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DEBRA BOWEN
SECRETARY OF STATE

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

2014 OAL DETERMINATION NO. 4
(OAL FILE NO. CTU2013-0802-01)

REQUESTED BY: **MAUREEN DAGGETT**

CONCERNING: **Fact Sheet issued by the State Water Resources Control Board titled: "Qualified Storm Water Pollution Prevention Plan Developer (QSD) Training Program for Professionals Licensed by the California Board of Professional Engineers, Land Surveyors and Geologists"**

DETERMINATION ISSUED PURSUANT TO GOVERNMENT CODE SECTION 11340.5.

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of "regulation" as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of "regulation," but was not adopted pursuant to the APA and should have been, it is an "underground regulation" as defined in California Code of Regulations, title 1, section 250.[1] OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

CHALLENGED RULE

At issue is whether a Fact Sheet titled "Qualified Storm Water Pollution Prevention Plan Developer (QSD) Training Program for Professionals Licensed by the California Board of Professional Engineers, Land Surveyors and Geologists" (Fact Sheet), issued by the State Water Resources Control Board (Board) is an underground regulation. The Fact Sheet is attached as Exhibit A.

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[1] As defined by title 1, section 250(a),

> "Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

DETERMINATION

OAL determines that the Fact Sheet meets the definition of "regulation" but that it is exempt from the rulemaking requirements of the APA pursuant to Government Code section 11352.

FACTUAL BACKGROUND

On August 2, 2013, OAL received a petition from Maureen Daggett (Petitioner), alleging that the Board issued, used, enforced or attempted to enforce an underground regulation. The petition alleges that the Fact Sheet issued by the Board on July 2, 2013, implements alternative Qualified Stormwater Pollution Prevention Plan Developer (QSD) training and qualifications certification criteria for California Board of Professional Engineers, Land Surveyors and Geologists licensed professionals, among other things.

The Fact Sheet at issue added a new training program to the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ) (Permit). The Permit was adopted by the Board after public hearing and comment on September 2, 2009, and effective on July 1, 2010. A copy of the Permit is attached as Exhibit B.

The Permit regulates discharges of pollutants in storm water associated with construction activity (storm water discharges) to waters of the United States from construction sites that "disturb one or more acres of land surface, or that are part of a common plan of development or sale that disturbs more than one acre of land surface." (Exhibit B, page 2.) It is a Construction General Permit which contains a requirement for each permittee to implement a Storm Water Pollution Prevention Plan (SWPPP). (Exhibit B, page 12.) The SWPPP must be written and certified by a QSD. (Exhibit B, page 32-33.) Pursuant to the Permit, "[i]n order to improve compliance with and to maintain consistent enforcement of this [Permit], all dischargers are required to appoint two positions – the Qualified SWPPP Developer (QSD) and the Qualified SWPPP Practitioner (QSP) – who must obtain appropriate training." (Exhibit B, page 7.) The QSD must have one of eight specified professional licenses or certifications and must attend a Board sponsored or approved training course within two years after the effective date of the Permit. (Exhibit B, page 32-33.)

The details of the training component were not initially identified in the Permit but were to be developed in collaboration with key stakeholders, the Board and Regional Water Boards. The Board alleges and Petitioner does not dispute, that QSD training exists solely for the purpose of complying with the Permit. On July 2, 2013, the Board issued the Fact Sheet. Petitioner alleges that the issuance of the Fact Sheet was an amendment of the Permit and was not pursuant to public notice or comment, was not adopted by the *members* of the Board and is therefore an underground regulation. Petitioner further alleges that during the public comment period for the adoption of the Permit, several workshops were held and the qualifications and certification process for the QSD were discussed. The qualifications required a 2-3 day training course with a written exam and a minimum passing grade of 70% or better. Among other things, the Fact Sheet provides for alternative training and qualifications for a QSD if

the QSD is already a licensed professional in good standing with the California Board of Professional Engineers, Land Surveyors and Geologists. The alternative process articulated in the Fact Sheet was never presented to the public according to the Petitioner, and was later issued by the Board staff without adoption by the members of the Board after having had the appropriate hearings that are required by various federal and state laws. The Fact Sheet provides for an "alternative," less stringent certification process for California Board of Professional Engineers, Land Surveyors and Geologists licensed professionals. The Board acknowledges that the *members* of the Board did not adopt the Fact Sheet, but that the Fact Sheet was issued by Board staff.

UNDERGROUND REGULATIONS

Government Code section 11340.5, subdivision (a), provides that:

> No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of Government Code section 11340.5 it creates an underground regulation as defined in title 1, California Code of Regulations, section 250.

OAL may issue a determination as to whether or not an agency has issued, utilized, enforced, or attempted to enforce a rule that meets the definition of "regulation" as defined in Government Code section 11342.600 and should have been adopted pursuant to the APA (Gov. Code sec.11340(b)). An OAL determination is not enforceable against the agency through any formal administrative means, but it is entitled to "due deference" in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].

ANALYSIS

OAL's authority to issue a determination extends only to the limited question of whether the challenged rule is a "regulation" subject to the APA. This analysis will determine (1) whether the challenged rule is a "regulation" within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

> . . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard

> adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

> A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, §11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, §11342, subd. (g)).[2]

As stated in *Tidewater*, the first element used to identify a "regulation" is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations.[3]

The rules articulated in the Fact Sheet concern the qualifications required to be a QSD so as to implement and certify the SWPPP for the Permit. Therefore, the rule affects the defined class of all persons who seek to meet the qualifications for being a QSD and the first element is met.

The second element used to identify a "regulation" as stated in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency's procedure.

Water Code section 13377 states:

> Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.

This matter concerns the qualifications for QSDs who certify the plans for the waste discharge permittees. It is undisputed that the Federal Water Pollution Control Act provides for the Board to issue waste discharge requirements. The Board is therefore implementing, interpreting and making specific Water Code section 13377 when issuing waste discharge requirements as reflected in the Permit and Fact Sheet.

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[2] Section 11342(g) was re-numbered in 2000 to section 11342.600 without substantive change.
[3] See also *Roth v. Department Of Veterans Affairs*, (1980) 110 Cal.App.3d 14, 19; 167 Cal.Rptr. 552, 557.

The Fact Sheet, therefore, meets the definition of "regulation" in Government Code section 11342.600.

The final issue to examine is whether the challenged rule falls within an express statutory exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies. Exemptions may also be specific to a particular rulemaking agency or a specific program. Pursuant to Government Code section 11346, the procedural requirements established in the APA "shall not be superseded or modified by any subsequent legislation *except to the extent that the legislation shall do so expressly*." (Emphasis added.)

