AT&T Services, Inc. **Environment, Health & Safety**

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

at&t

May 4, 2007

Ms. Song Her
Clerk to the Board - SWRCB
1001 I Street, 24th Floor
Sacramento, CA 95814

Response from AT&T Corp. and Pacific Bell Telephone Company (dba AT&T California)
to: California State Water Resources Control Board (SWRCB)
NPDES General Permit for Storm Water Discharges Associated Construction
and Land Disturbance Activities
Preliminary Draft Dated March 2, 2007

Thank you for the opportunity to comment on this Preliminary General Permit. The following comments are in two categories: a general response to the document from the perspective of its overall applicability to the types of construction projects in which AT&T engages; and some specific point-by-point comments on language in the Draft Permit itself.

As a provider of telecommunication services throughout California, our principal concern with the proposed General Permit is that it is clearly most appropriate for addressing storm water discharges from conventional perimeter-bounded projects such as residential and commercial developments. As a telecom company, the vast majority of our projects are *linear trenching projects* typically of narrow width (usually 1-2 feet)[1] and of varying length (up to twenty or more miles) for the installation of telecom lines and related infrastructure. Many of these projects are located outside other common plans of development and are considered unique projects in their own right. Key provisions of the proposed permit, if applied to our longer linear projects, would present impractical, unreasonable, and in many cases unnecessary challenges to our compliance.

Operators of long linear projects (usually located in pre-existing easements and rights-of-way) typically have much less control over access to the "project site" than would a developer of a residential or commercial development project with a conventional perimeter and footprint. While a long linear project

[1] Typical trench width is 1-2 feet with up to 6 feet of ancillary disturbance from excavated soil spread, for a total disturbed width of up to 8 feet.

has many theoretically possible discharge points along the project route, in our experience *the actual portion of the discharge associated with the linear construction itself is typically small.* It will be impractical and cost-prohibitive to monitor for permit compliance along the full length of many linear utility projects - and with minimal or no increased environmental benefit for the expended effort. We believe this general reason alone is sufficient justification for the State to consider a different approach to managing these unique projects.

In 2003, linear projects were correctly recognized by the SWRCB as inherently and sufficiently different from other kinds of construction projects such that a special permit was created for small linear projects (less than 5 acres or approx 5 miles long) [2]. The *General Permit for Storm Water Discharges Associated with Construction Activity from SLUP -Small Linear Underground /Overhead Projects- (General Permit #2003-0007 DWQ)* has been an efficient and effective tool for mitigating the storm water impacts resulting from the kinds of projects we typically pursue.

It is our belief that the nature of most linear telecom projects is sufficiently different, both in kind and in likely environmental impact from other construction projects, such that the best approach to managing them would be to modify the existing SLUP Permit to include larger linear projects. Other possible approaches are offered at the end of this letter in "Recommendations". Reasons for this position are found in our specific comments on the Draft Permit itself which follow, but also in the language and reasoning in the *Fact Sheet* accompanying the Draft Permit.

For example - Section C of the *Fact Sheet* addresses the efforts of the State's 2005/2006 Blue Ribbon Panel to consider the feasibility of establishing "Numeric Effluent Limitations" (NEL) in California's storm water permits. In establishing the Panel, the State Board directed that "Consideration should be given to whether numeric limits would apply to all construction sites or only those with significant disturbed soil areas (e.g. active grading, un-vegetated, or un-stabilized soils)." The Board also directed that any evaluation of the establishment of objective criteria should address "the ability of dischargers and inspectors to monitor for compliance" and "the technical and financial ability of dischargers to comply with the limitations or criteria."

[2] A rule-of-thumb for estimating the disturbance of linear projects is "1 mile = 1 acre" based on 8 feet x 5280 feet equals 42,240 which is less than 1 acre.

The following comments are specific to the cited language in the proposed Draft Permit and are generally based on the scenario of a typical linear construction project along a developed utility right-of-way, disturbing more than 5-acres of land (i.e. is greater than 5 linear miles).

I. Findings

25. Project Risk – Attachment F. The language of the "five distinct stages of construction activities" identified in this section clearly implies that the type of project being addressed is a conventional perimeter construction project. To apply these new criteria to linear projects based on the proposed risk metrics for likely sediment discharge, will cause many linear construction projects to be considered "high risk" which really should not be. This is due to the inevitable variability in soils (e.g. types and particle sizes) along a long linear route, variability in discharge points, variability in natural slope and variability in construction schedules.

