

Response To Comments For The Proposed Draft Of The
STATE WATER RESOURCES CONTROL BOARD (SWRCB)
ORDER NO. –2003 - 0007 - DWQ
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. CAS000005

WASTE DISCHARGE REQUIREMENTS (WDRS) FOR DISCHARGES
OF STORM WATER RUNOFF ASSOCIATED WITH SMALL LINEAR
UNDERGROUND/OVERHEAD CONSTRUCTION PROJECTS (GENERAL PERMIT)

1. COMMENT RECEIVED FROM THE ANAHEIM PUBLIC UTILITIES DEPARTMENT

Comment: Concurs that Tier I Linear Utilities Projects (LUPs) do not have a high potential to impact storm water quality, find proposed Tier I LUP National Pollutant Discharge Elimination System (NPDES) regulations too burdensome.

Recommends the General Permit be revised to:

- Eliminate all Storm Water Pollution Prevention Plan (SWPPP) requirements and allow the Linear Construction Activity Notification (LCAN) to acknowledge all appropriate Best Management Practices (BMPs) will be implemented, and
- Eliminate the Linear Construction Termination Notice (LCTN).

Response: The proposed General Permit will not be revised as recommended. Staffs of the State Water Resources Control Board (SWRCB) and Regional Water Quality Control Boards (RWQCBs) have found the use of SWPPPs to be an effective tool to ensure compliance with the intent of the storm water program regulatory requirements. The SWPPP provided in this General Permit for Tier I projects is a simple document that was developed based on the complexity of a Tier I project and with input from the linear construction industry. This form will not require significant time and, we believe, does not create a burden on the industry to complete.

We do not propose deleting the need for the LCTN at this time. The LCAN is to be used to notify the RWQCB when a small LUP will be constructed, and the LCTN will notify the RWQCB when construction is complete. The LCTN will also help ensure compliance because it requires the discharger to sign and certify that the site was in compliance, with this General Permit during the term of the project. If it cannot certify compliance an explanation must be included. Also, the LCTN has been modified to be used as the mechanism by which a discharger will notify a RWQCB when contaminated soil was encountered at a job site.

This General Permit will be renewed every five years. At the time of renewal, the SWRCB will review all requirements of this General Permit to determine what changes should be made. The usefulness and applicability of all the forms, including the LCTN, will be evaluated at that time.

2. COMMENT FROM ENVIRONMENTAL BUSINESS SOLUTIONS

Comment: Municipalities and other entities that have the potential to engage in these types of projects will more than likely conduct a number of these projects at once. I did not see any reference in the permit to allow these entities to submit one NOI for more than one project. There should be language in the permit to allow a NOI to cover more than one project within a certain timeframe (approximately one-year) and that it would also cover projects not anticipated at the time of NOI submittal. This would assume that all the projects submitted in the NOI are of the same tier or type.

Response: This General Permit has different application requirements depending on the complexity of a small LUP. Dischargers may choose to submit one LCAN to the appropriate RWQCB office for many Tier I small LUPs, or submit one LCAN for an individual Tier I project. Dischargers may only submit one Notice of Intent (NOI) for each Tier II project. The NOI and LCAN submittal requirements are discussed in detail in the Fact Sheet of this General Permit within the discussion of **NOI Submittal Requirements**.

3. COMMENT FROM EASTERN MUNICIPAL WATER DISTRICT

Comment: If an agency such as EMWD is developing many different pipeline projects in a year, and these pipeline projects are not contiguously connected but they are in the same general region, why does this permit require individual permits for each project instead of allowing an agency or individual to file "one permit" with several location sites not connected? It would be more efficient for an agency to file one permit with individual SWPPPs for each project and do the monitoring and file the completion permits when they are done. Is there a possibility for this to be included in the General Permit with qualifiers for timelines, such as completion of projects within the current fiscal or calendar year?

Response: Notice requirements vary depending on the complexity of the small LUP and are based on the threat to water quality. This General Permit allows for a discharger to file one LCAN for multiple Tier I projects or may submit one lean for each project. This General Permit requires a discharger to file individual notices for each Tier II small LUP because these are projects considered to have a higher threat to water quality. Please reference the Fact Sheet discussions under Determining Project Complexity and NOI Submittal Requirements for a more detail.

4. COMMENTS RECEIVED FROM THE NORTH MARIN WATER DISTRICT

a. Comment: Recommend a flow chart be prepared to guide the discharger or authorized representative in compliance with the permit steps.

Response: We agree that flow charts would be helpful for SWRCB and RWQCB staffs and dischargers and intend to develop flow charts for use immediately following the adoption of this General Permit.

b. Comment: Discharge prohibitions and effluent limitations identify storm water

discharges resulting in “nuisance” as a requirement to obtain a permit. Definition of a storm water discharge causing “nuisance” is not provided, and the District believes the language is too discretionary and requests the term be removed from the prohibitions and effluent limitations.

Response: This General Permit will not be revised to address this comment. The use of the term “nuisance” in both the Discharge Prohibitions and Effluent Limitations does not establish the need for permit coverage, rather these are requirements that must be met once permit coverage is obtained. The need to obtain permit coverage is established based on the type of construction project and size. The term “nuisance” is defined in the State Porter-Cologne Water Quality Control Act, Chapter 2, Section 13050(m).

5. COMMENT RECEIVED FROM BEST, BEST & KRIEGER, LLP

Comment: Clients of Best, Best & Krieger, LLP would like guidance on how the small LUP Permit interrelates with various NPDES permits including the Statewide General Construction and Industrial Permits, Statewide Hydrostatic Test Permit and large and small MS4 permits.

Response: We agree that guidance and outreach would be helpful and is needed for this General Permit. SWRCB will develop and post guidance material on its website subsequent to the adoption of this General Permit.

6. COMMENTS RECEIVED FROM STOEL, RIVES, LLP

a. Comment: Need to confirm that "Discharger" is defined in this permit to mean "the utility company, municipality, or other public or private agency that owns or operates the small LUP." (See footnote 2 in the Fact Sheet.) This means the entity that owns the project infrastructure (e.g. utility company) would be the discharger responsible for obtaining permit coverage when they are doing the work. Also, a real property lessee with operational control over the facilities under construction would qualify as an operator and thus have responsibility as the discharger, thereby relieving the property owner of the responsibility for obtaining permit coverage

Response: Yes, the proposed General Permit defines a discharger of a small LUP as the utility company, municipality or other public or private company or agency that owns or operates the small LUP. This is consistent with the current Statewide General Permit for Storm Water Discharges Associated with Construction Activities (Order No. 99-08-DWQ) that allows operators of construction activities being conducted on easements or on nearby property by agreement or permission to file for permit coverage rather than the property owner.

b. Comment: The Fact sheet states the "General Permit has varying application and permitting requirements depending on the type and complexity of the project." There follow sections on "Determining the Type of Project" and "Determining Project

Complexity." This suggests that specific requirements of the permit will depend on project type, when in fact type does not appear to be a criterion for applicability of particular permit requirements. While the characteristics of different project types will bear on BMPs to be implemented, the requirement is the same for all types of projects - implement relevant BMPs. It would be helpful if the significance of the project type, as broken down in the Fact Sheet, were clarified.

Response: We agree the language contained in this section of the Fact Sheet as written may be confusing and have revised the language to read: "This General Permit has varying application requirements based on the type of project and varying permitting requirements depending on the complexity of the project."

- c. **Comment:** The interplay between the proposed LUP permit and the existing construction General Storm Water Permit 99-08 or Municipal MS4 permits is not entirely clear. The LUP permit states that it is not applicable to storm water discharges from Small LUPs for projects covered by another construction storm water general permit or individual NPDES permit for storm water discharges associated with construction activity. (Fact Sheet p. 9; Order Finding 3). Just to confirm, this appears to mean that the LUP permit simply provides an alternative to coverage under the Construction General Permit. Also, the permit could be clearer that dischargers can comply with an MS4 construction permitting program in lieu of this permit.

Response: The proposed General Permit is intended to regulate discharges of storm water associated with construction activities of small LUPs. Small means construction activities that result in a land disturbance greater than one-acre but less than five-acres. The Fact Sheet defines the types of linear projects that are eligible for coverage under this General Permit. There is a similarity between the proposed General Permit and the current Statewide General Permit for Storm Water Discharges Associated with Construction Activities (Order 99-08). Order 99-08 regulates storm water discharges from any construction activity that results in a total land disturbance of one-acre or more. There are no restrictions on the type of projects that may seek coverage under Order 99-08. A discharger of small LUP projects may choose to seek coverage under the proposed General Permit, or they may elect to seek coverage under Order 99-08, or they may apply for an individual permit for storm water discharges from construction activities.

The relationship between the proposed General Permit and a Municipal Separate Storm Sewer System (MS4) permit is similar to the relationship between an MS4 permit and Order 99-08. Discharges of storm water from construction activities must be regulated by a storm water permit that contains different requirements than an MS4 permit. Construction activity discharges are required to meet best available technology (BAT) and best conventional pollutant control technology (BCT) discharge standards, pursuant to the federal Clean Water Act (CWA). Municipal (MS4) permits regulate discharges of storm water from MS4s and such discharges are required to meet the MEP discharge standard (reduction of pollutants in storm water "to the maximum extent practicable"). MS4 permits do indirectly regulate discharges of storm water from construction activities

by making municipalities responsible to reduce pollutants into their systems. But all dischargers of storm water associated with construction that results in land disturbance greater than one-acre, including municipalities that are regulated by MS4 permits and are also owners or operators of construction activities, must seek coverage under a construction storm water permit. Depending on the type of construction activities, the MS4 may choose to seek coverage under this proposed General Permit, Order 99-08, or they may submit an application for an individual permit. Thus, dischargers **cannot** comply with an MS4 construction permitting program in lieu of this permit.

- d. Comment:** The first sentence at Special Provision D.4. is awkward.

Response: We agree the language is awkward and have revised the language to clarify its intent. This sentence has been revised to read: “When using this General Permit, the discharger or duly authorized representative of Small LUPs must obtain coverage under this General Permit prior to commencement of construction activities.”

- e. Comment:** Special Provision D.12. is also awkward because it is circular. It says, in essence, that a discharger can terminate coverage when construction activities are completed by requesting termination.

Response: We agree the last sentence of Special Provision D.12 needs to be revised because it is awkward but do not agree it is circular. We have revised this sentence to clarify its intent. Part “(e)” of the sentence has been revised to read “the discharger or duly authorized representative submitted a LCTN for Tier I projects and has received approval for termination from the appropriate RWQCB(s) office for Tier II projects.”

- f. Comment:** The NOT (for Tier II) and LCTN require certification that the project was in compliance with the permit throughout the construction project. (See also Section b.5.) While it is not clear that the signed certification is necessary for agency approval, it appears an essential component of completing the forms. A discharger cannot sign if there were any incidents of noncompliance during the project, but the form provides no alternative.

Response: We agree. The Compliance Certification was revised on the Notice of Termination (NOT), in part, to read: “I certify under penalty of law that construction activities conducted at this Tier II small LUP site identified ___ were OR ___ were not (if not, explain fully in the basis for termination, you may refer to prior submittals to the RWQCB) in compliance with the requirements of NPDES No. CAS _____ and the site’s SWPPP throughout the entire construction project.” The LCTN Compliance Certification was revised to read: “I certify under penalty of law that construction activities conducted at identified site ___ were OR ___ were not (if not, explain fully in the basis for termination, you may refer to prior submittals to the RWQCB) in compliance with the requirements of NPDES No. CAS _____ and the site’s SWPPP throughout the entire construction project.” In addition, the LCTN form to be

used for termination notices of more than one project was also revised to include a new column to allow the discharger to certify compliance with each individual project.

- g. Comment:** SWPPP section paragraph A.6.b (requiring drawings or map in Tier I SWPPP) is identical to and redundant with A.5.e (same requirement for all tier SWPPPs).

Response: We agree it is redundant. For clarification, we have deleted A.6.b.

- h. Comment:** SWPPP section paragraphs A.6.i and A.7.vi (requiring stabilization in accordance with A.8. for Tier I and Tier II SWPPPs) are redundant with paragraph A.5.i. (requiring same for all tier SWPPPs.)

Response: We agree that Section A.6.c.i is redundant with A.5.i and have deleted A.6.c.i. We agree in part that A.7.a.vi. is redundant and have deleted the words, “Disturbed land areas shall be stabilized in accordance with Section A.8 of this General Permit and,” the remaining part of this requirement will remain unchanged.

7. COMMENTS RECEIVED FROM SANTA ANA RWQCB

- a. Comment:** Is it possible to eliminate Section A – Storm Water Pollution Prevention Plan and Section B – Monitoring Program and Reporting Requirements and place them within the Order using Roman Numerals?

Response: This General Permit will not be changed. The current format was used in order to be consistent with the current format of Order 99-08.

- b. Comment:** Revise Section B.4.a.i to allow the RWQCB to require monitoring of tributaries for water bodies listed in Attachment 7. Revise Section B.4.a.ii to allow sampling of discharges instead of receiving waters.

Response: This General Permit will not be changed. It was our intent to have the proposed language to be identical to the sampling and analysis language contained in Order 99-08. RWQCB Authorities Provision E.5 allows the RWQCB to require additional monitoring: “RWQCBs may require additional monitoring and reporting requirements including sampling and analysis of discharges to water bodies listed in Attachment 7 to this General Permit. Additional requirements imposed by the RWQCB should be consisted with the overall monitoring efforts in the receiving waters.”

- c. Comment:** Add a column to the LCAN multiple project information sheet to have the discharger inform the RWQCB that the individual project listed is subject to 401 certification requirements.

Response: This General Permit will not be changed since this information is not requested on the LCAN form for an individual Tier I project and also not required on the NOI Form for Tier II project. The Fact Sheet discusses the relationship between the proposed General Permit and the 404 permits/401 Certification. In part, this reads: “Small LUPs regulated by

this General Permit that also have dredge and fill activities must comply with CWA Sections 404 permit and 401 certification requirements and the requirements of this General Permit.”

d. Comment: Vicinity Maps should be required for LCANs.

Response: We agree. It was our intent to have a vicinity map included. The LCAN form was revised to include a check box that a vicinity map has been included.

e. Comment: Modify the first sentence under Section V. Basis for Termination of the LCTN form to have it read that this applies only to an individual Tier I project and not multiple Tier I projects.