Government Code section 11352 sets forth exemptions to the APA. It states:

> The following actions are not subject to this chapter:
> (a) The issuance, denial, or waiver of any water quality certification as authorized under Section 13160 of the Water Code.
> **(b) The issuance, denial, or revocation of waste discharge requirements and permits pursuant to Sections 13263 and 13377 of the Water Code and waivers issued pursuant to Section 13269 of the Water Code.**
> (c) The development, issuance, and use of the guidance document pursuant to Section 13383.7 of the Water Code. [Emphasis added.]

The Fact Sheet contains the qualifications for a QSD to certify the SWPPP for the Permit. It is an integral part of the waste discharge requirements of the Permit. The Permit states that it is the: "Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities." (Exhibit B, page 1.) Both Petitioner and the Board agree that the Fact Sheet contains further requirements concerning the Permit. Therefore, the Fact Sheet concerns the "issuance, denial, or revocation of waste discharge requirements and permits pursuant to [Section] . . . 13377 of the Water Code."

As such, the Fact Sheet is exempt from Chapter 3.5 of the APA pursuant to the exemption contained in Government Code section 11352 and is not required to be adopted pursuant to the APA.

AGENCY RESPONSE

On November 25, 2013, OAL received the Board's response to the petition. The response refuted the petition by stating:

1. The Fact Sheet is not inconsistent with the type of training the Board described during workshops on the Permit.
2. The Permit is not a regulation subject to the APA.
3. The Board did not violate the APA by adopting the Fact Sheet in that it was not a significant modification of the Permit in that the Permit stated that the training would be developed later with a task force, and it was.
4. The appropriate avenue to contest the Fact Sheet was to file a writ of administrative mandamus.

As noted above, our review is limited to the sole issue of whether the challenged rule meets the definition of "regulation" as defined in Government Code section 11342.600 and is subject to the APA. The foregoing analysis addressed whether the Fact Sheet was a regulation subject to the rulemaking provisions of the APA, to which OAL concluded the Fact Sheet was exempt from the APA. The issue of whether a writ of administrative mandamus was a proper avenue to contest the Fact Sheet is not a proper subject for OAL review. If a violation of law other than the APA occurred, it is a matter for an entity other than OAL.

PETITIONER'S REBUTTAL

On December 10, 2013, OAL received Petitioner's rebuttal to the Board's response. The rebuttal asserts that the promulgation of the Fact Sheet was in fact a regulation as defined by section 11342.600 of the Government Code and that the Board did not properly incorporate the Fact Sheet into the Permit as they did not follow the mandatory procedures requiring public notice and input as contained in both the Porter-Cologne Act and 40 CFR 122. As stated above, OAL has found that the Fact Sheet is a regulation; however, it is expressly exempt from adoption pursuant to the APA by Government Code section 11352, subdivision (b). Any other violation of federal or state law that may have occurred is not an issue that OAL has authority to address.

CONCLUSION

In accordance with the above analysis, OAL determines that the Fact Sheet meets the definition of "regulation" and that it is exempt from adoption pursuant to the APA by Government Code section 11352, subdivision (b).

Date: February 5, 2014

Debra M. Cornez
Director

Elizabeth A. Heidig
Senior Counsel

cc: Thomas Howard, Executive Director
Michael Lauffer, Chief Counsel

Exhibit A

Water Boards

Fact Sheet

STATE WATER RESOURCES CONTROL BOARD | 1001 I Street, Sacramento, CA 95814 | Mailing Address: P. O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Qualified Storm Water Pollution Prevention Plan Developer (QSD) Training Program for Professionals Licensed by the California Board of Professional Engineers, Land Surveyors and Geologists

Background:

The State Water Resources Control Board's (State Water Board) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Land Disturbance (Construction General Permit) includes training and certification requirements for individuals developing and implementing Storm Water Pollution Prevention Plans. The Construction General Permit requires that a QSD possess underlying professional licenses or certifications[1] and, effective September 2, 2011, have attended a State Water Board-sponsored or approved QSD training course. Three of the required licenses are administered by the California Board of Professional Engineers, Land Surveyors and Geologists at the Department of Consumer Affairs.[2] The Construction General Permit provides two routes for QSDs to comply with the training requirements: State Water Board-***sponsored*** or State Water Board-***approved*** training. Professional civil engineers, geologists, and engineering geologists in good standing with the California Board of Professional Engineers, Land Surveyors and Geologists are hereinafter referred to licensees (CBPELSG) and, effective July 1, 2013, may obtain their required QSD training in an alternative manner. A flowchart illustrating the alternatives and steps required for a licensee candidate to obtain their QSD training is included in this fact sheet on page 4.

The State Water Board has approved the California Stormwater Quality Association to provide[3] training. With input and oversight by State Water Board staff the California Stormwater Quality Association has trained over a hundred Trainers of Record, who in turn have trained thousands of QSDs. The California Stormwater Quality Association also developed a management structure, course materials, testing criteria, and fees commensurable to their costs of administering the training program. The training includes a review of the Construction General Permit requirements and provides common technical guidance to assure all storm water pollution prevention plans are in compliance with the Construction General Permit.

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[1] The applicable professional registration or certification requirements for QSDs are set forth in Section VII.B.1. of the Construction General Permit, as follows: California-registered professional civil engineer; California-registered professional geologist or engineering geologist; California-registered landscape architect; professional hydrologist registered through the American Institute of Hydrology; Certified Professional in Erosion and Sediment Control (CPESC) registered through Enviro Cert International , Inc.; Certified Professional in Storm Water Quality (CPSWQ) registered through Enviro Cert Internatio Inc.; or, professional in erosion and sediment control registered through the National Institute for Certification in Enginee Technologies (NICET).

[2] Professional civil engineer, Professional geologist, and Professional engineering geologist.

[3] Qualified SWPPP Practitioner

Licensees are bound by statutes and bylaws to either: (1) know how to perform their professional work, or (2) preclude themselves from doing that work.[4] The State Water Board has developed a specialized State Water Board-***sponsored*** registration and training program (see below) for licensees that choose not to become qualified QSDs through the State Water Board-**approved** training program administered by the California Stormwater Quality Association (CASQA).

Licensee Registration through SMARTS:
Licensees may choose to either register with the California Stormwater Quality Association or with the State Water Board's Storm Water Monitoring and Report Tracking System (SMARTS) online database. The SMARTS registration process must include submittal of the license number, review of posted QSD Training Materials, and certification that all information submitted is true, correct and current. No fee is required by the State Water Board for this registration.

