the Permit should provide a grandfathering clause for projects that are past the design stage.</p>
4	Yes	Overall Comment		<p>Effective Date of Permit Requirements</p>	<p>Based on the projected adoption of this permit immediately before or during the up-coming rainy season and the significant new requirements it includes, we recommend postponing the effective date of the CGP requirements to July 1, 2010. July 1 is the first day of the Permit FY, and would reduce the needless submittal of Annual Reports from Spring 2010 through June 30, 2010, which would be required if the permit requirements became effective on May 1, 2010.</p>
5	Yes	Overall Comment		<p>Homeland Security Requirements</p>	<p>Since the SWRCB intends to automatically post PRDs on the Internet for public viewing, it is important that certain information not be included</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
6	Yes	Overall Comment		<p>Due to Homeland Security concerns, confidentiality of infrastructure information is essential to public utility services. Therefore, it is important to limit public access to information regarding the details and locations of their facilities. Additionally, Federal Energy Regulatory Commission rules limit the disclosure of certain information regarding schedules of utility projects.</p>	<p>in utility project PRDs. This information includes, but may not be limited to:</p> <ul style="list-style-type: none"> ➤ Transmission circuit numbers ➤ Voltages ➤ Substation names ➤ Overall circuit maps that show how the new facilities fit into the overall grid ➤ GIS shape files ➤ Schedules that indicate when associated circuits will be de-energized or energized <p>The Proposed Permit should be revised to include a Finding for utility projects that clarifies that certain information that would cause a security or other regulatory issue does not have to be included in PRDs.</p>
				<p>Compliance Cost is Significantly Underestimated</p>	<p>The Blue Ribbon Panel's list of reservations and concerns regarding issuing Numeric Limits was stated on page 18 of the report: "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." We believe that the Draft CGP does not adequately consider the cost of compliance with the newly introduced permit requirements. The Draft CGP considers only the cost of purchasing pH and turbidity meters, and concludes that the CGP will cost only \$1,000 per site more than the current permit. In fact, the Draft CGP fails to consider the following additional costs: bioassessment, manpower to perform sampling, lab costs, additional cost to develop SWPPP due to increased training requirements</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
7	Yes	Fact Sheet, p.2	III.B.2	<p>Utilities - Security Concerns</p> <p>Utility companies are concerned about protecting infrastructure that is critical to providing the essential public services they supply from terrorist attacks. Therefore, it is important to limit public access to information regarding the location of their facilities.</p> <p>Public Hearings</p> <p>This section states: "...this General Permit enables public review and hearings on permit applications when appropriate."</p>	<p>(more costly employees), PRD development, online submittal, post-construction requirements, and additional inspection requirements.</p> <p>The Fact Sheet should be revised to include a realistic cost impact analysis.</p> <p>See Comment #5 - Homeland Security Requirements</p>
8	Yes	Fact Sheet, p.3	I.B.2		<p>This Permit does not define when or how "public hearings" would be triggered or take place. This is a very significant issue to dischargers as it could hold a project up for an indeterminate period of time resulting in significant loss of dollars. Additionally the allowance for public hearings appears to be inconsistent with the SWRCB's new approach in this permit to remove all language requiring the discharger to implement a SWPPP and REAP, together with the addition of new specific BMPs, NALs and NELs in the permit, to which the Fact Sheet concludes: "As a result, this General Permit does not require each discharger's SWPPP and REAP to be reviewed and approved by the regional Water Boards."</p> <p>If the SWPPP and REAP does not require to be reviewed and approved, then a public hearing should also not be required. However, if public hearings are allowed, the Draft Permit should identify the process and criteria that Regional Boards will use to determine when a</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
9	Yes	Fact Sheet, pp. 3-4	1.C. and D.	<p>Use of Numeric Effluent Limits</p> <p>It is premature to include NELs in this permit.</p>	<p>public hearing is required.</p> <p>Staff has not conducted a rigorous limit development process, as required by EPA regulations, to develop and substantiate the proposed NELs in the permit.</p> <p>A BMP-based approach should be used until the protocols for determining NELs and the benefits have been determined. We recommend that the NALs be used as a scientific basis for developing appropriate NELs over this permit term and that the concept of NELs be re-evaluated at the next permit renewal. This "bridging approach" was also submitted to the SWRCB in the previous comments by the Building Industry Association.</p> <p>Proposed EPA Effluent Limitations Guidelines only include NELs for sites that are 30 acres or larger and are located in areas with high rainfall intensity and soils with high clay content. Like the SWRCB Blue Ribbon Panel, EPA recognizes that "[i]n order to meet the proposed numeric turbidity limit, many sites would need to use chemical treatment and filtration of their storm water discharges." (i.e., ATS, a treatment system that is not practical at most construction sites.)</p> <p>Also see Overall Comment #2 - Establishment of a Turbidity NEL</p>
10	Yes	Fact Sheet, p.4		<p>Permit Complexity</p> <p>The Blue Ribbon Panel report states: "The Board should consider the phased</p>	<p>The high level of complexity in the Draft Permit and associated documents are in contradiction with the Panel's conclusion. This permit does not "phase in" the recommended measures. Rather, a</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
				<p>implementation of Numeric Limits and Action Levels, commensurate with the capacity of the dischargers and support industry to respond."</p>	<p>long list of new permit concepts and requirements are included in the Draft Permit, with no phased application of these increased requirements. In addition, the highly complex nature of the permit does not consider the dischargers' ability to respond.</p> <p>We recommend removing the Numeric Effluent Limitations (NEL), receiving water monitoring, and post-construction requirements from this permit. The remaining permit requirements represent a significant increase in requirements from the current permit, but are also achievable for dischargers in this permit term.</p> <p>Dischargers should be allowed a permit term to compile data and gain experience before they are subjected to monetary fines and risk of third party lawsuits. The delay would also provide time for the State Board to evaluate whether water quality improvements are gained by implementing the increased requirements of this permit. It is unfair and inappropriate to expect the construction industry to respond to this permit as it is currently written.</p>
11	Yes	Fact Sheet, p. 7	II.B.1.	<p>"Common Plan" - the proposed language is broader than EPA's scope for permit threshold.</p> <p>This section states: "Construction activity that results in land surface disturbances of less than one acre if the construction activity is part of a larger common plan of development</p>	<p>This proposed permit language does not accurately replicate EPA's regulatory language, resulting in what appears to be a broader meaning of EPA's language. This language is a component of EPA regulatory approach and should not be revised.</p> <p>This section should be revised to replicate</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
12	Yes	Fact Sheet, p. 8	II.B.2.	or the sale of one or more acres of disturbed land surface." (emphasis added)	EPA's language as follows: "Construction activity that results in land surface disturbances of less than one acre if the construction activity is part of a larger common plan of development or sale of one or more acres of disturbed land surface."
13		Fact Sheet, p. 9	II.C.1.a.	Description of LUPs	The description of LUPs is consistent with the existing small linear permit, with the exception that it eliminates the 5 acre threshold for soil disturbance. We support this description. This definition has been in place for the last ten years and is important for responding to emergencies in an efficient manner. No justification has been provided for its revision and it should not be changed. See Comment #11 - "Common Plan" - the proposed language is broader than EPA's scope for permit threshold
14	Yes	Fact Sheet, p.10	II.C.1.f.	Revision to "emergency" definition For traditional construction projects, the permit inserts the word "immediately" into the definition of emergency construction activities. Common Plan of Development or Sale The proposed language is broader than EPA's scope for permit threshold.	
15		Fact Sheet, p.10	II.C.1.h.	Rainfall Erosivity Waiver - Duplication	This section includes small construction activity with an approved rainfall erosivity waiver. Section II.C.3 addresses the rainfall erosivity waiver so this section is redundant.
16	Yes	Fact Sheet, pp. 9-11	II.C	Construction Activity Not Covered-General Section II.C identifies certain activities that are "not covered by" the permit. These activities are segregated into activities for Traditional Projects, Linear Projects and EPA's Small Construction Rainfall Erosivity Waiver.	This section should be deleted. Section II.C in actuality describes two types of activities; first, those activities which need to be permitted under a different permit or permitting mechanism; and second, those activities which are not considered construction and therefore do not require to be permitted. This is an important distinction and the subsection should be revised accordingly.

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
17	Yes	Fact Sheet, p.10	II.C.2.	<p>Construction Activity Not Covered - Linear Projects</p> <p>Section II.C.2 (linear projects) does not identify all of the construction activities that either: 1) do not need to be permitted under a different permit or permitting mechanism; or 2) which are not considered "construction activity" and therefore do not require to be permitted.</p>	<p>This section should identify subsections 1.a, 1.b, 1.c, 1.f, 1.i, 1.j, 1.k, 1.l, 2.a, 2.b, 2.c, and 2.d as "activities not required to obtain a construction stormwater permit" and subsections 1.d, 1.e, 1.g, 1.h, and 3 as "activities that are subject to other applicable permits or permitting mechanisms."</p> <p>This is not consistent with existing Order 2003-0007 or with Attachment A. Section II.C.2 of the Fact Sheet should be revised to state that the activities described in subsections 1.c, 1.f, 1.i, 1.j, 1.k, 1.l, 2.a, 2.b, 2.c, and 2.d are "activities not required to obtain a construction stormwater permit" and subsections 1.d, 1.e, 1.g, 1.h, and 3 as "activities that are subject to other applicable permits or permitting mechanisms".</p>
18	Yes	Fact Sheet, p.11	II.C.2.b.	<p>Project Planning Activities</p> <p>The Permit states: "LUP construction activity does not include field activities associated with the planning and design of a project."</p>	<p>This language comes from Order 2003-0007 for linear projects, but omits the parenthetical information that was in Order 2003-0007 that illustrated its applicability. The following language should be added back to the end of the above sentence:</p> <p>"(e.g., activities associated with route selection)"</p>
19	Yes	Fact Sheet, p.11	II.C.2.c.	<p>Tie-ins</p> <p>The Permit states: "Tie-ins conducted immediately adjacent to "energized" or "pressurized" facilities by the discharger or their authorized representative are not</p>	<p>The word "small" was carried over from Order 2003-0007 and should be deleted so it states: "...are not considered construction activities..."</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
20	Yes	Fact Sheet, p.11		<p>considered <u>small</u> construction activities where all other LUP construction activities associated with the tie-in are covered by a NOI and SWPPP of a third party or municipal agency."</p> <p>Construction Activities Not Covered - EPA's Small Construction Rainfall Erosivity Waiver</p>	<p>This section of the Fact Sheet should clarify that this exemption is applicable to both traditional projects and linear projects.</p>
21		Fact Sheet, p. 11	II.C.3. II.D.	<p>Clarification of Applicability Obtaining Permit Coverage</p> <p>Requires a property owner located adjacent to a construction project to obtain separate permit coverage when construction activities of the adjacent project will disturb soil on their property.</p>	<p>Except for linear projects this section would require the landowner to obtain permit coverage when someone else is conducting construction on their property under an agreement. There are times where adjacent land may need to be disturbed as part of a development (e.g., access, laydown area). This means that the adjacent landowner, although a passive party, would have to obtain their own stormwater permit and implement a SWPPP.</p> <p>This section should be revised to incorporate the language from Order 99-08 that states:</p> <p>"For proposed construction activity on easements or on nearby property by agreement or permission, the entity responsible for the construction activity shall file an NOI and filing fee and shall be responsible for development of the SWPPP, all of which must occur prior to commencement of construction activities." (Fact Sheet p.3)</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5, Section II.B.4)	What is the Concern?	Comment
22	Yes	Fact Sheet, p.11-12	II.D.	<p>Obtaining Permit Coverage – Linear projects</p> <p>This section states for linear projects that occur across "several" properties, the owner of the linear project is required to obtain the permit.</p>	<p>The way this section is worded leaves ambiguity regarding who is responsible for obtaining the permit when a linear project is located on one property. All linear projects should be permitted by the linear project owner, except where the work is being conducted within or adjacent to another permitted project which covers the linear activities under their permit.</p> <p>This sentence should be revised to state: "The owner of the linear project is responsible for obtaining the permit unless its construction activities will be covered by another permitted project."</p> <p>This section states that a grandfathering provision applies to projects currently permitted under Order 99-08.</p> <p>This section should be revised to also state that existing linear projects have a grandfathering provision as described in Attachment A.2 (See PRD submittal Requirements).</p>
23	Yes	Fact Sheet, p.12	II.D.	<p>Obtaining Permit Coverage – Linear projects grandfather provisions</p>	<p>It is not clear what criteria the RWQCB may use to decide when to direct a discharger to conduct a risk assessment. To ensure a smooth and effective transition to the new permit, this grandfathering provision should not be conditional. This section should be revised to delete the language allowing the RWQCB to request a risk assessment.</p> <p>This permit should not cover post-construction requirements other than the stabilization requirements needed to obtain termination. This section should be revised to state that for</p>
24	Yes	Fact Sheet, p.12	II.D.	<p>Obtaining Permit Coverage – Projects currently permitted under Order 99-08.</p>	
25	Yes	Fact Sheet, p.12	II.D.	<p>Post-Construction Requirements</p> <p>For termination of the permit, the discharger must install post-construction stormwater</p>	

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
26	Yes	Fact Sheet, p.13	II.E	<p>management measures and establish a long-term maintenance plan</p> <p>Discharge prohibitions</p> <p>This section states: "This General Permit prohibits the discharge of pollutants other than storm water and authorized non-storm water discharges, and prohibits all discharges which contain a hazardous substance in excess of reportable quantities established in 40 C.F.R. §§ 117.3 and 302.4, unless a separate NPDES Permit has been issued to regulate those discharges."</p>	<p>termination of permit coverage the discharger should meet the permit's final stabilization criteria.</p> <p>This section prohibits the discharge of pollutants other than stormwater and authorized non-stormwater discharges and prohibits all discharges which contain a hazardous substance in excess of a reportable quantity. This sentence is incorrect or at least inconsistent.</p> <p>Stormwater is not a pollutant; neither are non-stormwater discharges. However, these discharges may contain pollutants. The permit should clarify that discharges of pollutants which contain a hazardous substance in excess of a reportable quantity that causes the exceedance of a water quality standard are prohibited, not the discharge stormwater.</p>
27	Yes	Fact Sheet, p.13	II.E	<p>Discharge prohibitions-Chlorinated water</p> <p>This section states: "Authorized non-storm water discharges may include those from non-chlorinated potable water sources such as..."</p>	<p>This section allows discharges of non-stormwater only from non-chlorinated potable water sources. However, most potable water sources are chlorinated, so this section instead should state that discharges are allowed from dechlorinated potable water supplies.</p>
28	Yes	Fact Sheet, p.14	II. F. 1.	<p>Use of BPJ in determining NALs and NELs not justified</p>	<p>See Overall Comment #2 - Establishment of a Turbidity NEL</p>
29	Yes	Fact Sheet, p.14	II.F.1	<p>Additional monitoring costs</p> <p>The Blue Ribbon Panel's list of reservations and concerns regarding issuing Numeric Limits was stated on page 18 of the report: "The panel is concerned that the monitoring of</p>	<p>We believe that the Draft CGP does not adequately consider the cost of compliance with the newly introduced permit requirements. The Draft CGP considers only the cost of purchasing pH and turbidity meters, and concludes that the CGP will cost only \$1,000 per site more than the</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5, Section II.B.4)	What is the Concern?	Comment
				<p>discharges to meet either the Action Levels or Numeric Limits may be costly. The Panel recommends that the Board consider this aspect."</p> <p>The Fact Sheet states that the only additional cost for implementing sampling is the cost of the pH and turbidity meters.</p>	<p>current permit. In fact, the Draft CGP fails to consider the following additional costs: bioassessment, on-call technicians to perform sampling, lab costs, additional cost to develop SWPPP due to increased training requirements (more costly employees), associated labor costs to record, manage and report all of the sample results to the SWRCB, post-construction requirements, and additional inspection requirements. Based on the proposed sampling and monitoring requirements for Type 2 and 3 projects, there could literally be hundreds of sampling locations (e.g., "...any type of discharge of storm water that goes beyond the property boundary..."; Page 47 of Attachment A, Section L.4.b.i and Footnote 13) all of which would have to be sampled by qualified samplers three times per day for each day of stormwater runoff. Staff should conduct a realistic cost assessment of the proposed sampling and analysis requirements for Type 2 and 3 linear projects and include the assumptions, cost analysis and results in the Fact Sheet.</p> <p>See Overall Comment #2 - Establishment of a Turbidity NEL</p>
30	Yes	Fact Sheet, pp.15-17	II.F.1.ii	Turbidity NEL is set at 500 NTU.	For Risk Level 3 projects the compliance storm is set to 5 yr -24 hour storm event.
31	Yes	Fact Sheet,p.17	II.F.1.ii.a	Compliance storm – selected size	<ul style="list-style-type: none"> The 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 a basis for selecting a 5-year storm. The principles of

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
32	Yes	Fact Sheet, p.17	II.F.1.ii.b.	TMDL compliance This section states dischargers located within a watershed of a CWA 303(d) impaired water body for which a TMDL has been adopted, must comply with the TMDL ...	Best Professional Judgment cannot be used to select a design storm, without sound science and research to justify the selection. We recommend reducing the size of the design storm for this permit term and utilize this permit cycle for data collection. Once additional data have been collected, the State Board can re-evaluate the design storm at the time the next construction general permit is written. This section should be revised to clarify that it applies to construction projects located up-gradient and within the same hydrographic subarea in which the impaired water body segment is located.
33	Yes	Fact Sheet, p.17	II.F.1.ii.b.	TMDL compliance-Additional Requirements	This section indicates that dischargers will need to identify any TMDL (for sediment) that applies to their project. In cases where the project discharges to a MS4 system it may not be possible to identify the exact receiving water. In such cases, the permit should allow the discharger to document that the receiving water information is not available.
34	Yes	Fact Sheet, p.17	II.F.2.a.	Technology-Based Numeric Action Levels (NALs)	This sections states that permit "...contains technology-based NALs for pH and turbidity, and requirements for effluent monitoring at all sites." This is not correct as effluent monitoring and NALs do not apply to Type 1 linear projects. This section should be revised to correct this mis-statement.