IV. Effluent Limitations

Most linear projects contribute little to and enable even less control of off-site discharges, and therefore it is impracticable to impose objective numerical effluent limits on these projects. Linear projects consist of a narrow area of construction over a long distance, with discharge points typically consolidated at drainage culverts, swales, and other points along the route. Accordingly, identification and segregation of the discharge *solely associated with linear soil disturbance* is very difficult if not impossible to achieve. Potential contributors to the discharge at any given point along the route are the result of co-mingled runoff from the site, while that portion of the discharge associated with the linear construction itself is typically small. This is as true for short linear runs as for long ones.

3a. NEL for pH – Linear construction projects disturb native soils *without changing their inherent chemistry.* If pH discharge limits were exceeded, the linear excavation project itself would likely have had minimal impact and presents little realistic ability to control this discharge parameter. In long linear runs where only native soil is typically disturbed and replaced, the introduction of "fresh cement or wash water from cement mixers" typical to other construction sites (and noted in the Fact Sheet as a major contributor to pH changes in runoff) would not be expected.

VI. Receiving Water Limitations

General - See above comments regarding effluent limits

VIII. Project Planning Requirements

B. Soil Analysis - Linear construction subject to this permit will likely be several miles in length. Over the course of several miles, numerous soil types may be encountered. It is not practicable to sample and evaluate the particle size of every soil type encountered over a several mile construction route. Once again, long linear projects are not a good fit for the practical expectations of this Draft Permit. Sediment control for linear projects is achieved through constructed Best Management Practices (BMPs) installed at logically chosen drainage consolidation points which rely heavily on naturally vegetated buffers along the project route. These are not likely to vary significantly based on changes in soil conditions (e.g. particle size) along the project route.

IX. Project Implementation Requirements

A. Numeric Limitations - See above comments regarding numeric limitations.

D. Runon and Runoff – Linear construction projects have little to no control over site runon and typically do not change the naturally existing slope of the terrain. The importance of this fact as a practical matter cannot be overstated. Calculations for runon and runoff therefore are impractical for most linear construction. Even if they were calculated, most of the discharge would be associated with surface runoff and drainage *from areas other than the actual disturbed area of construction*. Runoff velocity will be mainly a function of the natural slope of the existing site and *will be little affected by the actual linear construction activities themselves*. These calculations will serve little meaningful purpose for this type of construction.

E. Sediment Controls 2. Sediment basins – Not feasible for linear construction projects.

H 1f. Source Control - Unlike in a fixed perimeter construction site, linear projects have no typical project “entrance and exit points.” A linear project advances incrementally, opening up and closing active segments as the project advances and therefore “stabilized construction entrances” are not feasible for linear projects.

X. Storm Water Pollution Prevention Plan (SWPPP)

A. SWPPP Preparation, Implementation and Oversight.

1. Qualifications – Required qualifications will serve to significantly increase the cost of SWPPPs. Most linear SWPPPs contain routine conditions which do not merit excessive credentials and associated cost. Costs will substantially increase if implementation (i.e., routine inspections) requires extensively credentialed erosion control professionals for all projects.

Attachment C – NOI and Instructions

Who must submit NOI (Notice of Intent)? - The second paragraph indicates that linear construction projects in one or more Regional Water Board jurisdictions should contact the State Water Resources Control Board prior to submitting an NOI. This language suggests that the SWCRB recognizes the unique nature of linear construction and its potential to cross jurisdictions. This language also suggests that in addition to the NOI, the SWRCB should be contacted *prior to every linear project*. This additional contact seems onerous and unnecessary within the context of a general permit authorization.

Attachment E - Monitoring Program and Reporting Requirements

General – *Effluent monitoring is simply not feasible for linear construction sites as there are multiple discharge locations and extensively co-mingled discharge*. The linear construction effort will have little or no control over the combined discharge parameters.

Receiving Water Monitoring - As linear construction subject to this permit crosses several miles of ground, there will be numerous discharge locations and very unlikely a single-point receiving water body. It is not feasible to conduct receiving water monitoring as discussed in Attachment E

Attachment F – Sediment Transport Risk Worksheet

Projects under the scope of the permit will likely be 5-miles or longer in length. Over the course of the project, many soil types and hydraulic conveyances will likely be encountered. Under the current worksheet parameters, it is likely that many linear projects will be considered a “medium or high risk” because of the following:

1. Proximity to Receiving Water - If *any single point* along the entire linear project was proximate to a water body, the *entire project* would be classified with a higher risk rating.
2. Area of site to be cleared - Linear projects usually include minimal grading or clearing and only a small portion of each project is ever exposed a one time.
3. Rainy Seasons and Erosivity Index: Projects are likely to be conducted year round with variable soil conditions.