The SMARTS system will make the licensee QSD information available to the public but will not be listed with the other QSDs listed through the California Stormwater Quality Association process. If licensees would like to have their information available to the public along with the California Stormwater Quality Association trained QSDs then licensees must register with the California Stormwater Quality Association. There may be a fee collected by the California Stormwater Quality Association to administer this database and reporting program. The State Water Board has no financial connections to fees paid to either Trainers of Record or the California Stormwater Quality Association.

State Water Board-Sponsored CBPELSG Training:
CBPELSG licensees will conduct self-directed QSD training using resources provided by the State Water Board and the most current "CGP (Construction General Permit) Review" developed by Office of Water Programs. These resources will include materials covering:

1. Overview and Regulations
2. Risk Determination
3. SWPPP Development and Permit Registration Documents
4. Erosion Theory
5. SWPPP Implementation
6. Construction Site Monitoring & Reporting
7. Post Construction Runoff Control Calculator
8. Project Close Out
9. CGP Review (available at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/training/cgp_review_issue.pdf)

Next Steps for CBPELSG Licensees Choosing Registration through SMARTS:
SMARTS has been updated to allow licensees to create an account and register as licensee QSDs. The State Water Board-sponsored training program for licensees is effective as of July 1, 2013. For more information please contact our Help Desk at stormwater@waterboards.ca.gov or (916) 341-5537.

[4] Professional Engineers Act, Business and Professions Code §§ 6700-6799 & Geologist and Geophysicist Act, Business and Professions Code §§ 7800-7887.

Licensees Currently Qualified as QSDs Through CASQA:

Licensees currently qualified through the California Stormwater Quality Association, State Water Board-**approved** QSD training program have two options for renewing their qualifications as Construction General Permit QSDs:

1) Continue qualification through California Stormwater Quality Association **or**
2) Register as a licensee QSD in SMARTS.

The main differences between the two options for renewals of QSD status are:

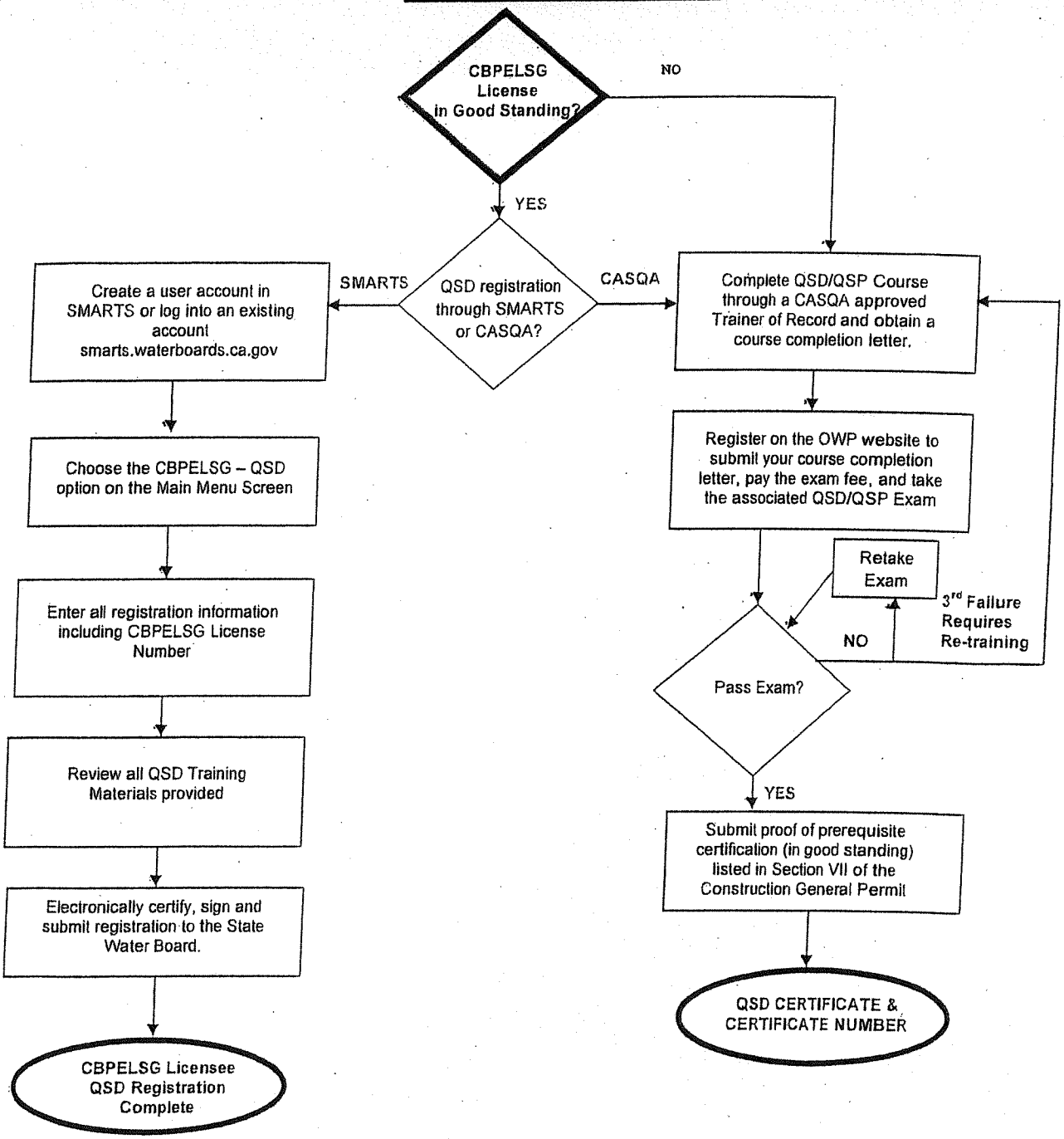
California Stormwater Quality Association QSD Registration

- Only way to continue to be included in the Look-Up database hosted by California StateUniversity at Sacramento, Office of Water Programs (https://www.owp.csus.edu/qsd-lookup.php). The database allows location-specific searches.
- Review of the most current "CGP Review" booklet.
- Payment of two-year registration fee required for renewals.

Licensee QSD Registration

- Create an account in SMARTS and register as a licensee QSD.
- Licensee QSD registration information will only be available to the public through SMARTS.
- Conduct self-directed training using resources provided by the State Water Board and the most current "CGP Review" booklet.
- No payment required for renewals (costs paid for by CGP permittees' permit fees).