Response: This General Permit will not change. The line-by-line instructions for the LCTN form clearly states that Section V of the LCTN is to be completed for individual Tier I projects only.

f. Comment: Revise the rainy season for Region 8 to be from October 1 through May 31 of each year to make this consistent with Region 8’s San Jacinto General Construction Activities Permit 01-34.

Response: This General Permit was revised to make the rainy dates consistent with the dates used by the Santa Ana RWQCB.

8. COMMENTS RECEIVED FROM THE CALIFORNIA STORM WATER QUALITY ASSOCIATION (CASQA)

a. Comment: CASQA does not believe that a linear construction project under five acres poses any less risk to water quality than a “traditional” construction project less than five acres in size. CASQA disagrees with the finding that small linear construction projects pose less of a risk to water quality than larger projects because linear projects are conducted on impervious surfaces that pose a greater threat than those conducted on pervious surfaces. CASQA is also concerned that the permit states Small LUPs have a lower impact potential because they are of short duration but the definition of short period may result in the project under construction during the portions of two rainy seasons.

Response: This proposed General Permit utilizes a two-tiered approach to regulating small linear construction projects. This General Permit finds Tier I projects to have a lower threat to water quality than traditional projects because they are typically done on paved surfaces over a short period of time with minimal disturbed land areas. Tier II projects are considered to have a higher threat to water quality and are subject to more stringent requirements. The two-tiers are defined in the Fact Sheet under the discussion **Determining Project Complexity**. To be defined as a Tier I project, the project must be returned to preconstruction like conditions at the end of each construction day that minimizes the potential for storm water pollution caused by erosion and sedimentation. This requirement is not imposed on other, more traditional type construction projects. In

addition, this General Permit requires BMPs to be implemented during active construction and provides a template SWPPP to be used for these projects.

According to industry representatives that provided information for the development of this General Permit, most Tier I small LUPs typically last less than one-month; however, it could be possible for a project in some circumstances to be extended a longer period of time. Regardless of the time period, staff finds these projects to be a lower threat because they are required to implement BMPs during activities and be returned to preconstruction like conditions at the end of the construction day.

- b. Comment:** If small linear construction projects warrant consideration and relief from the more stringent requirements of Water Quality Order 99-08-DWQ, then so must traditional small construction projects.

Response: Staff does not consider discharges of storm water from small linear construction projects to be less of a concern for water quality; rather, that small linear projects are constructed differently than traditional, land development construction projects and, therefore, deserve a separate permit. This General Permit establishes requirements appropriate for the type and complexity of small linear construction projects.

- c. Comment:** CASQA is concerned that the small LUP permit provides both regulatory and fiscal relief to a specific category of construction sites. They are concerned that this will open the door to other special interest groups and could result in a regulatory headache if additional permits are issued. Conversely, if other special interest groups are denied a requested permit, we believe that this could lead to discriminatory claims and potential litigation.

Response: The issuance of this General Permit is consistent with the goals of the SWRCB's storm water program to investigate, as resources allow, developing additional industry or activity specific storm water permits. This has already happened with the construction permit for projects within the Lake Tahoe Hydrologic Unit and the Statewide Caltrans MS4/Construction Permit. As stated above, this General Permit establishes requirements appropriate for the type and complexity of small linear construction projects.

- d. Comment:** CASQA is concerned that the proposed LUP General Permit may create unnecessary confusion within the MS4s as well as the regional regulatory community who will be burdened with additional permits and sites to track, administer and inspect.

Response: This General Permit should not add workload to the existing regulatory agencies, and it should not add unnecessary burden or confusion. The construction sites to be regulated by this General Permit are sites that would have been regulated by Order 99-08. These are not sites that will be in addition to those covered by 99-08. Like Order 99-08, this General Permit requires small linear construction sites to develop SWPPPs and Monitoring and Reporting Programs. For Tier I projects, this General Permit provides the SWPPP and a listing of BMPs that are to be used for a site. Alternative BMPs may be used provided they provide equivalent protection and are

described in the SWPPP. For Tier II projects, the SWPPP is to be developed in a similar method to those sites currently regulated by Order 99-08.

- e. **Comment:** This draft small LUP permit does not relieve either state or regional board of any of their administrative or enforcement duties. In fact, due to the complexity of the tiered approach proposed in the draft permit, the level of effort required to administer and enforce the small LUP will likely increase. By allowing LUP owners to pay a single fee of \$700 for an unlimited number of LUPs, the draft permit shifts the burden of funding the administration and enforcement of the small LUP Permit onto non-LUP construction project subject to Order 99-08.

Response: The construction sites to be regulated by the proposed General Permit are sites that would have been regulated by Order 99-08. Therefore, the regulatory oversight requirements are the same. As is done with Order 99-08, the type and degree of oversight provided by staff depends on the type and complexity of the construction project. This General Permit proposes one annual fee for any number of Tier I projects within a RWQCB office's jurisdictional area and one annual fee per each individual Tier II project. This is based again on the complexity of the projects and their threat to water quality. Tier I projects are not considered to be significant threats to water quality so it is not anticipated significant resources will be directed towards Tier I small LUPs for enforcement.

- f. **Comment:** CASQA recommends the draft LUP General Permit not be adopted and encourages the SWRCB to incorporate the concepts contained in this permit during the renewal of Order 99-08-DWQ.

Response: Order 99-08-DWQ does not expire until August 2004. This would require owners and operators of small linear construction projects to be subject to requirements for an additional 12 months that are not necessary for these types of projects. As stated above, the issuance of the proposed General Permit is consistent with the goals of the SWRCB's storm water program to develop industry or activity specific storm water permits as staff time and resources allow.

9. COMMENTS RECEIVED FROM CALTRANS

- a. **Comment:** Intent to cover small projects typically not covered by the normal MS4 NPDES permits. This permit needs to clarify when this permit applies and when a NPDES permit is required. Caltrans is covered by an MS4 permit. Is a LUP Permit required for independent contractors working within Caltrans' right of way?

Response: Please reference response to comment 6.C for a discussion regarding the relationship of this General Permit to MS4 permits.

Caltrans is regulated by a statewide NPDES MS4/construction permit that regulates discharges of storm water directly or indirectly to surface water associated with Caltrans' operations, facilities, activities, and roadways. Caltrans' MS4 permit also establishes

BAT/BCT discharge standards for discharges from construction activities that are owned or operated by Caltrans. Because of this, Caltrans is not required to seek coverage under Order 99-08 for its construction projects [see also response to comment 6.a]. When a third party constructs a project within Caltrans' right-of-way that is not a Caltrans project, it is the responsibility of the third party to obtain the appropriate water quality permits required for the type and size of the construction project.

Caltrans' MS4 permit and Storm Water Management Plan (SWMP) requires Caltrans to control activities by third parties in its right-of-way through appropriate legal authorities and documents. Through its legal authorities, Caltrans may establish more stringent requirements on third party activities in its right-of-way. Special Provision D.9 requires dischargers covered by this General Permit to comply with all lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water to MS4s or other water bodies with their jurisdictions, including applicable requirements in municipal SWMPs developed to comply with NPDES permits.

- b. Comment:** Criteria for distinguishing Tier I and Tier II projects needs further clarification and explanation. Are two tiers needed? A flow chart would be beneficial.

Response: See response to comment 8.a regarding the two tier permitting structure. See response to comment 4.a regarding flow charts.

- c. Comment:** Why is a NOI and LCN required for Tier I and only an NOI for Tier 2?

Response: NOI submittal requirements are based on the complexity of the project. The complexity will typically determine the degree of oversight required by RWQCB staff. See response to comment 8.e for more discussion regarding staff resources.

- d. Comment:** How is 70 percent defined for definition of Tier I projects?

Response: Definition of Tier I projects is provided in the Fact Sheet and states, "where 70% or more of the construction activity occurs continuously on a paved surface..."

- e. Comment:** The Fact Sheet discussion regarding Effluent Limitations states "The discharger or its duly authorized representative shall also install structural controls, as necessary, such as sediment control, which will constitute BAT and BCT and will achieve compliance with water quality standards." Does this imply that sediment controls constitute BAT/BCT and meet compliance with water quality standards?

Response: Sediment controls alone may or may not result in compliance with BAT/BCT discharge standards and be protective of water quality. This depends on site and project characteristics. Adding sediment controls to this paragraph was simply to provide an example of what was meant by structural controls and was not intended to be the only structural control that could or should be used. The language means that sediment

control is an example of a BMP; it does not mean that sediment control will always constitute BAT/BCT or achieve compliance with water quality standards.

- f. **Comment:** How long is the expected review period for accepting an NOI package?

Response: The NOI processing for this General Permit will be identical to the process used for Order 99-08. Once a complete NOI package is mailed to the SWRCB, the discharge may assume coverage within 48 hours. The SWRCB will notify the discharger when a complete NOI is received within 7-10 days of receipt of the NOI at the SWRCB office.

- g. **Comment:** Can examples be provided under what conditions the “findings” may result in the need for additional water quality sampling for non-visible pollutants?

Response: Section A.4.b.i describes the circumstances that could result in sampling for non-visible pollutants. Section A.4.b.ii. requires the discharger to collect a sample that has been uncontaminated with runoff from the construction site. If conditions described in Section A.4.b.i occur at a construction site and samples are collected, Section A.4b.iii and iv require the discharger to compare the runoff sample to the uncontaminated sample. If this analysis finds the runoff contains pollutants in greater amounts or additional pollutants not in the non-contaminated samples, then additional sampling may be required.

- h. **Comment:** Section A.6.a.vi requires all Tier I SWPPPs to include BMP 2-06 “Contaminated Soil Management” and 3-01 “De-watering Operations.” Construction activities may not always include these and it is unclear why these are mandatory BMPs.

Response: The intent of this requirement was to insure that proper notification is made whenever contaminated soil was encountered or before initializing de-watering activities. Our intent was not clear, and the permit language has been revised. See response to comments 10.d and 10.e.

- i. **Comment:** It is not clear which permit would be required for coverage if the project went through several different MS4 permitted properties.

Response: See response to comments.

- j. **Comment:** Footnote 6, Section D.6 regarding street cleaning, states that non-stormwater discharge that may occur from street cleaning shall not discharge any visible or non-visible pollutants. What is the benefit of this statement when at the present time washing/cleaning of streets, during construction, with water is not allowed if the water is going to enter into the storm drain system?

Response: The intent of Section D.6 is to allow street cleaning waters only where: 1) such a discharge is infeasible to eliminate, 2) BMPs are implemented to reduce the discharge of pollutants to the BAT/BCT, and 3) such discharges will not cause or

contribute to a violation of water quality standards. This is consistent with Order 99-08. Footnote 6, which was not consistent with Order 99-08 or Special Provision D.6, has been removed from this General Permit.

- k. Comment:** The permit does not specify a time frame for approval of Notices of Terminations (NOTs). This could leave the area of coverage in the construction phase for a long time until the RWQCB approves it.

Response: The current NOT process is consistent with the process established for Order 99-08. Approval of NOTs is the responsibility of the RWQCBs. The discharger is to work directly with the RWQCB to resolve issues associated with NOT requests.

- l. Comment:** What is the reasoning behind E.4 that allows the RWQCB to request record retention for more than three years? Storage of records for the multitude of Caltrans' projects would be a significant burden.

Response: This provision is consistent with Order 99-08. This allows the RWQCB to request longer record retention for projects that may last longer than three years or for projects that had been subject to enforcement. This provision is not commonly used by the RWQCB, and it is not anticipated its use will significantly increase with this General Permit.

Comment: Section A.8.c. needs to be expanded to explain the acceptance level if the RWQCBs are going to be the judges of what is acceptable. What is 70% of native and what else meets it needs to be clear. Construction completion could be left open for quite sometime.

Response: Special Provision D.11 specifies what is required in order to request termination for coverage. RWQCB are the authority to determine when a site is in compliance with this General Permit requirements. We agree guidance to assist dischargers may be helpful and will work with the RWQCB staff subsequent to the adoption of this General Permit to develop termination guidance.

- n. Comment:** The Fact Sheet refers to offsite locations being included in the calculation of soil disturbance if the offsite locations are owned or operated by the discharger. What offsite situations would be considered an "operation" by the discharger? Does having permission from a land owner to place soil on an offsite property constitute an "operation" by the discharger?

Response: The Fact Sheet explains how to determine land disturbance under the discussion "Process and Methods for Calculating Land Disturbance Areas of Small LUPs." The intent is for the owner or operator of the construction project to determine land areas that will be disturbed as a result of the project regardless of who runs or operates the land that is disturbed.

This section of the Fact Sheet acknowledges that some areas that may be disturbed by the project may be in areas already regulated by a storm water NPDES permit. When this occurs, those disturbed areas do not need to be included in the total area to be disturbed by the construction project.

- o. Comment:** The list provided under “Methods to Calculate Land Disturbance Areas” of the Fact Sheet has two bullet items containing the same language.

Response: This list has been revised to remove the bullet item that reads “Areas of paved surfaces constructed for the project.”

- p. Comment:** Section A.10, training does not say how much is “appropriate and convenient.” This is open for interpretation which could lead to NOIs and such if this language is added to the General Construction Permit.

Response: This language already exists in Order 99-08 and was copied into this General Permit for consistency and is appropriate for this training requirement.

- q. Comment:** Section B.3 requires daily visual inspections – lots of additional work and paper being added to the files could end up in General Construction permit and this requirement could add required staff to contractors working for Caltrans. This is currently ongoing for Caltrans projects but is not documented on all projects. This kind of blanket effect where everybody needs to be working on storm water first, then project work seemingly could be hard to challenge if an NOI or ACL shows up for a project.

Response: The inspection activities for small LUPs were developed jointly with representatives from the linear construction industry. The frequency is appropriate for the type and duration of these projects.

Tier I projects are to be returned to pre-construction type conditions at the end of each work day. This requires additional inspections by individuals responsible for compliance with the SWPPP and this General Permit.

Inspection frequency requirements in Order 99-08 are a minimum. More frequent inspections may be warranted based on site conditions to ensure compliance.

- r. Comment:** Section B.3.c.iii.a requires an inspection log. If added to the General Construction Permit would be another layer of paperwork requiring additional staff for Caltrans and the contractor.

Response: Section A.11 of Order 99-08 currently requires all inspections be logged. Logging of inspections are required for Tier II small LUPs not Tier I. Tier II projects are those that have an increased threat to water quality. These requirements were developed jointly with industry representatives.