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
35	Yes	Fact Sheet, p. 18	II.F.2.a.ii.	Turbidity NAL - 250 NTU	This section establishes a 250 NTU NAL for turbidity but does not provide a rational for how this number was determined. This section should be revised to provide the justification for this level of NAL.
36	Yes	Fact Sheet, pp. 19-25	II.I.	Sampling, Monitoring, Reporting and Record Keeping-Linear Projects Sub-section 1 (pages 19 to 23) addresses "monitoring requirements" with reference to Risk Levels 1, 2 and 3 which, based on the permit's terminology, refers only to traditional projects, although the section is not labeled as such.	Based on the Fact Sheet description in Sub-section 2 (pages 23 to 25), it appears that linear projects are not subject to bioassessment. This is inconsistent with the Type 3 monitoring requirements in Attachment A for Type 3 projects (page 61). Sub-section 1 should be revised so that it is clear what is generally required of all projects and what is required for traditional projects. Sub-section 2 should be revised to address the "bioassessment" inconsistency.
37	Yes	Fact Sheet, p. 19	II.	Monitoring-Certified methods and personnel	For the field tests for pH and turbidity there is no requirement for State Certified analysis or personnel. State of California Certified labs and methods should be required for any testing that is required for compliance with the general permit or that could lead to violations, fines or enforcement. Without this requirement, there is a high risk of generating data of unknown quality, either by the discharger or by others (e.g., agencies, public). Personnel conducting the analyses should have to obtain training and demonstrate their proficiency with the analytical method.
38	Yes	Fact Sheet, p. 19	II.I.1.	Effluent monitoring	This section states that effluent monitoring is required for all Risk Levels but Table 4 shows that effluent and receiving water monitoring is not required for Risk Level 1. This section should be revised to correct this

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
39	Yes	Fact Sheet, p.20	II.I.1.a	Qualifying Rain Event This section states: "...qualifying rain event is one producing precipitation of ½ inch or more at the time of discharge..."	inconsistency. It is uncertain exactly what the phrase "...at the time of discharge" means. Additionally, is the ½ inch over a specified number of hours, a calendar day, etc., and from what starting time? This section should be revised to clarify its meaning.
40	Yes	Fact Sheet, pp.21-22	II.I.1.c.	Sampling locations This section states: "...must perform sampling and analysis of storm water discharges to characterize discharges associated with construction activity from the entire area disturbed by the project."	On a linear project this would be impractical given the number of potential runoff locations. To the extent this applies to linear projects, the permit should include a methodology for establishing a subset of representative sampling locations for Type 2 and 3 project areas (1 sample location per Type 2 or 3 project area).
41	Yes	Fact Sheet, p.22	II.I.1.c.	Table 5 – Non-Approved Method	Suspended Sediment Concentration (SSC) ASTM Method D3977-97 is not currently a recognized State of California certified test. The State of California DHS currently recognizes Standard Methods 2540 F. for "Settleable Solids"
42	Yes	Fact Sheet, p.22	II.I.1.c.	Water Quality – Effluent Sampling This section requires Risk Levels 2 and 3 collect to 3 samples per storm event beginning with the 1 st hour of discharge.	This language is inconsistent with the language in the errata sheet and should be corrected.
43	Yes	Fact Sheet, p.23	II.I.1.d.i.	Bioassessment is required for Risk Level 3 projects ≥ 30 acres.	One of the criteria for the bioassessment requirement is that the project has ≥ 30 acres of soil disturbance. This section should be revised to state that it applies to projects that have ≥ 30 acres of soil disturbance draining to a single sediment sensitive waterbody.

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
44	Yes	Fact Sheet, p.23	II.1.1.d.i.	<p>Table 6 requires all sampling events to include effluent and receiving water monitoring.</p> <p>The table infers that bioassessment is required for all sampling events</p>	<p>This table should clarify whether receiving water sampling should be conducted 3 times per day like the effluent monitoring.</p> <p>This table should clarify that bioassessments are conducted before the project commences and after the project is completed, not with each sampling event.</p>
45	Yes	Fact Sheet, pp.23-24	II.1.2.a & II.1.2.b.	<p>Type 1,2,3 LUP Monitoring requirements - Photos</p> <p>Linear projects "... must conduct daily visual inspections...". Additionally, "Photographs shall be taken during site inspections and submitted to the State Water Board."</p>	<p>The existing requirement in Order 2003-0007 for daily site inspections requires a daily review of the site to make sure that it is in acceptable shape at the end of the day. Qualified site personnel are able to conduct these inspections and the inspections are not intended to be recorded. This is an efficient requirement and supports water quality protection. The new requirement will significantly increase this effort and now require photos to be taken on a daily basis and be submitted to the State Water Board; this will be overwhelmingly burdensome. What was initially conceived as a good way to have site personnel conduct a visual inspection as part of other activities on the job will now become a full time job. The requirement to take photos during daily inspections and submit them to the State Water Board should be deleted.</p>
46	Yes	Fact Sheet, p.25	II.1.3.a.	<p>Reporting Requirements - NEL Violation Report</p> <p>The Fact Sheet states that "All Risk Level 3 and LUP Type 3 dischargers must electronically submit all storm event sampling results to the State and Regional Boards, via the electronic data system, no later than 5</p>	<p>As currently written, it is unclear whether this reporting requirement is necessary only when there is an exceedance of a daily average NEL or for all sample results collected during sampling required for NELs. It also requires that "all data", not just the data for the pollutant that exceeded the NEL, must be reported. This section should be revised to clarify that the reporting</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5, Section II.B.4)	What is the Concern?	Comment
47	Yes	Fact Sheet, p.25	II.1.3.a.	<p>days after the conclusion of the storm event."</p> <p>NEL Violation Notifications</p> <p>This section states: "The purpose of this is to notify the State and Regional Water Board, stakeholder agencies and organizations and the general public of the exceedance so that they can determine whether any follow-up (e.g., inspection, enforcement, etc.) is necessary to bring the site into compliance."</p>	<p>requirement is only applicable when there has been an exceedance of a NEL and that the only the data that should be reported is the data for the pollutant that exceeded the NEL.</p> <p>Five days is insufficient time to submit this information, especially if the end of the storm event is on a Wednesday, which from a practical standpoint means the report would need to be submitted on the Friday before the weekend.</p> <p>The permit should be revised to state that the data showing the exceedance shall be reported within 14 calendar days after the receipt of all of the monitoring results.</p>
					<p>It is our understanding that the State and Regional Water Boards have the regulatory responsibility to "...determine whether any follow-up (e.g., inspection, enforcement, etc.) is necessary to bring the site into compliance" and the other entities listed above would have these reports available to be informed. Therefore, this section should be revised to state:</p> <p>"The purpose of the electronic filing of the NEL Violation Report is to 1) inform stakeholder agencies and organizations and the general public, and 2) notify the State and Regional Water Board of the exceedance so that they can determine whether any follow-up (e.g., inspection, enforcement, etc.) is necessary to bring the site into compliance."</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
48	Yes	Fact Sheet, p.25	II.I.3.b.	<p>Reporting Requirements – NAL Exceedance Report</p> <p>The Fact Sheet states that "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."</p>	<p>As it is currently stated, it is unclear whether this reporting requirement includes "all storm event sampling results", or just the results for the pollutant that exceeded the NAL. This section should be revised to clarify that the reporting requirement is only applicable when there has been an exceedance of a NAL and that the only the data that should be reported is the data for the pollutant that exceeded the NAL.</p> <p>Ten days is insufficient time to submit this information.</p> <p>The permit should be revised to state that the data showing the exceedance shall be reported within 14 calendar days after the receipt of all of the monitoring data.</p>
49	Yes	Fact Sheet, p.26	II.I.3.c.	<p>Annual Report</p> <p>This section states that the annual report is to be submitted no later than September 1 of each year.</p>	<p>We support the 9/1 due date, given the period reported for is 7/1 to 6/30.</p> <p>The permit should define the compliance year to be from 7/1 to 6/30.</p>
50	Yes	Fact Sheet, p.27	Figure 1	<p>This Figure is the Statewide Map of K²LS</p>	<p>The KLS map in the fact sheet is virtually impossible to use. The SWRCB should make this map available as a standard GIS file so dischargers can determine which KLS area they are in.</p>
51		Fact Sheet, p.28	Section II.J.1.a.	<p>Definition of Sediment Sensitive Water Body not clear.</p> <p>"A sediment sensitive water body is either 1) on the most recent 303(d) list for waterbodies impaired for sediment ; 2) has a USEPA-</p>	<p>The definition of a Sediment Sensitive Water Body in this section is not consistent with the definition in Appendix 1. These sections should be revised to be consistent.</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
52	Yes	Fact Sheet, p.30	II.J.1.i.	<p>approved TMDL implementation plan for sediment; or 3) has the beneficial uses of COLD, SPAWN, and MIGRATORY.</p> <p>REAP</p> <p>Unclear criteria for when a REAP is required to be prepared.</p>	<p>This section states that a REAP must be prepared when there is a forecast of 50% or more chance of precipitation in the project area, but a "chance" according to NOAA is defined as 30%-50% probability of precipitation. Does this mean that a REAP is only required to be prepared when the probability of precipitation is considered "likely" or 60-70%?</p> <p>This section should clarify when a REAP is necessary.</p>
53	Yes	Fact Sheet, p.31	II.J.2.a.	<p>Linear Projects – Linear Risk Determination</p> <p>The Fact Sheet states "Once a project type for the LUP has been established, the complexity of the project must be determined. As described below, LUPs have been categorized into three project types."</p>	<p>Linear projects or project sections need to have the ability to be split into two or more "Types" identified by location along the path of the project. This will prevent a whole LUP from being assigned an artificially high (or low) Type due to a small segment that is a higher (or lower) risk.</p> <p>The above sentence should be revised to state: "Once a project has been determined to be a LUP, the complexity(ies) or Type(s) associated with different areas on the project must be determined. As described below, LUPs can be assigned one of three project types to different areas along the length of the project."</p>
54	Yes	Fact Sheet, p.31	II.J.2.a.i	<p>Linear Projects – Linear Risk Determination-Type 1 LUPs</p>	<p>This section defines Type 1 LUPs.</p> <p>In subsection (2) there are two bullets linked by the word "or". This appears to be a typographical error as Order 2003-0007 uses the word "and" to</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
55	Yes	Fact Sheet, pp. 32 - 33	II.J.2.c. to h.	<p>Linear Projects – Good Housekeeping, Non-Storm Water Management, Erosion Control, Sediment Control, Run-on and Runoff Control, Inspection, Maintenance and Repair</p> <p>Each of these sub-sections specifies measures to be implemented on linear projects that are identical to those required to traditional projects.</p> <p>Linear Run-on and Runoff Control</p> <p>This section states: "In order to ensure proper management of run-on and runoff, all LUPs must comply with the Run-on and Runoff Control measures specified in the General Permit. These requirements are identical to the Run-on and Runoff control requirements</p>	<p>link these two bullets. This section should be revised to replace the word "or" with the word "and."</p> <p>This section omits the other definitions of Type 1 based on sediment and receiving water risk determinations:</p> <ul style="list-style-type: none"> • Low sediment risk and low receiving water risk; • Low sediment risk and medium receiving water risk; and • Medium sediment risk and low receiving water risk. <p>The Fact Sheet should be revised to include these other definitions of Type 1 based on sediment and receiving water risk determinations.</p> <p>Linear projects have many unique circumstances and BMPs that are appropriate for traditional projects are not necessarily a good fit for linear projects. It is important to ensure that the BMPs fit the kind (traditional vs. linear) of project regulated. The language in each of these sub-sections should be revised to state that "These requirements are appropriate for LUPs."</p>
56	Yes	Fact Sheet, p.33	Section II.J. 2.g.	<p>Risk Level 1 discharges with lower risks to impact water quality are not subject to the run-on and run off control requirements unless an evaluation deems them necessary or visual inspections show that such controls are required." Who does the evaluation? What does it consist of? When is it done?</p>	<p>Risk Level 1 discharges with lower risks to impact water quality are not subject to the run-on and run off control requirements unless an evaluation deems them necessary or visual inspections show that such controls are required." Who does the evaluation? What does it consist of? When is it done?</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
57	Yes	Fact Sheet, pp. 35 - 36	Section II. L.	applicable to traditional construction projects." Post-Construction Requirements	This section also contradicts statement on Fact Sheet p. 30, which should be corrected. Although this Permit states that runoff requirements apply only to projects that lie outside of the jurisdictions covered by a Standard Urban Storm Water Management Plan or other more protective post construction requirements in either Phase I or Phase II permits, the state's permit authority under the Clean Water Act is limited to regulating the quality of the discharges from the regulated construction activity. Since these post-construction discharge standards are for complete they are outside the purview of this permit and should be deleted.
58	Yes	Fact Sheet, pp. 43 - 44	II.M	Storm Water Pollution Prevention Plans The Fact Sheet states: "...this General Permit requires that all SWPPPs be written, amended, and certified by a Qualified SWPPP Developer."	This requirement makes sense for large complex projects that have significant risk. However, for Type 1 projects, especially those conducted in existing developed areas, it is an unnecessary use of resources and expertise. These projects by definition are low risk and implement simple BMPs such as storm drain inlet protection and stockpile management. Because these are low risk projects they do not require the same level of expertise that is required of Type 2 and 3 LUPs. This section should be revised to allow QSDs for Type 1 projects to be "certified" solely through attending the SWRCB's training program. This same rationale should be used to allow QSPs for Type 1 projects to be "certified" solely through attending the SWRCB's training program. Based on the focus of this Permit (i.e., conventional footprint development projects), the SWRCB training is likely to focus only on standard