QSD Candidate Flow Chart



Linda S. Adams
Secretary for Environmental Protection

State Water Resources Control Board

Division of Water Quality
1001 I Street • Sacramento, California 95814 • (916) 341-5455
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5463 • http://www.waterboards.ca.gov

Arnold Schwarzenegger
Governor

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES

ORDER NO. 2010-0014-DWQ
NPDES NO. CAS000002

Order No. 2009-0009-DWQ was adopted by the State Water Resources Control Board on:	**September 2, 2009**
Order No. 2009-0009-DWQ became effective on:	**July 1, 2010**
Order No. 2009-0009-DWQ shall expire on:	**September 2, 2014**
This Order, which amends Order No. 2009-0009-DWQ, was adopted by the State Water Resources Control Board on:	**November 16, 2010**
This Order shall become effective on:	**February 14, 2011**

IT IS HEREBY ORDERED that this Order amends Order No. 2009-0009-DWQ. Additions to Order No. 2009-0009-DWQ are reflected in blue-underline text and deletions are reflected in red-strikeout text.

IT IS FURTHER ORDERED that staff are directed to prepare and post a conformed copy of Order No. 2009-0009-DWQ incorporating the revisions made by this Order.

I, Jeanine Townsend, Clerk to the Board, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the State Water Resources Control Board, on **November 16, 2010.**

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Arthur G. Baggett, Jr.
Board Member Tam M. Doduc

NAY: None

ABSENT: None

ABSTAIN: None

Jeanine Townsend

Jeanine Townsend
Clerk to the Board

Exhibit B

CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR
STORM WATER DISCHARGES
ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES

ORDER NO. 2012-0006-DWQ
NPDES NO. **CAS000002**

Order No. 2009-0009-DWQ was adopted by the State Water Resources Control Board on:	**September 2, 2009**
Order No. 2009-0009-DWQ became effective on:	**July 1, 2010**
Order No. 2010-0014-DWQ became effective on:	**February 14, 2011**
Order No. 2009-0009-DWQ as amended by 2010-0014-DWQ shall expire on:	**September 2, 2014**
This Order, which amends Order No. 2009-0009-DWQ as amended by 2010-0014-DWQ, was adopted by the State Water Resources Control Board on:	**July 17, 2012**
This Order No. 2012-0006-DWQ shall become effective on:	**July 17, 2012**

IT IS HEREBY ORDERED that this Order amends Order No. 2009-0009-DWQ. Additions to Order No. 2009-0009-DWQ are reflected in blue-underline text and deletions are reflected in red-strikeout text.

IT IS FURTHER ORDERED that staff are directed to prepare and post a conformed copy of Order No. 2009-000-DWQ incorporating the revisions made by this Order.

I, Jeanine Townsend, Clerk to the Board, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the State Water Resources Control Board, on July 17, 2012.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Tam M. Doduc
Board Member Steven Moore
Board Member Felicia Marcus

NAY: None

ABSENT: None

ABSTAIN: None

Jeanine Townsend

Jeanine Townsend
Clerk to the Board

TABLE OF CONTENTS

I. FINDINGS 1
II. CONDITIONS FOR PERMIT COVERAGE 14
III. DISCHARGE PROHIBITIONS 20
IV. SPECIAL PROVISIONS 22
V. EFFLUENT STANDARDS & RECEIVING WATER MONITORING 28
VI. RECEIVING WATER LIMITATIONS 31
VII. TRAINING QUALIFICATIONS AND CERTIFICATION REQUIREMENTS 32
VIII. RISK DETERMINATION 33
IX. RISK LEVEL 1 REQUIREMENTS 34
X. RISK LEVEL 2 REQUIREMENTS 34
XI. RISK LEVEL 3 REQUIREMENTS 34
XII. ACTIVE TREATMENT SYSTEMS (ATS) 34
XIII. POST-CONSTRUCTION STANDARDS 35
XIV. SWPPP REQUIREMENTS 37
XV. REGIONAL WATER BOARD AUTHORITIES 38
XVI. ANNUAL REPORTING REQUIREMENTS 39

LIST OF ATTACHMENTS

Attachment A – Linear Underground/Overhead Requirements
Attachment A.1 – LUP Type Determination
Attachment A.2 – LUP Permit Registration Documents
Attachment B – Permit Registration Documents
Attachment C – Risk Level 1 Requirements
Attachment D – Risk Level 2 Requirements
Attachment E – Risk Level 3 Requirements
Attachment F – Active Treatment System (ATS) Requirements

LIST OF APPENDICES

Appendix 1 – Risk Determination Worksheet
Appendix 2 – Post-Construction Water Balance Performance Standard
Appendix 2.1 – Post-Construction Water Balance Performance Standard Spreadsheet
Appendix 3 – Bioassessment Monitoring Guidelines
Appendix 4 – Adopted/Implemented Sediment TMDLs
Appendix 5 – Glossary
Appendix 6 – Acronyms
Appendix 7 – State and Regional Water Resources Control Board Contacts

STATE WATER RESOURCES CONTROL BOARD
ORDER NO. 2009-0009-DWQ
[AS AMENDED BY ORDER NO. 2010-0014-DWQ]
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT NO. CAS000002

WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES OF STORM WATER RUNOFF ASSOCIATED WITH
CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES

I. FINDINGS

A. General Findings

The State Water Resources Control Board (State Water Board) finds that:

1. The federal Clean Water Act (CWA) prohibits certain discharges of storm water containing pollutants except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit (Title 33 United States Code (U.S.C.) §§ 1311 and 1342(p); also referred to as Clean Water Act (CWA) §§ 301 and 402(p)). The U.S. Environmental Protection Agency (U.S. EPA) promulgates federal regulations to implement the CWA's mandate to control pollutants in storm water runoff discharges. (Title 40 Code of Federal Regulations (C.F.R.) Parts 122, 123, and 124). The federal statutes and regulations require discharges to surface waters comprised of storm water associated with construction activity, including demolition, clearing, grading, and excavation, and other land disturbance activities (except operations that result in disturbance of less than one acre of total land area and which are not part of a larger common plan of development or sale), to obtain coverage under an NPDES permit. The NPDES permit must require implementation of Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or eliminate pollutants in storm water runoff. The NPDES permit must also include additional requirements necessary to implement applicable water quality standards.