10. COMMENTS RECEIVED FROM THE CALIFORNIA COUNCIL ON ENVIRONMENTAL AND ECONOMIC BALANCE (CCEEB)

- a. **Comment:** Fact Sheet, the first subsection under Determining the Type of Project, Duly Authorized Representative. This subsection states:

"1. *Projects Associated with Private or Municipal Development Projects.* These are construction projects conducted by an owner or operator of the small LUP (hereafter referred to as discharger¹) or its duly authorized representative² to relocate facilities in advance of ...".

In numerous locations in the permit documents, there are references to the "discharger or duly authorized representative" as being responsible for specific activities or actions. These terms ("discharger" and "duly authorized representative") are defined in the footnotes in these documents (Permit - see footnotes 2 & 3; Fact Sheet - see footnotes 1 & 2) and in footnotes in the permit Attachments.

A "duly authorized representative" is defined in the footnotes as:

"...either an employee of the utility company, municipality, or other public agency that owns or operates the small LUP or a contractor employed by the owner or operator and is the person responsible for oversight of the day to day operations of construction activities associated with small LUPs."

The use of this term throughout the document is in the context of the "duly authorized representative" being another type of "discharger". However, it really defines persons/positions within a discharger's company or organization that have specific responsibility for permit compliance.

Use of this term throughout the document in this manner is confusing because EPA also has a definition for this term in their regulations (see "Permit Application and Special NPDES Program Requirements" (40 CFR 122.22(b))), that has a narrow context, that is, "duly authorized representatives" are those persons or positions whom have the authority to sign and certify permit reports and other information required from the permittee by the agency. So, whereas in the permit's footnotes, "duly authorized representative" is used in a more generic context, it is defined and used in a narrower context the permit's Section F.9.(b) (STANDARD PROVISIONS FOR SMALL LUPS: Signatory Requirements).

To eliminate this confusion, the term "duly authorized representative" should be deleted from the document except for its use in the Section F.9. (b) (STANDARD PROVISIONS FOR SMALL LUPS: Signatory Requirements) and other permit documents (e.g., Notice of Intent, Notice of Termination) to specifically identify whom can sign reports and other permit documents).

In the locations that it is deleted, the term "discharger" is adequate, although the definition of the term "discharger" should be expanded to include a small LUP's contractor.

Response: In order to eliminate the confusion arising from language within 40 CFR 122.22(b), we will be changing the term "duly authorized representative" to "authorized representative." In addition, we revised the definition of "authorized representative" within the Fact Sheet to read as: "An authorized representative is a contractor employed by the owner or operator of the small LUP and is the person responsible for oversight of the day to day operations of construction activities associated with small LUPs. The appointment of an authorized representative by a discharger does not relieve the discharger of its responsibility for compliance with this General Permit. The term is different from that of the duly authorized representative, which is defined in Standard Provision F.9.b." We will not be expanding the definition of the term "discharger" to include a small LUPs contractor because they would be acting in lieu of the owners and, therefore, are considered an "authorized representative."

- b. Comment:** On page 4, of Attachment 5, Sampling and Analysis for Non-Visible Pollutants, the last bullet in Section 4 states:

“Sampling can be discontinued in non-active construction areas where soil-disturbing activities have been completed and permanent stabilization has been established, and in areas where revegetation is chosen, until minimum vegetative coverage has been established in accordance with Section A.8 of the General Permit has been achieved.”

For consistency with the following permit’s inspection requirements:

- Fact Sheet, p. 18: First sentence in the first paragraph under “Tier I Small LUPs Monitoring Requirements” (i.e., “A discharger or its duly authorized representative must conduct visual inspections of Tier I small LUPs during working hours daily during active construction.”)
- Fact Sheet, p. 18: Last sentence in the second paragraph under “Tier II Small LUPs Monitoring Requirements” (i.e., “Inspections can be discontinued in non-active construction areas where soil disturbing activities have been completed and final stabilization has been achieved (e.g., trench has been paved, substructures installed, and successful vegetative cover or other stabilization criteria have been met).”)

The sentence should be revised as follows:

“Sampling can be discontinued in non-active construction areas where soil-disturbing activities have been completed and permanent final stabilization has been established, and in areas where revegetation is chosen, until minimum vegetative coverage has been established in accordance with Section A.8 of the General Permit has been achieved (e.g., trench has been paved, substructures have been installed, and successful final vegetative cover or other stabilization criteria have been met).”

Response: We agree in full with changes suggested here and will revise Fact Sheet to incorporate the above changes to read accordingly in this General Permit.

- c. **Comment:** On page 1, Attachment 5, General Instructions and Information, Section 6 states:

“Each SWPPP shall be signed and certified by the discharger or its duly authorized representative and include the date of initial preparation and the date of each amendment.”

The persons responsible for onsite SWPPP activities will likely be foreman, supervisors and construction crews who have received training appropriate to their responsibilities. Although these persons are qualified persons for SWPPP implementation, these positions are not likely to be “duly authorized representatives”, and they will not be able to make amendments to the SWPPP in the field because they cannot sign and certify the SWPPP. This will inhibit the implementation and maintenance of the SWPPP and we recommend that the permit, in this section and elsewhere as necessary, be amended to require the initial SWPPP certification to be made by a duly authorized representative and authorize the onsite person/ position responsible for SWPPP implementation (even though he is not a duly authorized representative) to make revisions to the SWPPP in the field. Therefore, this section should be revised to state:

~~“Each SWPPP and each amendment to a SWPPP shall initially be signed and certified by the discharger or its duly authorized representative and will include the date of initial preparation. and the date of each amendment. Each amendment to a SWPPP shall be signed by a qualified person.”~~

Response: The language at this location will be changed to read as follows and will be consistent throughout this General Permit:

"Each SWPPP shall initially be signed and certified by the discharger or its duly authorized representative and will include the date of initial preparation. Each amendment to a SWPPP shall be signed and dated by the discharger or its authorized representative that has been trained in accordance with Section A.10 of this General Permit."

- d. **Comment:** On page 3, Attachment 5, Tier I SWPPP Table. This table lists the following as a “Typical Construction Activity Conducted at Small LUP Sites”:

“Notify the appropriate local, state or federal agency (ies) and RWQCB”

The applicable box is checked to make this a mandatory requirement for using the “Contaminated Soil Management” BMP.

First, agency notification is not a “Typical Construction Activity Conducted at Small LUP Sites”, but rather an action that should be taken if the permittee encounters contaminated soil during his construction activities.

Second, notification should occur when it is required by applicable laws and regulations.

Therefore, the following revisions should be made:

- Delete the notification heading; and
- Provide a new footnote for the “Contaminated Soil Management” BMP that states:

“Contact the appropriate local, state or federal agency (ies), as required, and the RWQCB if contaminated soil is found on a linear construction project.”

Response: We will retain language requiring mandatory notification to the appropriate agency and the RWQCB for contaminated soils in this General Permit in order to ensure notification when contaminated soils are handled, since improper handling can result in contamination of waters. However, we do agree that the notification of appropriate local, State or federal agency(ies) and RWQCB for contaminated soils should not be listed under "Typical Construction Activity Conducted at Small LUP Sites." This heading will be revised to read:

"Dewatering"

In addition, dischargers will only be required to notify the RWQCB of any contaminated soil they have encountered when they terminate a project and submit an LCTN or NOT. On those forms, they will only need to check a box stating that they have encountered contaminated soils and also note the suspected contaminants. Dischargers are still required to notify other local, State, or federal agencies of contaminated soil they encounter during a small LUPs as required by law.

- e. **Comment:** Page 4 of the Attachment 5, Tier I SWPPP Table 1. This table lists the following as a “Typical Construction Activity Conducted at Small LUP Sites”:

“Notify the appropriate local, state or federal agency(ies) and RWQCB”

The applicable box is checked to make this a mandatory requirement for using the “Dewatering Operations” BMP.

First, agency notification is not a “Typical Construction Activity Conducted at Small LUP Sites”, but rather an action that should be taken if the permittee is unsure of what requirements apply for dewatering in the Regional Board jurisdiction within which he is working or if a separate permit is required for dewatering activities. RWQCBs have different requirements for dewatering discharges and they are dependent, in part, on whether the discharge is to land or to a surface water body. Dewatering discharges may also be managed through discharge to a municipal sanitary sewer or to a regulated

disposal facility. Therefore, it seems inappropriate to mandate that the RWQCB always be notified prior to a dewatering operation. This places an unnecessary administrative burden on both the discharger and RWQCB staff.

Second, dischargers using this permit will likely be those that conduct numerous construction activities within the particular RWQCB jurisdiction and will be familiar with the RWQCB's dewatering requirements. Therefore, there would not be a need to contact the RWQCB unless there were specific requirements within that region to do so.

Third, this language makes a discharger technically in non-compliance with this permit if he fails to notify the RWQCB even though his discharge is in complete compliance with all applicable laws and regulations. Therefore, this condition is inappropriate and the following revisions should be made:

- Delete the notification heading; and
- Provide a new footnote for the "Dewatering Operations" BMP that states:

"Contact, as necessary, the appropriate local, state or federal agency(ies) and/or RWQCB if unsure of the applicable permitting requirements or if a permit is required for this operation."

Response: The language requiring mandatory notification to the appropriate agency and the RWQCB for "Dewatering Operations" will be retained because dewatering activities present a threat to water quality that is a significant concern to the SWRCB. We do agree, however, that the notification of appropriate local, State or federal agency(ies) and RWQCB for dewatering operations should not be listed under "Typical Construction Activity Conducted at Small LUP Sites." This heading under "Typical Construction Activity Conducted at Small LUP Sites" will be revised to read:

"Dewatering"

In addition, language has been revised for this General Permit that states when notification of dewatering activities shall be done for a small LUPs. The language has been revised to read as follows:

"Dewatering activities may be prohibited or need coverage under a separate permit issued by the RWQCBs. Dischargers or authorized representatives shall check with the appropriate RWQCBs for any required permit or basin plan conditions prior to initial dewatering activities to land, storm drains, or water bodies."

- f. **Comment:** On page 4 of the Fact Sheet, Tier 1 small LUPs, the second bullet states:

"That occur on unpaved improved roads or where greater than 30 percent of construction activities occur within the non-paved shoulders or land immediately adjacent to paved surfaces and where:"

The way that this definition is written it allows for construction activities in non-paved shoulders and land immediately adjacent to paved surfaces but only allows for construction in unpaved improved roads (but not in the shoulders or land immediately adjacent to the unpaved improved road). The definition should include construction activities in non-paved shoulders and land immediately adjacent to unpaved improved roads. Therefore, this bullet should be revised to state:

“That occur on unpaved improved roads, including their shoulders or land immediately adjacent to them, or where greater than 30 percent of construction activities occur within the non-paved shoulders or land immediately adjacent to paved surfaces and where:”

Response: We agree that further clarification is needed regarding work areas of Tier I small LUPs and will use the initial language that has been provided by CCEEB. For consistency, we are proposing the following changes throughout this General Permit in order to provide better clarification for which small LUPs can apply for coverage under Tier I. The language shall read as follows:

"Where greater than 30 percent of construction activities occur within the non-paved shoulders or land immediately adjacent to paved surfaces, and on unpaved improved roads, including their shoulders or land immediately adjacent to them where:"

- g. Comment:** Page 8 of the Fact Sheet, under Small LUPs Associate with Private or Municipal Development Projects”, Bullet No. 2, this section states:

“The discharger or its duly authorized representative must seek coverage³ under this General Permit for small LUP construction activities associated with new development and redevelopment projects where the total disturbed land area of the small LUP is greater than 1 acre but is less than 5 acres except where the small LUP construction activities are covered by the NOI and SWPPP of the owner or operator of the new or redevelopment site.”

This paragraph appears to mean that where the work within the development and/ or some or all of the work outside the development is covered by the development’s permit, the soil disturbance associated with other linear work conducted by the utility outside the development, such as a bring-up, would be assessed separately to determine if its area of soil disturbance is one or more, but less than five, acres.

Therefore, this paragraph should clarify that the soil disturbance calculated for the purposes of determining the need for permit coverage is that area not covered by the development’s or redevelopment’s permit. In many cases this will be only the bring-up, as the work within the development will be covered by the development’s permit. It should also clarify that the calculation of soil disturbance for bring-ups and pre-development activities is conducted separately for each bring-up.

Response: To better clarify when coverage may be obtained under this General Permit, the language in question will be changed to read as follows and will be changed throughout this General Permit to read:

"The discharger or its duly authorized representative must seek coverage under this General Permit for small LUP construction activities associated with new development and redevelopment projects where the total disturbed land area of the small LUP is greater than one acre but is less than five acres. Coverage under this General Permit is not required where the small LUP construction activities are covered by another NPDES permit (e.g., where the NOI and SWPPP of the owner or operator of a new or redevelopment site includes the small LUP activities)."

- h. Comment:** Page 9 of the Fact Sheet, PROJECTS AND ACTIVITIES NOT COVERED BY THIS PERMIT. The title of this section is stated as:

“PROJECTS AND ACTIVITIES NOT COVERED BY THIS PERMIT”

There is a concern that stating the activities/ projects listed beneath this title are “not subject to this permit” leaves open the question of whether they are subject to another construction stormwater NPDES permit (e.g., Order 99-08). This title and paragraphs 1-4 should be revised to make it clear that they are not subject to construction storm water permitting. The section should be re-titled “PROJECTS AND ACTIVITIES NOT SUBJECT TO CONSTRUCTION STORMWATER PERMITTING” and Paragraphs 1-4 should be retained in the section, as follows:

“PROJECTS AND ACTIVITIES NOT SUBJECT TO CONSTRUCTION STORMWATER PERMITTING”

1. Small LUP construction activity does not include routine ...”.
2. Small construction activity does not include field activities ...”
3. Tie-ins conducted ...”
4. Small construction activity does not include activities ~~Activities~~ associated with responding to emergencies to protect public health and safety and restoration of public services after natural or manmade disasters ~~are not subject to this permit.~~”

Paragraph 5 should be put under the title:

“PROJECTS AND ACTIVITIES NOT COVERED BY THIS PERMIT”

Response: We agree that the language for paragraphs 1 through 5 should be modified to clarify which activities are not subject to NPDES permits at all, as opposed to activities that must be covered under a different NPDES permit. We have revised the language as:

PROJECTS AND ACTIVITIES NOT DEFINED AS CONSTRUCTION ACTIVITY

1. Small LUP construction activity does not include routine maintenance projects. Routine maintenance projects are projects associated with operations and maintenance activities that are conducted on existing lines and facilities and within existing right-of-way, easements, franchise agreements, or other legally binding agreements of the discharger. Routine maintenance projects include, but are not limited to, projects that are conducted to:
 - Maintain the original purpose of the facility or hydraulic capacity.
 - Update existing lines and facilities to comply with applicable codes, standards, and regulations regardless if such projects result in increased capacity.
 - Repairing leaks.