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
59	Yes	Fact Sheet, p. 46	II.M.	<p>Storm Water Pollution Prevention Plans</p> <p>The Fact Sheet states that: "The SWPPP must remain on the site during construction activities, commencing with the initial mobilization and ending with the termination of coverage under the General Permit."</p>	<p>land development projects. To the extent linear projects are covered by this Permit, the training also should address issues that are specific to linear projects.</p> <p>LUPs frequently do not have construction trailers on the construction site and therefore have no facility in which to maintain the SWPPP on-site. In these cases the SWPPP is retained in a crew member's vehicle (see Permit Section XIV.D - page 36). The Fact Sheet should be revised to include the following statement: "For LUPs the discharger shall make the SWPPP available at the construction site during working hours while construction is occurring and shall be made available upon request by a State or Municipal Inspector. When the original SWPPP is retained by a crewmember in a construction vehicle and is not currently at the construction site, current copies of the BMPs and map/drawing will be left with the field crew and the original SWPPP shall be made available via a request by radio/telephone. Once construction activities are complete, until stabilization is achieved the SWPPP shall be available from the SWPPP contact listed in the PRDs."</p>
60	Yes	Permit, p.1	Findings-General	<p>LUP Findings</p>	<p>The Order contains references to linear projects in Findings 2, 16, 20 and 45. Finding 2 mentions that linear projects are included in this permit. Finding 16 states that projects covered by this permit may have multiple discharges including those from linear projects each of which have specific permit requirements. Finding 20 describes linear projects. Finding 45 discusses determining the LUP risk Type. The permit</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
61	Yes	Permit,p.2	Finding 1.A.7.	Effective date – 100 days after adoption	<p>should be revised to clarify which findings are applicable to LUPs, which are applicable to traditional projects and which are applicable to both types of projects.</p> <p>Providing only 3 months, ten days is not enough time to train a large organization appropriately. The Permit should provide a longer transition time for permit implementation, such as July 1, 2010.</p>
62	Yes	Permit,p.4	Finding I.B.21.	<p>Activities Covered Under the General Permit</p> <p>This Finding states: "Discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities."</p>	<p>Simply having a discharge of sediment from these identified activities does not require a construction stormwater permit. It is when sediment discharges would cause the exceedance of a sediment related water quality standard that requires a permit.</p> <p>This finding should be revised to state: "Discharges from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities that have discharges that cause the exceedance of a sediment related water quality standard."</p>
63	Yes	Permit, pp.4-6	Findings in I.C.	<p>Activities Not Covered Under the General Permit</p> <p>These Findings describe activities that are not covered under the permit. In some cases the activities described are not considered "construction activity" and therefore are not subject to construction stormwater permitting.</p>	<p>This section should be revised to clarify that the activities described in Findings 23, 24, 25, 28, 31, 32, 33 and 34 are "not required to obtain construction stormwater permits", whereas the activities in Findings 26, 27, 29, 30, and 35 are "subject to other applicable permits or permitting mechanisms."</p> <p>These Findings also do not discuss the LUP construction activities that are either not subject to permitting or subject to other applicable permits or permitting mechanisms.</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
64		Permit, p.5	Finding 1.C.24.	New Definition of "Routine Maintenance"	<p>This section should be revised to also include Findings specific to LUPs. See comments on Fact Sheet Section II.C.</p> <p>This definition of routine maintenance is more complex and restrictive than the definition for the same term in Order 99-08. As currently defined, these activities would unnecessarily restrict/delay routine maintenance. This Draft GCP will be issued under the State's authority to implement the federal Clean Water Act's NPDES provisions. See, e.g., 1) Draft CGP § I.A.1-3 (General Findings; regulating discharges to "Waters of the United States"); and 2) Cal. Water Code § 13370(c) -California is implementing Chapter 5.5 to "avoid direct regulation" of the Clean Water Act by the federal government. The California Water Code and Clean Water Act require that California's NPDES program be consistent with the federal program, Water Code § 13372(a). However, EPA does not limit "routine maintenance" to "only road shoulder work, dirt or gravel road re-grading, or ditch clean-outs." See, e.g., 64 FR 68722, 68773; federal CGP for Large Construction Activity, App. A (definitions). To eliminate this inconsistency, the sentence purportedly limiting routine maintenance ("only to shoulder work, dirt or gravel road re-grading or ditch clean-outs) should be deleted.</p>
65	Yes	Permit, p.6	Finding 1.D.36.	Electronic Filing	<p>Electronic information format should: 1) be available for review and comment; 2) provide for consistent, reliable, and accurate reflection of an individual project; 3) allow administrative personnel to upload information for other authorized personnel to</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
66	Yes	Permit,p.6	Finding 37.	Existing Linear Projects This section states: "All existing projects covered by 99-08 and beyond the design stage are automatically Risk Level 1."	certify; 4) have linear and conventional sections; and 5) provide for multiple Types on a single LUP. This finding should be revised to state that existing linear projects that chose to file for coverage under the new CGP will also automatically become Risk Level 1.
67	Yes	Permit,p.7	Finding 1.F.43.	Training -Construction General Permit (CGP) Training Team	The requirement for these new positions (QSD and QSP) should be removed from the permit unless the SWRCB Construction General Permit (CGP) Training Team has been established, and has funding and the required training is available for persons and the required the permit is adopted. Alternately, training should not be required any sooner than 2 years after the training becomes available statewide.
68		Permit,p.7	Finding 1.G.45.	Evaluation of Risk.	Projects should not have the same risk throughout all phases. Once grading and stabilization is complete, their risk should be recalculated based on the vertical build phase and, as the risk level changes, so should their requirements.
69	Yes	Permit,p.7	Finding I.G.45.	Determining and Reducing Risk The Permit states: "Risk levels are established by determining two factors: first, calculating the project's sediment risk; and second, receiving water risk during periods of soil exposure (i.e. grading and site stabilization). Both factors are used to determine the site specific Risk Level(s)."	This Finding does not describe the other method of determining a LUP Type 1 (i.e., through the first flowchart in Attachment A.1). This Finding should be revised to state that a LUP Type 1 can also be determined through use of the first flowchart in Attachment A.1.
70	Yes	Permit,p.8	Finding	REAPS	REAPs are not applicable to LUPs. This Finding

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
			I.G.47.	The Finding states: "Therefore, a Rain Event Action Plan (REAP) is necessary to ensure that active construction sites have adequate erosion and sediment controls implemented prior to the onset of a storm event, even if construction is planned only during the dry season."	should be revised to clarify that REAPs are not applicable to LUPs.
71	Yes	Permit,p.8	I.G.48.	Soil Particle Size Analysis Requirements are complicated and impractical for a majority of projects.	The Draft Permit requires a soil particle size analysis for each project site (for percentages of sand, fines, silt, clay etc.). The analysis also should include a percentage of particles less than 0.02 mm. Section I.19. also implies that if the site includes soils with a high percentage of 0.02 mm particles, the Board may recommend an Advanced Treatment System (ATS) to alleviate the turbidity and long settling times of fine particles. This alternative is not realistic for most projects.
72	Yes	Permit,p.8	Finding I.H.50	NELs This section states: "The panel also concluded that numeric effluent limitations (NELs) are feasible for discharges from construction sites that utilize an ATS."	This implies that NELs are not feasible where it is not feasible to use an ATS. The permit should recognize this limitation if it implements NELs. This is particularly important in locations where safe access is limited on linear projects.
73	Yes	Permit,pp.8-9	Finding 1.H.50-52	Numeric Effluent Limits	See Comment #9 -- Use of Numeric Effluent Limits
74	Yes	Permit,p.9	Section H. 52.	The permit establishes an NEL for turbidity of 500 NTU.	See Overall Comment #2 - Establishment of a Turbidity NEL Additionally, as cited in the Storm Water Panel Recommendations to the California State Water Resources Control Board report "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5, Section II.B.4)	What is the Concern?	Comment
75	Yes	Permit,p.9	Finding I.H.52	<p>Based on the Panel Report, we believe it is inappropriate to establish NELs in this permit, especially for sites implementing BMPs rather than ATS.</p> <p>Linear projects will typically fit into the category of construction projects in smaller drainages making it infeasible to employ ATS. According to the Panel Report, without the use of ATS it is not possible to implement a numeric effluent limit. Therefore, linear projects should not be subject to numeric effluent limits, but rather utilize traditional BMPs.</p> <p>See Overall Comment #2 - Establishment of a Turbidity NEL</p> <p>Based on "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated With Municipal, Industrial and Construction Activities" (June 2006), it is</p>	<p>Municipal, Industrial and Construction Activities" (June 19, 2006) (or "Panel Report") contained a number of observations and recommendations concerning numeric effluent limits for construction projects, specifically:</p> <ul style="list-style-type: none"> • Where chemical addition is not permitted, then numeric limits are not likely feasible. • Non-active erosion and sediment control BMPs, while effective when applied and adequately maintained, produce more highly variable effluent quality, making setting numeric limits difficult, if not impossible. • A site could meet certain conditions to be considered stabilized for the runoff season, thus eliminating numeric limits.
		Permit,p.9	Finding I.H.52	<p>This section states: "Discharges of storm water from construction activities may become contaminated from sediment. For Risk Level 3 discharges, this General Permit establishes technology-based, numeric</p>	<p>Based on the Panel Report, we believe it is inappropriate to establish NELs in this permit, especially for sites implementing BMPs rather than ATS.</p> <p>Linear projects will typically fit into the category of construction projects in smaller drainages making it infeasible to employ ATS. According to the Panel Report, without the use of ATS it is not possible to implement a numeric effluent limit. Therefore, linear projects should not be subject to numeric effluent limits, but rather utilize traditional BMPs.</p> <p>See Overall Comment #2 - Establishment of a Turbidity NEL</p> <p>Based on "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated With Municipal, Industrial and Construction Activities" (June 2006), it is</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
76		Permit, p.9	Finding 1.H.55.	effluent limitations (NELs) for turbidity of 500 NTU. Exceedances of the turbidity NEL constitutes a violation of this General Permit."	<p>inappropriate to establish NELs in this permit, especially for projects implementing BMPs rather than ATS. LUPs will likely fit into the category of construction projects in smaller drainages making it infeasible to employ ATS. According to the above cited report, without the use of ATS it is not possible to implement a numeric effluent limit. Therefore, LUPs should not be subject to numeric effluent limits, but rather utilize traditional BMPs.</p> <p>The reporting requirements are overdone and too complex. These exceedances should be retained in the SWPPP and reported in the Annual Report.</p>
77	Yes	Permit, p.10	Finding 1.1.57.	Receiving Waters Delineation	<p>The Permit contains no guidance on limiting potential "Receiving Waters". If a project is miles away from a waterbody or discharges to a MS4 system where it is not obvious where it ultimately discharges, the Permit should allow documenting that the receiving water is unknown.</p> <p>This statement infers that a receiving water standard may be the de facto discharge limit when it is the more restrictive of the two limits. Receiving water limits are not necessarily effluent limits and the permit should make this clear.</p>
78	Yes	Permit, p.10	Finding 1.1.57	Receiving Water Limitations. This section states: "This General Permit requires all dischargers to determine the receiving waters potentially affected by their discharges and to comply with all applicable water quality standards, including more stringent standards applicable to a water body."	
79	Yes	Permit, pp.10-11	Findings	Sampling, Monitoring, Reporting and	These Findings require certain documents be

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5, Section II.B.4)	What is the Concern?	Comment
			I.J.59 & 65	Record Keeping	retained on the construction site until construction is complete. LUPs frequently do not have construction trailers on the construction site and therefore have no facility in which to maintain the SWPPP on-site. In these cases the SWPPP is retained in a crew member's vehicle (see Permit Section XIV.D.-page 36). After construction is complete, the SWPPP documents are retained at a company office, not on-site. The Permit Sheet should be revised to include the following statements: "For LUPs these documents may be retained in a crew member's vehicle and made available via a phone request." "After construction is complete, SWPPP documents may be retained at a corporate office."
80	Yes	Permit,p.10	Finding 1.J.61.and 62.	Bioassessment	Bioassessments should only be required if a Risk Level 3 project exceeds its NELs, is within a defined distance of a water body and the grading and stabilization part of the project exceeds 3 months or more. See Comment #79 - Sampling, Monitoring, Reporting and Record Keeping There is no California data for ATS performance. Place the word "expected" in front of "typical" and remove it after data over the next five years confirms expectations.
81	Yes	Permit,p.11	Finding 1.J.65	Records Retention	
82		Permit,p.11	Finding 1.K.67	ATS Performance	
83		Permit,p.11	Finding 1.K.67 through 1.K.69	NELs and ATS Performance	NELs for ATS units are not justified for ATS installations at this time or until the California experience is shown to mirror the experience elsewhere. NALs only are currently appropriate.

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
84		Permit,p.11	Finding 1.K.70.	ATS Throughput and the design storm	The Finding should provide process design and cost basis and rationale for the ten year storm criterion. This criterion is excessive for proper design. The five year storm is more appropriate and has been used in the permit in the numeric effluent limitations section (except it should reference NALs, which are more appropriate at this time). See Overall Comment #3 – Applicability of Post-Construction Requirements
85	Yes	Permit,pp.11-12	Findings I.L.71	Post-Construction Requirements This Finding states: "This General Permit includes performance standards for post construction that are consistent with State Water Board Resolution No. 2005-0006, "Resolution Adopting the Concept of Sustainability as a Core Value for State Water Board Programs and Directing Its Incorporation," and 2008-0030, "Requiring Sustainable Water Resources Management." 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. This "runoff reduction" approach is analogous in principle to Low Impact Development (LID) and will serve to protect related watersheds and waterbodies from both hydrologic-based and pollution impacts associated with the post-construction landscape."	The requirement to match pre-project hydrology is not reasonable or appropriate. This requirement would make it impossible to grade a conventional site. In addition, linear utility projects should be exempt from this condition. It would be impossible to mitigate volume or match pre-project hydrology on a long, narrow transmission project. Post construction standards do not belong in a construction permit. While we are sympathetic to the Board's frustration at the challenge of finding an appropriate permitting mechanism, this is not the appropriate permitting tool to do it. Requirements in this permit should go no further than the end of construction, rather than having unrelated issues tagged on to the end. This issue is of particular concern because the design and planning of post-construction issues must be addressed very early in the project design process; far before the construction permit is ever considered. LUPs typically do not add significant impervious surfaces and should be exempt from these requirements. Furthermore, Attachment A for

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
86	Yes	Permit, p.13		<p>Compliance Conditions</p> <p>The Permit states: "IT IS HEREBY ORDERED that all dischargers subject to this General Permit shall comply with the following conditions and requirements (including all conditions and requirements as set forth in Attachments A, B, C, D, E and F)".</p> <p>Linear Underground/Overhead Projects (LUPs)</p> <p>This section states: "All underground/overhead facilities typically constructed as Linear Underground/Overhead Projects (LUPs), shall comply with Attachment A."</p>	<p>LUPs does not have post-construction requirements. This Finding should be revised to clarify these post-construction requirements do not apply to LUPs.</p> <p>Attachments B, C, D and E do not apply to LUPs. This statement should be revised to clarify which attachments are applicable to LUPs.</p>
87	Yes	Permit, p.13	II.A.1.		<p>LUPs are also subject to Attachments A.1 and A.2. This section should also state that LUPs shall comply with Attachments A.1 and A.2.</p> <p>In the balance of the Order (Sections II.B through Section XVI), it is unclear what sections, if any are applicable to LUPs. Some of the information in these sections is duplicative of the information in Attachment A that is tailored to LUPs (e.g., Sections C, D, E, F, G and H in Attachment A), whereas some of the information in these sections is exclusively applicable to traditional projects (e.g., Sections VIII through XI, and XIII). It is critical to clarify what sections are applicable to LUPs.</p> <p>So, in addition to stating that LUPs shall comply with Attachment A, A.1 and A.2, this section should state that the balance of the Order is not applicable to LUPs except as stated in Attachment A. This will ensure clarity on what parts of the Order apply to LUPs.</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appax A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
					The way this section reads all LUPs need to comply with Attachment A, even those that are exempt from permitting requirements. Therefore it is important to either condition this statement or incorporate the language from Attachment A.2 (Projects and Activities Not Defined As Construction Activity) and oil and gas transmission projects that are exempt from permitting.
88	Yes	Permit, p.13	II.A.2	Conditions For Permit Coverage-Linear Underground/Overhead Projects (LUPs) The Permit states: "The utility company, municipality, or other public or private company or agency that owns or operates the linear underground/overhead project is responsible for obtaining coverage under the General Permit where the construction of pipelines, utility lines, fiber-optic cables, or other linear underground/overhead projects will occur across several properties."	The owner/operator of the LUP facility should be the permittee except in those situations where the LUP construction activities are covered under another construction stormwater permit. This sub-section should be revised to state: "The utility company, municipality, or other public or private company or agency that owns or operates the linear underground/overhead project is responsible for obtaining coverage under the General Permit unless the LUP construction activities are covered under another construction stormwater permit."
89		Permit, pp.13-14	II.B.1 through II.B.2	Entity Responsible for Obtaining Coverage. Land ownership, Right-of Ways ownership, and individual projects by either entity. Electronic PRDs	See Comment #21 - Obtaining Permit Coverage and Comment #22 - Obtaining Permit Coverage-Linear projects
90	Yes	Permit, p.14	II.B.2		Utility electronic PRDs should not be available to the general public except through specific requests that are screened for security purposes. Screening should be by both the SWRCB and the Utility Security Departments.
91	Yes	Permit, p.14	II.B.4.a.	New Projects-Permit Implementation	New projects after the permit is adopted have 14