2. This General Permit authorizes discharges of storm water associated with construction activity so long as the dischargers comply with all requirements, provisions, limitations and prohibitions in the permit. In addition, this General Permit regulates the discharges of storm water associated with construction activities from all Linear

Underground/Overhead Projects resulting in the disturbance of greater than or equal to one acre (Attachment A).

3. This General Permit regulates discharges of pollutants in storm water associated with construction activity (storm water discharges) to waters of the United States from construction sites that disturb one or more acres of land surface, or that are part of a common plan of development or sale that disturbs more than one acre of land surface.

4. This General Permit does not preempt or supersede the authority of local storm water management agencies to prohibit, restrict, or control storm water discharges to municipal separate storm sewer systems or other watercourses within their jurisdictions.

5. This action to adopt a general NPDES permit is exempt from the provisions of Chapter 3 of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21100, et seq.), pursuant to Section 13389 of the California Water Code.

6. Pursuant to 40 C.F.R. § 131.12 and State Water Board Resolution No. 68-16,[1] which incorporates the requirements of § 131.12 where applicable, the State Water Board finds that discharges in compliance with this General Permit will not result in the lowering of water quality standards, and are therefore consistent with those provisions. Compliance with this General Permit will result in improvements in water quality.

7. This General Permit serves as an NPDES permit in compliance with CWA § 402 and will take effect on July 1, 2010 by the State Water Board provided the Regional Administrator of the U.S. EPA has no objection. If the U.S. EPA Regional Administrator objects to its issuance, the General Permit will not become effective until such objection is withdrawn.

8. Following adoption and upon the effective date of this General Permit, the Regional Water Quality Control Boards (Regional Water Boards) shall enforce the provisions herein.

9. Regional Water Boards establish water quality standards in Basin Plans. The State Water Board establishes water quality standards in various statewide plans, including the California Ocean Plan. U.S. EPA establishes water quality standards in the National Toxic Rule (NTR) and the California Toxic Rule (CTR).

[1] Resolution No. 68-16 generally requires that existing water quality be maintained unless degradation is justified based on specific findings.

10. This General Permit does not authorize discharges of fill or dredged material regulated by the U.S. Army Corps of Engineers under CWA § 404 and does not constitute a waiver of water quality certification under CWA § 401.

11. The primary storm water pollutant at construction sites is excess sediment. Excess sediment can cloud the water, which reduces the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas, and impede navigation in our waterways. Sediment also transports other pollutants such as nutrients, metals, and oils and greases.

12. Construction activities can impact a construction site's runoff sediment supply and transport characteristics. These modifications, which can occur both during and after the construction phase, are a significant cause of degradation of the beneficial uses established for water bodies in California. Dischargers can avoid these effects through better construction site design and activity practices.

13. This General Permit recognizes four distinct phases of construction activities. The phases are Grading and Land Development Phase, Streets and Utilities Phase, Vertical Construction Phase, and Final Landscaping and Site Stabilization Phase. Each phase has activities that can result in different water quality effects from different water quality pollutants. This General Permit also recognizes inactive construction as a category of construction site type.

14. Compliance with any specific limits or requirements contained in this General Permit does not constitute compliance with any other applicable requirements.

15. Following public notice in accordance with State and Federal laws and regulations, the State Water Board heard and considered all comments and testimony in a public hearing on 06/03/2009. The State Water Board has prepared written responses to all significant comments.

16. Construction activities obtaining coverage under the General Permit may have multiple discharges subject to requirements that are specific to general, linear, and/or active treatment system discharge types.

17. The State Water Board may reopen the permit if the U.S. EPA adopts a final effluent limitation guideline for construction activities.

B. Activities Covered Under the General Permit

18. Any construction or demolition activity, including, but not limited to, clearing, grading, grubbing, or excavation, or any other activity that results in a land disturbance of equal to or greater than one acre.

19. Construction activity that results in land surface disturbances of less than one acre if the construction activity is part of a larger common plan of development or the sale of one or more acres of disturbed land surface.

20. Construction activity related to residential, commercial, or industrial development on lands currently used for agriculture including, but not limited to, the construction of buildings related to agriculture that are considered industrial pursuant to U.S. EPA regulations, such as dairy barns or food processing facilities.

21. Construction activity associated with Linear Underground/Overhead Utility Projects (LUPs) including, but not limited to, those activities necessary for the installation of underground and overhead linear facilities (e.g., conduits, substructures, pipelines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities) and include, but are not limited to, underground utility mark-out, potholing, concrete and asphalt cutting and removal, trenching, excavation, boring and drilling, access road and pole/tower pad and cable/wire pull station, substation construction, substructure installation, construction of tower footings and/or foundations, pole and tower installations, pipeline installations, welding, concrete and/or pavement repair or replacement, and stockpile/borrow locations.

22. Discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.[2]

23. Storm water discharges from dredge spoil placement that occur outside of U.S. Army Corps of Engineers jurisdiction (upland sites) and that disturb one or more acres of land surface from construction activity are covered by this General Permit. Construction sites that intend to disturb one or more acres of land within the jurisdictional boundaries of

[2] Pursuant to the Ninth Circuit Court of Appeals' decision in *NRDC v. EPA* (9th Cir. 2008) 526 F.3d 591, and subsequent denial of the U.S. EPA's petition for reconsideration in November 2008, oil and gas construction activities discharging storm water contaminated only with sediment are no longer exempt from the NPDES program.

a CWA § 404 permit should contact the appropriate Regional Water Board to determine whether this permit applies to the site.

C. Activities Not Covered Under the General Permit

24. Routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility.

25. Disturbances to land surfaces solely related to agricultural operations such as disking, harrowing, terracing and leveling, and soil preparation.

26. Discharges of storm water from areas on tribal lands; construction on tribal lands is regulated by a federal permit.

27. Construction activity and land disturbance involving discharges of storm water within the Lake Tahoe Hydrologic Unit. The Lahontan Regional Water Board has adopted its own permit to regulate storm water discharges from construction activity in the Lake Tahoe Hydrologic Unit (Regional Water Board 6SLT). Owners of construction sites in this watershed must apply for the Lahontan Regional Water Board permit rather than the statewide Construction General Permit.

28. Construction activity that disturbs less than one acre of land surface, and that is not part of a larger common plan of development or the sale of one or more acres of disturbed land surface.

29. Construction activity covered by an individual NPDES Permit for storm water discharges.

30. Discharges from small (1 to 5 acre) construction activities with an approved Rainfall Erosivity Waiver authorized by U.S. EPA Phase II regulations certifying to the State Board that small construction activity will occur only when the Rainfall Erosivity Factor is less than 5 ("R" in the Revised Universal Soil Loss Equation).