Routine maintenance does not include construction of new 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. When a project must secure new areas, those areas may be subject to this General Permit based on the area of disturbed land outside the original right-of-way, easement, or agreement.

2. Small LUP construction activity does not include field activities associated with the planning and design of a project (e.g., activities associated with route selection).
3. Tie-ins conducted immediately adjacent to “energized” or “pressurized” facilities by the discharger or their authorized representative are not considered small construction activities where all other small LUP construction activities associated with the tie-in are covered by an NOI and SWPPP of a third party or municipal agency.
4. Small LUP construction activity does not include activities associated with responding to emergencies to protect public health and safety and restoration of public services after natural or manmade disasters.

The activities currently described in paragraph 5 do require coverage under a different NPDES permit, and therefore will be placed under a new and separate heading that will read as follows:

PROJECTS NOT COVERED BY THIS PERMIT

- i. **Comment:** Page 9 of the Fact Sheet, paragraph 3 states:

“Tie-ins conducted immediately adjacent to “energized” or “pressurized” facilities by the discharger or their duly authorized representative are not considered small construction activities where all other small LUP construction activities associated with the tie-in are covered by an NOI and SWPPP of a third party or municipal agency.”

The concept of tie-ins not being “construction activity” was proposed to eliminate the need to for a linear facility entity to have to get a construction storm water permit for conducting work around an energized facility to connect a bring-up or to install a piece of equipment (e.g., a pad mounted fuse cabinet). Not all “tie-ins” (e.g., fuse cabinets) will necessarily have a “bring-up” and therefore will not meet the criteria in the draft permit. This work is typically fairly small in extent and should not require a permit. Therefore, this paragraph should be revised to state:

~~“Tie-ins conducted immediately adjacent to “energized” or “pressurized” facilities by the discharger or their duly authorized representative are not considered small construction activities where all other small LUP construction activities associated with the tie-in are covered by an NOI and SWPPP of a third party or municipal agency.”~~

Response: This matter was discussed, and language in paragraph 3 was agreed upon with representatives from the utility industry. If a tie-in is not associated with a bring-up for a development or with the development itself, then it will probably not meet the minimum acreage criteria for this General Permit. No modification is needed for the existing language other than removing the word "duly" from "duly authorized."

- j. Comment:** Page 4 of the Fact Sheet, first paragraph under “Prohibitions”, the second sentence of this paragraph states:

“It prohibits the discharge of non-storm water discharges and all discharges which contain a hazardous substance in excess of reportable quantities established at Title 40 Code of Federal Regulations (CFR) Section 117.3 or 40 CFR 302.4 unless a separate NPDES Permit has been issued to regulate those discharges.”

The wording in this paragraph does not reflect the fact that that this permit authorizes the discharge of certain non-storm water discharges (see the third paragraph in this section and Section D.6 of the permit). Therefore, this sentence should be revised to state:

“It prohibits the discharge of non-storm water discharges not authorized by this permit and all discharges which contain a hazardous substance in excess of reportable quantities established at Title 40 Code of Federal Regulations (CFR) Section 117.3 or 40 CFR 302.4 unless a separate NPDES Permit has been issued to regulate those discharges.”

Response: We agree in full with the CCEEB's proposed change and will change the language throughout this General Permit to read as follows:

“It prohibits the discharge of non-storm water discharges not authorized by this permit and all discharges which contain a hazardous substance in excess of reportable quantities established at Title 40 Code of Federal Regulations (CFR) Section 117.3 or 40 CFR 302.4 unless a separate NPDES Permit has been issued to regulate those discharges.”

- k. Comment:** Page 16 of the Fact Sheet, Second paragraph under “Storm Water Pollution Prevention Plan (SWPPP). The last sentence in paragraph 2 states:

“The SWPPP shall be available at the construction site during working hours while construction is occurring and shall be made available upon request.”

Most linear projects will not have a construction trailer, necessitating one of the crew (e.g., foreman, supervisor, etc.) to carry the SWPPP in their vehicle. Since the person responsible for the SWPPP may also be responsible for other projects located in the general area, the SWPPP may not be on-site at all times, but this person would be available by radio/phone if a question came up or an inspector requested to review the SWPPP. Even on a large non-linear project (e.g., a subdivision project), construction personnel would not necessarily have the SWPPP immediately available to them if they were on the other side of the project and had a question. They would probably also use a phone or radio to get the information they needed. If the SWPPP must be retained on the linear construction site it poses other problems. Where crews and trucks move between different jobs or go to pick up supplies, the SWPPP could conceivably have to be passed from vehicle to vehicle, making its location at any point in time hard to track down. It would be better to fix the location of the SWPPP with a person so that at any time crews would know whom to contact. The following sentence should be added to the end of this paragraph to resolve this problem:

“When the SWPPP is retained by a crewmember in a construction vehicle and is not currently at the construction site, the SWPPP shall be made available via a request by radio/ phone.”

Response: We agree that the SWPPP may sometimes be kept in a vehicle, but the discharger must ensure the appropriate information, including the BMPs and map or drawing, must be left on site. For consistency, the language will be revised to read as follows throughout this General Permit.

"The SWPPP shall be available at the construction site during working hours while construction is occurring and shall be made available upon request. When the original SWPPP is retained by a crewmember in a construction vehicle and is not currently at the construction site, 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."

- I. Comment:** Page 16 of the Fact Sheet, First paragraph under Tier I Small LUPs SWPPP Requirements. The third to last sentence in this paragraph states:

“The SWPPP will include a construction drawing or other appropriate drawing/map showing the locations of storm drain inlets and water bodies that may receive discharges from the construction activities and will show the locations of BMPs to be installed.”

In many cases it may be infeasible or be more efficient to describe the location of BMPs. For example, it would be infeasible to mark specific locations on a long street cut identifying where the BMP for street cutting would be used as it would be used through the length of the area being cut, whereas describing the locations where the BMP for

street cutting would be implemented would be feasible. To accommodate this concern, the above sentence should be revised to state:

“The SWPPP will include a construction drawing or other appropriate drawing/map showing the locations of storm drain inlets and water bodies that may receive discharges from the construction activities and will show or describe the locations of BMPs to be installed.”

Response: We agree to the proposed change to the current language to modify this language to read as follows for consistency throughout this General Permit:

"The SWPPP will include a construction drawing or other appropriate drawing/map showing the locations of storm drain inlets and water bodies that may receive discharges from the construction activities and will show locations of BMPs to be installed for all those that can be illustrated on the drawing/map. If storm drain inlets, water bodies, and/or BMPs cannot be adequately shown on the drawing/map they will be described in detail within the SWPPP."

- m. Comment:** Page 17 of the Fact Sheet, Second paragraph under “Tier II Small LUPs SWPPP Requirements. The last bullet in this section states:

“Where construction activities listed in Table 2 apply to Tier II small LUPs, select BMPs in Table 2 or identify and justify alternative BMPs.”

This sentence requires a discharger to “justify” the alternative BMP. This is inconsistent with the language used for Tier I SWPPPs (see the last paragraph on p. 16 of the Fact Sheet) and seems to be unnecessary. Many alternate BMPs are available from different organizations and entities, from which a discharger should be able to select. If left as is, what must the discharger do to “justify” the BMP? This sentence should be revised to read:

“Where construction activities listed in Table 2 apply to Tier II small LUPs, select BMPs in Table 2 or identify ~~and justify~~ an alternative BMP(s).”

Response: This language will be changed for the sake of consistency within this General Permit to read as follows:

"Where construction activities listed in Table 2 apply to Tier II small LUPs, select BMPs in Table 2, or identify and justify alternative BMPs, alternative BMPs that provide equivalent protection as those identified in Table 2 may also be listed. When new or alternate BMPs are added to Table 1, the discharger or its authorized representative must include additional information about the BMPs in the SWPPP, including but not limited to BMP reference(s), BMP description(s), and drawings or other attachments to describe the BMPs in the SWPPP."

- n. **Comment:** Page 18 of the Fact Sheet, first paragraph under “Tier I Small LUPs Monitoring Requirements. The last sentence in this paragraph states that:

“Inspections can be discontinued in non-active construction areas where soil disturbing activities have been completed and final stabilization has been achieved (e.g., trench has been paved, substructures have been installed, and successful final vegetative cover or other stabilization criteria have been met) and permit coverage for the area stabilized is terminated.”

This sentence requires that the inspections continue until “...permit coverage for the area stabilized is terminated.” This requirement would put an unnecessary burden on both the discharger and the RWQCB staff to process partial project terminations for areas that had been stabilized. For example, linear projects being conducted in paved areas achieve stabilization when the trench is repaved. It is at this point that the inspections should be able to be discontinued. However, if inspections can only be accomplished by submitting a partial project termination request to the RWQCB, then it will unnecessarily require additional time and effort on both the discharger and RWQCB staff to process the request. This requirement is also inconsistent with other portions of this permit, for example:

- Fact Sheet, p. 18: First sentence in the first paragraph under “Tier I Small LUPs Monitoring Requirements” (i.e., “A discharger or its duly authorized representative must conduct visual inspections of Tier I small LUPs during working hours daily during active construction.”)
- Fact Sheet, p. 18: Last sentence in the second paragraph under “Tier II Small LUPs Monitoring Requirements” (i.e., “Inspections can be discontinued in non-active construction areas where soil disturbing activities have been completed and final stabilization has been achieved (e.g., trench has been paved, substructures installed, and successful vegetative cover or other stabilization criteria have been met).”)

This sentence should be revised as follows to delete this requirement:

“Inspections can be discontinued in non-active construction areas where soil disturbing activities have been completed and final stabilization has been achieved (e.g., trench has been paved, substructures have been installed, and/ or successful final vegetative cover or other stabilization criteria have been met, as applicable) ~~and permit coverage for the area stabilized is terminated.~~”

Response: The proposed change will be implemented with exception to the language "as applicable," which will not be included in the change. The proposed change will read as follows:

"Inspections can be discontinued in non-active construction areas where soil disturbing activities have been completed and final stabilization has been achieved (e.g., trench has been paved, substructures have been installed, and successful final vegetative cover or other stabilization criteria have been met)."

- o. Comment:** Page 4, SECTION B: MONITORING PROGRAM AND REPORTING REQUIREMENTS, No. 4(a)(iii). The last sentence in this subsection states:

“The SWPPP shall remain at the construction site at all times during working hours while construction activities are occurring, until a written request for termination has been submitted to the SWRCB or appropriate RWQCB and approved.”

First, most linear projects will not have a construction trailer, necessitating one of the crew (e.g., foreman, supervisor, etc.) to carry the SWPPP in their vehicle. Since the person responsible for the SWPPP may also be responsible for other projects located in the general area, the SWPPP may not be on-site at all times, but this person would be available by radio/phone if a question came up or an inspector requested to review the SWPPP. Even on a large non-linear project (e.g., a subdivision project), construction personnel would not necessarily have the SWPPP immediately available to them if they were on the other side of the project and had a question. They would probably also use a phone or radio to get the information they needed. If the SWPPP must be retained on the linear construction site it poses other problems. Where crews and trucks move between different jobs or go to pick up supplies, the SWPPP could conceivably have to be passed from vehicle to vehicle, making its location at any point in time hard to track down. It would be better to fix the location of the SWPPP with a person so that at any time crews would know whom to contact.

Second, the second half of this sentence (i.e., “...until a written request for termination has been submitted to the SWRCB or appropriate RWQCB and approved.”) is internally inconsistent with the first half of the sentence. The first half indicates that the SWPPP only needs to be retained onsite during active construction, whereas, the second half of the sentence requires it to be retained onsite until the request for termination is approved. And as stated above, most linear projects do not have a secure location to retain the SWPPP onsite after the project is completed. Therefore, this sentence should be revised and (to address the first comment) a new sentence added to the end of the subsection as follows:

~~“The SWPPP shall remain at the construction site at all times during working hours while construction activities are occurring, until a written request for termination has been submitted to the SWRCB or appropriate RWQCB and approved. When the SWPPP is retained by a crewmember in a construction vehicle and is not currently at the construction site, the SWPPP shall be made available via a request by radio/ phone.”~~

Response: The following language will be removed from Section B of this General Permit:

“The SWPPP shall remain at the construction site at all times during working hours while construction activities are occurring, until a written request for termination has been submitted to the SWRCB or appropriate RWQCB and approved.”

p. Comment: Page 6 of the Permit, Effluent Limitation No. 2. This limitation states:

“The discharger or duly authorized representative shall implement BMPs to prevent a net increase of sediment load in storm water discharge relative to preconstruction levels.”

This limitation is not found in the SWRCB’s Order 99-08 (i.e., the existing Construction Storm Water General NPDES Permit) and its apparent intent is to impose Standard Urban Storm Water Mitigation Plan (i.e., SUSMP) type requirements on linear construction projects. This type of requirement is more appropriate for Municipal Separate Storm Sewer System (i.e., MS4) permits to require of overall land developments and not linear construction projects.

Therefore this limitation should be deleted.

Response: This language is taken from Section A, heading 8, "Sediment Control," first paragraph of the existing Construction Storm Water General NPDES Permit, SWRCB’s Order 99-08. To highlight the requirement, this language appears as an effluent limitation within this General Permit so that it is easily identified by dischargers.

q. Comment: Page 13 of the Permit, STANDARD PROVISIONS FOR SMALL LUPS No. 8(e). Section 8 contains language from EPA’s standard provisions that are required in every NPDES permit, with the exception of subsection 8(e), which states:

“Document compliance of the project using any format that is preferred, which includes the taking of photo or video images.”

There may be situations wherein linear projects are being conducted at facilities on which security may be an issue and taking pictures may not be appropriate. It is unclear why EPA’s standard language (40 CFR 122.41(i)) has been expanded and therefore Subsection 8(e) should be deleted.

