Response to Comments
For Statewide NDPES Construction Stormwater General Permit Reissuance

Public Comment Period: March 30, 2022 to May 2, 2022

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Introduction

On March 30, 2022, the State Water Board issued a Public Notice and the proposed National Pollutant Discharge Elimination System (NPDES) Statewide Construction Stormwater General Permit reissuance, for a 30-day written comment period limited to four distinct issues:

1) Construction Stormwater General Permit antidegradation analysis;
2) Regulatory transition period;
3) Retranslation of nitrogen-based nutrients from numeric effluent limitations to numeric action levels; or
4) Total maximum daily load-related soil screening investigation and associated total suspended solids numeric effluent limitations.

The written comment period was from March 30, 2022, to May 2, 2022.

The State Water Board received 14 public comment letters with approximately 89 individual comments. The State Water Board has evaluated all submitted comments. This document

provides a summary of each public comment that was within the scope identified in the March 30, 2022 notice, and a corresponding State Water Board response, as follows:

- The comments are organized into 4 primary response categories and identified by a comment identification number. The first column of the comment summary table lists comment identification numbers for comments with similar content or that address the same permit requirement(s). The comment identification numbers are in decimal format; the numbers before the decimal refer to the comment letter number, and the numbers after the decimal refer to an individual comment in that comment letter.
- The second column of the comment summary table provides the comment category (and subtopic as applicable), and a summary of the related comments, requested changes, and responses. Responses may address comments within a given summary row together or separately.

Comments that were outside of the scope identified in the March 30, 2022 notice are not included below. These comments are included in the Response to Comments Catalog excel spreadsheet available at https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction/general_permit_reissuance.html.

If you would like to request a copy of the written public comments submitted to the Board, please send a request to commentletters@waterboards.ca.gov, identifying the Construction Stormwater General Permit. The Clerk of the Board will respond by sending a link to access them.

Table of Commenters

Comment Letter Number (Commenter ID)	Commenter Organization(s)	Representative(s)
1	California Department of Transportation (Caltrans)	Shaila Chowdhury
2	The Associated General Contractors of California (AGC)	Manny Leon
3	<u>California Utility Stakeholder Group:</u> San Diego Gas & Electric (SDG&E), Southern California Edison (SCE), Southern California Gas Company (SCG), Los Angeles Department of Water & Power (LADWP), Sacramento Municipal Utility District (SMUD), and Pacific Gas & Electric (PG&E)	SDG&E – Willie Gaters, Brett Gamble, Elizabeth Cason SCE – Julie Granbery, Kadi Whiteside, Lucy Cortez-Johnson, Mike Gallagher SCG – Ricardo Moreno, Josephine Huang LADWP – Katherine Rubin, Robin Yamada SMUD – Emily Bacchini, Rene Toledo PG&E –Alexa LaPlante, Isabella Johannes
4	California Stormwater Quality Association (CASQA)	Karen Cowan
5	California Coastkeeper Alliance (CCKA), Los Angeles Waterkeeper (LAW), and Heal the Bay (HtB)	CCKA – Cody Phillips LAW – Benjamin Harris HtB – Annelisa Moe
6	Pacific Gas & Electric (PG&E)	Isabella Johannes
7	Christopherson Builders	Amy Christopherson Bolten
8	The City of San Diego	Kris McFadden
9	Los Angeles Department of Water & Power (LADWP)	Katherine Rubin
10	The Building Industry	Susan Paulsen
11	California Alliance for Jobs (CIJ) & Building Industry Association of San Diego County (BIASD)	Suzanne Varco, Wayne Rosenbaum
12	Dave Sluga	Dave Sluga
13	JB Contractors	John Begin
14	Home Builders Association of the Central Coast (HBACC)	Lindy Hatcher

Response to Comments

Comment ID	Comment Summary and Response
5.19, 5.20, 5.21, 5.22	**Comment Category: Construction Stormwater General Permit Antidegradation Analysis** **Comment Summary:** 1. Commenters state that the antidegradation analysis in the permit is insufficient and fails to establish that authorizing degradation of high-quality waters is consistent with the maximum benefit to California residents. 2. Commenters state that the antidegradation analysis has insufficient evidence regarding cost-effective alternatives to mitigate degradation of high-quality waters. They add that the analysis contradicts itself and is vague throughout the permit. 3. Commenters state that there is no analysis to convey why authorizing degradation of high-quality waters is more beneficial to California residents than requiring construction sites to implement diversion or retention best management practices (BMPs). These conclusions cannot be considered with vague supporting evidence. **Requested Change:** Commenters are requesting more in-depth analyses regarding the benefits of degrading high-quality waters and why BMPs are infeasible to integrate at construction sites. **Response:** 5.19, 5.21 - Finding 9 in the General Permit and Section I.H.2 of the Fact Sheet describe how to comply with state and federal antidegradation policies. Section I.H.2 of the Fact Sheet has been revised in response to comments on antidegradation. The revised findings include an analysis of multiple alternatives. 5.20 - The antidegradation analysis for a general NPDES permit is inherently different than the analysis for an individual NPDES permit. Dischargers obtain coverage under a general NPDES permit by filing a Notice of Intent after it is adopted. Details about individual projects are not known at the time of adoption particularly for the Construction General Permit, where projects are temporary and enrollment is highly dynamic. The federal antidegradation policy does not require an individual project analysis to determine what would be economically feasible for a particular project. Instead, for a general permit, a higher level of analysis is appropriate. Unlike the antidegradation findings at issue in *Natural Resources Defense Council & Los Angeles Waterkeeper v. State Water Resources Control Board & California Regional Water Quality Control*