31. Landfill construction activity that is subject to the Industrial General Permit.

32. Construction activity that discharges to Combined Sewer Systems.

33. Conveyances that discharge storm water runoff combined with municipal sewage.

34. Discharges of storm water identified in CWA § 402(*l*)(2), 33 U.S.C. § 1342(*l*)(2).

35. Discharges occurring in basins that are not tributary or hydrologically connected to waters of the United States (for more information contact your Regional Water Board).

D. Obtaining and Modifying General Permit Coverage

36. This General Permit requires all dischargers to electronically file all Permit Registration Documents (PRDs), Notices of Termination (NOT), changes of information, annual reporting, and other compliance documents required by this General Permit through the State Water Board's Storm water Multi-Application and Report Tracking System (SMARTS) website.

37. Any information provided to the Regional Water Board shall comply with the Homeland Security Act and any other federal law that concerns security in the United States; any information that does not comply should not be submitted.

38. This General Permit grants an exception from the Risk Determination requirements for existing sites covered under Water Quality Orders No. 99-08-DWQ, and No. 2003-0007-DWQ. For certain sites, adding additional requirements may not be cost effective. Construction sites covered under Water Quality Order No. 99-08-DWQ shall obtain permit coverage at the Risk Level 1. LUPs covered under Water Quality Order No. 2003-0007-DWQ shall obtain permit coverage as a Type 1 LUP. The Regional Water Boards have the authority to require Risk Determination to be performed on sites currently covered under Water Quality Orders No. 99-08-DWQ and No. 2003-0007-DWQ where they deem it necessary. The State Water Board finds that there are two circumstances when it may be appropriate for the Regional Water Boards to require a discharger that had filed an NOI under State Water Board Order No. 99-08-DWQ to recalculate the site's risk level. These circumstances are: (1) when the discharger has a demonstrated history of noncompliance with State Water Board Order No. 99-08-DWQ or; (2) when the discharger's site poses a significant risk of causing or contributing to an exceedance of a water quality standard without the implementation of the additional Risk Level 2 or 3 requirements.

E. Prohibitions

39. All discharges are prohibited except for the storm water and non-storm water discharges specifically authorized by this General Permit or another NPDES permit. Non-storm water discharges include a wide variety of sources, including improper dumping, spills, or leakage from storage tanks or transfer areas. Non-storm water discharges may

contribute significant pollutant loads to receiving waters. Measures to control spills, leakage, and dumping, and to prevent illicit connections during construction must be addressed through structural as well as non-structural Best Management Practices (BMPs)[3]. The State Water Board recognizes, however, that certain non-storm water discharges may be necessary for the completion of construction.

40. This General Permit prohibits all discharges which contain a hazardous substance in excess of reportable quantities established in 40 C.F.R. §§ 117.3 and 302.4, unless a separate NPDES Permit has been issued to regulate those discharges.

41. This General Permit incorporates discharge prohibitions contained in water quality control plans, as implemented by the State Water Board and the nine Regional Water Boards.

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

43. This General Permit prohibits the discharge of any debris[4] from construction sites. Plastic and other trash materials can cause negative impacts to receiving water beneficial uses. The State Water Board encourages the use of more environmentally safe, biodegradable materials on construction sites to minimize the potential risk to water quality.

F. Training

44. In order to improve compliance with and to maintain consistent enforcement of this General Permit, all dischargers are required to appoint two positions - the Qualified SWPPP Developer (QSD) and the Qualified SWPPP Practitioner (QSP) - who must obtain appropriate training. Together with the key stakeholders, the State and Regional Water Boards are leading the development of this curriculum through a collaborative organization called The Construction General Permit (CGP) Training Team.

45. The Professional Engineers Act (Bus. & Prof. Code section 6700, et seq.) requires that all engineering work must be performed by a California licensed engineer.

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[3] BMPs are scheduling of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practice to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

[4] Litter, rubble, discarded refuse, and remains of destroyed inorganic anthropogenic waste.

G. Determining and Reducing Risk

46. The risk of accelerated erosion and sedimentation from wind and water depends on a number of factors, including proximity to receiving water bodies, climate, topography, and soil type.

47. This General Permit requires dischargers to assess the risk level of a site based on both sediment transport and receiving water risk. This General Permit contains requirements for Risk Levels 1, 2 and 3, and LUP Risk Type 1, 2, and 3 (Attachment A). Risk levels are established by determining two factors: first, calculating the site's sediment risk; and second, receiving water risk during periods of soil exposure (i.e. grading and site stabilization). Both factors are used to determine the site-specific Risk Level(s). LUPs can be determined to be Type 1 based on the flowchart in Attachment A.1.

48. Although this General Permit does not mandate specific setback distances, dischargers are encouraged to set back their construction activities from streams and wetlands whenever feasible to reduce the risk of impacting water quality (e.g., natural stream stability and habitat function). Because there is a reduced risk to receiving waters when setbacks are used, this General Permit gives credit to setbacks in the risk determination and post-construction storm water performance standards. The risk calculation and runoff reduction mechanisms in this General Permit are expected to facilitate compliance with any Regional Water Board and local agency setback requirements, and to encourage voluntary setbacks wherever practicable.

49. Rain events can occur at any time of the year in California. Therefore, a Rain Event Action Plan (REAP) is necessary for Risk Level 2 and 3 traditional construction projects (LUPs exempt) to ensure that active construction sites have adequate erosion and sediment controls implemented prior to the onset of a storm event, even if construction is planned only during the dry season.

50. Soil particles smaller than 0.02 millimeters (mm) (i.e., finer than medium silt) do not settle easily using conventional measures for sediment control (i.e., sediment basins). Given their long settling time, dislodging these soils results in a significant risk that fine particles will be released into surface waters and cause unacceptable downstream impacts. If operated correctly, an Active Treatment System (ATS[5]) can prevent or reduce the release of fine particles from construction sites.

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[5] An ATS is a treatment system that employs chemical coagulation, chemical flocculation, or electro coagulation in order to reduce turbidity caused by fine suspended sediment.

Use of an ATS can effectively reduce a site's risk of impacting receiving waters.

51. Dischargers located in a watershed area where a Total Maximum Daily Load (TMDL) has been adopted or approved by the Regional Water Board or U.S. EPA may be required by a separate Regional Water Board action to implement additional BMPs, conduct additional monitoring activities, and/or comply with an applicable waste load allocation and implementation schedule. Such dischargers may also be required to obtain an individual Regional Water Board permit specific to the area.