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
92	Yes	Permit, p.14	II.B.4.a.	<p>Permit Coverage</p> <p>This section states: "Permit coverage shall not commence until the PRDs and the annual fee are received by the State Water Board...."</p>	<p>days to submit SWPPP and comply with permit. Existing projects have 100 days from permit adoption to comply with permit.</p> <p>Implementation of all of the new requirements within the permit will be extremely difficult, given the many new requirements, including the use of "certified" professionals which were not previously required. Given the numerous outstanding permittees (~20,000) that will be required to modify SWPPPs, train personnel and re-file for permit coverage; this will place a tremendous resource burden on the RWQCB staff. The phase-in of the proposed permit requirements should be extended over a longer period of time, such as until 7/1/2010.</p> <p>The permit does not provide any timeframe within which the SWRCB should respond with the WDID receipt letter. The permit should be revised to specify this timeframe.</p>
93	Yes	Permit, p.14	II.B.4.b.	<p>Existing Small LUP Permits and Paid Fees.</p> <p>Multi-projects in a RWQCB that have paid their annual fees</p> <p>Permit Coverage</p>	<p>Existing Small LUP Permits cover multiple projects in a RWQCB. We support the permit's provision to allow LUPs to continue under their existing permit until completed.</p>
94	Yes	Permit, p.15	II.B.5.	<p>This section states: "The Discharger is only considered covered by this General Permit upon receipt of a Waste Discharger Identification (WDID) number assigned and sent by the State Water Board..."</p>	<p>Section II.B.4 states that the PRDs shall be filed no later than 14 days (business or calendar?) prior to commencement of construction activities. It is unclear whether this implication that after 14 days the project would be approved provides the discharger the authorization to proceed with his project. If, alternately, the discharger must wait until he has a WDID receipt letter in hand it is imperative that: 1) the permit makes this clear, and 2) the SWRCB institutes an</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
					<p>electronic process that updates the discharger on the status of the approval and the WDID letter. The permit also should clarify a finite time in which the Regional Board has to send the WDID receipt letter.</p> <p>The permit should also provide a mechanism to be utilized in the event the SMART system is not functional.</p>
95	Yes	Permit, p.15	II.B.7.	<p>Obtaining Permit Coverage Traditional Construction Projects-</p> <p>Small Construction Rainfall Erosivity Waiver</p>	<p>This waiver is mentioned in the Traditional Projects section of the permit, but it should also apply to qualifying LUPs. The permit should be revised to clarify that this waiver is also applicable to qualifying LUPs.</p> <p>The permit is unclear whether a discharger that submits a waiver application will be issued a WDID receipt letter or some other authorization to proceed. The permit should be revised to clarify the process for applying for and having authorization to work under this waiver.</p>
96		Permit, p.16	II.C.2.e.	<p>Revised Fee submittal for change in acreage/ownership</p>	<p>30 days is a standard business invoice payment practice due to reasonable processing time. The permit should be revised to allow 30 business days.</p>
97	Yes	Permit, p.18	Section II. D. 3.b.	<p>RUSLE 2 method acceptable for termination of coverage.</p>	<p>The RUSLE 2 methodology should be provided for review and comment.</p>
98	Yes	Permit, p.23	IV.I.1.a.i.	<p>Electronic Signature and Certification Requirements - -The Draft Permit, as revised by the errata, specifies the terms "Legally Responsible Person" (or LRP), "Approved Signatory" and "Duty Authorized Representative"</p>	<p>The standard provision for signatories contained in EPA's NPDES regulations specify who has the authority for certifying and signing NPDES permit documents. Some documents (i.e., permit applications (notices of intent) and notices of termination) can only be signed by a "responsible corporate officer", a "general partner" or "proprietor", or a "principal executive officer" or "ranking elected official", depending on whether</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
					<p>the discharger is a corporation, partnership, sole proprietorship or public agency. The signature of other specified documents can be done by one of the above positions or can be delegated by one of the above positions to a "duly authorized representative" that meets certain criteria.</p> <p>The Draft Permit inexplicably revised EPA's standard provision to redefine the discharger into the "Legally Responsible Person" (or LRP) and the "Approved Signatory"; this both confusing and unnecessary. The Draft Permit also inexplicably redefines the role of the "Duly Authorized Representative" to the equivalent position of the discharger. These sections should be revised to be consistent with EPA's standard provisions.</p> <p>Additionally, utilities operate across large geographic areas and have many divisions of responsibility for company operations. As such, it is imperative that, consistent with EPA's regulations, the Draft Permit does not contain language that would preclude a corporation or other discharger from having one or more authorized signatories and/or duly authorized representatives.</p> <p>Furthermore, the Draft Permit proposes that almost all submittals to the SWRCB will be conducted electronically. The Draft Permit is not clear on the procedures that will be used for the electronic submittals. Since it is not practical for responsible corporate officials to individually prepare and upload the many submittals required by the Draft Permit, it is</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
99		Permit,p.28		NELs vs. NALS	imperative that the SWRCB's procedures for this process are designed in a flexible manner such that internally authorized administrative staff at corporations can also prepare and upload the submittals to the SWRCB web-site for the ultimate review and certification by a responsible corporate official or a duly authorized representative. EPA employs a similar procedure for their web-based construction general permit application process, wherein administrative staff can prepare and upload documents to EPA's web-site for certification by the responsible corporate official. See Comment #9 – Use of Numeric Effluent Limits
100	Yes	Permit, p. 29	Effluent Standards V.B. Section V.B.4	Electronic Reporting This section states: "If an analytical effluent sampling result is outside the range of pH NELs (i.e., is below the lower NEL for pH or exceeds the upper NEL for pH) or exceeds the turbidity NEL (as listed in Table 1), the discharger is in violation of this General Permit and shall electronically file the results in violation within 5 business days of obtaining the results." SWRCB sponsored or approved QSD Course This section states: "Effective [two years after the adoption date of this General Permit,] a QSD shall have attended a State Water Board-sponsored or approved QSD training course."	Five days is too little time to properly report this information and should be extended to 14 calendar days after receipt of the monitoring data.
101		Permit, pp.32-33	VII.B.1.h.	Risk Segments – Determined only by	In order for this stipulation to be included in the permit, the SWRCB should present their work plan including schedule for public review for feasibility of accomplishing that work. If there is no such program/devise for compliance, then there should be no violation of the permit condition.
102		Permit,p.34	VIII.		This section should clarify that it applies to

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
103	Yes	Permit, p.35	XIII.	<p>Watersheds Post-Construction Standards</p> <p>This section describes the runoff reduction requirements unless the project is located within an area subject to post construction standards of an active Phase I or II municipal separate storm sewer system (MS4) permit that has an approved Storm Water Management Plan.</p>	<p>traditional projects, not LUPs.</p> <p>LUPs typically do not add significant impervious surfaces and should be exempt from these requirements. This section should be revised to clarify that it does not apply to LUPs.</p>
104		Permit, p.35	XIII.A.4. footnote13	<p>Definition of first order stream</p>	<p>The term "stream" should exclude ephemeral and intermittent waters.</p>
105		Permit, p.37	XV.A.	<p>Risk Re-evaluation</p>	<p>The wording implies that the SWRCB/RWQCB is imposing a higher risk level without allowing a real reevaluation. The wording should allow a project proponent to demonstrate/explain their reevaluation for serious consideration by the SWRCB/RWQCB.</p>
106	Yes	Permit, p.37	XV.D.	<p>Additional Monitoring Requirements</p> <p>Regional Water Boards may require additional Monitoring and Reporting Program Requirements, including sampling and analysis of discharges to sediment-impaired water bodies.</p> <p>Annual Reports - Inclusion of all laboratory Reports.</p>	<p>This requirement should add "only when construction or land development is cited as source for the impairment" as stated at p. 31 of the Permit, Section VI. Receiving Water Limitations.</p>
107		Permit, p.38	XVI.D.1 through XVI.D.2	<p>Laboratory reports, including results, QA/QC, chain of custody, etc. can be bulky electronically as well as in paper format.</p>	<p>We suggest Reporting on DMR forms and keeping laboratory records on file at the laboratory or project office. The SWRCB should carefully consider the amount of administrative overhead this permit requires through all of the reporting mechanisms, including the annual report. As written, it will be extremely time consuming to implement the proposed requirements.</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4) XVI.D. and E.	What is the Concern?	Comment
108		Permit, p.38	XVI.D. and E.	Annual Report Forms	Will there be standard Annual Report Forms with adequate provision for comments on the data submitted?
109	Yes	Attachment A-1	A.2.a.	LUP Evaluation The attachment states: "The State Water Board website contains a project determination guidance flowchart. www.waterboards.ca.gov ".	The referenced flowcharts should be incorporated into this Attachment as it contains information critical to understanding the Permit requirements.
110	Yes	Attachment A-1	A.2.b	Type determination This sub section states: "Identify which Type(s) (1, 2 or 3 described in Section I below) are applicable to the project or project sections based on project sediment and receiving water risk." This section states that Type is based on "... sediment and receiving water risk..." Type is also based on the factors in the flowchart on page 1 of Attachment A.1.	The above sentence should be revised to state: "Identify which Type(s) (1, 2 or 3 described in Section I below) are applicable to the project areas or project section areas based on the flowcharts in Attachment A.1."
111	Yes	Attachment A-1	A.3	LUP Projects The attachment states: "Attachment A.1 contains a flow chart to be used when determining if a linear project qualifies for coverage."	The referenced attachment actually contains two flowcharts used to determine LUP Types. The flowcharts that are used to determine whether a project qualifies as a LUP are only referenced in this permit as being available on the SWRCB website. These flowcharts should be added to Attachment A.1 since they contain information critical to determining how a LUP is permitted. The above sentence should be revised to state "Attachment A.1 contains flow charts to be used when determining if a linear project

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
112	Yes	Attachment A, p.1	A.3	"Project" & "Project Sections"	<p>qualifies for coverage and to determine LUP types."</p> <p>The attachment needs more clarification on how a linear project is described. For LUPs, the permit currently references "Projects" and "Project Sections." This appears to be analogous to a Project that in total distance goes from point A to point C, consisting of two sections that are from point A to point B and from point B to point C. The sections may be defined by a number of factors, such as developed/undeveloped areas, different contractors, different construction periods, etc. Additionally, within each section there may be differing conditions (e.g., geographical, geological, receiving water conditions, etc.) that would affect the risk determination for the different areas within that segment. Therefore, the permit should clearly state that within a permitted Project or Project Section, there can be areas with different risk levels. Section A.2.b indicates this (Identify which Type(s) ... are applicable to the project or project sections based on project sediment and receiving water risk).</p>
113	Yes	Attachment A, p.2	A.3	LUP Permitting The permit states: "Sections shall be determined based on portions of a project conducted by one contractor."	<p>LUPs may be broken into sections for permitting purposes for a number of reasons, not just because portions of the project are constructed by different contractors. The rest of the paragraph appears to recognize this fact. Therefore, this sentence should be revised to state: "Sections may be determined based on portions of a project conducted by one contractor."</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5, Section II.B.4)	What is the Concern?	Comment
114	Yes	Attachment A, p.2	B.2	<p>Site Maps</p> <p>The permit states: "The first map will be a zoomed² 500 ft vicinity map that shows the starting point of the project. The second will be a zoomed map of 500 ft showing the ending location of the project. The third will be a larger view vicinity map, 1000 ft to 2000 ft, displaying the entire project location, and indicating the LUP type (1, 2 or 3) segments within the total project footprint."</p> <p>Segments</p>	<p>Bottom line, linear project proponents should be permitted to select the most reasonable project sections independently.</p> <p>It is unclear what a "500 ft" map is. Is this 1" = 500 ft? Please clarify.</p>
115	Yes	Attachment A, p.2	B.2	<p>The permit states: "The third will be a larger view vicinity map, 1000 ft to 2000 ft, displaying the entire project location, and indicating the LUP type (1, 2 or 3) segments within the total project footprint."</p>	<p>To maintain consistent use of terminology within the permit for LUPs this sentence should be revised to state "The third will be a larger view vicinity map, 1000 ft to 2000 ft, displaying the entire project location, and indicating the LUP type (1, 2 or 3) areas within the total project or project section footprint."</p>
116	Yes	Attachment A, p.4	C.2	<p>LUP Termination</p> <p>This section states: "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 and that it is now compliant with soil stabilization requirements where appropriate."</p>	<p>This certification is required to obtain termination under the permit. However, the way the language is written, if a project was not in full compliance at any point during the permit term, the certification cannot be made and the permit cannot be terminated. There should be a way for a project that had some kind of non-compliance that was corrected to be able to terminate the permit once the stabilization criteria are met.</p> <p>This sentence should be revised to state: "By submitting an NOT, the LRP is certifying that construction activities for an LUP are complete and that the project is in full</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
117	Yes	Attachment A, p.4	C.4	<p>LUP Termination</p> <p>This section states: "The LRP may terminate coverage under this General Permit when all LUPs currently authorized pursuant to this General Permit have been permitted under an individual or another construction storm water general permit."</p> <p>Non-Storm Water</p> <p>This section states: "Non-storm water discharges authorized by this General Permit⁴ include, but are not limited to irrigation of vegetative erosion control measures, pipe flushing and testing,⁵ street cleaning, and dewatering,⁶ and "The discharger shall notify the Regional Water Board of any anticipated non-storm water discharges not authorized by this General Permit to determine the need for a separate NPDES permit."</p>	<p>compliance with requirements of this General Permit and that it is now compliant with soil stabilization requirements where appropriate."</p> <p>This section comes from Order 2003-0007 and applied to the complete termination of permit coverage under Tier 1 of the permit. It is not applicable to this permit and should be deleted.</p>
118	Yes	Attachment A, p.5	D.6	<p>Location of SWPPP and Records</p> <p>This section states: "These records shall be available at the construction site until construction is completed."</p>	<p>The permit only specifies four authorized non-storm water dischargers in the first reference above, but indicates other authorized non-stormwater discharges may exist but does not identify them. The second reference above requires notification of the RWQCB whenever any non-authorized non-stormwater discharge is anticipated. The lack of a complete list of authorized non-stormwater dischargers will cause confusion for dischargers and this section should be revised to state the complete list (see Orders 99-08 and 2003-0007) of authorized non-storm water discharges. Also, Order Section III.C lists additional authorized non-storm water discharges that should be included in this section.</p>
119	Yes	Attachment A, p.8	E.7.a.		<p>As the permit recognizes elsewhere, linear projects may not have a construction trailer located on-site and the SWPPP may alternately be available from a crew member who retains it within his vehicle. This section should be revised to allow for these documents to be retained in a crew member's vehicle and available via a phone request.</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
120	Yes	Attachment A, p.9	E.9.a.	<p>Electronic Signature and Certification Requirements –</p> <p>The Draft Permit, as revised by the errata, specifies the terms "Legally Responsible Person" (or LRP), "Approved Signatory" and "Duly Authorized Representative"</p>	<p>The standard provision for signatories contained in EPA's NPDES regulations specify who has the authority for certifying and signing NPDES permit documents. Some documents (i.e., permit applications (notices of intent) and notices of termination) can only be signed by a "responsible corporate officer", a "general partner" or "proprietor", or a "principal executive officer" or "ranking elected official", depending on whether the discharger is a corporation, partnership, sole proprietorship or public agency. The signature of other specified documents can be done by one of the above positions or can be delegated by one of the above positions to a "duly authorized representative" that meets certain criteria.</p> <p>The Draft Permit inexplicably revised EPA's standard provision to redefine the discharger into the "Legally Responsible Person" (or LRP) and the "Approved Signatory"; this both confusing and unnecessary. The Draft Permit also inexplicably redefines the role of the "Duly Authorized Representative" to the equivalent position of the discharger. These sections should be revised to be consistent with EPA's standard provisions.</p> <p>Additionally, utilities operate across large geographic areas and have many divisions of responsibility for company operations. As such, it is imperative that, consistent with EPA's regulations, the Draft Permit does not contain language that would preclude a corporation or other discharger from having one or more authorized signatories and/or duly authorized representatives.</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
					<p>Furthermore, the Draft Permit proposes that almost all submittals to the SWRCB will be conducted electronically. The Draft Permit is not clear on the procedures that will be used for the electronic submittals. Since it is not practical for responsible corporate officials to individually prepare and upload the many submittals required by the Draft Permit, it is imperative that the SWRCB's procedures for this process are designed in a flexible manner such that internally authorized administrative staff at corporations can also prepare and upload the submittals to the SWRCB web-site for the ultimate review and certification by a responsible corporate official or a duly authorized representative. EPA employs a similar procedure for their web-based construction general permit application process, wherein administrative staff can prepare and upload documents to EPA's web-site for certification by the responsible corporate official.</p>
121	Yes	Attachment A, p. 13	Table 1	<p>Turbidity NEL The table states that the turbidity NEL for Risk Level 3 projects is 500 NTU.</p>	<p>See Overall Comment #2 - Establishment of a Turbidity NEL</p>
122	Yes	Attachment A, p. 13	F.2.a.iv & v	<p>NELs These sub-sections state the NELs applicable to this permit.</p>	<p>It is premature to include NELs in this Permit as a sound basis for the actual numbers has yet to be established. However, to the extent that NELs are retained in the Permit, these sections need to correctly state that these are "daily average" limits. Therefore, these sections should be revised to state:</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
123	Yes	Attachment A, p. 13	F.2.b.	<p>Violations of NELs</p> <p>This section states "if an analytical effluent sampling result is outside the range of pH NELs (i.e., is below the lower NEL for pH or exceeds the upper NEL for pH) or exceeds the turbidity NEL (as listed in Table 1), the discharger is in violation of this General Permit and shall electronically file the results in violation within 3 business days of obtaining the results."</p>	<p>"For LUP Type 3 dischargers, the daily average pH of storm water and non-storm water discharges..."</p> <p>For LUP Type 3 dischargers, the daily average turbidity of storm water and non-storm water discharges..."</p> <p>For clarity and consistency with the wording within this section, this sentence should be revised to state "if an NEL daily average limit is exceeded, the discharger..."</p> <p>Also, as previously commented on, 3 days is too short of a period of time to file this information. It should be revised to 14 calendar days from the time all of the monitoring results are received.</p>
124	Yes	Attachment A, p. 14	F.2.c.	<p>Compliance Storm Event</p> <p>This section states: "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..."</p>	<p>There are several issues with the design storm size.</p> <ul style="list-style-type: none"> ▪ 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 five year storm only has a 20% chance of being exceeded in a single year. ▪ The design volume or design flow of construction BMPs has not been determined. It is unknown what storm size or design flow most construction BMPs can accommodate and still prevent erosion or sedimentation. ▪ The Fact Sheet addresses the selection of the 5-year 24-hour storm by saying that it occurs "relatively infrequently, and is smaller than the