~~“Document compliance of the project using any format that is preferred, which includes the taking of photo or video images.”~~

Response: This language was added to this General Permit in order to help staff document compliance of projects, if there should be a need. As we have been told previously by the industry, the majority of small LUPs will occur in highly urbanized settings (i.e., in cities and towns without security issues) and any security issues related to specific projects should be able to be addressed as the need arises during a compliance inspection. In order to eliminate any confusion, we will move this language from its present location under "STANDARD PROVISIONS FOR SMALL LUPS No. 8(e)" and will insert revised language under the heading titled "REGIONAL WATER QUALITY CONTROL BOARD (RWQCB) AUTHORITIES." The language will be revised to read as follows:

"RWQCBs may document compliance of a project using any format that is preferred, which may include the taking of photo or video images."

- r. **Comment:** Page 2 of Section A, STORM WATER POLLUTION PREVENTION PLAN (SWPPP). SWPPP Requirement No. 5(a) states:

"The SWPPP and each amendment shall be signed and certified by the discharger or its duly authorized representative and will include the date of initial preparation and the date of each amendment."

Amendments to SWPPPs that are made in the field should be able to be made by personnel on-site. Due to the delegation requirements for a "duly authorized representative", on many utility projects this would not be possible. We recommend that the permit allow SWPPP amendments to be made by personnel that are not "duly authorized representatives" but are on site conducting the work and SWPPP implementation (e.g., a qualified person). The SWPPP could be certified initially by a "duly authorized representative". The Requirement should be revised to state:

~~"The SWPPP and each amendment shall initially be signed and certified by the discharger or its duly authorized representative and will include the date of initial preparation and the date of each amendment."~~ Each amendment to a SWPPP shall be signed by a qualified person."

Response: Please see the response to CCEEB's comment "c." as we believe that we have adequately addressed this issue there.

- s. **Comment:** Page 5, Section A, STORM WATER POLLUTION PREVENTION PLAN (SWPPP), No. 6(a)(vi). This subsection states:

"All Tier I SWPPPs must always implement the following two BMP:

- 2-06 "Contaminated Soil Management," and
- 3-01 "Dewatering Operations."

The BMPs selected for each linear construction project will be unique to the project. They will be initially selected based upon those activities and pollutants expected to occur on the project and also consider the potential routes for flow to storm drains and surface water bodies. Additional BMPs may be implemented on the project, depending on other factors that are determined once the project starts. The two BMPs listed above may or may not be required on any particular project, depending on site-specific factors. For those projects where it is known at the beginning of the project that one or both of these BMPs are required, then they should be checked on the Table 1 SWPPP document. However, when it is not known that these BMPs will be required at the beginning of a project, Table 1 in the SWPPP should not have these BMPs checked. As the project progresses, if it is determined that dewatering is required or contaminated soil is found, then the Table 1 can be revised and the BMPs implemented. This is how the process

works for all the other BMPs and the implementation process for these two BMPs should be consistent with the other BMPs. (see also comments on SWPPP Table 1, p. 3 & 4).

Therefore, this subsection should be deleted.

- ~~“All Tier I SWPPPs must always implement the following two BMPs:~~
- ~~2-06 "Contaminated Soil Management," and~~
- ~~3-01 "Dewatering Operations.”~~

Response: Please see our response to Comments 10.d and 10.e. In addition, although the language addressing dewatering operations and contaminated soils will not be removed from this location, it has been revised to read as follows:

“All Tier I SWPPPs must always implement the following two BMPs when contaminated soil is encountered and/or prior to initial dewatering to land, storm drains or water bodies:

- 2-06 "Contaminated Soil Management," and
- 3-01 "Dewatering Operations."

t. **Comment:** Page 2, Attachment 1 NOI Form, Section IX. Item A states:

“Have you included a site map with this submittal?”

For consistency with the entire permit documents, this should be revised to state:

“Have you included a ~~site~~ vicinity map with this submittal?”

Response: We agree with this change and the language has been revised to read as follows:

"Have you included a vicinity map with this submittal?"

u. **Comment:** Page 2, Attachment 1, NOI Form, Section IX. Item B states:

“Have you included payment of the annual fee with this submittal?”

This question is correct for Tier I NOI applications because one NOI is submitted for the life of the permit and annual fees are appropriate. However, for Tier II projects, which are described as being short term (i.e., a project duration of weeks to months, but typically less than one-year in duration) and require an NOI to be submitted per project, there should be a one-time application fee rather than an annual fee. For example, a Tier II small LUP project that starts in May or June, but is not completed until July or August, should not be subject to paying two fees.

This item should be revised to state:

“Have you included payment of the initial annual fee (Tier I) or the one-time application fee (Tier II) with this submittal?”

Response: The fee will remain as an annual fee for all NOIs. NOIs are not billed based on the fiscal year, rather they are billed based on the quarter they are submitted. In the example provided by CCEEB, an NOI submitted in May 2003 will receive its next annual billing in the second quarter on 2004. This will provide a Tier II small LUP 12 months to be completed before it is billed.

- v. **Comment:** Page 1 of Attachment 1, NOI Line-By-Line Instructions, SECTION III, second paragraph. The sentence in the title states:

“For Tier I, the contact person should be someone who has been delegated signature authority by the discharger to submit an NOI on their behalf.”

It would be more appropriate for the contact person to be the person within the company with the responsibility for compliance and oversight of the General Permit. Therefore, this sentence should be revised to state:

“For Tier I, the contact person should be someone who ~~has been delegated signature authority by the discharger to submit an NOI on their behalf~~ is responsible for compliance and oversight of this General Permit.”

Response: Tier I projects should not be completing this section of the NOI; only the company, private or public agency, or municipality should be submitting the NOI for Tier I projects. The NOI form and instructions will be revised to indicate that Tier I projects are not to complete Section III.

- w. **Comment:** Page 2, Attachment 2, LCN Line-By-Line Instructions, IV. CERTIFICATION (for single or multiple Tier I projects). The first sentence of this section states:

“The owner or signatory agent of the construction site must complete this section⁶.”

This should be revised to state:

“The owner or his signatory agent ~~of the construction site~~ must complete this section⁶.”

Response: We agree with this change and the language will be revised to read as follows:

"The owner or their signatory agent must complete this section."

- x. **Comment:** Page 1, Attachment 3, LCTN Instructions, Who May File. The first bullet under this section states:

“The construction project has been completed and the following conditions have been met: all elements of the Stormwater Pollution Prevention Plan have been completed; construction materials and equipment maintenance waste have been disposed of properly; the site is in compliance with all applicable local storm water management requirements including erosion/sediment control requirements; and all disturbed areas have been stabilized in accordance with Section A.8 of the Permit.”

This paragraph should be consistent with the requirements Under Order 99-08. Therefore, it should be revised to state:

“The construction project has been completed and the following conditions have been met: all elements of the Stormwater Pollution Prevention Plan have been completed; construction materials ~~and equipment~~ waste have been disposed of properly; the site is in compliance with all applicable local storm water management requirements ~~including erosion/sediment control requirements~~; and all disturbed areas have been stabilized in accordance with Section A.8 of the Permit.”

Response: No, there is no need for this section to be identical to Order 99-08. New language was added for clarification and refers to activities that should happen at a site and includes even those sites regulated under Order 99-08.

- y. **Comment:** Page 2, Attachment 4, NOT Instructions, SECTION V, EXPLANATION OF BASIS OF TERMINATION (Tier II small LUPs only). This section states:

“Please explain the basis or reasons why you believe your construction site is not required to comply with the General Permit. For Tier II small LUPs provide a site map and photograph of your site to support your explanation.”

For consistency with the rest of the permit documents, this section should be revised to state:

“Please explain the basis or reasons why you believe your construction site is not required to comply with the General Permit. For Tier II small LUPs provide a ~~site~~ vicinity map and photograph of your site to support your explanation.”

Response: We agree with this change and the language will be revised to read as follows:

"For Tier II small LUPs, provide a vicinity map and photograph of your site to support your explanation."

- z. **Comment:** Page 3, Attachment 5, Tier I SWPPP, Sampling and Analysis for Non-Visible Pollutants. Section 2 in this section states:

“Pollutants to be analyzed for are the pollutants associated with the construction activity or material suspected of being discharged.”

For consistency with the SWPPP Section B, this sentence should be revised to state:

“Pollutants to be analyzed for, are the pollutants (or appropriate indicator parameters) associated with the construction activity or material suspected of being discharged.”

Response: We agree with this change and the language will be revised to read as follows:

"Pollutants to be analyzed for, are those pollutants associated with the construction activity or material suspected of being discharged."

aa. Comment: Page 3, Attachment 5, Tier I SWPPP, Sampling and Analysis for Non-Visible Pollutants. Section 7 states:

“Samples collected will be analyzed for pH, specific conductance, dissolved oxygen, conductivity, salinity, and TDS, as applicable”

For consistency with the SWPPP Section B, this sentence should be revised to state:

“Samples collected will be analyzed for pH, specific conductance, dissolved oxygen, conductivity, salinity, and/ or TDS, as applicable.”

Response: We agree that this should be changed and the language will be revised for consistency to read as follows:

“Samples collected will be analyzed for those pollutants identified through items 1 and 2 above. Sample analysis may include, but are not limited to, pH, specific conductance, dissolved oxygen, conductivity, salinity, and (Total Dissolved Solids) TDS, as applicable samples may be analyzed through field analysis or laboratory analysis.”

ab. Comment: Page 1, Attachment 5, Tier I SWPPP Instruction, B. DULY AUTHORIZED REPRESENTATIVE INFORMATION. This subsection states:

“Enter the name of the duly authorized representative, their address, contact person, and contact person's title and telephone number. The contact person should be the construction site manager completely familiar with the construction site and charged with compliance and oversight of the general permit or a company storm water representative. This information should correspond with information on the Notice of Intent submitted for the site.”

Due to the size of many companies that will use this permit, there may be multiple duly authorized representatives and contact persons. Consequently, this information may not be identical to that submitted on the NOI. Therefore the last sentence in this subsection should be revised to state:

“Enter the name of the duly authorized representative, their address, contact person, and contact person's title and telephone number. The contact person should be the construction site manager completely familiar with the construction site and charged with compliance and oversight of the general permit or a company storm water representative. ~~This information should correspond with information on the Notice of Intent submitted for the site.~~”

Response: We agree with the suggested change and language will be changed to read as follows:

Enter the name of the authorized representative, their address, contact person, and contact person's title and telephone number. The contact person should be the construction site manager completely familiar with the construction site and charged with compliance and oversight of this General Permit or a company storm water representative.

ac. Comment: Page 4, Attachment 5, Tier I SWPPP Instruction, Attachment B: SAMPLING AND ANALYSIS FOR SEDIMENT SILTATION or TURBIDITY. The first sentence in Section 6 states:

“Note, in accordance with the provisions of the General Permit, you must always notify the appropriate RWQCB when contaminated soil has been found or suspected at a construction site and prior to any dewatering activities.”

RWQCBs have different requirements for dewatering discharges and they are dependent, in part, on whether the discharge is to land or to a surface water body. Dewatering discharges may also be managed through discharge to a municipal sanitary sewer or to a regulated disposal facility. Therefore, it seems inappropriate to mandate that the RWQCB always be notified prior to a dewatering discharge. This places an unnecessary administrative burden on both the discharger and RWQCB staff. Additionally, this language makes a discharger technically in non-compliance with this permit if he fails to notify the RWQCB even if his discharge is in complete compliance with all other applicable laws and regulations. This is not appropriate. Therefore, the sentence should be revised to state:

“Note, in accordance with the provisions of the General Permit, you must always notify the appropriate RWQCB when contaminated soil has been found or suspected at a construction site ~~and prior to any dewatering activities~~. The RWQCB should also be notified prior to any dewatering activities when required by their Basin Plan or applicable general permits.”

Response: We have addressed the concerns regarding dewatering when responding to the earlier comments "d" and "s." Language at this location has been changed at this location to read as follows:

"All Tier I SWPPPs must always implement the following two BMPs when contaminated soil is encountered and/or prior to initial dewatering to land, storm drains, or water bodies:"

ad. Comment: Page 16, BMP Fact Sheet 2-06, Contaminated Soil Management, The third bullet under "How" states:

"If soil contamination is found or suspected notify the appropriate local, state or federal agency(ies) and RWQCB."

This bullet requires that a permittee notify the appropriate environmental agencies local state or federal agency(ies), in addition to the RWQCB, when contaminated soil is found or suspected.

First, notification of these agencies should only be necessary when it is a regulatory requirement and this will vary from location to location around the state. Therefore, to address this issue, and to be consistent with the rest of the permit documents, the bullet should be revised to state:

"The discharger will notify the appropriate local, State, or federal agency(ies), as required, and the RWQCB when contaminated soil is found at a construction site."

Response: The language has been revised at this location to read as follows:

"When soil contamination is found or suspected and a responsible party is not identified, or the responsible party fails to promptly take the appropriate action, the discharger or authorized representative shall have those soils sampled and tested to ensure proper handling and public safety measures are implemented. The discharger or its authorized representative will notify the appropriate local, State, or federal agency(ies) and RWQCB when contaminated soil is found at a construction site and will notify the RWQCB through the submittal of the LCTN or not at the completion of the project."

ae. Comment: Page 18, BMP Fact Sheet 2-08, Liquid Waste Management: The eighth bullet under "How" states:

"Sediment laden liquid waste must not be discharged to a storm drain or waterbody. Contact the local RWQCB office to obtain appropriate permits, conditions or prohibitions regarding discharge."

This bullet requires that a permittee contact the RWQCB. This will not always be necessary. Permittees working in a RWQCB office jurisdictional area have the responsibility to ensure that their construction operations comply with all environmental requirements, including permitting for non-storm water discharges when permits are required. Many permittees under the linear permit will be very familiar with the local and regional requirements for these discharges. To minimize impacts to both RWQCB and permittee resources, permittees should not be required to contact a RWQCB on every project regarding non-storm water discharges unless necessary to obtain separate permit

coverage. To ensure that this requirement is not misconstrued to mean that for every project on which there may be non-storm water discharges the permittee must contact the RWQCB, the sentence should be revised to read:

“Sediment laden liquid waste must not be discharged to a storm drain or waterbody. Contact the local RWQCB office, as necessary, to obtain appropriate permits, conditions or prohibitions regarding discharge.”