H. Effluent Standards

52. The State Water Board convened a blue ribbon panel of storm water experts that submitted a report entitled, "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities," dated June 19, 2006. The panel concluded that numeric limits or action levels are technically feasible to control construction storm water discharges, provided that certain conditions are considered. The panel also concluded that numeric effluent limitations (NELs) are feasible for discharges from construction sites that utilize an ATS. The State Water Board has incorporated the expert panel's suggestions into this General Permit, which includes numeric action levels (NALs) for pH and turbidity, and special numeric limits for ATS discharges.

Determining Compliance with Numeric Limitations

53. This General Permit sets a pH NAL of 6.5 to 8.5, and a turbidity NAL of 250 NTU. The purpose of the NAL and its associated monitoring requirement is to provide operational information regarding the performance of the measures used at the site to minimize the discharge of pollutants and to protect beneficial uses and receiving waters from the adverse effects of construction-related storm water discharges. An exceedance of a NAL does not constitute a violation of this General Permit.

54. This General Permit requires dischargers with NAL exceedances to immediately implement additional BMPs and revise their Storm Water Pollution Prevention Plans (SWPPPs) accordingly to either prevent pollutants and authorized non-storm water discharges from contaminating storm water, or to substantially reduce the pollutants to levels consistently below the NALs. NAL exceedances are reported in the State Water Boards SMARTS system, and the discharger is

required to provide an NAL Exceedance Report when requested by a Regional Water Board.

I. Receiving Water Limitations

55. This General Permit requires all enrolled dischargers to determine the receiving waters potentially affected by their discharges and to comply with all applicable water quality standards, including any more stringent standards applicable to a water body.

J. Sampling, Monitoring, Reporting and Record Keeping

56. Visual monitoring of storm water and non-storm water discharges is required for all sites subject to this General Permit.

57. Records of all visual monitoring inspections are required to remain on-site during the construction period and for a minimum of three years.

58. For all Risk Level 3/LUP Type 3 and Risk Level 2/LUP Type 2 sites, this General Permit requires effluent monitoring for pH and turbidity. Sampling, analysis and monitoring requirements for effluent monitoring for pH and turbidity are contained in this General Permit.

59. Risk Level 3 and LUP Type 3 sites with effluent that exceeds the Receiving Water Monitoring Triggers contained in this General Permit and with direct discharges to receiving water are required to conduct receiving water monitoring. An exceedance of a Receiving Water Monitoring Trigger does not constitute a violation of this General Permit.

60. This General Permit establishes a 5 year, 24 hour (expressed in inches of rainfall) as an exemptions to the receiving water monitoring requirements for Risk Level 3 and LUP Type 3 dischargers.

61. If run-on is caused by a forest fire or any other natural disaster, then receiving water monitoring triggers do not apply.

62. For Risk Level 3 and LUP Type 3 sites larger than 30 acres and with direct discharges to receiving waters, this General Permit requires bioassessment sampling before and after site completion to determine if significant degradation to the receiving water's biota has occurred. Bioassessment sampling guidelines are contained in this General Permit.

63. A summary and evaluation of the sampling and analysis results will be submitted in the Annual Reports.

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

65. Compliance with the General Permit relies upon dischargers to electronically self-report any discharge violations and to comply with any Regional Water Board enforcement actions.

66. This General Permit requires that all dischargers maintain a paper or electronic copy of all required records for three years from the date generated or date submitted, whichever is last. These records must be available at the construction site until construction is completed. For LUPs, these documents may be retained in a crew member's vehicle and made available upon request.

K. Active Treatment System (ATS) Requirements

67. Active treatment systems add chemicals to facilitate flocculation, coagulation and filtration of suspended sediment particles. The uncontrolled release of these chemicals to the environment can negatively affect the beneficial uses of receiving waters and/or degrade water quality (e.g., acute and chronic toxicity). Additionally, the batch storage and treatment of storm water through an ATS' can potentially cause physical impacts on receiving waters if storage volume is inadequate or due to sudden releases of the ATS batches and improperly designed outfalls.

68. If designed, operated and maintained properly an ATS can achieve very high removal rates of suspended sediment (measured as turbidity), albeit at sometimes significantly higher costs than traditional erosion/sediment control practices. As a result, this General Permit establishes NELs consistent with the expected level of typical ATS performance.

69. This General Permit requires discharges of storm water associated with construction activity that undergo active treatment to comply with special operational and effluent limitations to ensure that these discharges do not adversely affect the beneficial uses of the receiving waters or cause degradation of their water quality.

70. For ATS discharges, this General Permit establishes technology-based NELs for turbidity.

71. This General Permit establishes a 10 year, 24 hour (expressed in inches of rainfall) Compliance Storm Event exemption from the technology-based numeric effluent limitations for ATS discharges. Exceedances of the ATS turbidity NEL constitutes a violation of this General Permit.

L. Post-Construction Requirements

72. This General Permit includes performance standards for post-construction that are consistent with State Water Board Resolution No. 2005-0006, "Resolution Adopting the Concept of Sustainability as a Core Value for State Water Board Programs and Directing Its Incorporation," and 2008-0030, "Requiring Sustainable Water Resources Management." The requirement for all construction sites to match pre-project hydrology will help ensure that the physical and biological integrity of aquatic ecosystems are sustained. This "runoff reduction" approach is analogous in principle to Low Impact Development (LID) and will serve to protect related watersheds and waterbodies from both hydrologic-based and pollution impacts associated with the post-construction landscape.

73. LUP projects are not subject to post-construction requirements due to the nature of their construction to return project sites to pre-construction conditions.

M. Storm Water Pollution Prevention Plan Requirements

74. This General Permit requires the development of a site-specific SWPPP. The SWPPP must include the information needed to demonstrate compliance with all requirements of this General Permit, and must be kept on the construction site and be available for review. The discharger shall ensure that a QSD develops the SWPPP.

75. To ensure proper site oversight, this General Permit requires a Qualified SWPPP Practitioner to oversee implementation of the BMPs required to comply with this General Permit.

N. Regional Water Board Authorities

76. Regional Water Boards are responsible for implementation and enforcement of this General Permit. A general approach to permitting is not always suitable for every construction site and environmental circumstances. Therefore, this General Permit recognizes that Regional Water Boards must have some flexibility and authority to alter, approve, exempt, or rescind permit authority granted under this

General Permit in order to protect the beneficial uses of our receiving waters and prevent degradation of water quality.