4. Runoff potential: Variable soils likely to be encountered, potentially including hydrologic Group D.

Using this rating scheme, all projects exceeding 100 points would be classified as a "medium risk" and all projects exceeding 200 points would be considered to be a "high risk". At the April 20, 2007 workshop in Sacramento, Board Staff expressed their expectation that planned projects would fall in a "normal distribution curve" under this risk rating scheme, but it is clear that many of our projects would be rated either medium or high risk and that a low risk rating would be difficult to achieve. We believe this system mis-represents the actual risks and potential impacts and more importantly - *the controllable potential impacts* – of these projects, which in most cases really are of low risk to the watershed.

Attachment G - New and Re-development Standard Worksheet

General - This worksheet is not practical for linear utility construction as there is seldom any permanent modification to drainage characteristics of the site. Completion of this worksheet would add no value for most linear projects.

Other General Concerns

A. It is impractical to impose NELs on linear construction as there is so little ability to control the variables affecting the "project site."
B. It is impractical to consider soil particle-size or slope variability along lengthy project routes, especially when this would not change the location of BMPs which are always located at consolidated drainage points. The proposed permit requires BMPs *every 300 feet for zero slope* and more frequently with increasing slope. This seems excessive and of little added value on a long run with little change in slope. Instead, logical placement of BMP at consolidated drainage points would seem more than sufficient.
C. When assigning risk points by considering a project's "Proximity to Receiving Water", no account is made for time of year (wet season or dry), existing impairment of the nearby water body, or the amount of the linear project that is actually near the receiving water body.
D. When assigning risk points by considering the project area to be cleared, no account is made for the re-vegetation that occurs during a project's lifespan or along its length as active trench segments are closed, both of which serve to reduce the area actually subject to erosion at any one time.

In summary, the theme of our concerns about the proposed permit is one of *applicability, practicability, feasibility and efficacy*. Utility projects for the installation or maintenance of telecom lines are a common activity in California and with growing demand for broadband services is likely to increase. In previous General Permits, the State Board has already correctly recognized that small linear construction projects are inherently different than conventional footprint construction projects and therefore warrant a special approach to managing their storm water impacts. In fact our essential position can be found in the Fact Sheet accompanying the 2003 SLUP in which the State Board notes that small LUPs "are not like traditional construction projects" and are "typically of short duration and constructed within or around hard paved surfaces that result in minimal disturbed land areas being exposed at the close of the construction day". We agree and believe this approach remains valid regardless of individual project length. We further believe that these projects are not well considered under the current proposal. Issues of practicability, cost of compliance, and even the likely effectiveness of proposed mitigation measures are all a serious concern for us under the current proposal. In short they are not a good fit for being managed under the proposed language. Carefully considered relief from the most problematic provisions of this proposed permit for the linear projects we typically engage in is greatly needed and we believe warranted.

RECOMMENDATIONS: Because linear telecom projects are different from the kinds of projects best managed by the proposed General Permit, we ask that the State Board carefully re-consider how linear projects are to be regulated. The following possible solutions are submitted for your consideration:

1. Categorical Exclusion - Consider categorically excluding most linear telecom projects from coverage under this Permit as was done with the construction of "water lines, electrical utility lines, etc. as part of oil and gas exploration". The potential adverse environmental impacts of most telecom linear projects are far smaller than those of other industries with hazardous chemical-bearing infrastructure.
2. SLUP Expansion - Seriously consider expanding the current Small Linear Underground/Overhead Permit (SLUP) to larger linear projects. Its mitigation methods work well for this type of project. Many of the proposed Draft Permit requirements are not applicable to linear construction or will be very difficult to implement and would achieve little or no additional watershed protection.

3. Assumed Level of Risk - Consider changes within the proposed Permit such that linear construction be considered *low risk by rule* and therefore would not require NELs in most circumstances based on: the incremental nature of construction, seasonality, the type and true proximity of water bodies affected, amount of re-vegetation over time, and the amount of the project area soil exposed at any one time.
4. Consistency - Because long linear projects may cross many jurisdictional lines (including multiple Regional Boards), we believe a consistent approach across the State is warranted to address these concerns.

We appreciate and thank you for the opportunity to participate in this dialogue and we look forward to working with the State Board to craft an approach that meets all of our objectives. Should you have any questions or require any clarification, please feel free to contact the undersigned.

Sincerely,

Jay P. Maille

EH&S Manager – U. S. Water Compliance
AT&T Services, Inc.
2600 Camino Ramon - 3E000A
San Ramon, CA 94583

Tel: 925.823.7430

cc: Michele Blazek, AT&T Director EH&S