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
125	Yes	Attachment A, p. 14	F.3.d.	Numeric Action Levels This section states: "For LUP Type 2 and 3 dischargers, the lower NAL for pH is 6.5 pH units and the upper NAL for pH is 8.5 pH units. The LUP discharger shall take actions as described below if the discharge is outside of this range of pH values."	10-year storm." Both of these conditions are arbitrary, and do not provide a basis for selecting a 5-year storm. The principles of Best Professional Judgment cannot be used to select a design storm, without sound science and research to justify the selection. <ul style="list-style-type: none"> We recommend reducing the size of the design storm for this permit term and utilize this permit cycle for data collection. Once additional data have been collected, the State Board can re-evaluate the design storm at the time the next construction general permit is written.
126	Yes	Attachment A, p. 14	F.3.e.	Numeric Action Levels This section states: "For LUP Type 2 and 3 dischargers, the NAL for turbidity is 250 NTU. The discharger shall take actions as described below if the discharge is outside of this range of turbidity values."	Similar to the NELs, the NALs should be implemented as daily averages. This section should be revised so it is clear the action levels are daily averages and that "The LUP discharger shall take actions as described below if the daily average discharge is outside of this range of pH values." This section specifies the NAL for turbidity, but does not clarify that it is a daily average limit. The subsection should be revised so it is clear the action level is a daily average NAL and "The discharger shall take actions as described below if the daily average discharge is above the turbidity NAL."
127	Yes	Attachment A, p. 14	F.3.f.	Numeric Action Levels- Violation response This section states: "Whenever an analytical effluent monitoring result indicates that the discharge is below the lower NAL for pH,	This section should be revised so it is clear that the NALs are daily averages. This section should be revised to clarify that when "a daily average NAL" is exceeded that the LUP discharger should take the described actions

CCIEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
128	Yes	Attachment A, p. 15	H.2	exceeds the upper NAL for pH, or exceeds the turbidity NAL (as listed in Table 1), the LUP discharger shall conduct a construction site and run-on evaluation to determine whether pollutant source(s) associated with the site's construction activity may have caused or contributed to the NAL exceedance and shall immediately implement corrective actions if they are needed."	Type 1 LUP projects are very simple, and have very little associated risk of sediment discharge. We recommend that the Permit remove QSD requirements for Type 1 LUP projects.
129	Yes	Attachment A, p. 17	I	<p>QSD</p> <p>This section states: "The LUP discharger shall ensure that all SWPPPs be written, amended and certified by a Qualified SWPPP Developer (QSD.)"</p> <p>Types of Linear Projects</p> <p>This section states: "This attachment establishes three types (Type 1, 2 & 3) of project section based on threat to water quality. Project segment Types are determined through Attachment A.1."</p>	<p>In various locations, the Permit uses several different terms to describe LUPs, including "project", "project section", "project section area", "segments" and "portions". The Permit should be clear that projects can be permitted under one permit or can be split into logical sections for separate permits for each section. Furthermore, for each project or project section, one or more risk areas can be determined so that one project or project section may have one or more Types, depending on the associated risk levels identified along the length of the project or project section.</p> <p>The above sentence should be revised to state: "This attachment establishes three types (Type 1, 2 & 3) of complexity for areas in a project or a project section based on threat to water quality."</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
130	Yes	Attachment A, p. 17	I	<p>Type 1 LUPs</p> <p>This section states: "This attachment establishes three types (Type 1, 2 & 3) of complexity for segments within an LUP or project section based on threat to water quality. Project segment Types are determined through Attachment A.1.</p> <p>The Type 1 requirements below establish the baseline requirements for all LUPs subject to this General Permit. Additional requirements for Type 2 and Type 3 LUPs are labeled."</p>	<p>This section correctly states that "types" of LUPs can be established for segments within a LUP or project section. It is important that one or more risk segments or areas can be established with a LUP or project section. The permit appears to use the terms "segment" and "area" interchangeably throughout Attachment A, A.1 and A.2. A single term (e.g., "area") should be used consistently to provide clarity.</p> <p>Much of the information contained in Sections I.1, I.2 and I.3 is duplicative. It would make for a cleaner document to condense this into one section. Where there are additional requirements for Type 2 or Type 3, these could be hi-lighted. The above language should be revised to state:</p> <p>"The requirements below in non-bolded type are baseline requirements for all LUPs subject to this General Permit. Additional requirements for Type 2 and Type 3 LUPs are labeled."</p>
131	Yes	Attachment A, pp.17-18	I.1.a.	<p>Type 1 LUPs</p>	<p>This section describes a Type 1 LUP in terms of a Tier 1 project under Order 2003-0007. However, in this permit a Type 1 also includes some projects based on risk to sediment and receiving waters as follows:</p> <ul style="list-style-type: none"> • Low sediment risk and low receiving water risk; • Low sediment risk and medium receiving water risk; and • Medium sediment risk and low receiving water risk. <p>This section should be revised to include these other definitions of Type 1 based on</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
132	Yes	Attachment A, pp.18, 24 and 31	I.1.b.i.1.b; I.2.b.i.1.b; I.3.b.i.1.b.	<p>Effluent Standards</p> <p>This section states: "LUP dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants."</p>	<p>sediment and receiving water risk determinations.</p> <p>As written, this standard could be interpreted to require the use of controls, structures, and management practices, although the standard may be able to be achieved with the use of one or more of these controls. This section should be revised to state:</p> <p>"LUP dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and/or management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants."</p>
133	Yes	Attachment A, pp.19, 25 and 32	I.1.b.ii.1.a; I.2.b.ii.1.a; I.3.b.ii.1.a.	<p>Good Housekeeping-Inventory</p> <p>These sections state: "Conduct an inventory of the products used and/or expected to be used and the end products that are produced and/or expected to be produced."</p>	<p>Since a physical "inventory" cannot be conducted prior to commencement of a project and this information is required to prepare the SWPPP which is required to be completed prior to commencing construction project, it would be more appropriate to use the term "identify." Also, the identification should be of types of materials as opposed to a specific parts list with quantities as the actual materials and number of items will always be changing. The materials included in the identification should exclude materials and equipment that are designed to be outdoors and exposed to the environment (e.g., poles, equipment pads and cabinets, conductors, insulators, bricks, etc.).</p> <p>These sections should be revised to state:</p> <p>"Identify the products used and/or expected to be used and the end products</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
134	Yes	Attachment A, pp.19, 25 and 32	I.1.b.ii.1.b; I.2.b.ii.1.b; I.3.b.ii.1.b	Good Housekeeping-Stockpiles These sections state: "Cover and berm loose stockpiled construction materials that are not actively being used (i.e. soil, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.)."	that are produced and/or expected to be produced. This does not include materials and equipment that are designed to be outdoors and exposed to the environment (e.g., poles, equipment pads and cabinets, conductors, insulators, bricks, etc.)." Covering all stockpiled construction materials is not always feasible or appropriate. Alternate BMPs (e.g., tackifiers) may be used for soil piles that are too large to cover. Other materials that are designed to be outdoors and exposed to the environment should not require covering. This section should be revised to state: "Protect loose stockpiled construction materials that are not actively being used (i.e. soil, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.) from erosion (this requirement is not applicable to materials that are designed to be outdoors and exposed to the environment)."
135	Yes	Attachment A, pp.19, 25 and 32	I.1.b.ii.1.c; I.2.b.ii.1.c; I.3.b.ii.1.c	Good Housekeeping-Chemical storage This section states: "Store chemicals in watertight containers or in a storage shed (completely enclosed), with appropriate secondary containment to prevent any spillage or leakage."	This section appears to require secondary containment around a storage shed when the chemicals are already under cover. A clearer revision would read: "Store chemicals in watertight containers (with appropriate secondary containment to prevent any spillage or leakage) or in an enclosed storage shed."
136	Yes	Attachment A, pp.19, 25 and 32	I.1.b.ii.1.d; I.2.b.ii.1.d; I.3.b.ii.1.d.	Good Housekeeping-Construction Materials This section states: "Minimize exposure of	Many materials are designed to be outdoors and exposed to the environment and should not require covering. This section should be revised to state:

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
137	Yes	Attachment A, pp.19, 25 and 32	I.1.b.ii.1.e; I.2.b.ii.1.e; I.3.b.ii.1.e.	construction materials with precipitation." Good Housekeeping-Tracking These sections state: "Implement BMPs to prevent the off-site tracking of loose construction and landscape materials."	"Minimize exposure of construction materials with precipitation (this requirement is not applicable to materials that are designed to be outdoors and exposed to the environment)." LUPs do not always have one or two main entrances and exists from their construction site since the "site" can occur over a long distance. In some cases where a LUP parallels an existing road, rather than construct a separate dirt access road that parallels the existing road, short spur roads may be constructed to each pole from the existing road. This can decrease the actual soil disturbance on the project. In such cases there may be logistical or safety reasons for not establishing physical tracking controls at each entrance or exit. However, inspections and sweeping can be conducted as required to manage tracking issues. These sections should be revised to state: "Implement BMPs to control the off-site tracking of loose construction and landscape materials."
138	Yes	Attachment A, pp.19-20, 25-26 and 32-33	I.1.b.ii.2.a&i; I.2.b.ii.2.a&i; I.3.b.ii.2.a&i.	Good Housekeeping-Waste Management These sections state: "(a) Prevent disposal of any rinse or wash waters or materials on impervious or pervious site surfaces or into the storm drain system." "(i) Ensure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is	When LUPs conduct trenching and backfill with concrete or concrete slurry, it is helpful to be able to rinse into the trench onto the poured concrete/slurry where the rinse is incorporated into the poured material and contained from running off. These sections should recognize this practice and be revised to state: "(a) Prevent disposal of any rinse or wash waters or materials on impervious or

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
139	Yes	Attachment A, pp.19, 26 and 33	I.1.b.ii.3.b; I.2.b.ii.3.b; I.3.b.ii.3.b.	<p>no discharge into the underlying soil and onto the surrounding areas."</p> <p>Good Housekeeping-Vehicles</p> <p>These sections state: "Place all equipment or vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs."</p>	<p>pervious site surfaces or into the storm drain system (see Section I.1.b.ii.2.i for concrete wash waters)."</p> <p>"(i) Ensure the containment of concrete washout areas. Concrete washout waters may be discharged to a trench or excavation where a concrete pour has occurred when it will contain the washout waters."</p> <p>LUPs do not always have a specified location on a project for maintenance or fueling. Where vehicles and equipment are not fueled off-site they may be fueled by portable refuelers. In such cases, appropriate BMPs are employed. These sections should be revised to state:</p> <p>"Implement appropriate BMPs whenever equipment or vehicles are fueled, maintained or stored."</p>
140	Yes	Attachment A, pp. 20, 26 and 33	I.1.b.ii.4.c; I.2.b.ii.4.f; I.3.b.ii.4.c.	<p>Good Housekeeping-Landscape Material Application</p> <p>This section states: "Discontinue the application of any erodible landscape material within 2 days before a forecasted rain event or during periods of precipitation."</p>	<p>Permittees are required to "...obtain the precipitation forecast information from the National Weather Service Forecast Office (http://www.srh.noaa.gov/)."</p> <p>A review of this site found that it uses terminology such as the following in their predictions of precipitation:</p> <ul style="list-style-type: none"> • "slight chance of drizzle" • "20 percent chance of showers" • "Isolated showers" • "slight chance of showers" • "A 10 percent chance of showers and thunderstorms before 11pm" • "20 percent chance of showers" and thunderstorms". <p>It is unclear whether any or all of these forecasts of precipitation would be subject to this</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
141	Yes	Attachment A, pp. 21, 27 and 34	I.1.b.ii.6; I.2.b.ii.6; I.3.b.ii.6.	<p>Good Housekeeping-Air Deposition</p> <p>These sections state: "LUP Type 1 (2 & 3) dischargers shall implement good housekeeping measures on the construction site to control the air deposition of site materials and from site operations. Such particulates can include, but are not limited to, sediment, nutrients, trash, metals, bacteria, oil and grease and organics."</p>	<p>requirement, especially in southern California where actual precipitation is many times unlikely with these types of predictions.</p> <p>These sections should be revised to clarify what type of forecasts trigger these requirements. This could be accomplished through a definition of "forecasted rain event", such as: A forecasted rain event is whenever 30% or more chance of rain or showers is predicted. A rain event does not include predictions of "drizzle".</p> <p>BMPs are used to control dust on LUPs, however it is unclear how nutrients, trash, metals, bacteria, oil and grease and organics would become "air deposition" issues. These sections should be revised to state: "LUP dischargers shall implement BMPs to control dust on projects."</p>
142	Yes	Attachment A, pp. 22, 28 and 35	I.1.b.iv.2; I.2.b.iv.2; I.3.b.iv.2.	<p>Erosion Control - Soil Cover</p> <p>These sections state: "LUP Type 1 (2 & 3) dischargers shall provide effective soil cover for inactive⁹ areas and all finished slopes, open space, utility backfill, and completed lots."</p>	<p>LUPs do not have "completed lots" or "open spaces" and this should be deleted from this section and revised so it states: "LUP Type 1 (2 & 3) dischargers shall provide effective soil cover for inactive⁹ areas and all finished slopes and utility backfill."</p>
143	Yes	Attachment A, pp. 22, 28 and 35	I.1.b.v.1; I.2.b.v.1; I.3.b.v.1.	<p>Sediment Control - Perimeter Control</p> <p>These sections state: "LUP Type 1 (2 & 3)</p>	<p>It is not reasonable to require a large linear project to implement perimeter controls along miles of linear construction. This would result in a</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
144	Yes	Attachment A, pp. 22, 29 and 36	I.1.b.vi.1; I.2.b.vi; I.3.b.vi.	<p>dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits sufficiently to control erosion and sediment discharges from the site."</p> <p>Run-on and Run-off Controls</p> <p>These sections state: "</p> <p>"LUP Type 1 (2 & 3) dischargers shall evaluate the quantity and quality of run-on and runoff through observation and sampling. LUP Type 1 dischargers shall effectively manage all run-on, all runoff within the site and all runoff that discharges off the site. Run-on from off-site shall be directed away from all disturbed areas or shall collectively be in compliance with the effluent limitations in this Attachment."</p>	<p>hydrologic barrier across miles of landscape in natural areas, and would be impracticable on active city streets. Alternatively, appropriate sediment control BMPs should be placed where necessary to protect storm drains and/or receiving waters.</p> <p>Construction access points are constantly moving along large linear projects; thus, stabilization of each "entrance" is unreasonable and may not be safe at some locations. Alternative BMPs should be allowed, for example, sweeping.</p> <p>This section should be revised to state:</p> <p>"LUP dischargers shall establish and maintain effective perimeter controls, as needed, and implement effective BMPs for construction entrances and exits to minimize sediment tracking."</p>
					<p>In urban areas this requirement presumably would require sampling water running down curbs and gutters. Requiring a run-on evaluation, especially sampling, for all run-on locations may be feasible for a confined site (e.g. conventional footprint development construction project) but it is not realistic for large linear projects with multiple drainage sites or for those projects located in existing developed areas (e.g., paved streets). These sections should be revised to state:</p> <p>"LUP dischargers shall evaluate the quantity and quality of run-on and run-off through observation. LUP dischargers shall effectively manage all run-on, all run-off within the site and all run-off that discharges off the site. Run-on from off-</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5, Section II.B.4)	What is the Concern?	Comment
145	Yes	Attachment A, pp. 22, 29 and 36	I.1.b.vii; I.2.b.vii; I.3.b.vii	Inspection, Maintenance and Repair	site shall be directed away from all disturbed areas or shall collectively be in compliance with the applicable effluent limitations in this Attachment.” These sections are largely duplicative of the Monitoring and Reporting Requirements contained in Section L of Attachment A. These requirements should be consolidated together in one section or the other.
146	Yes	Attachment A, pp. 23, 29 and 36	I.1.b.vii.2; I.2.b.vii.2; I.3.b.vii.2	Inspection, Maintenance and Repair- Weekly Inspections These sections state: "LUP Type 1 dischargers shall perform weekly inspections and observations, and at least once each 24-hour period during extended storm events, to identify BMPs that need maintenance to operate effectively, that have failed, or that could fail to operate as intended. Inspectors shall be the QSP or be trained by the QSP."	In addition to these section requiring weekly and pre- and post-rain event inspections, the permit also requires daily visual inspections to be conducted. These inspection requirements are actually more intensive than those required for traditional projects (i.e., weekly and pre- and post-rain event inspections). <u>Type I</u> Under Order 2003-0007, Tier I projects are not required to conduct weekly or rain event inspections because Tier I projects are required to be "buttoned up" at the end of the work day and to conduct visual inspections "...daily during working hours and in conjunction with other daily activities in areas where active construction is occurring." Per the above language, Type 1 LUPs, in addition to daily inspections, are required to conduct weekly inspections and rain event inspections which are not appropriate for low risk projects. These sections should be revised to state: "Type LUPs shall conduct visual inspections daily during working hours and in conjunction with other daily activities in areas where active construction is occurring. These inspections