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	Board, Los Angeles Region, this General Permit includes adequate antidegradation findings in the Fact Sheet that are supported by the weight of the evidence. The antidegradation analysis in the Construction General Permit is consistent with how U.S. EPA conducted its own antidegradation analysis for the 2022 Multistate Construction General Permit (MSGP), and in many respects, more detailed. U.S. EPA's interpretation of the type of analysis required by its own policy is entitled to great weight. U.S. EPA affirmed its previous conclusions that "compliance with the CGP generally will be sufficient to satisfy Tier 2 (or 2.5) and Tier 3 antidegradation requirements because the controls will not result in a lowering of water quality, making individualized Tier 2 or Tier 3 review unnecessary assuming of course that the discharger is in compliance with any other applicable State or Tribal antidegradation conditions. . ." (p. 83 of the Fact Sheet.) U.S. EPA further stated, "[T]he controls in the permit are sufficiently stringent that they would generally satisfy the requirement at the heart of Tier 2 review, that the discharge is necessary to accommodate important economic or social development in the area where the discharge is located. Construction is usually important to economic and social development, and the controls already required in Part 2 of this permit have been identified by EPA in its effluent limitations guideline for the construction and development category as the level of pollutant abatement that is the best available technology economically achievable." U.S. EPA explained that its 2022 MSGP contains even stricter requirements than its prior permit and reiterated that it retained the authority to impose further controls if necessary. U.S. EPA did not conduct a fact specific analysis or incorporate empirical evidence because that level of detail is not necessary to satisfy the federal antidegradation policy. Because this Construction General Permit contains similar requirements to the MSGP and in many cases is more stringent then the MSGP, the State Water Board concludes, in line with U.S. EPA's analysis, that the controls in the permit generally satisfy the requirements of a Tier 2 review. 5.22 - As explained in response to comment 5.20, U.S. EPA did not conduct a fact specific analysis or incorporate empirical evidence because that level of detail is not necessary to satisfy the federal antidegradation policy. Nevertheless, the State Water Board has added additional support to its antidegradation findings. The examples of other BMPs provided by the comment – groundwater infiltration, stormwater filters, bioretention, and biofilters – may help minimize the discharge of stormwater but would not generally completely eliminate discharges or if they did, would have the same price constraints as retention basins. Specifically, U.S. EPA also separately analyzed an infiltration trench and an infiltration basin. But the cost estimates for these BMPs were for small features that would not completely retain

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	stormwater (estimates were for a 100-foot long trench and a 0.25 acre infiltration basin) and the costs were higher for both ($4 per cubic feet for the infiltration trench and $1.30 per cubic foot for the infiltration basin). The same is true for the other BMPs identified. Filters are designed to filter stormwater are it passes through, not to prevent discharges. In addition, as explained in more detail in the antidegradation findings, the BMPs that may be appropriate for a particular site depend on site specific factors. It is not a feasible alternative to require the use of certain BMPs on a site. Generally, this permit may not specify the design location, type of construction, or particular manner in which compliance may be attained with a requirement. (Wat. Code, § 13360.) The antidegradation findings do not conclude that it is always cost-ineffective to implement complete retention or detention at a construction site. In fact, complete retention or detention may be possible for some projects that are eligible for coverage under this General Permit. But for an antidegradation analysis for a General Permit the appropriate reference point is alternatives to the General Permit, not cost-effective alternatives for a specific site. The State Water Board's findings do not rely solely on the expense of additional requirements imposed on dischargers. Instead, as is required by an antidegradation analysis, the State Water Board finds that construction is usually important to economic and social development. The comment is incorrect that dischargers are exempt from installing BMPs that are economically feasible. As discussed in greater detail in Section I.H.2 of the Fact Sheet, the permit already requires implementation of the best practicable treatment or control of discharges. As part of minimum best management practices, dischargers are required to implement good site management, non-stormwater management, and eliminate or minimize site erosion. Additional requirements are required when the discharge has a higher sediment risk. The minimum requirements included in the permit for all dischargers is further detailed in the discussion of Alternative 1 in Section I.H.2 of the Fact Sheet. Compliance with the General Permit will generally not result in degradation in high quality waters, but because the State Water Board cannot guarantee that any specific project would not result in any degradation, Section I.H.2 of the Fact Sheet has been revised to include additional antidegradation findings.
5.23, 5.24	**Comment Category: Construction Stormwater General Permit Antidegradation Analysis – Insufficient Socioeconomic Analysis** **Comment Summary:**

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	1. Commenter states that the antidegradation analysis does not provide sufficient evidence regarding the socioeconomic benefits of authorizing degradation of high-quality waters. They add that the permit makes conclusory statements without adequate supporting evidence. 2. Commenter states that the antidegradation analysis does not provide sufficient analysis regarding the socioeconomic benefits of clean water and the detrimental impacts polluted stormwater discharges have on waterbodies and California residents. **Requested Change:** Commenters are requesting additional evidence, cited sources, and analysis for the antidegradation Findings in the Order. They add that there is not enough supported evidence to make the statements or draw the conclusions mentioned in the Findings. **Response:** U.S. EPA's MSGP found construction is usually important to economic and social development. In addition to that finding, the General Permit's antidegradation analysis in Section I.H.2 of the Fact Sheet provides examples and data demonstrating how construction projects in general are beneficial to the people of the state of California. It is not required, nor would it be possible, to analyze projects on an individual basis to determine that particular project's benefit to the people of the state. The socioeconomic harms from polluted discharges need not be considered because this permit would not allow stormwater discharges that would cause pollution, nuisance, or any other significant adverse public health or environmental effects. As set forth in Section I.H.2 of the Fact Sheet, the permit protects and maintains existing beneficial uses. Under Alternative 1, notwithstanding the possibility of limited and temporal degradation from some authorized stormwater discharges, the State Water Board finds that authorized stormwater discharges will not cause or contribute to exceedances of water quality objectives in high quality waters, and therefore will not cause pollution or conditions of nuisance or otherwise adversely affect beneficial uses of the receiving waterbodies. Because all beneficial uses will be maintained and protected, there will be only very minor impacts to water quality resulting from any degradation that does occur, and so any resulting harm to the public interest associated with any degradation will also be very minor and speculative because all high quality waters will still fully support all beneficial uses. Therefore, it is not necessary to analyze the harm to the public interest associated with the authorized stormwater discharges, especially in a generalized and simple antidegradation analysis.