Response: This bullet is redundant with other requirements listed on this BMP fact sheet. To remove the redundancy the following language has been removed:

“Sediment laden liquid waste must not be discharged to a storm drain or water body. Contact the local RWQCB office to obtain appropriate permits, conditions, or prohibitions regarding discharge.”

af. Comment: Page 19, BMP Fact Sheet 3-01, Dewatering Operations. The third and sixth bullets under “When” state, respectively:

- “Generally, non-contaminated discharges of non-storm water to lands (such as infiltration) are allowed. Some areas may require a permit or other regulatory approval. Verify with your local RWQCB and local municipality/agency.”
- “Dewatering activities may be prohibited or need coverage under a separate permit issued by the RWQCBs. Contact the appropriate RWQCBs for permit conditions prior to commencing any dewatering activities”

These two bullets are similar in their content, however, the sixth bullet requires the discharger to contact the RWQCB prior to commencing any dewatering. This is an overly prescriptive requirement, especially when the discharge may be to a sanitary sewer for which the RWQCB is not the regulatory agency.

Therefore, the “When” section should be revised to delete the sixth bullet.

~~“Dewatering activities may be prohibited or need coverage under a separate permit issued by the RWQCBs. Contact the appropriate RWQCBs for permit conditions prior to commencing any dewatering activities”~~

Response: The following language has been removed from "When" and moved to the seventh major bullet under “How” in Fact Sheet 3-01. The language was also revised to read as follows:

"Dewatering activities may be prohibited or require coverage under a separate permit issued by the RWQCBs. Dischargers or authorized representatives shall check with the appropriate RWQCBs for any required permit or basin plan conditions prior to initial dewatering activities to land, storm drains, or water bodies."

ag. Comment: Page 19, BMP Fact Sheet 3-01, Dewatering Operations. The third bullet under “How” states:

“Non-contaminated storm water may be discharged to land for infiltration when:

- The water contains sediment but is not contaminated with other pollutants.
- The water does not run-off from the land to storm drain systems, to creek beds (even if dry) or other surface waters.
- Permission from the property owner on which the infiltration will occur has been received.
- Local RWQCB and local agency has been contacted and discharge is authorized or permitted, whichever applies.”

First, the wording of this bullet limits the discharge of water to land for infiltration to non-contaminated storm water. In many cases, it is also appropriate to discharge groundwater to land for infiltration. This should not be precluded by this BMP condition.

Second, formal authorization or permitting may not always be required from the RWQCB, where the RWQCB’s Basin Plan provides for this type of discharge to land without permitting or authorization (e.g., through a waiver).

Therefore, this bullet should be revised to state:

“Non-contaminated ~~storm~~ water may be discharged to land for infiltration when:

- The water contains sediment but is not contaminated with other pollutants.
- The water does not run-off from the land to storm drain systems, to creek beds (even if dry) or other surface waters.
- Permission from the property owner on which the infiltration will occur has been received.
- The ~~l~~ local RWQCB and local agency(ies) has been contacted, as required, and discharge is authorized or permitted, ~~whichever applies~~ if applicable.”

Response: The language has been revised to read as follows at this location:

- "Non-contaminated water may be discharged to land for infiltration when:
 - The water contains sediment but is not contaminated with other pollutants.
 - The water does not run-off from the land to storm drain systems, to creek beds (even if dry) or other surface waters.
 - Permission from the property owner on which the infiltration will occur has been received.
 - The local RWQCB and local agency(ies) have been contacted and discharge is authorized or permitted, if applicable."

ah. Comment: Page 23 BMP, Fact Sheet 3-04, Vehicle and Equipment Fueling. The third bullet in the “Maintenance and Inspection” Section states:

“Report all spills immediately to the appropriate local, state or federal agency(ies) and RWQCB.”

Federal, state and local laws and regulations identify the requirements for spill reporting and these requirements should be used as the basis for reporting. This requirement goes beyond these reporting requirements. Therefore, this bullet should be revised to state:

~~“Report all spills immediately to the appropriate local, state or federal agency(ies) and RWQCB. Report spills in accordance with all applicable federal, State, and local laws and regulations.”~~

Response: Language will be revised to read as follows in BMP Fact Sheet 3-04:

"Report spills in accordance with all applicable federal, State and local laws and regulations and in accordance with reporting requirements of this General Permit."

ai. Comment: Page 25, BMP Fact Sheet 3-06, Dewatering Utility Substructures and Vaults. The first and third bullets under “How” and the first bullet under “Maintenance and Inspection” state, respectively:

“All dewatering discharges conducted by utility crews, including contractors, shall follow the latest versions of SCG/SDG&E Environmental Practice (EP) on Vault and Substructure Dewatering.”

“If the water to be discharged conforms to the practices within the EP, the discharge is allowed.”

“Implement applicable provisions of the Environmental Practice.”

These need to have references to SCG/ SDG&E removed from them, as follows:

“All dewatering discharges conducted by utility crews, including contractors, shall follow the latest versions of ~~SCG/SDG&E Environmental Practice (EP)~~ on the permittee’s dewatering procedure for Vault and Substructure Dewatering.”

“If the water to be discharged conforms to the practices within the ~~EP~~ dewatering procedure, the discharge is allowed.”

“Implement applicable provisions of the ~~Environmental Practice~~ dewatering procedure.”

Response: All changes suggested here will be made as recommended.

aj. Comment: Page 29, BMP Fact Sheet 3-09, Removal of Underground Utility Location/Mark-Out Paint The seventh and eighth bullets in the “How” section state, respectively:

- “Install storm drain inlet protection at adjacent down gradient inlets.”
- “Prevent discharges from wet hydro pressure washing and wet abrasive blasting and grinding into storm drains or waterbodies.”

Storm drain inlet protection is needed when wet hydro washing is conducted, but not necessarily with dry removal methods. Therefore, these two bullets should be joined together to state:

“Install storm drain inlet protection, as necessary, at adjacent down gradient inlets during ~~Prevent discharges from~~ wet hydro pressure washing and wet abrasive blasting and grinding ~~into storm drains or waterbodies.~~”

Response: The eighth bullet and associated language will be deleted and the seventh bullet will be revised to read as follows:

"Install storm drain inlet protection at adjacent down gradient inlets during wet hydro pressure washing and wet abrasive blasting and grinding."

ak. Comment: Page 2 of the Fact Sheet, first full paragraph. The last sentence states:

“... access road and pole/tower pad and cable/wire pull and station/substation construction, substructure installation, ...”.

The underlined wording was meant to address pulling pads that need to be constructed in certain situations to pull wire onto poles or cable into conduits. Large substations would not be constructed under this permit, however, very a small substation associated with a linear project could be constructed under the “include, but not limited to” language in this sentence. The wording of the sentence should be revised to state:

“...access road and pole/tower pad and cable/wire pull ~~and station/substation~~ construction, substructure installation, ...”.

Response: The language will be changed here and throughout this General Permit to read as follows:

"access road and pole/tower pad and cable/wire pull station, substation construction, substructure installation,"

al. Comment: Page 2, Fact Sheet, Footnote 1. This footnote states:

“The term “discharger” means the utility company, municipality or other public or private agency that owns or operates the small LUP.”

The definition of “Discharger” needs to include “public or private company” and their “contractors” to include all types of permittees and should be revised to state:

“The term “discharger” means the utility company, municipality or other public or private company or agency that owns or operates the small LUP and/ or their contractors.”

Response: Please refer to the response for CCEEB's comment "a" as this issue was addressed there.

am.Comment: Page 6 of the Fact Sheet, Last paragraph of “Process and Methods for Calculating Land Disturbance Areas of Small LUPs The second sentence states:

“The discharger or its duly authorize representative will notify the appropriate local, State, or federal agency(ies) and RWQCB when contaminated soil is found at a construction site.”

This sentence requires that a permittee notify the appropriate environmental agencies local state or federal agency(ies), in addition to the RWQCB, when contaminated soil is found. Notification of these agencies should only be necessary when it is a regulatory requirement and this will vary from location to location around the state. Therefore, to address this issue, the sentence should be revised to state:

“The discharger or ~~its duly authorized representative~~ will notify the appropriate local, State, or federal agency(ies), as required, and the RWQCB when contaminated soil is found at a construction site.”

Response: Please refer to the response for CCEEB's comment "a" as this issue was addressed there.

an. Comment: Page 7 of the Fact Sheet, Footnote 5. This footnote states:

“Estimate provided by electric utility company based on actual electric projects is based on an estimate for 18 inch and 24 inch wide trenches.”

The 25 percent estimate was not based on “actual electric projects” but on typical projects. This footnote should be revised to read:

“Percentage for underground electric projects was provided by an electric company and is an averaged estimate based on 18” and 24” wide trenches. ~~Estimate provided by electric utility company based on actual electric projects is based on an estimate for 18 inch and 24 inch wide trenches.~~”

Response: The language will be changed throughout this General Permit to read as follows:

Percentage for underground electric projects was provided by an electric company and is an average estimate based on 18 inch and 24 inch trenches.

- ao. Comment:** Page 7 of the Fact Sheet, 2nd bullet under “Tier II Small LUPs”. The second bullet for Tier II states:

“Area of the base of stockpiles”

This bullet should be consistent with the second bullet under “Tier I Small LUPs” (i.e., apply to “unpaved surfaces”), and be revised as follows:

“Area of the base of stockpiles on unpaved surfaces:”

Response: This language will be changed as recommended.

- ap. Comment:** Page 7 of the Fact Sheet, 8th bullet under “Tier II Small LUPs”. The eighth bullet states:

“Soil areas outside the surface area of trenches, laterals, and ancillary facilities that will be graded and disturbed by the use of construction equipment, vehicles, and machinery during construction activities.”

This bullet identifies additional soil disturbance areas to include in the calculation of soil disturbance. The phrase “graded and disturbed” implies that an area would need to be graded and disturbed to be included in the soil disturbance calculation, whereas an area that was just “disturbed” by construction activities would not be included.

The meaning of this bullet should be clarified.

Response: The language will be revised for clarity to read as follows:

"Soil areas outside the surface area of trenches, laterals, and ancillary facilities that will be graded and/or disturbed by the use of construction equipment, vehicles, and machinery during construction activities."

- aq. Comment:** Page 8 of the Fact Sheet, Section 1 under “Small LUPs Associated With Private or Municipal Development Projects. Section 1 states:

“For small LUPs associated with pre-development construction activities:

The discharger or its duly authorized representative must seek coverage under this General Permit for its pre-development construction activities where the total disturbed land area of these construction activities is greater than one acre but is less than five acres.”

This paragraph needs to clarify that the pre-development conditions are applicable to both new development (e.g., a new housing subdivision) and to redevelopment (e.g., relocations required due to cities relocating sewer lines; redevelopment of a city block from old to new structures) and therefore should be revised to state:

“For small LUPs associated with pre-development and pre-redevelopment construction activities:

The discharger ~~or its duly authorized representative~~ must seek coverage under this General Permit for its pre-development and pre-redevelopment construction activities where the total disturbed land area of these construction activities is greater than one acre but is less than five acres.”

Response: This language will be changed throughout this General Permit to include the term “Pre-redevelopment.”

ar. Comment: Page 10 of the Fact Sheet, NOI Submittal Requirements. The second sentence states:

“It is the responsibility of the discharger or its duly authorized representative to obtain coverage under this General Permit prior to commencement of small LUP construction activities that are eligible to be covered by this General Permit.”

The point of this that the discharger needs to obtain coverage under the permit prior to commencing construction activities, but could be misinterpreted to mean that a project that qualifies for coverage under this General Permit has to be permitted under this General Permit and could not be permitted under another General Permit or an individual permit. The following revised language clarifies that the permit coverage must be obtained prior to start of construction and eliminates the implication that if a project qualifies for coverage under this permit, it must be permitted under this permit:

“When using this General Permit, the discharger shall ~~It is the responsibility of the discharger or its duly authorized representative to obtain coverage under this General Permit~~ prior to commencement of small LUP construction activities that are eligible to be covered by this General Permit.”

Response: This language will be revised to read as follows:

"When using this permit the discharger or its duly authorized representative shall obtain coverage prior to commencement of small LUP construction activities that are eligible to be covered by this General Permit."

as. Comment: Page 11 of the Fact Sheet, Tier I Small LUPs NOI Submittal Requirements: The first sentence in the first paragraph states:

“The discharger submits an NOI and appropriate fee to the SWRCB for each RWQCB office⁹ where construction activities for the Tier I small LUPs are planned.”

Therefore, the draft permit requires the discharger to submit a NOI and fee to the SWRCB for each RWQCB office where Tier I construction activities are planned. Since the fee will be by RWQCB office, not RWQCB region, this needs to be taken into consideration in any current or future reevaluation of fees for permittees under this permit.

Response: Comment noted.

at. Comment: Page 11 of the Fact Sheet, First paragraph under Tier I Small LUPs NOI Submittal Requirements. The last sentence of the first paragraph states:

By submitting the NOI, the discharger is notifying the SWRCB and RWQCB that all small LUPs covered by the NOI will be in compliance with requirements of this General Permit.

This statement needs to be revised to clarify that not all projects need to be permitted under this permit once a discharger files a Tier I NOI. For some projects, it might be better to have permit coverage under Order 99-08 or an individual permit. Therefore, the last sentence of this paragraph should be revised to state:

“By submitting the NOI, the discharger is notifying the SWRCB and RWQCB that all small LUPs covered by the NOI (i.e., those for which an LCAN is submitted) will be in compliance with requirements of this General Permit.”

Response: The language will be revised to read as follows at this location:

"By submitting the NOI, the discharger is notifying the SWRCB and appropriate RWQCB office that all small LUPs covered by the NOI (i.e., those for which an LCAN is submitted) will be in compliance with requirements of this General Permit."

au. Comment: Page 16 of the Fact Sheet, Tier I Small LUPs SWPPP Requirements, Second paragraph. The second to last sentence in this paragraph states:

“The discharger or its duly authorized representative must select from the BMPs provided in Table 2 that are associated with a particular construction activity.”

The following paragraph goes on to state that alternative BMPs may be used. Therefore, to be consistent the above sentence should be revised to state:

“The discharger ~~or its duly authorized representative~~ must select from the BMPs provided in Table 2 (or an alternative BMP) that are associated with a particular construction activity.”