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
147	Yes	Attachment A, pp. 23, 29 and 36	I.1.b.vii.4; I.2.b.vii.4; I.3.b.vii.4.	<p>Inspection, Maintenance and Repair- Inspection Checklist</p> <p>These sections state: "For each inspection required, LUP Type 1 dischargers shall complete an inspection checklist, using a form provided by the State Water Board or Regional Water Board or in an alternative format."</p>	<p>are not required to be recorded."</p> <p>Types 2 & 3</p> <p>Type 2 & 3 LUPs should also be required to conduct unrecorded daily visual inspections along with pre- and post-rain event inspections. These sections should be revised to state: "Type LUPs shall conduct visual inspections daily during working hours and in conjunction with other daily activities in areas where active construction is occurring. These inspections are not required to be recorded. Additionally, LUPs shall conduct inspections within 2 business days prior to each qualifying rain event and within 2 business days after each qualifying rain event to identify BMPs that need maintenance to operate effectively, that have failed, or that could fail to operate as intended. Inspectors shall be the QSP or be trained by the QSP."</p> <p>The daily inspections should not be required to be recorded. However, the pre- and post-rain event inspections should be recorded. These sections should be revised to state: "For each pre- and post-rain event inspection required, LUP dischargers shall complete an inspection checklist, using a form provided by the State Water Board or Regional Water Board or in an alternative format."</p>
148	Yes	Attachment A, pp. 23, 30 and 37	I.1.b.vii.5; I.2.b.vii.5; I.3.b.vii.5.	<p>Inspection, Maintenance and Repair- Checklist Location</p> <p>These sections state: "The LUP Type 1</p>	<p>For LUPs, the SWPPP may not always be on-site because many times a LUP does not have a construction trailer.</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
149	Yes	Attachment A, pp.28 and 35	I.2.b.v.3; I.3.b.v.3.	<p>discharger shall ensure that the checklist remains onsite with the SWPPP."</p> <p>Sediment Controls – Additional Requirements - Areas Under Active Construction</p> <p>These sections state: "LUP Type 2 (and 3) dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active¹⁰ construction."</p>	<p>These sections should be revised to state: "The LUP discharger shall ensure that the checklist remains onsite or with the SWPPP."</p> <p>Erosion control BMPs (e.g., soil stabilization) are used to prevent soil from being dislodged and carried off by storm water. These controls are not compatible with areas of active construction. They are more appropriate in areas where active construction is not occurring.</p> <p>These sections should be deleted.</p>
150	Yes	Attachment A, pp. 29 and 36	I.2.b.v.7; I.3.b.v.7.	<p>Sediment Controls – Additional Requirements - Areas Under Active Construction</p> <p>These sections state: "LUP Type 2 dischargers shall inspect on a daily basis all immediate access roads daily."</p>	<p>The requirement in these sections is redundant to those that require daily inspections and implementing BMPs for construction entrances and exits and therefore should be deleted.</p>
151	Yes	Attachment A, p.35	I.3.b.iv.4.	<p>Erosion Control - Additional Requirements - Soil Loss</p> <p>This section states: "LUP Type 3 dischargers shall ensure that the soil loss during each phase of construction is equivalent to or less than the pre-construction soil loss for the same time period."^{12,}</p>	<p>A reference is made to a Caltrans RUSLE2 model that can be used to predict soil loss. First, Caltrans publically requested in the June 3, 2009 SWRCB public hearing that their model not be used for this purpose. Second, this requirement is not a valid requirement since there is no way to verify (therefore "ensure") that the soil loss during construction is equivalent to or less than the pre-construction soil loss.</p> <p>Therefore, this requirement should be deleted.</p> <p>This permit is so nebulous that makes it extremely</p>
152	Yes	Attachment A,	Section K.5.	"Regional Water Boards may terminate	

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
153	Yes	p.40 Attachment A, p.40	K.7	coverage under this General Permit for discharges who incorrectly determine or report their LUP Type..." Public Review This section states: "The Regional Water Boards may extend the public comment period for review of any discharger's complete PRDs, on a case-by-case basis."	difficult for a discharger to determine their risk level/type. This requirement is also more punitive than the similar requirements for traditional construction projects (see Permit, p. 37 Section XV.) This section should be revised to read "Regional Water Boards may terminate coverage under this General Permit for discharges who <i>negligently</i> or <i>with willful intent</i> incorrectly determine or report their LUP Type..." The Permit only alludes to the public review process for permit PRDs. This section states that the review period can be extended but does not define what the review period is to begin with. The permit should be revised to clearly state what the Regional Board, State Board and public review process is so that the discharger can understand the process as it could have a significant impact on project schedules and cost. See also Comment #8 - Public Hearings
154	Yes	Attachment A, p. 42 and p. 44-45 and p. 60	Section L, Table 3 and L.3.b.iv. and v. and Table 8.	LUP Monitoring and Sampling Tables conflicts with monitoring requirements for non-visible pollutants	Table says no sampling, text says sample, even if Risk Type 1. These inconsistencies should be corrected.
155	Yes	Attachment A, pp. 43, 46 and 54	L.3.a.iii; L.4.a.iii; L.5.a.iii.	Monitoring -Photographs These sections state: "LUP Type 1 dischargers shall ensure that photographs of the site taken before, during, and after storm events are taken during inspections, and submitted through the State Water Board's SMARTS website once every three rain	<u>All Types</u> These sections require submittal of photos taken during rain event inspections to be submitted to the SWRCB via the SMARTS website once every three rain events. It would be better for this submittal to be required no less than once per quarter as it would be easier to schedule these submittals.

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
156	Yes	Attachment	L.3.a.i;	events."	<p><u>Type 1</u> According to Table 3, Type 1 LUPs are not required to conduct inspections during pre-, during and post-rain events. The language in this section should be revised to state: "LUP Type 1 dischargers are not required to conduct inspections during pre-, during and post-rain events."</p> <p><u>Type 2</u> According to Table 3, Type 2 LUPs are not required to conduct inspections during rain events. The language in this section should be revised to state: "LUP Type 2 dischargers shall ensure that photographs of the site taken before and after storm events are taken during inspections, and submitted through the State Water Board's SMARTS website no less frequently than once every calendar quarter."</p> <p><u>Type 3</u> The language in this section should be revised to state: "LUP Type 3 dischargers shall ensure that photographs of the site taken before, during, and after storm events are taken during inspections, and submitted through the State Water Board's SMARTS website no less frequently than once every calendar quarter."</p>
				Monitoring – Qualified Personnel	Since QSPs can delegate to an employee trained

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
157	Yes	A, pp. 43, 46 and 54	L.4.a.i; L.5.a.i.	This section states: "LUP Type 1 dischargers shall ensure that all inspections are conducted by qualified personnel."	to do the task(s), it would be more consistent if this sentence was revised to state: "LUP Type 1 (2 and 3) dischargers shall ensure that all inspections are conducted by trained personnel."
158	Yes	Attachment A, p. 43	L.3.a.iv.	Monitoring – Documentation These sections state: "LUP Type 1 dischargers shall conduct daily visual inspections to verify that..."	Tier 1 projects under Order 2003-0007 are not required to document these daily inspections. This order is silent on this point and the permit should clarify that these inspections do not need to be recorded. A Subsection "4" should be added to this section to state: "Daily inspections for Type 1 LUPs do not need to be recorded."
159	Yes	Attachment A, pp. 44, 48, and 57	L.3.b.i.2; L.4.d.i.2; L.5.f.i.2.	Monitoring – Non-Visible Pollutant Sampling These sections state: "The LUP Type 1 (2 & 3) discharger is not required to sample if one of the conditions described above (e.g., breach or spill) occurs and the site is cleaned of material and pollutants and BMPs are implemented prior to the next storm event."	Sections L.3.b.i, L.4.d.i and L.5.f.i state two reasons that would trigger non-visible pollutant sampling for the next storm event. First, if a spill occurs or there was a breach, malfunction, failure and/or leak of any BMP; and second there was a failure to implement BMPs. Therefore, implementation of BMPs should be a stand-alone reason for allowing the discharger to not have to sample. These sections should be revised to state: "The LUP Type 1 (2 & 3) discharger is not required to sample if one of the conditions described above (e.g., breach or spill) occurs and the site is cleaned of material and pollutants and/or BMPs are implemented prior to the next storm event."
		Attachment A,	L.3.b.ii;	Monitoring – Non-Visible Pollutant Sample	The language "...shall collect samples at all

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
		pp. 44, 48, and 58	L.4.d.ii; L.5.f.ii.	<p>Locations</p> <p>These sections state: "LUP Type 1 (2 & 3) dischargers shall collect samples at all discharge locations which drain to the areas identified by the visual observations and which can be safely accessed. For sites where sampling and analysis is required, personnel trained in water quality sampling procedures shall collect storm water samples."</p>	<p>discharge locations which drain to the areas identified by the visual observations..." is confusing. It would seem that a sample would need to be collected down-gradient from the area where the visual observation (e.g., spill site, location lacking the BMP) was made.</p> <p>These sections should be revised to state: "LUP dischargers shall collect a sample at a discharge point down-gradient from the location at which the visual observation was made that triggered the non-visual pollutant monitoring."</p>
160	Yes	Attachment A, pp. 44, 48, and 58	L.3.b.iii; L.4.d.iii; L.5.f.iii	<p>Monitoring – Sample Parameters</p> <p>These sections state: "If sampling for non-visible pollutant parameters is required, LUP Type 1 (2 & 3) dischargers shall ensure that samples be analyzed for parameters indicating the presence of pollutants identified in the pollutant source assessment required in Section I.1.b.ii.(5).</p>	<p>The sample parameter should be that pollutant which was released and not cleaned up prior to the next rain event or the pollutant for which a BMP was not implemented, not a broader list of pollutants.</p> <p>These sections should be revised to state: "If sampling for a non-visible pollutant parameter(s) is required, LUP dischargers shall ensure that samples be analyzed for parameters indicating the presence of the specific pollutant(s) released or for which a BMP was not implemented."</p>
161	Yes	Attachment A, pp. 44, 48, and 58	L.3.b.v; L.4.d.v; L.5.f.v.	<p>Uncontaminated Samples</p>	<p>The term 'uncontaminated sample' is not well-defined. The Permit should provide more detailed specific guidelines.</p> <p>The requirements for uncontaminated samples and how they are to be compared requires more definition. The term "uncontaminated sample" should be clarified</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
162	Yes	Attachment A., p. 45	L.3.d.	Particle Size Analysis Justification	to mean a sample taken from a location unaffected by the construction activities. What is "justifying an alternative project risk?" When is it to be used? This should be better defined.
163	Yes	Attachment A, pp.45, 49, and 58	L.3.c.i; L.4.e.i; L.5.g.i.	Monitoring – Exceptions These sections state: "LUP Type 1 (2 & 3) dischargers shall be prepared to collect samples and conduct visual observation (inspections) to meet the minimum visual observation requirements of this Attachment. The Type 1 (2 & 3) LUP discharger is not required to physically collect samples or conduct visual observation (inspections) under the following conditions:"	These sections identify two conditions under which inspections and sampling do not need to occur. The first is dangerous weather conditions and the other is when an event occurs outside of business hours. An additional condition should be made for LUPs which is when the access to the site is dangerous. Many areas on LUP construction sites are in remote locations with limited access over dirt roads. During rain events, access can become unsafe, so another exception should be added for this condition. These sections should be revised to add a third exception as follows: "When access to the site is unsafe due to storm events."
164	Yes	Attachment A, pp. 46 and 54	L.4.a; L.5.a.	Monitoring – Sample Discontinuance Section L.3.a includes subsection "v" that states: "Inspections may be discontinued in non-active construction areas where soil-disturbing activities are completed and final soil stabilization is achieved (e.g., paving is completed, substructures are installed, vegetation meets minimum cover requirements for final stabilization, or other stabilization requirements are met)."	This section is missing from the requirements for Type 2 & Type 3 LUPs. This subsection should be added to Section L.4.a and L.5.a.
165	Yes	Attachment A,	L.4.a.v.	Monitoring – Rain Event Inspections	According to Table 3, Type 2 LUPs are not