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5.25	**Comment Category: Construction Stormwater General Permit Antidegradation Analysis – Insufficient to Ensure Maintenance and Protection of Instream Uses** **Comment Summary:** Commenter states that the antidegradation analysis is insufficient, as it fails to ensure the maintenance and protection of existing instream uses in impaired waterways throughout California by not properly implementing total maximum daily loads (TMDLs). They state that TMDLs are not properly implemented due to the 3-year transition period, the use of the total suspended solids numeric effluent limitation proxy, and the retranslation of nitrogen-based nutrient numeric effluent limitations into numeric action levels. These improper TMDL practices ultimately create a deficient antidegradation analysis. **Requested Change:** Commenter is requesting that staff revise the legally deficient antidegradation analysis in the permit to include specific objective analysis with factual support, establish that authorizing degradation of high-quality water under the permit is consistent with the maximum benefit to California residents, and that the permit will maintain and protect existing instream uses in impaired waters. **Response:** The permit incorporates requirements for all relevant TMDLs for which construction stormwater permittees are assigned a WLA. For additional information regarding how relevant TMDLs were identified, see Fact Sheet, Section I.G and March 30, 2022 response to comments. Re: regulatory transition period – The federal regulations require the inclusion of effluent limitations consistent with the assumptions and conclusions of waste load allocations, but they do not eliminate a permitting authority's authority to determine the appropriate method for implementing those limitations and transitioning from prior permit coverage. Even for dischargers with coverage under the 2009 permit, the Water Boards retain the authority to impose TMDL-specific requirements on dischargers. If the Water Boards determine that any individual discharger needs to implement additional requirements to comply with a TMDL, the Water Board may do so on a case-by-case basis. TSS NEL – The permit explains why and how the TSS numeric effluent limitation was set. As explained in Fact Sheet, Section I.J.1., the primary stormwater pollutant at construction sites is excess sediment. Sediment also transports other pollutants such as nutrients, metals, oils and greases, and pesticides. If the data shows that the TSS and the underlying pollutant are not sufficiently correlated, the Water Board may revise the permit. In addition, as explained in the Fact

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	Sheet, Section I.G.5.g and I.W the waste load allocations for organochlorine pesticides and PCBs are below the analytical laboratory reporting. See also response to comment 5.13, 5.15. Other provisions – see response to comments 5.01- 5.11 and 5.26. The antidegradation findings set forth in Fact Sheet Section I.H.2 have been revised and are sufficient to comply with the state and federal antidegradation policies.
8.03	**Comment Category: Construction Stormwater General Permit Antidegradation Analysis – Fact Sheet Analysis** **Comment Summary:** Commenter states that other general National Pollutant Discharge Elimination System (NPDES) permits have their antidegradation analysis in their Fact Sheet, not within the Order's Findings. **Requested Change:** 1. Commenter is requesting to remove the antidegradation analysis language in the Order and incorporate it in the Fact Sheet. This will ensure consistency between other general NPDES permits and the reissued Construction General Permit. 2. Commenter is requesting to update the language in Finding 11 to: "The CWA requires the San Diego Water Board to establish water quality standards for each water body in its region. Water quality standards include beneficial uses, water quality objectives and criteria that are established at levels sufficient to protect beneficial uses, and an antidegradation policy to prevent degrading of waters. On September 8, 1994 the San Diego Water Board adopted the Water Quality Control Plan for the San Diego Basin (Basin Plan). The Basin Plan designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters in the San Diego Region. The San Diego Water Board has amended the Basin Plan on multiple occasions since 1994. In addition, the Basin Plan implements State Water Board Resolution No. 88-631 which established state policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply." **Response:** Revisions to the antidegradation analysis have been added to Section I.H.2 of the Fact Sheet. The proposed revisions to Finding 11 were not made because they are not related to the antidegradation analysis.

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10.01	**Comment Category: Construction Stormwater General Permit Antidegradation Analysis – General Approval** **Comment Summary:** Commenter conveys their support of the antidegradation findings presented in the Order. **Requested Change:** N/A. **Response:** The commenter's support for the antidegradation findings is noted.
1.01, 4.01, 8.04, 10.02	**Comment Category: Regulatory Transition Period – General Approval** **Comment Summary:** Commenters state they are in support of the 3-year regulatory transition period for projects with current coverage under the 2009 Construction General Permit. **Requested Change:** One commenter is requesting that the transition period be 5 years instead of 3 years. However, they are satisfied with the current 3-year transition period. **Response:** The regulatory transition period has been reduced from three years to two years after the effective date of the permit. Based on enrollment data from Order 2009-0009-DWQ as amended by 2010-0014-DWQ and 2012-0006-DWQ (the 2009 permit), the average duration of construction project permit coverage is three years. Consequently, a three-year regulatory transition period beginning from the permit's adoption date will allow existing projects to be completed or provide ample time for dischargers to obtain the necessary budget and complete project planning to comply with the adopted permit and its requirements.
5.16, 5.17, 5.18	**Comment Category: Regulatory Transition Period** **Comment Summary:** 1. Commenter states that the regulatory transition period is overly broad, allowing dischargers to remain under the 2009 permit regardless of any actual need. Commenter states that the