Response: This language will not be revised. The third paragraph following the language in question explains the process for selecting alternative BMPs for Tier I projects.

av. Comment: Page 18 of the Fact Sheet, Tier I Small LUPs Monitoring Requirements, first paragraph. This paragraph states that:

“A discharger or its duly authorized representative must conduct visual inspections of Tier I small LUPs during working hours daily during active construction.”

In order to be clear that the visual monitoring is required to be conducted when construction crews are present and actively working on the site, this paragraph should be revised to state:

~~“A discharger or its duly authorized representative must conduct daily visual inspections of Tier I small LUPs during working hours daily during active while construction activities are occurring.”~~

Response: This language will be revised to read as follows:

"A discharger or its authorized representative must conduct daily visual inspections of Tier I small LUPs during working hours while construction activities are occurring."

aw. Comment: Page 18 of the Fact Sheet, Tier I Small LUPs Monitoring Requirement, second paragraph. The second sentence states:

“This program requires temporary and permanent stabilization BMPs after active construction is completed.”

This statement is true for those cases only where final stabilization is not achieved at the end of active construction. Therefore, this statement should be revised as follows:

“This program requires temporary and permanent stabilization BMPs after active construction is completed for disturbed areas in which final stabilization has not yet been achieved.”

Response: This language will not be revised. The intent is to address those areas disturbed during construction and what is to happen once active construction is completed.

ax. Comment: Page 18 of the Fact Sheet, Tier II Small LUPs Monitoring Requirements, first paragraph. This paragraph states that:

“A discharger or its duly authorized representative must conduct daily visual inspections of Tier II small LUPs during working hours and during active construction.”

This language is inconsistent with the similar requirement contained in the first paragraph of “Tier I Small LUPs Monitoring Requirements” and should be revised to state:

~~“A discharger or its duly authorized representative must conduct daily visual inspections of Tier I small LUPs during working hours and during active construction while construction activities are occurring.”~~

Response: This language will be revised to read as follows:

"A discharger or its authorized representative must conduct daily visual inspections of Tier II small LUPs during working hours while construction activities are occurring."

ay. Comment: Page 3, SECTION B,: MONITORING PROGRAM AND REPORTING REQUIREMENTS, No. 3(c)(i). This subsection states:

“Conduct daily inspections to verify that appropriate BMPs for storm water and non-storm water are being implemented and in place in areas where active construction is occurring.”

In other sections of the permit (e.g., MONITORING PROGRAM AND REPORTING REQUIREMENTS section 3(a)(2)) it specifies that these inspections are “visual” inspections. Therefore this subsections should be revised to state:

“Conduct daily visual inspections to verify that appropriate BMPs for storm water and non-storm water are being implemented and in place in areas where active construction is occurring.”

Response: The language will be revised to read as follows:

"Conduct daily visual inspections to verify that appropriate BMPs for storm water and non-storm water are being implemented and in place in areas where active construction is occurring."

ay. Comment: Page 5 of the permit, Discharge Prohibitions, (No. 5). This prohibition states:

“Trench spoils or any other soils disturbed during construction activities that are contaminated soil⁴ shall not be discharged with storm water or non-storm water discharges.”

So that this prohibition does not preclude other permitted waste management options (e.g., sewerage after treatment), it should be made consistent with Prohibition 6 as follows:

“Trench spoils or any other soils disturbed during construction activities that are contaminated soil⁴ shall not be discharged with storm water or non-storm water discharges into any receiving water or storm drain.”

Response: The language at this location will be revised to read as follows:

"Trench spoils or any other soils disturbed during construction activities that are contaminated soil shall not be discharged with storm water or non-storm water discharges into any storm drain or water body unless subject to an NPDES permit."

az. Comment: Page 11 of the Permit, SPECIAL PROVISIONS FOR SMALL LINEAR UNDERGROUND/ OVERHEAD CONSTRUCTION PROJECTS, No. 12(c). The second to last sentence in this subsection states:

“The new owner must comply with provisions of Sections A.2(c) and B.2(b) of this General Permit.”

The referenced Section A.2(c) (i.e., SWPPP) states:

“Owners or operators of ongoing linear underground/overhead construction projects that are Small LUPs as defined in this General Permit and are currently covered under Order No. 99-08 shall continue coverage under Order No. 99-08 until the construction activities are complete except where less than 50 percent of the construction project is complete. When ongoing construction activities are less than 50 percent complete, the operator of the Small LUP may choose to seek coverage under this General Permit by filing the appropriate NOI and/or LCAN, revising its SWPPP, if appropriate, and terminating coverage under Order No. 99-08. Termination of coverage under Order No. 99-08 is subject to the approval of the RWQCB.”

The referenced Section B.2(b) (i.e., Monitoring Program & Reporting Requirements) states:

“b. Required Changes

A M&RP must be revised when:

- i. Site conditions or construction activities change such that a change in monitoring is required to comply with the requirements and intent of this General Permit.
- ii. The Regional Water Quality Control Board (RWQCB) requires the discharger or duly authorized representative to revise its M&RP based on its review of the document. Revisions may include, but not be limited to, conducting additional site inspections, submitting reports, and certifications.
- iii. The RWQCB may require additional monitoring and reporting program requirements including sampling and analysis of discharges to water bodies listed in Attachment 7 to this General Permit. Additional requirements imposed by the RWQCB should be consistent with the overall monitoring effort in the receiving waters.”

Special Provision No. 12c (“Change of Ownership Termination Requirements”) addresses changes in ownership. It is unclear why it requires (i.e., “...the new owner must...”) the new owner to comply with SWPPP Section A.2(c) and Monitoring Program & Reporting and Requirements Section B.2(b), as these requirements do not pertain to new ownership or transfer of ownership issues.

Therefore, this sentence should be deleted:

~~“The new owner must comply with provisions of Sections A.2(c) and B.2(b) of this General Permit.”~~

Response: The language at this location will be revised to read as follows:

"The new owner must comply with provisions of Sections A. 2(d) of this General Permit."

ba. Comment: Page 13 of the Permit, STANDARD PROVISIONS FOR SMALL LUPS, No. 5. The first sentence of this Provision states:

“The discharger or duly authorized representative shall properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) at all times, which are installed or used by the discharger or duly authorized representative to achieve compliance with the conditions of this General Permit and with the requirements of SWPPPs.”

This language is from EPA’s standard provisions (40 CFR 122.41(e)) that are required in every NPDES permit, with the exception of “at all times”. It is unclear why this additional language has been inserted into EPA’s standard language and should be revised to state:

“The discharger or duly authorized representative shall properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) ~~at all times,~~ which are installed or used by the discharger or duly authorized representative to achieve compliance with the conditions of this General Permit and with the requirements of SWPPPs.”

Response: The language located here will be changed to read as follows:

"The discharger or authorized representative shall at all times properly operate and maintain any facilities and systems of treatment and control (and related appurtenances), which are installed or used by the discharger or authorized representative to achieve compliance with the conditions of this General Permit and with the requirements of SWPPPs."

bb. Comment: Page 6, Section A: STORM WATER POLLUTION PREVENTION PLAN (SWPPP), No. 7(a)(viii). The first sentence of this subsection states:

“Where activities conducted at Tier II Small LUPs are identical to those listed in Table 2 of Attachment 5 of the General Permit, the Tier II SWPPP shall incorporate the BMPs provided in Table 2.”

The BMPs listed in Table 2 may or may not be applicable to the Tier II construction activity. Therefore, this sentence should be revised to read:

“Where activities conducted at Tier II Small LUPs are identical to those listed in Table 2 of Attachment 5 of this General Permit, the Tier II SWPPP shall incorporate, as applicable, the BMPs provided in Table 2.”

Response: The language located here will be revised to read as follows:

"Where activities conducted at Tier II Small LUPs are identical to those listed in Table 2 of Attachment 5 of the General Permit, the Tier II SWPPP shall incorporate the BMPs provided in Table 2. However, alternative BMPs that provide equivalent protection may be implemented provided the discharger or its duly authorized representative includes additional information about the BMPs in the SWPPP including, but not limited to, BMP reference(s), BMP description(s), and drawings or other attachments to describe the BMPs in the SWPPP."

bc. Comment: Page 7, Section A: STORM WATER POLLUTION PREVENTION PLAN (SWPPP). The second sentence of this subsection states:

“The discharger or its duly authorized representative is responsible for contacting the appropriate RWQCB office(s) having jurisdictional authority in the area of the Small LUP construction and obtaining, when required, separate permit coverage for non-storm water discharges.”

Permittees working in a RWQCB office jurisdictional area have the responsibility to ensure that their construction operations comply with all environmental requirements, including permitting for non-storm water discharges when permits are required. Many permittees under the linear permit will be very familiar with the local and regional requirements for these discharges. To minimize impacts to both RWQCB and permittee resources, permittees should not be required to contact a RWQCB on every project regarding non-storm water discharges unless necessary to obtain separate permit coverage. To ensure that this requirement is not misconstrued to mean that for every project on which there may be non-storm water discharges the permittee must contact the RWQCB, the sentence should be revised to read:

“The discharger ~~or its duly authorized representative~~ is responsible for contacting the appropriate RWQCB office(s) having jurisdictional authority in the area of the Small LUP construction, as necessary, and obtaining, when required, separate permit coverage for non-storm water discharges.”

Response: This issue was responded to for an earlier CCEEB comment. Please see the response to CCEEB's comment "a."

11. COMMENTS RECEIVED FROM ORANGE COUNTY SANITATION DISTRICT

- a. **Comment:** Please provide specific details on what constitutes “qualified” personnel and inspectors. There is currently no formal certified training program offered by the States to meet this need.

Response: Qualified individuals are those who are trained and authorized to develop and/or implement a SWPPP and conduct site inspections to ensure compliance with this General Permit. Section A.10 of this General Permit establishes the training requirements for individuals responsible for SWPPP preparation, implementation, and permit compliance. The SWRCB does not have a formal certified training program. There are many training opportunities available that are provided by professional organizations, and local training programs conducted throughout the State. The SWRCB may also provide additional Outreach Workshops for this General Permit subsequent to its adoption by the SWRCB.

- b. **Comment:** Training requirements stipulate that responsible individuals “shall be appropriately trained...formal and informal...on an ongoing basis.” Is the State planning on developing a certification program? If not will the State provided a list of approved training organizations? As an alternative, the State could provide a minimum requirement for training.

Response: For a partial response regarding training opportunities, please see response to Comment 11.a. Currently, the SWRCB does not have the resources to develop, implement, and maintain a Certification Program for the construction storm water program. The SWRCB also does not have resources to establish a program to review and approve various training programs offered by independent contractors or organizations. The training requirements specified in Section A.10 of this General Permit were written to be flexible because the State does not have these types of programs. The intent of this requirement is to ensure that individuals unfamiliar with this General Permit requirements and the storm water regulatory program are not put in a position of responsibility for ensuring compliance. It is not the intent of this General Permit to specify the specific training requirements.

- c. **Comment:** The issue of non-compliance is not addressed in the filing of LCTNs and NOTs. Dischargers are required to certify that the site/project was “in full compliance with the requirements [of the permit] during active construction,” but doesn’t address the issue of any violations that might have occurred. What if the site was not in full compliance and the appropriate 14 day reports were filed? Does on still file a LCTN/NOT or is there an additional form?

Response: See response to Comment 6.f.

12. COMMENTS RECEIVED FROM THE COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

- a. **Comment:** The NOI Line by Line Instructions specify that the NOI Form must be completed by the owner or signatory agent of the construction site. They further define signatory agent for the municipality, State, Federal or public agency as either a principal executive officer, ranking elected official or duly authorized representative. The term “duly authorized representative” is defined differently in the WDR (page 15) and Attachment 2-LCAN Form.

Response: This General Permit has been revised to change the term “duly authorized representative” defined in Footnote 2 of the Fact Sheet to read “authorized representative.” The definition has been revised to read “An authorized representative is a contractor employed by the owner or operator of the small LUP and is the person responsible for oversight of the day to day operations of construction activities associated with small LUPs. The appointment of an authorized representative by a discharger does not relieve the discharger of its responsibility for compliance with this General Permit. This term is different from that of the duly authorized representative, which is defined in Standard Provision F.9.b.” This General Permit has been revised to clarify when certain permit requirements must be fulfilled by the duly authorized representative. In summary, documents, such as NOIs, LCANs, NOTs, and LCTNs and other reports that are required to be signed and certified, must be signed by either the discharger or its duly authorized representative. Development, implementation and revisions of SWPPPs, inspections and monitoring, and other activities related to ensuring full compliance with this General Permit may be done by the discharger or its authorized representative.

- b. **Comment:** Tier I Small LUPs Monitoring Requirements states that visual inspections are required to be conducted during working hours daily during active construction and implies that a written inspection record is not required. Please confirm that a log of the inspections is not required for Tier I projects and that inspections are not required on days that are not normal workdays (e.g. weekends, holidays) or when crews are not onsite.

Response: This General Permit does not require inspections, conducted for Tier I projects, be documented; only inspections of Tier II projects must be documented. By definition, Tier I projects are typically conducted in developed, paved areas that are returned to pre-construction like conditions or equivalent at the end of each construction day. This is required for water quality concerns but has also been done in the past for public safety purposes. Based on input from industry representatives during the development of this General Permit, it was assumed that, due to liability concerns, oversight of these types of projects is frequent and that storm water quality inspection requirements would be done in conjunction with other oversight activities.

Section B.3.a. of this General Permit requires inspections of Tier I projects to be conducted daily during working hours where active construction is occurring. If construction activities are not occurring, inspections are not required regardless of the day of the week or time of day.

- c. **Comment:** Delete the requirement that Tier I Small LUPs must always implement BMPs 2-06 and 3-01.

Response: Please see response to Comment 9.h

- d. **Comment:** The Sanitation Districts included a spreadsheet of comments that are identical to the comments provided by CCEEB,

Response: Please see responses to CCEEB comments provided to Comment 10.

13. COMMENTS RECEIVED FROM SEMPRA ENERGY

- a. **Comment:** The permit requires that the SWPPP be available at the construction site during working hours while construction is occurring and shall be made available upon request. We request the permit be revised to allow the SWPPP to be available via a request by radio or phone.

Response: Please see response to Comment 10.k

- b. **Comment:** The permit requires that each amendment to a SWPPP shall be signed and certified by the discharger or its duly authorized representative. We request the permit be amended to require the initial SWPPP certification be made by a duly authorized representative and to authorize the onsite person/position responsible for SWPPP implementation to make revisions to the SWPPP in the field.