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
166	Yes	Attachment A, pp. 46 and 54	L.4.a.vii; L.5.a.vii.	<p>This section states: "LUP Type 2 dischargers shall conduct inspections of the construction site prior to anticipated storm events, during extended storm events, and after actual storm events to identify areas contributing to a discharge of storm water associated with construction activity."</p> <p>Monitoring – Rain Gauge</p> <p>This section states: "LUP Type 2 (and 3) dischargers shall install a rain gauge on-site with readings made during all storm event inspections."</p>	<p>required to conduct inspections during rain events.</p> <p>The language in this section should be revised to state: "LUP Type 2 dischargers shall conduct inspections of the construction site prior to anticipated and after actual storm events..."</p> <p>Most LUPs do not have construction trailers located on the project site that would provide a secure and accessible location at which to establish a rain gauge. The need for a rain gauge is questionable for a Type 2 (and 3) project unless rain water is being captured and stored or an ATS is being used on the project.</p> <p>These sections should be revised to state: "A rain gauge is required when rainfall data is necessary to implement the provisions of this permit. If possible, a rain gauge should be installed at an accessible and secure location that is representative of the construction locations and LUP Type 2 (and 3) dischargers shall take readings during all storm event inspections. When such a site is unavailable, data from the closest rain gauge with publically available data may be used."</p>
167	Yes	Attachment A, pp. 47 and 55	L.4.b.i and Table 4; L.5.b.i and Table 6.	<p>Monitoring – Sampling Requirements</p> <p>These sections state: "LUP Type 2 (and 3) dischargers shall collect storm water grab samples from sampling</p>	<p>These sections/tables/footnotes describe an impossible task for a LUP. First, there could literally be hundreds of sampling locations (e.g., "...any type of discharge of storm water that goes beyond the property boundary..."). It is not clear if</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
				<p>locations <u>characterizing discharges associated with construction activity from the entire LUP disturbed area beginning the first hour of any new discharge</u>¹³ and during the first and last hour of every day of normal operations for the duration of the discharge event. At a <u>minimum, 3 samples</u> shall be collected <u>per day of discharge.</u>"</p> <p>¹³ A new discharge is defined here as any <u>type of discharge of storm water that goes beyond the property boundary</u> after at least a 48 hour period of no discharge.</p>	<p>this footnote refers to both sheet flow and channelized flow or only channelized flow. Second, for all of these discharge locations, numerous qualified samplers would have to be on call for each rain event to sample each of these locations within the first hour of discharge and three times a day every single day until the discharge ends. Additionally, at least some of these sites may not be safely accessible on LUPs. This effort would then have to be repeated for each rain event. The permit also does not make it clear when sampling is able to cease; for example, once earthwork is complete and stabilization BMPs are implemented.</p> <p>A much more reasonable sampling approach should be implemented, such as sampling a small subset of locations in "areas" chosen in advance based upon risk and safety considerations.</p> <p>These sections should be revised to state: LUP Type 2 (and 3) dischargers shall collect storm water grab samples from one representative sampling location within each area designated as Type 2 (or 3) that can be safely accessed during a rain event. Samples shall be taken during normal business hours, as close to the first hour of discharge from the rain event as possible. A minimum of three samples shall be taken on the sample day. Sampling shall only occur on the first day of discharge."</p> <p>¹³ A new discharge is defined here as a channelized discharge of storm water that</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
168	Yes	Attachment A, pp.47 and 56	L.4.c.i; L.5.c.i.	<p>Monitoring – Sampling Locations</p> <p>These sections state: "LUP Type 2 dischargers shall perform sampling and analysis of storm water discharges to characterize discharges associated with construction activity from the entire disturbed project or segment area."</p>	<p>goes beyond the LUP boundary after at least a 48 hour period of no discharge."</p> <p>See Comment #167 – Monitoring-Sampling Requirements</p>
169	Yes	Attachment A, p.47	L.4.c.ii.	<p>Monitoring – Sampling Locations</p> <p>This section states: "LUP Type 2 dischargers may monitor and report run-on from surrounding areas if there is reason to believe run-on may contribute to exceedance of NALs or NELs."</p>	<p>NELs do not apply to Type 2 LUPs so this section should be revised to state: "LUP Type 2 dischargers may monitor and report run-on from surrounding areas if there is reason to believe run-on may contribute to exceedance of NALs."</p>
170	Yes	Attachment A, p.51	Table 5	<p>Monitoring – Test Methods</p>	<p>Information contained in this table includes numeric limits and test methods.</p> <p>Type 2 LUPs are not subject to NELs, so these values should be deleted from the table. Also, since this is a NPDES discharge permit, the table should provide that any applicable EPA 40CFR 136 method can be used in addition to those specified.</p>
171	Yes	Attachment A, pp.53 and 63	L.4.k.iv.3; L.5.m.iv.3.	<p>NAL Report</p> <p>These sections state: "Description of the current BMPs associated with the effluent sample that exceeded the NAL and the proposed corrective actions taken."</p> <p>Monitoring records</p>	<p>These sections should be revised to state: "Description of the current BMPs associated with the effluent sample that exceeded the NAL and the proposed corrective actions to be taken."</p>
172		Attachment	L.4.l.i.	<p>Monitoring records</p>	<p>LUPs typically do not have construction trailers</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
		A,pp.53 and 63	L.5.o.	<p>These sections state: "LUP Type 2 dischargers shall ensure that records of all storm water monitoring information and copies of all reports (including Annual Reports) required by this General Permit be retained for a period of at least three years. LUP Type 2 dischargers shall retain all records on-site while construction is ongoing."</p> <p>Turbidity Sampling</p> <p>This section states: "LUP Type 3 dischargers that have violated the turbidity daily average NEL shall analyze subsequent effluent samples for all of the parameters specified in Section L.5.b of this Attachment."</p>	<p>on-site and the SWPPP is retained in a construction vehicle.</p> <p>These sections should be revised to state: "For LUPs these documents may be retained off-site and made available via request."</p>
173	Yes	Attachment A, p.56	L.5.b.v.	<p>This would require a discharger that exceeds a turbidity daily average NEL to sample all subsequent samples for "...all of the parameters specified in Section L.5.b of this Attachment." This language should be more specific as to what parameter(s) are required to be sampled. For example, is it just SSC? Additionally, it is not justified to continue sampling the additional parameter(s) for the duration of the project. This should only be required until two discharges in a row meet the NEL, at which point the sampling requirements should revert to only turbidity samples. Also the section should make it clear that the additional sample parameter(s) that apply when a turbidity sample exceeds an NEL only apply to the sample location at which the NEL was exceeded.</p>	<p>This section should be revised to state:</p> <p>"LUP Type 3 dischargers that have violated the turbidity daily average NEL shall analyze subsequent effluent samples at that sample location for turbidity and SSC until two samples in a row do not exceed the turbidity NEL, at which time the analysis of SSC can be discontinued."</p>
174	Yes	Attachment A,	L.5.d.i. and	<p>Receiving Water Sampling</p>	<p>Receiving water monitoring is problematic since</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
		p.56	Table 7	<p>Table 7 requires receiving water monitoring for all Type 3 projects.</p> <p>Subsection I states: "In the event that an LUP Type 3 discharger violates an applicable NEL contained in this General Permit, the LUP discharger shall subsequently sample Receiving Waters (RWs) for all parameter(s) required in Section L.5.c above for the duration of coverage under this General Permit."</p>	<p>access to a receiving water may not be possible at locations that make the monitoring meaningful. For example, a discharge that enters a municipal storm drain system that results in comingling of runoff from many sources or a surface water that has no public access for a great distance up or downstream from the project's discharge. Additionally, after the construction project stormwater runoff comingles with the other waters in the MS4, any results in the downstream receiving water become meaningless in regards to the construction project's contribution. Therefore, receiving water monitoring should not be required on LUPs.</p> <p>To the extent that it is required, receiving water monitoring, like discharge monitoring, should be conducted only at representative sites. In conjunction with the limited frequency of discharge monitoring proposed elsewhere in these comments.</p> <p>Subsection "I" would require the LUP Type 3 discharger to sample the receiving waters for the duration of the permit for all parameters in Table 7 if an applicable NEL is exceeded. This language should be more specific as to what parameter(s) are required to be sampled. For example, is it just SSC? Additionally, it is not justified to continue sampling the additional parameter(s) for the duration of the project. This should only be required until two discharges in a row meet the NEL, then the sampling requirements should revert to only turbidity samples. Also the section should make it clear that the additional sample parameter(s) that apply when a turbidity sample</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5, Section II.B.4)	What is the Concern?	Comment
175	Yes	Attachment A, pp. 57 and 61	L.5.d.ii; Table 8;	<p>Bioassessment</p> <p>This section states: "LUP Type 3 dischargers that meet the project criteria in Attachment K of this General Permit shall comply with the Bioassessment requirements prior to commencement of construction activity."</p>	<p>exceeds an NEL only apply to the sample location at which the NEL was exceeded. This section should be revised to state:</p> <p>"In the event that an LUP Type 3 discharger violates an applicable NEL contained in this General Permit, the LUP discharger shall subsequently sample the Receiving Waters (RWs) for turbidity and SSC until two discharge samples in a row do not exceed the turbidity NEL, at which time the sampling and analysis of receiving waters can be discontinued."</p> <p>Table 8 states that Type 3 LUPs that are greater than 30 acres must conduct a bioassessment.</p> <p>This requirement should only apply to Type 3 LUPs when:</p> <ul style="list-style-type: none"> • The project or project section that is determined to be a Type 3 LUP meets Criteria 1 and 2 of Appendix 5; and • There is more than 30 acres of soil disturbance in the project area or project section area designated as Type 3. <p>These criteria should be added as a footnote to Table 8.</p>
176	Yes	Attachment A, p. 60	Table 8	<p>Reporting Limits</p>	<p>The analytical reporting limits imply that results should be reported below lab reporting limits and Method Detection Limits. This will create confusion and incorrectly reported results. In addition the precision and accuracy of results below the lab's MDLs is unknown.</p> <p>Generally, State Certified Laboratories do not report levels below the reporting limit unless specifically request. Labs should not report</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
177	Yes	Attachment A, p. 63	L.5.n.i.	<p>Sampling Results Reporting</p> <p>This section states: "All LUP Type 3 dischargers shall electronically submit all storm event sampling results to the State Water Board no later than 5 days after the conclusion of the storm event."</p>	<p>results below the analytical Method Detection Limits.</p> <p>Although this section is located in the NEL Violation Report section it appears to require all storm event data to be reported within 5 days after the conclusion of the storm event all the time, not just when a violation has occurred. If SSC analytical testing is conducted, then it could take much longer to obtain "all" the sample results.</p> <p>This section should be revised to state: "All LUP Type 3 dischargers shall electronically submit all storm event sampling results to the State Water Board no later than 14 calendar days after receipt of the analytical data."</p>
178	Yes	Attachment A, p. 63	L.5.n.ii.	<p>Sampling Results Reporting</p> <p>This section states: "In the event that a LUP Type 3 discharger has violated an applicable NEL, the discharger shall submit an NEL Violation Report to the State Water Board no later than 5 days after the NEL exceedance has been identified."</p>	<p>Five days is insufficient time to obtain all sample results, determine corrective actions and prepare and submit a report.</p> <p>This section should be revised to state: "In the event that a LUP Type 3 discharger has violated an applicable NEL, the discharger shall submit an NEL Violation Report to the State Water Board no later than 14 calendar days after the NEL exceedance has been identified receipt of all of the monitoring results."</p>
179	Yes	Attachment A.1., p.2	General	<p>Type Determination – Terms</p> <p>In the three receiving water question triangles in this flowchart, the terms "project section" and "project section area" are used.</p>	<p>For clarity the use of these terms should be made consistent.</p> <p>The permit states that projects can be permitted as a whole project or split into separate sections</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
180	Yes	Attachment A.1., p.2	Left Question Triangle	<p>Sediment Sensitive Watershed</p> <p>The left question triangle asks:</p> <p>"Is 50% or more of the project section located within a Sediment Sensitive Watershed?"</p>	<p>that are permitted separately. Each permit or permit section should be able to have defined areas that are evaluated for Type.</p> <p>Therefore, each of the questions in this flowchart should be revised so that it asks the question for an area (i.e., a "project area or a project section area").</p> <p>Project areas or project section areas should be evaluated for whether they are in a sediment sensitive watershed, not the entire project or project section.</p> <p>This question should be revised to ask:</p> <p>"Is the project area or project section area located within a Sediment Sensitive Watershed?"</p> <p>A Sediment Sensitive Watershed is:</p> <p>"Defined as a watershed draining into a receiving water body listed on EPA's approved CWA 303(d) list for sedimentation/siltation, turbidity, or a water body designated with beneficial uses of SPAWN, MIGRATORY, and COLD."</p> <p>Sediment Sensitive Watersheds are defined too broadly as they include all areas within the entire watershed that drain to the sediment sensitive waterbody. This is too broad for relatively short-term linear construction projects which have relatively short-term potential project impacts and could be located 1, 2, 5, 10, 25 or more miles up</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
181	Yes	Attachment A.1., p.2	Left Question Triangle	Sediment Sensitive Watershed	<p>gradient from a sediment sensitive water body. A better and more relevant definition for a LUP would be limited to the "hydrographic subarea" in which the sediment sensitive water body is located. This will increase the focus of the permit on areas that are truly at risk of damage due to sediment discharges rather than providing a blanket designation to a whole watershed.</p> <p>The definition of Sediment Sensitive Watershed should be revised to state:</p> <p>"Defined as the Hydrologic sub-area within which a sediment sensitive water body is located."</p> <p>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. Often, only certain sections of a water body are listed for a pollutant. A project that is 10 or 20 miles upstream of a section listed for sediment should not have the same risk level or sampling requirements as a project discharging directly to a high risk waterbody. The permit should be revised to refer to Hydrologic Sub Areas rather than watersheds.</p>
182	Yes	Attachment A.1., p.2	Sediment Risk Box	Sediment Risk	<p>All linear project areas or project section areas that need to assess receiving water and sediment risk to determine their Type(s), need to also assess sediment risk using the Sediment Risk Factor Worksheet in Appendix 1. It appears that this assessment should be conducted for the entire project or project section, even if the area</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
					<p>being evaluated is located outside of a sediment sensitive watershed or a riparian area or located more than 150 ft up gradient from the sediment sensitive waterbody. Because the calculation of the sediment risk is dependent on the sediment type, terrain (length/slope), EPA's erosivity factor (which is based on location, start date, and stabilization date), this will be a very tedious process. There is also the uncertainty of what increment the analysis will need to be conducted along the length of the project or project section. Consequently conducting the sediment risk assessment for long linear projects will be problematic. Areas of the project or project section located outside a Sediment Sensitive Watershed should be considered a low sediment risk and a Type 1. This is because the receiving water risk is low by definition (see the left question triangle) and if there was a low or medium sediment risk the type would be low (see the risk/type matrix at the bottom of the second flowchart).</p>
183	Yes	Attachment A.1., p.2	References	<p>Reference **** The reference states: ***Measured from the top of bank to the water body Sediment Sensitive Waterbody A Sediment Sensitive Watershed is:</p>	<p>To read correctly this should be revised to state : ***Measured from the top of bank of the water body</p>
184	Yes	Attachment A.1., p.3	Definition of Terms	<p>"Defined as a watershed draining into a receiving water body listed on EPA's approved CWA 303(d) list for sedimentation/siltation, turbidity, or a water body designated with beneficial</p>	<p>Sediment Sensitive Watersheds are defined too broadly as they include all areas within the entire watershed that drain to the sediment sensitive waterbody. This is too broad for relatively short-term linear construction projects which have relatively short-term potential project impacts and could be located 1, 2, 5, 10, 25 or more miles up gradient from a sediment sensitive water body. A better and more relevant definition for a LUP</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
185	Yes	Attachment A.1., p.3	Definition of Terms	<p>uses of SPAWN, MIGRATORY, and COLD."</p> <p>Tributary to Sediment Sensitive receiving Water Body</p> <p>The attachment defines a "Tributary to Sediment Sensitive Receiving Water Body" as "Surface water that is up-gradient of and hydrologically connected to a CWA 303(d) listed water segment (i.e., for sedimentation/siltation, turbidity), or a water body designated with beneficial uses of SPAWN, MIGRATORY, and COLD, located within the same hydrologic sub-area, but does not include: 1) ephemeral or intermittent surface waters (e.g., drainages, creeks, streams, etc.); or 2) storm drain inlets."</p>	<p>would be limited to the "hydrographic subarea" in which the sediment sensitive water body is located.</p> <p>The definition of Sediment Sensitive Watershed should be revised to state:</p> <p>"Defined as the Hydrologic sub-area within which a sediment sensitive water body is located."</p> <p>Understanding the actual meaning of this definition is a bit difficult due to its length and punctuation. This definition should specify that a surface water is "tributary to a sediment sensitive water body" when it meets all three of the following criteria:</p> <ol style="list-style-type: none"> 1. the surface water body is located up-gradient of and hydrologically connected to either of the following: <ul style="list-style-type: none"> • A CWA 303(d) listed water segment (i.e., for sedimentation/siltation, turbidity); • A water body designated with beneficial uses of SPAWN, MIGRATORY, and COLD 2. the surface waterbody is located within the same hydrologic subarea as the CWA 303(d) listed water segment (i.e., for sedimentation/siltation, turbidity) or the water body designated with beneficial uses of SPAWN, MIGRATORY, and COLD, 3. the surface water body is not one of the following: <ul style="list-style-type: none"> • an ephemeral or intermittent surface water (e.g., drainages, creeks, streams, etc.); or • a storm drain inlet.