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	transitionary period should solely apply to large public infrastructure or restoration construction projects. 2. Commenter states that the regulatory transition period is harmful to water quality because it allows dischargers to continue coverage under the 2009 permit, which is less effective at protecting waterways. Moreover, the 2009 permit does not enforce TMDLs whereas the 2022 permit does. Overall, the proposed permit is much more protective and beneficial to California waters. **Requested Change:** 1. Commenter is requesting the revision of transitionary period language to tailor its requirements explicitly to large public infrastructure or restoration construction projects. 2. Commenter is requesting to exclude dischargers discharging into a TMDL-listed watershed/waterbody or whose TMDL compliance schedule is expired/expiring from the transitionary period. They state that these dischargers should comply with the TMDL requirements, despite maintaining 2009 permit coverage. 3. Commenter is requesting to remove the 1-year grace period between permit adoption and issuance. **Response:** 1. No change to the proposed permit was made in response to this request. The regulatory transition language is not restricted to certain kinds of construction projects. The justification for including a regulatory transition, being that projects enrolled in the 2009 permit and are operating under established, fixed budgets, applies to projects with large impacts as well as smaller impacts and regardless of project purpose. 2. No further changes to the proposed permit were made in response to this request. As set forth in Finding 51 of the 2009 permit and Section L.7 of Attachment A of the 2009 permit, where there is a U.S. EPA-approved TMDL, the Regional Water Board may impose additional requirements to comply with the applicable TMDL during the transition period. 3. No change to the proposed permit was made in response to this request, however, the regulatory period has been reduced from three years to two years after the effective date of the proposed permit. A 'grace period' does not exist between the adoption and effective date of the permit. All dischargers during that time will need to enroll and comply with the 2009 permit. There is approximately a year-long period between adoption and the proposed permit's effective date to ensure that staff have sufficient time to train staff on the newly adopted

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	provisions, develop and provide training to stormwater professionals, and ensure the Stormwater Multiple Application and Report Tracking System (SMARTS) is programmed to implement permit requirements. Staff determined that 3 years, which includes the period between the adoption and effective date, is an appropriate transition period based on the average and median construction project durations recorded in SMARTS.
2.01	**Comment Category: Retranslation of Nitrogen-based Nutrients from Numeric Effluent Limitations to Numeric Action Levels – General Approval** **Comment Summary:** Commenters support the conversion of nitrogen-based nutrients numeric effluent limitations to numeric action levels. The commenters understand that these limits are infeasible to meet and utilizing a numeric effluent limitation will only place financial penalties on dischargers who cannot comply with numeric effluent limitations. **Requested Change:** Since the limits themselves did not change, it is still likely infeasible to meet numeric action levels for these nitrogen-based nutrients. As a result, one commenter is requesting to implement monitoring-only requirements for the nitrogen-based nutrient numeric action levels. **Response:** Support for the conversion of nitrogen-based nutrient numeric effluent limitations to numeric action levels is noted. Sections I.G.5.d and I.W.6.d of the Fact Sheet have been revised to further explain how numeric action levels are consistent with the assumptions and requirements of the waste load allocations. As explained in the Fact Sheet, it is expected that the compliance with the permit will generally ensure compliance with the nitrogen-based nutrients numeric action levels. As detailed in Fact Sheet, Section I.W.3, if a discharger has an exceedance of an applicable numeric action level, discharger must take corrective actions. A monitoring-only requirement was not imposed because there may be additional BMPs or corrective actions that can be taken to prevent any exceedances.
5.01	**Comment Category: Retranslation of Nitrogen-based Nutrients from Numeric Effluent Limitations to Numeric Action Levels** **Comment Summary:** Commenter states that the retranslated nitrogen-based nutrient numeric action levels are not consistent with the assumptions and requirements of TMDLs waste load allocations. Since the

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	nitrogen-based nutrient numeric effluent limitations are assigned a waste load allocation at the point of discharge, it should be a numeric effluent limitation, not a numeric action level. Numeric action levels are assigned at receiving waters. **Requested Change:** Commenter is requesting that the nitrogen-based nutrient numeric action levels be retranslated back into numeric effluent limitations as to be consistent with TMDLs. **Response:** Sections I.G.5.d and I.W.6.d of the Fact Sheet have been revised to further explain how numeric action levels are consistent with the assumptions and requirements of the waste load allocations.
5.02	**Comment Category: Retranslation of Nitrogen-based Nutrients from Numeric Effluent Limitations to Numeric Action Levels – Ventura River Algae TMDL** **Comment Summary:** Commenter states that the Ventura River Algae TMDL language specifies that the waste load allocations shall be numeric effluent limitations, not numeric action levels. **Requested Change:** Commenters are requesting for the Ventura River Algae TMDL waste load allocations to be retranslated back into numeric effluent limitations. **Response:** Sections I.G.5.d and I.W.6.d of the Fact Sheet have been revised to further explain how numeric action levels are consistent with the assumptions and requirements of the waste load allocations. Although the implementation language specifies that the waste load allocations should be implemented as numeric water quality-based effluent limitations, the underlying assumptions contained in the TMDL support implementation via numeric action levels.
5.03, 5.04, 5.05, 5.06, 5.07	**Comment Category: Retranslation of Nitrogen-based Nutrients from Numeric Effluent Limitations to Numeric Action Levels**