Response: Please see response to Comments 10.a, 10.c and 12.a.

- c. **Comment:** The permit language is not consistent throughout the various permit documents regarding the ability to discontinue sampling and inspections in areas of the project where construction is completed and final stabilization has been achieved.

Response: Please see response to Comments 10.b

- d. **Comment:** In numerous locations in permit there are references to the “discharger or duly authorized representative” as being responsible for specific activities or actions. Duly authorized representative is defined in footnotes of the permit and this definition is inconsistent with the definition of Duly Authorized Representative provided in Standard Provision F.9.b.

Response: Please see response to Comments 10.a and 12.a.

- e. **Comment:** Unlike the existing Order 99-08, this proposed permit requires that dischargers contact the RWQCBs prior to all dewatering operations. We request this condition be revised to state that the RWQCB should be contacted, as necessary, if the discharger is unsure of the applicable permitting requirements or if a permit is required for the dewatering operations.

Response: Please see response to Comments 9.h, 10.d and 10e.

14. COMMENT RECEIVED FROM DEPARTMENT OF WATER AND POWER THE CITY OF LOS ANGELES (LADWP)

Comment: LADWP supports the adoption of this permit.

15. COMMENT RECEIVED FROM THE WESTERN STATES PETROLEUM ASSOCIATION (WSPA)

Comment: WSPA supports the adoption of this permit.

16. COMMENTS RECEIVED FROM ENVIRONMENTAL COMPLIANCE MANAGEMENT SERVICES

- a. **Comment:** The assumptions offered in the Fact Sheet and Permit preamble to justify the issuance of this permit are grossly flawed and un-defendable. The assumption that small linear projects have less potential impact to receiving waters is not founded on factual assertions and observations of actual field conditions. These projects occur on impervious surfaces and pose a greater threat than those conducted on pervious surfaces. These projects do not pose less of a risk to water quality than larger, traditional construction projects.

Response: Please see response to Comments 8.a and 8.b

- b. **Comment:** Limiting relief to only small linear construction projects is inherently biased and unfair. There is no technically justifiable basis to assume that linear construction projects under 5 acres pose any less risk to water quality than “traditional” construction projects less than 5 acres in size. If small linear construction projects warrant consideration and relief from the more stringent requirements of Water Quality Order 99-08, so must small construction projects.

Response: Please see response to Comment 8.b

- c. **Comment:** If any project categories warrant some relief from the existing Order 99-08 it would be large linear projects.

Response: Please see response to Comments 8.b and 8.c

- d. **Comment:** Descriptions of the types of projects are undefinable and will result in significant confusion to the regulated community. The distinctions and tiers of

complexity made between various types of projects have the appearance of being written by, and for, special interest groups.

Response: This General Permit was written to address a specific type of small construction activity typically associated with utility type construction projects. It was written with input from industry representatives that would be responsible for complying with the requirements of this General Permit. For additional response please refer to Comment 8.c.

- e. **Comment:** This General Permit redefines what constitutes a “project” as currently defined by the California Environmental Quality Act (CEQA) and how project is defined by many other California regulatory agencies. The distinction between the type of projects owned or operated by private or municipal agencies versus those that are not appears arbitrary. What does references to “new development” and “re-development” have to do with storm water protection and regulation?

Response: This General Permit does not define “project” and does not redefine “project” for other regulatory programs in California. It establishes the various phases or types of projects that trigger the requirement for an owner or operator of a small linear underground/overhead construction project to obtain coverage under this General Permit or a different NPDES storm water permit for storm water discharges from construction activities. It has no effect on the definition of “project” for purposes of CEQA review.

- f. **Comment:** If a project is not a private or municipal project, then what is it? Is there such a thing as a non-private or non-municipal project?

Response: The intent is to cover projects by private parties or public agencies. This General Permit used terms that are commonly used for these types of projects. This permit was established with input from industry representatives who are in agreement with the terms used in the permit. Individuals that are uncertain if this permit applies to them may contact their local RWQCB or the SWRCB. In addition, please see response to comment 5.

- g. **Comment:** The permit attempts to redefine linear construction activities that take place within the boundaries of a larger construction project as a separate and unrelated construction project.

Response: The permit does not redefine linear construction activities that take place within the boundaries of a larger construction project. The permit requires the owner or operator of the linear project to obtain coverage under the appropriate storm water permit unless the project is covered by the NOI and SWPPP of the larger construction project. SWRCB staff intends to develop flow charts for use immediately following the adoption of this General Permit (see response to Comment 4.a).

- h. **Comment:** The complexity of a construction project does not establish BAT/BCT. The current General Construction permit establishes minimum requirements that construction

activities/projects must meet to demonstrate compliance to the Federal Clean Water Act, California's Porter-Cologne Act, Basin Plans and Water Quality Policies, including BAT/BC. This draft permit establishes less stringent conditions. Either the draft permit conditions do not meet the Federal or State water quality requirements or the existing general Permit for Construction Activity exceeds the State's authority by imposing unmandated Federal requirements. If the conditions in this draft permit meet the BCT/BAT conditions and meet the requirements of the Federal and State statutes and regulations, then these less stringent permit conditions must be applicable to all construction projects regardless of complexity and size.

Response: This General Permit establishes requirements appropriate for the type of construction activities being conducted and to protect water quality as required by the Federal CWA and State Water Code. The requirements for small LUPs are no less stringent than other construction sites. Dischargers covered by this General Permit will be required to develop and implement a SWPPP that will implement BMPs to reduce the discharge of pollutants in storm water discharges from small LUPs to meet the BAT/BCT discharge standard and are also required to meet Receiving Water Limitations. Dischargers are also required to conduct monitoring and reporting activities to ensure compliance is met. The permit requirements are appropriate for the complexity and type of construction activities associated with small LUPs.

- i. **Comment:** We recommend that the tiered approach be eliminated all together. Any linear construction project that can be completed in a limited period of time (i.e., 14 days) and limits the total area of disturbed soils at any one time to less than one acre should be exempt from the General Permit if they can meet the following conditions: 1) The construction activity only occurs during dry weather conditions (i.e., during the day of construction); 2) Following re-establishment of the disturbed corridor to pre-construction conditions, no additional construction related activities shall take place within the re-established and stabilized corridor (i.e., no stockpiles, equipment, or material storage/disposal). All other small LUPs should then be required to meet the proposed Tiered 1 requirements for SWPPP preparation, NOI submittal, and Notice of Termination requirements. We recommend Tier 2 projects and requirements be eliminated.

Response: The General Permit will not be changed to accommodate this recommendation. The requirements of this General Permit were developed with input from industry representatives that are very knowledgeable in the type, complexity and characteristics of construction activities and projects for small LUPs. The suggested change would prohibit construction activities during wet weather that is far more restrictive than Order 99-08. Also the suggested change implies that once an area of construction is complete that future construction activities are prohibited in the same area. A strict prohibition against construction is not the intent of this General Permit. This permit requires BMPs and other appropriate control measures be implemented to reduce the discharge of pollutants from construction activities and to protect water quality.

- j. **Comment:** The permit must use the same criteria and approach used in the existing General Construction Permit and established guidance issued by the SWRCB for determining total area disturbed for linear construction. In this draft permit, the criteria used to determine whether a stockpile should, or should not, be included in the calculation of disturbed areas is whether the stockpile is located on a paved surface or not. The determining factor should be the location of the stockpile in relationship to a water conveyance system. Stockpiles located on a paved surface pose a greater risk to storm water if the stockpile is near a curb inlet or if the stockpile is left unprotected during a storm event because of the impervious nature of paved surfaces, and the greater flow velocity and volume of storm water that runs over and off paved surfaces.

Response: This General Permit uses the same criteria and approach for determining land disturbance as currently used for Order 99-08. This General Permit is different in that it includes more specificity in the method of calculating the disturbed area. This was done at the request of the industry representatives to ensure consistency throughout the state. Calculating the disturbed area is to be used to determine when permit coverage is required and when coverage can be obtained under this General Permit or must be obtained under a different NPDES storm water permit. Calculating the disturbed area does not impact the BMPs that must be implemented for construction activities including stockpiles. The area where stockpiling occurs may or may not be included in the calculation of disturbed soil depending on the conditions of the site to receive the stockpiling. This is defined in the General Permit. Where a construction site meets the disturbed land threshold for coverage under this General Permit and stockpiling will occur, this General Permit requires BMPs to be implemented to ensure the stockpile is adequately protected from storm water runoff.

- k. **Comment:** Footnote 4 of the draft permit attempts to redefine the definition of contaminated soil.

Response: Footnote 4 does not define contaminated soil rather it describes conditions that trigger the need for additional action and reporting by the discharger should contaminated soil be encountered during construction activities.

- l. **Comment:** Section A, Discharge Prohibition, Section B Effluent Limitations and Section C Receiving Water Limitations must be consistent with the existing General Permit for Construction 99-08. The draft small LUP permit claims to be consistent with this order but it is not. We recommend that the exact language in Order 99-08 be used in this draft permit.

Response: The only reference to being identical to order 99-08 is contained in the discussion about Receiving Water Limitations in the Fact Sheet of this General Permit. This General Permit has copied the language directly from Order 99-08. We did not make this statement for Discharge Prohibitions and Effluent Limitations. Discharge Prohibitions in this General Permit are not identical to those in 99-08. The revisions were based on implementation issues and concerns surrounding some of the prohibitions in 99-08. Effluent Limitations were added to this General Permit and are consistent with the

requirements of the Federal CWA. The second paragraph contained in Effluent Limitation B.1 and limitation B.2 were taken directly from provisions in Order 99-08.

- m. **Comment:** Section A.6.a.i of the draft LUP permit obligates Tier I Small LUPs to select BMPs from Table 2: Construction Activity and BMP Reference Guide and Attachment 6: BMP Fact sheets. This permit establishes the BMPs listed in Table 2 and Attachment 6 as being adequate to meet BAT/BCT. If the BMPs listed in this draft permit are sufficient to meet BAT/BCT for small LUPs, then these BMPs must also be sufficient to meet the BAT/BCT standard for all construction activities, regardless of size or complexity.

Response: The Tier I small LUPs SWPPP form and the small LUP construction activity/BMP table provided in this General Permit were developed with input from industry representatives and based on the types of activities typically conducted at a small LUP site. The permit requires the discharger to identify activities and BMPs not listed and allows for alternative BMPs to be implemented. This flexibility was provided to ensure the discharger implements appropriate BMPs to be in full compliance with the requirements of this General Permit. These BMPs may not be appropriate for other types of construction since the construction would not necessarily meet the conditions for being a Tier I site.

- n. **Comment:** ECMS supports any effort to provide fee relief to construction related activities. However, this permit will place an unreasonable financial burden on Non-Small LUP Construction Projects. As a consequence of AB10X, funding of the state and regional boards' administration and enforcement of the State's stormwater programs will be based solely on permit fees. Additionally, AB10X mandates a minimum level of inspection and enforcement that the regional boards must meet. This draft Small LUP permit does not relieve either state or regional boards of any of their administration or enforcement duties. In fact, due to the complexity of the tiered approach proposed in the draft permit, the level of effort required to administer and enforce the Small LUP permit more than likely will increase. By allowing LUP owners to pay a single fee of \$700 for an unlimited number of LUPs shifts the burden of funding the administration and enforcement of the Small LUP Permit on to non-LUP construction projects subject to the General Construction Permit. A more equitable fee schedule would be to eliminate the tiered approach 2) continue the requirement to submit a NOI but do not submit a fee with the NOI and 3) submit a fee for each small LUP listed on the LCAN based on linear feet of disturbed surface area/soils.

Response: Please see response to Comments 8.d and 8.e.

- o. **Comment:** The draft permit stipulates that prior to a NOT taking effect the RWQCB has to approve the termination. This is in direct conflict with the existing General Permit for larger projects. If this provision is to stay in effect a specific time limit has to be imposed on the Regional Boards to make that determination. A time frame of not more than 45-days from date of submittal of the NOT should be established. If the Regional Board fails to respond within that period of time then the NOT is considered approved and the construction project terminated in compliance with the Permit Conditions.

Response: This General Permit does not conflict with Order 99-08 NOT requirements. Order 99-08 does not impose a time period in which the RWQCBs must respond. Please see response to comment 9.k.

- p. **Comment:** Section E. W. of the draft permit authorizes Regional Board to impose upon small LUPs owners' obligation to conduct analytical analysis of downstream impacts on receiving waters. This provision opens the door for the Regional Boards to force upon the permittees an obligation to conduct expensive and exhaustive analysis of water quality beyond the boundaries of the project site. This provision is precedent setting and is currently not a provision of the General Permit. This provision needs to be eliminated or it's scope limited to realistic impacts posed by the construction activity on downstream receiving waters.

The greatest threat to water quality from small linear projects is sediments. As such, small linear project should, at a minimum, be required to sample for sediments to establish the effectiveness of their BMP regardless of whether the discharges occurs to 303(d) listed water bodies impaired for sediments. In addition, the sampling and analysis language in this draft permit must be the same language used in the existing General Permit.

The draft permit allow too much judgment on the part of the discharger or its duly authorized representative as to whether sampling for non-visual pollutants will be done. The language included in this section (i.e., "where the discharger believes pollutants associated with construction may be discharged") provides these projects with an opportunity to deem sampling as not necessary whereas this "flexibility" is not given to traditional projects. In addition, the language states that "Also, failure to implement BMPs may be a trigger for sample collection" should be revised to require mandatory sampling if the discharger has failed to implement BMPs.

Response: Sampling and analysis requirements for this General Permit are identical to the requirements established in Order 99-08. Requirements established in Order 99-08 were developed in response to a court order.

- q. **Comment:** We recommend that this draft permit be rescinded and reconsidered. If it is the intent the State Board to provide regulatory and financial relief to small LUP projects then that consideration must be extended to all small construction projects under 5 acres. We recommend that separate General Permit be developed that provides all construction projects under five acres the same level regulatory relief, not just linear projects. We also recommend that the existing General Permit for Construction be amended to address the unique needs of large linear construction project, as previously described.

Response: Please see response to Comments 8.b and 8.f.

17. COMMENTS RECEIVED FROM ARGONAUT CONSULTING

The comments received are similar to all the comments received from Environmental Compliance Management Services. Please refer to the responses provided to all the comments provided to Comment 16 above.

TF:jh/lz/klh (6/12/03) (6/17/03)

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