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
					<p>With the proposed punctuation (i.e., the comma after "(i.e., for sedimentation/ siltation, turbidity)") it appears the proposed definition may not have the above meaning.</p> <p>For clarification, the definition should be revised to state:</p> <p>"Tributary to Sediment Sensitive Receiving Water Body – A surface water is "tributary to a sediment sensitive water body" when it meets all three of the following criteria:</p> <ol style="list-style-type: none"> 1. the surface water body is located up-gradient of and hydrologically connected to either of the following: <ul style="list-style-type: none"> • A CWA 303(d) listed water segment (i.e., for sedimentation/ siltation, turbidity); • A water body designated with beneficial uses of SPAWN, MIGRATORY, and COLD 2. the surface waterbody is located within the same hydrologic subarea as the CWA 303(d) listed water segment (i.e., for sedimentation/ siltation, turbidity) or the water body designated with beneficial uses of SPAWN, MIGRATORY, and COLD, 3. the surface water body is not one of the following: <ul style="list-style-type: none"> • an ephemeral or intermittent surface water (e.g., drainages, creeks, streams, etc.); or • a storm drain inlet.
186	Yes	Attachment A.2., p.1	Who Must Submit	LRP	Many dischargers will have multiple LRP's within their company/organization so the

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
187	Yes	Attachment A.2., p.2	When Permit Coverage Commences	<p>The attachment states: "Dischargers of storm water from construction activities associated with linear underground/overhead project (LUP) must apply for coverage under this General Permit. If it is determined that the LUP construction activities require an NPDES permit, the Legally Responsible Person¹ (LRP) shall submit PRDs for this General Permit in accordance with the following"</p>	<p>above sentence should be revised to state: "...a Legally Responsible Person¹ (LRP)..."</p> <p>Footnote 1, in regards to the LRP, states: "person possessing the title of the land on which the construction activities will occur for the regulated site"</p> <p>Many LUPs are conducted on land to which the LUP owner does not hold title. This is recognized elsewhere in the permit.</p> <p>This sentence should be revised to state: "The owner of the linear project is responsible for obtaining the permit unless its construction activities will be covered by another permitted project."</p> <p>The permit does not provide any timeframe within which the SWRCB should respond with the WDID receipt letter. The permit should be revised to specify a timeframe.</p>
188	Yes	Attachment A., pp.2-3	Projects and Activities Not Defined as Construction Activity-2	<p>Project Planning Activities</p> <p>The permit states: "LUP construction activity does not include field activities associated with the planning and design of a project."</p>	<p>This language comes from Order 2003-0007 for linear projects, but omits the parenthetical information that was in Order 2003-0007 that illustrated its applicability. The following language should be added back to the end of the above sentence:</p> <p>"(e.g., activities associated with route</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
189	Yes	Attachment A., pp.2-3	Projects and Activities Not Defined as Construction Activity-3	<p>Tie-ins</p> <p>The permit states: "Tie-ins conducted immediately adjacent to "energized" or "pressurized" facilities by the discharger or their authorized representative are not considered <u>small</u> construction activities where all other LUP construction activities associated with the tie-in are covered by a NOI and SWPPP of a third party or municipal agency."</p>	<p>selection)"</p> <p>The word "small" was carried over from Order 2003-0007 and should be deleted so it states: "...are not considered construction activities..."</p>
190	Yes	Attachment B, p.1	B.	<p>Who Must Submit</p> <p>The Permit states: "Any construction activity that is a part of a larger common plan of development or sale must also be permitted, regardless of size. (For example, if 0.5 acre of a 20-acre subdivision is disturbed by the construction activities of landowner A and the remaining 19.5 acres is to be developed by landowner B, landowner A must obtain a General Storm Water Permit for the 0.5 acre project)."</p>	<p>The Permit delineates a number of circumstances for linear projects that do not require permit coverage as enumerated in Attachment A.2-Projects and Activities Not Defined as Construction Activity".</p> <p>To accommodate these circumstances the following statement should be added to the above statement:</p> <p>"LUP activities identified in these permit documents as "projects and activities not defined as construction activity" or "linear projects not covered" are not considered construction activities and are not subject to the "common plan of development or sale" condition.</p>
191	Yes	Attachment B, p.1	B.	<p>Who Must Submit</p> <p>The Permit states: "It is the LRP's responsibility to obtain coverage under this General Permit by submitting a complete</p>	<p>The Permit requires that the owner or operator of the LUP is responsible for obtaining permit coverage. Also, there are cases where the linear construction activities are covered under another permittee's construction stormwater permit.</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
192	Yes	Attachment B, p.1	C.	<p>PRD (Permit Registration Documents).</p> <p>Construction Activity Not Covered By This Permit</p> <p>The Permit states: Discharges from construction that are not covered under this General Permit can be found in the General Permit Sections II.A & B."</p>	<p>Therefore, the above sentence should be revised to state: "The owner of the linear project is responsible for obtaining the permit unless its construction activities will be covered by another permitted project."</p> <p>Consistent with our other comments, the permit should identify discharges that are projects and activities not defined as construction activity and projects and activities that are subject to other permits or permitting mechanisms. The phrase "Construction Activity Not Covered By This General Permit" is ambiguous as it does not distinguish between discharges that do not require permitting and discharges that are permitted by another permit or permitting mechanism (e.g., exemption ,waiver, etc.). Therefore, this section should be revised to state: "C. Projects and Activities Not Defined as Construction Activity" and Linear Projects Not Covered"</p> <p>Discharges from construction that are not "construction activity" or are not covered by this General Permit can be found in the General Permit Sections II.A & B and Attachment A.2."</p>
193	Yes	Attachment B pp. 1-2	D.	<p>Annual Fees and Fee Calculation</p> <p>This section states: "Annual fees are calculated based upon the total area of land to be disturbed not the total size of the acreage owned. However, the calculation</p>	<p>We concur that the fee should be based on the actual area of the land to be disturbed. However, the permit specifies that LUPs can be permitted as one project or can be split into logical sections to be permitted separately. The permit should specify that fees are assessed by permitted</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
				<p>includes all acres to be disturbed during the duration of the project. For example, if 10 acres are scheduled to be disturbed the first year and 10 in each subsequent year for 5 years, the annual fees would be based upon 50 acres of disturbance. The State Water Board will evaluate adding acreage to an existing Permit Waste Discharge Identification (WDID) number on a case-by-case basis. In general, any acreage to be considered must be contiguous to the permitted land area and the existing SWPPP must be appropriate for the construction activity and topography of the acreage under consideration. As acreage is built out and stabilized or sold, the Change of Information (COI) form enables the applicant to remove those acres from inclusion in the annual fee calculation. Checks should be made payable to: State Water Board."</p>	<p>section. For example, if a LUP is split into two sections, each section would apply for coverage under the permit separately and should be assessed its fee based its own amount of disturbed soil for the period during which it has permit coverage. Where one section is constructed this year and the second section is to be constructed next year, the fee for the section to be constructed next year should not start until permit coverage is approved.</p> <p>Therefore, this section should be revised to state: "Annual fees are calculated based upon the total area of land to be disturbed by the permitted activity. Where a LUP is split into separate sections that are permitted separately, the annual fee for each section will be assessed based on the amount of soil disturbance that is determined for each section of the project. The annual fee will only be due for the period starting when the PRDs are approved and ending when the notice of termination is approved. The State Water Board will add acreage to an existing Permit Waste Discharge Identification (WDID) number as requested by the discharger. For LUPs, the acreage to be considered must be associated with the permitted construction activity, but does not necessarily need to be contiguous (e.g., a laydown yard). As the construction activity is completed and stabilized or sold, the Change of Information (COI) form enables the applicant to remove those acres from</p>

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
194	Yes	Attachment B, p.2	E.	When to Apply This section states: "LRPs proposing to conduct construction activities subject to this General Permit must..."	inclusion in the annual fee calculation. Checks should be made payable to: State Water Board." The permittee for LUPs are the owner/operators of the LUP, unless the project is covered under another construction stormwater permit. Therefore, the above sentence should be revised to state: "Owners/operators of the LUP proposing to conduct construction activities subject to this General Permit must..."
195	Yes	Attachment B, p.2	H.1.a.	Post- Construction Water Balance Calculator This section states: "Discharger in unincorporated areas of the State (not covered under an adopted Phase I or II SUSMP requirements) and that are not a linear project shall also submit a completed: a. Post- Construction Water Balance Calculator (Appendix 4)"	Attachment B is solely applicable to linear projects so this subsection should state: "Post- Construction Standards (Sections 4 and 4.1) are not applicable to LUPs."
196	Yes	Attachment B, p.3	J.2.	Site Map This section states: "Site Map(s) includes:" and lists items "a" through "o", whereas Attachment A-Section B.2 states that site maps to be submitted require to show the start and end points of the project, plus a site map that shows the entire project location that illustrates the "LUP type (1, 2 or 3) segments within the total project footprint."	Attachment A, Section B.3 states that a construction drawing, other appropriate drawing or map shall be included with the PRDs that shows the locations of storm drain inlets and waterbodies that may receive discharges from the construction activities and that shows the locations of BMPs to be installed for all those BMPs that can be illustrated on the revisable drawing(s) or map(s). It furthermore states that if storm drain inlets, waterbodies, and/or BMPs cannot be adequately shown on the drawing(s) or map(s) they should be described in detail within the SWPPP.

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
197	Yes	Attachment B, p.3	J.4.	Risk Assessment This section states: "All dischargers shall use the Risk Assessment procedure as describe in the General Permit Appendix 1." Post-Construction Water Balance This section states "All dischargers subject to this requirement shall complete the Water Balance Calculator (in Appendix 4) in accordance with the provided outlined instructions"	Section J.2 should be revised to conform to Attachment A-Sections B.2&3. The reference to Appendix 1 should be revised to Attachment A, A.1 and A.2 and Sections J.4.a and b should be deleted.
198	Yes	Attachment B, p.4	J.5.	WDID Receipt Letter This paragraph states "Upon receipt of a complete PRD submittal, the State Water Board will process the application package in the order received and assign a (WDID) number. Each discharger will be mailed a receipt letter containing the WDID number."	This is hydromodification and not subject to NPDES permitting authority. Additionally, conducting a Water Balance for linear projects would be of little benefit since they typically do not create any significant increase in impervious area. In fact Section H.1 within this Attachment excludes linear projects from water balance calculations. Section J. should be deleted. Dischargers will be mailed a receipt letter with a WDID number that will confirm coverage under the permit. A copy of this letter also should be emailed to the discharger or at least posted to the SWRCB's website. This section should also clarify when the discharger is authorized to proceed. If, alternately, the discharger must wait until he has a WDID receipt letter in hand it is imperative that: 1) the permit makes this clear, and 2) the SWRCB institutes an electronic process that updates the discharger on the status of the approval and the WDID letter. The permit also should clarify a finite time in which the Regional Board has to send the WDID receipt letter.
200	Yes	Attachment B, p.4	J. (last paragraph)	Flowcharts - Include in the Permit	These flowcharts ("Linear Underground/Overhead Project Flowcharts") clarify significant attributes of

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appox A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
201	Yes	Linear Underground/ Overhead Project Flowcharts, p.2	Chart II	RWQCB/ SWRCB verification The information box located in the second column, one row up from the bottom row states: "The activities may be exempt from the requirements of this CGP. Contact your RWQCB or SWRCB contact to verify."	the linear portions of the permit and they should be included as part of Attachment A or A.1. Attachment A or A.1 should be revised to include these flowcharts. The activities identified in this box are maintenance projects, emergencies, planning activities, and tie-ins. These activities are listed in Attachment A.2 as "Projects and Activities Not Defined as Construction Activity". Given they are not construction activity, they are not subject to the permit and should not require verification with the SWRCB or RWQCB. This is not currently required under Order 2003-0007. This box should be revised back to the existing language of the Chart II for Order 2003-0007 to state: "The activities are not "construction" and do not require a Construction SW NPDES Permit"
202	Yes	Linear Underground/ Overhead Project Flowcharts, p.3	Chart III	Permit Coverage The middle triangle at the top of this chart states: "Is the developer** covering all of the linear activities under the CGP?"	The point of this question is to confirm whether the linear activities will be covered by the developer's permit, so it would be clearer if this question asked if the developer** is going to cover all of the linear activities under their CGP? This question should be revised to state: "Is the developer** covering all of the linear activities under their CGP?"
203	Yes	Linear Underground/ Overhead Project Flowcharts, p.3	Chart III	Chart Format/ Reference The bottom right box states: "Coverage under the CGP is required; this Appendix <u>may</u> be used." Additionally, the box points to a circle with a "D" inside of it.	The reference to an appendix is incorrect. The reference should be to "Attachment A". Also, there is no longer a "D" in these flowcharts. This box should be revised to state: "Coverage under the CGP is required; Attachment A may be used." and the reference to "D" should be deleted.

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
204	Yes	Linear Underground/ Overhead Project Flowcharts, p. 4	Chart IV	Chart Reference The bottom box states "Coverage under the CGP is required". It would be helpful to also state Attachment A may be used".	This box should be revised to state: " Coverage under the CGP is required; Attachment A may be used. "
205	Yes	Linear Underground/ Overhead Project Flowcharts, p.5	Definitions	Routine Maintenance Activities The definition of "Routine Maintenance Activities" is missing the following language that is in the definitions included with the flowcharts for Order 2003-0007. "C. Repairing leaks." Routine maintenance does not include construction of new ² lines or facilities resulting from compliance with applicable codes, standards, and regulations. Routine maintenance projects do not include those areas of maintenance projects that are outside of an existing right-of-way, franchise, easements, or agreements. ² New Lines are those that are not associated with existing facilities and are not part of a project to update or replace existing lines."	This missing language should be added back into the definition for "Routine Maintenance Activities."
206	Yes	Attachment C, p.7.	Section I.1.a.	Monitoring Justification "Pursuant to Water Code Sections 13383 and 13267, all dischargers subject to the General Permit... shall develop and implement a Construction Site Monitoring Program	CWC 13383 states that the board may require monitoring. CWC 13267.b.1 requires that "The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
207	Yes	Attachment C, p. 11	Section I.8.	(CSMP) in accordance with the requirements of this Section. Where is soil particle testing required?	board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports." This justification should be included in the Fact Sheet and Permit Findings. Nothing in the permit is clear on how a project would determine how many locations are required for soil particle testing. The Permit should provide some guidance as to what is appropriate. For linear projects that could cross many different soil conditions, this requirement would be burdensome as there could be hundreds/ thousands of potential sample locations. This testing requirement should be limited to those areas that have a greater potential to pose significant risks for water quality, such as work immediately adjacent to (e.g., within a defined distance of) sensitive waterbodies.
208		Attachment D. p. 12	Section I.4.c.	Qualifying Event This section states: "At a minimum, Risk Level 2 dischargers shall collect 3 samples per day of the qualifying event."	Does the discharge event have to be a qualifying event (i.e., 0.5 inches of precipitation)? Impossible to determine at the beginning of a storm. How can you collect samples at the first and last hour of every day... for the duration of the storm...you don't know how long the storm is going to last... This issue should be addressed.
209		Attachment E, p. 6	Section E.8.	Definition "The RWQCB may require Risk Level 3 dischargers to implement additional site-specific sediment control requirements if the implementation of the other requirements in this section are not adequately protecting the receiving waters."	How will "adequately protecting the receiving waters" be determined?

CCEEB's Comments on the SWRCB's Proposed Construction Storm Water General Permit (April 23, 2009)

Ref #	Does This Affect Linear Projects (Yes) ?	Citation: Permit Section (e.g., Fact Sheet, Permit, Appdx A) & Page #	Citation: Reference Number (e.g., Finding 5; Section II.B.4)	What is the Concern?	Comment
210	Yes	Attachment F, p. 9	Section M.5.a.	<p>Active Treatment System (ATS) Monitoring Requirements - Non-Compliance Reporting</p> <p>This section states: "Any indications of toxicity or other violations of water quality objectives shall be reported to the appropriate regulatory agency as required by this General Permit."</p>	<p>This section infers that "...any indication of toxicity..." is a violation of the permit. However, the phrase "...any indication of toxicity..." is not defined. Many toxicity tests recognize a certain amount of attrition can occur to the test organisms during the test that is completely unrelated to the water that is being tested. It is important that this natural attrition is not considered to be an indication of toxicity.</p>