	Comment Summary: 1. Commenter states there is no adequate justification for retranslating nitrogen-based nutrient numeric effluent limitations into numeric action levels. The commenters add that the four justifications for retranslation did not adequately justify the change, nor did it properly ensure protection of water quality. Commenter states there needs to be further studies and analysis before retranslating numeric effluent limitations to numeric action levels. 2. Commenter states that that the exceedance thresholds did not change when retranslating the numeric effluent limitations to numeric action levels, thus only modifying the consequences for exceedances. Additionally, since there are still no feasible BMPs to mitigate these discharges, dischargers will still likely exceed their thresholds, but without any punishment. 3. Commenter states that retranslating numeric effluent limitations to numeric action levels will not prevent numeric action level exceedances; things will remain the same, just without punishment. 4. Commenter states that construction sites cannot be excluded because of other polluters within the same watershed. They add that construction sites must be regulated per the assumptions and requirements of the TMDLs. 5. Commenter states that analysis of industrial stormwater discharges does not justify or provide sufficient evidence for the retranslation of numeric effluent limitations to numeric action levels. They add that the Industrial General Permit actually lists three nitrogen-based TMDLs as numeric effluent limitations, ultimately allowing industrial stormwater discharges to remain well below their waste load allocations. **Requested Change:** Commenters are requesting that nitrogen-based nutrient numeric action levels be retranslated back into numeric effluent limitations for the final Construction Stormwater General Permit. **Response:** 1. The nitrogen-based nutrient numeric action levels are expected to protect water quality and are consistent with the assumptions and requirements of the waste load allocations. Please see responses to comments 5.04, 5.05, 5.06, and 5.07 for additional details. 2. This draft of the Construction Stormwater General Permit clarifies that denitrification and bioretention BMPs are the most effective at treating stormwater for concentrations of nitrogen-based compounds in stormwater but are not practical for implementation at construction sites. Dischargers must implement minimum BMPs such as good housekeeping, scheduling, and erosion/sediment control to minimize or eliminate discharges of nitrogen-based nutrient

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	compounds found in sediment or stored/applied in the form of fertilizers, pesticides, and herbicides. 3. The language in the Fact Sheet, Section I.G.5.d explaining how numeric action limitations are consistent with the requirements and assumptions of the waste load allocations has been revised. Fact Sheet, Section I.W.3 sets forth the State Water Board's process for evaluating and translating each of the TMDLs in Attachment H. Step 6 is to identify existing general permit requirements and evaluate if additional TMDL-specific requirements are necessary to implement the TMDL. For the nitrogen-based nutrient waste load allocations, it was determined that additional TMDL-specific requirements are not necessary to implement the TMDL. Where compliance with the waste load allocations is expected to be achieved through implementation of the general permit, it is not necessary to impose numeric effluent limitations. Instead, numeric action levels can confirm that the general permit requirements are sufficient. Numeric action levels do not remove accountability or deterrence. Although an exceedance of a numeric action level is not a violation of the permit, failure to take corrective actions to an exceedance would be a violation of the permit. Fact Sheet, Section I.W.3 was revised to further detail the required corrective actions for any exceedances. If the data collected under this permit shows that there are frequent exceedances, the State Board can amend the permit requirements. 4. The language in the Fact Sheet, Section I.G.5.d explaining how numeric action levels are consistent with the requirements and assumptions of the waste load allocations has been revised. In translating the TMDL, the entirety of the TMDL must be considered. The source analysis, discussion of critical condition, explanation of how the waste load allocation was calculated, and other explanatory language are all important to interpreting the relevant requirements and assumptions in the TMDL. The permit language does not ignore the waste load allocation assigned to construction stormwater. Responsible dischargers are assigned numeric action levels and must take corrective actions if there are any exceedances of those action levels. 5. The State Water Board has very few nitrogen-based nutrient sampling results from construction stormwater because the previous permit did not require sampling for nutrients. There is much more nutrient data available from the Industrial Stormwater General Permit. The Industrial Stormwater General Permit's numeric action levels for nitrate plus nitrite nitrogen (0.68 mg/L) and ammonia (2.16 mg/L) apply to dischargers of certain Standard Industrial Classification codes statewide. Both of these numeric action levels are lower than the TMDL-related numeric action levels in the Construction Stormwater General Permit. 95 percent of

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	stormwater sampling results for nitrate plus nitrite nitrogen and 92 percent of stormwater sampling results for ammonia complied with the Industrial Stormwater General Permit numeric action levels. The sampling results include data from industrial facilities with significant potential sources of nutrients, such as fertilizer manufacturers. Construction stormwater is expected to have fewer sources of nutrients. Thus, the data from the industrial general permit is relevant in demonstrating that numeric action levels are protective of water quality and part of the State Water Board's rationale regarding why nitrogen-based numeric action levels in this General Permit are consistent with the assumptions and requirements of the TMDLs and protect water quality.
5.08	**Comment Category: Retranslation of Nitrogen-based Nutrients from Numeric Effluent Limitations to Numeric Action Levels – Unworkable Standard** **Comment Summary:** Commenter states that retranslating the nitrogen-based nutrient numeric effluent limitations into numeric action levels creates an unworkable standard. Since one aspect of the analysis to retranslate was the fact that there were no feasible BMPs to control nitrogen-based nutrients, the commenter adds that switching from numeric effluent limitations to numeric action levels solves nothing, as there would still be no way to improve the BMPs. **Requested Change:** Commenter is requesting that the nitrogen-based nutrient numeric action levels be retranslated back into numeric effluent limitations pending further investigation regarding BMPs that can sufficiently control nitrogen pollutants. **Response:** Sections I.G.5.d and I.W.6.d of the Fact Sheet have been revised to further explain how numeric action levels are consistent with the assumptions and requirements of the waste load allocations. Although structural BMPs that are the most efficient at removing nitrogen-based nutrients are not practicable for most construction sites, there are other BMPs that reduce nitrogen-based nutrients from stormwater. Dischargers must implement minimum BMPs such as good housekeeping, scheduling, and erosion/sediment control to minimize or eliminate discharges of nitrogen-based nutrient compounds found in sediment or stored/applied in the form of fertilizers, pesticides, and herbicides. If there are exceedances of numeric action levels, corrective actions could also include further minimizing or eliminating stormwater discharges or implementing BMPs with filter media. It is

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	expected that most dischargers will not need to implement more advanced BMPs to meet the numeric action levels.
5.09	**Comment Category: Retranslation of Nitrogen-based Nutrients from Numeric Effluent Limitations to Numeric Action Levels – Disadvantaged and Polluted Community Effects** **Comment Summary:** Commenter states that retranslating the nitrogen-based nutrient numeric effluent limitations into numeric action levels will negatively affect disadvantaged and polluted communities. By utilizing numeric action levels rather than numeric effluent limitations, it authorizes dischargers to exceed their limits without imposing any financial penalties. Numeric action levels allow dischargers to exceed first and then determine a mitigation strategy afterwards. This continues to add exceeded constituents into already polluted waterbodies without any significant consequence. **Requested Change:** Commenter is requesting that the nitrogen-based nutrient numeric action levels be retranslated back into numeric effluent limitations to prevent pollutant exceedances in already vulnerable waterbodies and communities. **Response:** Numeric action levels for nitrogen-based nutrients are appropriate to protect water quality, as demonstrated by high rates of compliance with the numeric action level for nitrate plus nitrite nitrogen in the Industrial Stormwater General Permit which is lower than the proposed numeric action levels of this General Permit. In general, construction stormwater dischargers represent a small portion of nitrogen loading (e.g., estimated at 1.2 percent for Puddingstone Reservoir). Although there are not financial penalties for exceeding a numeric action level, there are required corrective actions. As set forth in Attachment H, Section I.D.3.e, the discharger must report and respond to any numeric action level exceedances. As described in Attachment D and E, Section III.G, when there is an exceedance of a numeric action level, dischargers must determine the source of the pollutant and implement corrective actions to reduce or prevent further exceedances and iterative corrective actions until the discharge is in compliance with the action level. Within 14 calendar days of an exceedance, a Qualified Stormwater D and QSP must perform on-site visual inspections and the QSP must document any areas of concern (Order, Section V.C.3 & V.D.4). Thus, dischargers have an incentive to avoid exceedances of action levels and numeric action levels are protective of water quality.

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9.01, 10.10	**Comment Category: Retranslation of Nitrogen-based Nutrients from Numeric Effluent Limitations to Numeric Action Levels** **Comment Summary:** 1. Commenter states they foresee issues with nitrogen-based numeric action levels. They convey that most BMPs are adequate to manage nitrogen-based nutrients are biofiltration or bioretention basins, which are advanced structural controls used by permanent or large projects. 2. Commenter agrees with the retranslation of nitrogen-based nutrients from numeric effluent limitations to numeric action levels. However, they would like to incorporate monitoring only requirements for the numeric action levels. **Requested Change:** 1. Commenter is requesting additional studies be performed to assess nitrogen contributions from construction sites, thus helping translate the waste load allocations. They also request the postponement of nitrogen-based numeric action levels until further studies can be performed regarding the technical and economic feasibility of complying with these requirements. 2. Commenter is requesting the implementation of monitoring only requirements for nitrogen compounds. **Response:** It is expected that construction stormwater discharges will not exceed the numeric action levels based on data from industrial stormwater dischargers, where nearly 95 percent of facilities are in compliance with a nitrate plus nitrate concentration that is lower than numeric action levels in this General Permit. The primary sources of nitrogen compounds on a construction site are expected existing concentrations in sediment from past land use and the storage and application of fertilizers, pesticides, and herbicides where minimum housekeeping and erosion/sediment controls should be sufficient to prevent discharges exceeding the NAL. Although structural BMPs that are the most efficient at removing nitrogen-based nutrients are not practicable for most construction sites, there are other BMPs that reduce nitrogen-based nutrients from stormwater. Dischargers must implement minimum BMPs such as good housekeeping, scheduling, and erosion/sediment control to minimize or eliminate discharges of nitrogen-based nutrient compounds found in sediment or stored/applied in the form of fertilizers, pesticides, and herbicides. If there are exceedances of numeric action levels, corrective actions could also include further minimizing or eliminating stormwater discharges or implementing BMPs with filter media. It is expected that most dischargers will not need to implement

Comment ID	Comment Summary and Response
	more advanced BMPs to meet the numeric action levels. Please refer to Fact Sheet Section I.G.5.d for additional details. The permit can be revised if relevant studies are completed in the future.
3.01, 10.04	**Comment Category: Total Maximum Daily Load-related Soil Screening Investigation and Associated Total Suspended Solids Numeric Effluent Limitations** **Comment Summary:** Commenters state that analysis pertaining to staff's approach and correlation of the total suspended solids (TSS) and the 100 mg/L TSS limit is insufficient. Moreover, they add that the analysis for the 100 mg/L TSS numeric effluent limitation is unsupported and is not clear in how the surrogate numeric effluent limitation was derived. **Requested Change:** Commenters are requesting that the surrogate numeric effluent limitation be retranslated into a numeric action level pending further study and analysis. **Response:** The numeric effluent limitation of 100 mg/L TSS as a proxy for certain metals and organochlorine pesticide constituents is based on research that demonstrates these pollutants have moderate to high adsorption to clay particles. Because TSS captures particles 45 microns and larger, most adsorbed constituents will be detected. Research also indicates that 100 mg/L is the lowest threshold that captures the non-dissolved phase of metals. Based on the broadly linear correlation between TSS and turbidity, evaluation of more than 300,000 turbidity samples in SMARTS indicates the TSS standard is achievable at construction sites. Specifically for the Los Angeles and Long Beach Harbor Waters Total Maximum Daily Load, the TSS numeric effluent limitation becomes effective on March 23, 2032.Until then, Dischargers must comply with the interim numeric action level(s) shown in Table H-2 of Attachment H. Data collected through implementation of the interim numeric action levels will provide further information about metals concentrations in construction stormwater and to assess the correlation between metals concentrations, total suspended solids, and turbidity.
4.02	**Comment Category: Total Maximum Daily Load-related Soil Screening Investigation and Associated Total Suspend Solids (TSS) Numeric Effluent Limitations** **Comment Summary:**

Comment ID	Comment Summary and Response
	Commenters support the use of a TSS proxy for pesticides and metals. However, they believe TSS numeric effluent limitations should be retranslated into numeric action levels pending further studies, data, and detailed analysis to determine feasibility of utilizing the 100 mg/L TSS proxy as a numeric effluent limitation. **Requested Change:** 1. Commenters are requesting to retranslate the TSS numeric effluent limitation into a numeric action level for all total maximum daily loads (TMDLs) with the TSS proxy pending release of additional studies and analysis. 2. Commenters are requesting additional studies, data, information, and analysis for the use of TSS as a proxy, its feasibility, and overall achievability. They are also requesting more data and cited scientific literature presented within the permit as well. **Response:** Numeric effluent limitations for metals and organochlorine pesticides are consistent with the assumptions and requirements of the TMDLs. Because the limitations for which TSS is a proxy were numeric effluent limitations, the TSS proxy is also a numeric effluent limitation. The rationale for using TSS as a proxy is: 1) the target pollutants exhibit moderate to high adsorption to clay particles; 2) the correlation between TSS and the target pollutants is linear, so a higher value for TSS would be less protective; and 3) sediment is the most common pollutant discharged from construction sites and can be managed effectively with BMPs. As data collected under this permit or additional research becomes available, the State Water Board can evaluate the use of the TSS proxy and amend the requirements if appropriate. Specifically for the Los Angeles and Long Beach Harbor Waters Total Maximum Daily Load, the TSS numeric effluent limitation becomes effective on March 23, 2032.Until then, Dischargers must comply with the interim numeric action level(s) shown in Table H-2 of Attachment H. Data collected through implementation of the interim numeric action levels will provide further information about metals concentrations in construction stormwater and to assess the correlation between metals concentrations, total suspended solids, and turbidity.
4.03	**Comment Category: Total Maximum Daily Load-related Soil Screening Investigation and Associated Total Suspended Solids Numeric Effluent Limitations** **Comment Summary:**

Comment ID	Comment Summary and Response
	Commenter states that the Legg Lakes reference should not be included, and additional information needs to be incorporated stating that a source assessment is only required for specific waterbody pollutant combinations in Attachment, Section I.G.5.a. **Requested Change:** Commenter is requesting to remove the Legg Lakes reference and add clarifying text stating that a source assessment is only conducted for applicable waterbody pollutant combinations in Attachment, Section I.G.5.a. **Response:** The reference to Legg Lakes has been removed from Attachment H, Section I.G.5.a. and text added to the same section to clarify that laboratory analysis is limited to the TMDL-specific pollutants in the subject watersheds.
5.13	**Comment Category: Total Maximum Daily Load-related Soil Screening Investigation and Associated Total Suspended Solids Numeric Effluent Limitations** **Comment Summary:** Commenter states that the TSS proxy should only be utilized when waste load allocations are too low to detect. They also state that the use of the TSS proxy for cost-effective measures is against the law and does not align with the applicable waste load allocations. The commenter concludes that the two justifications are deficient, and the TSS proxy should only be used when waste load allocations are analytically undetectable. **Requested Change:** Commenter is requesting that the TSS proxy be utilized only when waste load allocations are too low to detect. **Response:** Use of TSS as a proxy for metals in the Los Angeles and Long Beach Harbor Waters TMDL watershed offers equivalent protection of water quality as a direct limitation for metals directly. Cost considerations are appropriate so long as the requirements are consistent with the assumptions and requirements of the waste load allocations. In addition, this watershed offers the best opportunity to evaluate the strength of the proxy in a predominantly urban setting. Research indicates that the target metals adsorb readily to soil, and sediment is the primary pollutant at construction sites. In addition,

Comment ID	Comment Summary and Response
	dischargers are required to test for metals for informational purposes, which can be used to confirm the proxy's underlying assumptions. As data collected under this permit or additional research becomes available, the State Water Board can evaluate the use of the TSS proxy and amend the requirements if appropriate. Specifically for the Los Angeles and Long Beach Harbor Waters Total Maximum Daily Load, the TSS numeric effluent limitation becomes effective on March 23, 2032.Until then, Dischargers must comply with the interim numeric action level(s) shown in Table H-2 of Attachment H. Data collected through implementation of the interim numeric action levels will provide further information about metals concentrations in construction stormwater and to assess the correlation between metals concentrations, total suspended solids, and turbidity.
5.14	**Comment Category: Total Maximum Daily Load-related Soil Screening Investigation and Associated Total Suspended Solids Numeric Effluent Limitations – Exceedance** **Comment Summary:** Commenter states that exceeding the TSS numeric effluent limitation proxy must be a violation for each underlying pollutant, not just a single violation for multiple exceeded pollutants. For example, if both organochlorine and polychlorinated biphenyls (PCBs) exceed their TSS numeric effluent limitation, then this would be considered multiple violations, not just 1 violation for TSS. **Requested Change:** Commenter is requesting clarification and updates to permit language regarding exceeding a TSS numeric effluent limitation. They state that the exceeding a TSS numeric effluent limitation should result in a violation for each underlying pollutant, not just a single violation for multiple pollutants covered under the TSS proxy. **Response:** Attachment H, Section I.G.5 was revised to state that an exceedance of the TSS numeric effluent limitation proxy will be treated as an exceedance of each individual pollutant at the site that is listed in the pollutant source assessment section of the SWPPP and exceeds the monitoring thresholds during the soil screening investigation. For example, if the results of the soil screening investigation are above the monitoring thresholds such that the discharger is required to test for PCB and zinc, a violation of the 100 mg/L TSS numeric effluent limitation shall be two violations, one for PCB and one for zinc.

Comment ID	Comment Summary and Response
5.15	**Comment Category: Total Maximum Daily Load-related Soil Screening Investigation and Associated Total Suspended Solids Numeric Effluent Limitations – Backup Numeric Action Levels** **Comment Summary:** Commenter states that having numeric action levels as a backstop for TSS numeric effluent limitations will ensure best management practices (BMPs) are effectively controlling pollutants, verify that the TSS numeric effluent limitation proxy is effective, and help protect water quality. The commenter suggests that where the numeric action level is too low for analytical detection, the Water Board can require action at the analytical detection limit. **Requested Change:** Commenter is requesting the implementation of numeric action levels as a backstop for TSS numeric effluent limitations. **Response:** A numeric effluent limitation and numeric action level applicable for the same TMDL at the same time would be confusing and administratively difficult to implement. Attachment H, Section I.G.6 of the Permit requires dischargers using the TSS proxy to additionally analyze and report the concentrations of total copper, total zinc, and total lead. Having measurements of metals concentrations along with TSS allows the Water Boards to both evaluate the efficiency of the TSS proxy and monitor the actual listed TMDL pollutants. The same requirement is not imposed for the organochlorine pesticides because the reporting limit is substantially higher than the applicable limitations and accordingly less likely to produce useful data. Specifically for the Los Angeles and Long Beach Harbor Waters Total Maximum Daily Load, the TSS numeric effluent limitation becomes effective on March 23, 2032.Until then, Dischargers must comply with the interim numeric action level(s) shown in Table H-2 of Attachment H. Data collected through implementation of the interim numeric action levels will provide further information about metals concentrations in construction stormwater and to assess the correlation between metals concentrations, total suspended solids, and turbidity.
9.02	**Comment Category: Total Maximum Daily Load-related Soil Screening Investigation and Associated Total Suspended Solids Numeric Effluent Limitations** **Comment Summary:**

Comment ID	Comment Summary and Response
	Commenter states there is an unclear relationship between Figure 1 in the Fact Sheet and TSS numeric effluent limitations. **Requested Change:** Commenter is requesting additional documentation be provided for Figure 1 in the Fact Sheet and methodology/analysis be incorporated to convey how 100 mg/L TSS was derived for the numeric effluent limitation. **Response:** At a few known sites in California counties where TMDL requirements apply, organochlorine pesticides and PCBs were detected in stormwater runoff at measurable concentrations in the same samples that Total Suspended Solids (TSS) were also measured. The Figures were intended to show that if the measured TSS was normalized to 100 mg/L, the proportional organochlorine pesticides and PBS concentrations would be detectible at levels useful for evaluation of the proxy. Similarly, this analysis was applied to the TMDL metals, in that the detected concentrations in samples where TSS was also analyzed were at or below their respective Waste Load Allocations. Staff has decided to remove the Figures because in order to show these relationships, the Reporting Limits and Waste Load Allocations had to be expressed as percentages rather than the actual values in order for the TMDL pollutants to be adequately visible in the graphic. The confusion this creates is judged to outweigh the benefit of the graphic, so the foregoing textual explanation will be used instead.
9.03, 10.06, 10.07, 10.08	**Comment Category: Total Maximum Daily Load-related Soil Screening Investigation and Associated Total Suspended Solids Numeric Effluent Limitations – BMPs** **Comment Summary:** 1. Commenters state that no adequate studies have been incorporated into the permit regarding feasibility of compliance when utilizing traditional construction best management practices (BMPs.) 2. Commenters state that additional information and data is necessary regarding BMPs that can effectively achieve the 100 mg/L TSS threshold. They state that traditional construction BMPs cannot consistently meet the TSS numeric effluent limitation, and advanced treatment system appear to be the only practice that can achieve the 100 mg/L TSS threshold. 3. Commenters state that TSS is site-specific and the universal 100 mg/L TSS limitation needs to be tailored to individual sites. The TSS threshold should vary based on specific site location, as the 100 mg/L TSS limitation cannot be utilized for every site.

Comment ID	Comment Summary and Response
	Requested Change: 1. Commenters are requesting additional studies, data, information, and analysis for the use of TSS as a proxy and its feasibility. Additionally, they request further information and analysis regarding traditional construction site BMPs and their feasibility of achieving the 100 mg/L TSS limit. They would also appreciate more data and cited scientific literature presented within the permit as well. 2. Commenters are requesting additional studies and analysis be performed regarding the performance of advanced treatment systems with respect to TSS removal. **Response:** 1. There are several categories of BMPs proven to reduce TSS, including scheduling, cover, infiltration, filtration, and detention. Multiple studies worldwide have demonstrated a strong linear correlation of turbidity (measured in nephelometric turbidity units (NTU)) and TSS, with the NTU/TSS ratio ranging from 0.7 to 1.4. Using the 320,000+ NTU data points reported to SMARTS under the Construction Stormwater General Permit, the standard is achievable, since applying the higher multiplier of 1.4 to the trimmed (statistical outliers removed) mean of 68 NTU would be 95 mg/L TSS. 2. Construction sites in California have not been required to obtain TSS samples. There is, however, a known linear relationship between NTU and TSS, which can be used to evaluate the achievability of the TSS standard. The correlation varies in a range between 0.7 and 1.4, depending on specific site conditions, so the statewide trimmed mean value of 68 NTU, based on over 320,000 data points, would translate to 48 to 95 mg/L TSS. Although it may be difficult to achieve 100 mg/L TSS at some sites, the data indicates that it will be achievable at a majority.
10.05	**Comment Category: Total Maximum Daily Load-related Soil Screening Investigation and Associated Total Suspended Solids Numeric Effluent Limitations** **Comment Summary:** Commenter states it is unclear how laboratory analysis results for soil samples should be examined to indicate the use of the 100 mg/L TSS surrogate numeric effluent limitation. They are unclear how permittees should compare the analytical results for metal concentrations and organochlorines. **Requested Change:**

Comment ID	Comment Summary and Response
	Commenter is requesting clarification for how the 100 mg/L TSS surrogate will be applied. **Response:** The TMDL-related soil screening investigation is to determine if the target constituents are present at the time. The results would not necessarily be predictive of runoff concentrations. The TSS numeric effluent limitation set forth in Attachment H, Section I.G.5.a.vi.2 applies only if the soil sample analysis results exceed the applicable thresholds.