IT IS HEREBY ORDERED that all dischargers subject to this General Permit shall comply with the following conditions and requirements (including all conditions and requirements as set forth in Attachments A, B, C, D, E and F)[6]:

II. CONDITIONS FOR PERMIT COVERAGE

A. Linear Underground/Overhead Projects (LUPs)

1. Linear Underground/Overhead Projects (LUPs) include, but are not limited to, any conveyance, pipe, or pipeline for the transportation of any gaseous, liquid (including water and wastewater for domestic municipal services), liquescent, or slurry substance; any cable line or wire for the transmission of electrical energy; any cable line or wire for communications (e.g. telephone, telegraph, radio or television messages); and associated ancillary facilities. Construction activities associated with LUPs include, but are not limited to, (a) those activities necessary for the installation of underground and overhead linear facilities (e.g., conduits, substructures, pipelines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment, and associated ancillary facilities); and include, but are not limited to, (b) underground utility mark-out, potholing, concrete and asphalt cutting and removal, trenching, excavation, boring and drilling, access road and pole/tower pad and cable/wire pull station, substation construction, substructure installation, construction of tower footings and/or foundations, pole and tower installations, pipeline installations, welding, concrete and/ or pavement repair or replacement, and stockpile/borrow locations.

2. The Legally Responsible Person is responsible for obtaining coverage under the General Permit where the construction of pipelines, utility lines, fiber-optic cables, or other linear underground/overhead projects will occur across several properties unless the LUP construction activities are covered under another construction storm water permit.

3. Only LUPs shall comply with the conditions and requirements in Attachment A, A.1 & A.2 of this Order. The balance of this Order is not applicable to LUPs except as indicated in Attachment A.

[6] These attachments are part of the General Permit itself and are not separate documents that are capable of being updated independently by the State Water Board.

B. Obtaining Permit Coverage Traditional Construction Sites

1. The Legally Responsible Person (LRP) (see Special Provisions, Electronic Signature and Certification Requirements, Section IV.I.1) must obtain coverage under this General Permit.

2. To obtain coverage, the LRP must electronically file Permit Registration Documents (PRDs) prior to the commencement of construction activity. Failure to obtain coverage under this General Permit for storm water discharges to waters of the United States is a violation of the CWA and the California Water Code.

3. PRDs shall consist of:

   a. Notice of Intent (NOI)
   b. Risk Assessment (Section VIII)
   c. Site Map
   d. Storm Water Pollution Prevention Plan (Section XIV)
   e. Annual Fee
   f. Signed Certification Statement

   Any information provided to the Regional Water Board shall comply with the Homeland Security Act and any other federal law that concerns security in the United States; any information that does not comply should not be submitted.

   Attachment B contains additional PRD information. Dischargers must electronically file the PRDs, and mail the appropriate annual fee to the State Water Board.

4. This permit is effective on July 1, 2010.

   a. **Dischargers Obtaining Coverage On or After July 1, 2010:** All dischargers requiring coverage on or after July 1, 2010, shall electronically file their PRDs prior to the commencement of construction activities, and mail the appropriate annual fee no later than seven days prior to the commencement of construction activities. Permit coverage shall not commence until the PRDs and the annual fee are received by the State Water Board, and a WDID number is assigned and sent by SMARTS.

   b. **Dischargers Covered Under 99-08-DWQ and 2003-0007-DWQ:** Existing dischargers subject to State Water Board Order No. 99-08-DWQ (existing dischargers) will continue coverage under 99-08-DWQ until July 1, 2010. After July 1, 2010, all NOIs subject to State Water Board Order No. 99-08-DWQ will be terminated.

Existing dischargers shall electronically file their PRDs no later than July 1, 2010. If an existing discharger's site acreage subject to the annual fee has changed, it shall mail a revised annual fee no less than seven days after receiving the revised annual fee notification, **or else lose permit coverage**. All existing dischargers shall be exempt from the risk determination requirements in Section VIII of this General Permit until two years after permit adoption. All existing dischargers are therefore subject to Risk Level 1 requirements regardless of their site's sediment and receiving water risks. However, a Regional Board retains the authority to require an existing discharger to comply with the Section VIII risk determination requirements.

5. The discharger is only considered covered by this General Permit upon receipt of a Waste Discharger Identification (WDID) number assigned and sent by the State Water Board Storm water Multi-Application and Report Tracking System (SMARTS). In order to demonstrate compliance with this General Permit, the discharger must obtain a WDID number and must present documentation of a valid WDID upon demand.

6. During the period this permit is subject to review by the U.S. EPA, the prior permit (State Water Board Order No. 99-08-DWQ) remains in effect. Existing dischargers under the prior permit will continue to have coverage under State Water Board Order No. 99-08-DWQ until this General Permit takes effect on July 1, 2010. Dischargers who complete their projects and electronically file an NOT prior to July 1, 2010, are not required to obtain coverage under this General Permit.

7. Small Construction Rainfall Erosivity Waiver

   EPA's Small Construction Erosivity Waiver applies to sites between one and five acres demonstrating that there are no adverse water quality impacts.

   Dischargers eligible for a Rainfall Erosivity Waiver based on low erosivity potential shall complete the electronic Notice of Intent (NOI) and Sediment Risk form through the State Water Board's SMARTS system, certifying that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five. Where the LRP changes or another LRP is added during construction, the new LRP must also submit a waiver certification through the SMARTS system.

   If a small construction site continues beyond the projected completion date given on the waiver certification, the LRP shall recalculate the

rainfall erosivity factor for the new project duration and submit this information through the SMARTS system. If the new R factor is below five (5), the discharger shall update through SMARTS all applicable information on the waiver certification and retain a copy of the revised waiver onsite. The LRP shall submit the new waiver certification 30 days prior to the projected completion date listed on the original waiver form to assure exemption from permitting requirements is uninterrupted. If the new R factor is five (5) or above, the LRP shall be required to apply for coverage under this Order.

8. In the case of a public emergency that requires immediate construction activities, a discharger shall submit a brief description of the emergency construction activity within five days of the onset of construction, and then shall submit all PRDs within thirty days.

C. Revising Permit Coverage for Change of Acreage or New Ownership

1. The discharger may reduce or increase the total acreage covered under this General Permit when a portion of the site is complete and/or conditions for termination of coverage have been met (See Section II.D Conditions for Termination of Coverage); when ownership of a portion of the site is sold to a different entity; or when new acreage, subject to this General Permit, is added to the site.

2. Within 30 days of a reduction or increase in total disturbed acreage, the discharger shall electronically file revisions to the PRDs that include:

   a. A revised NOI indicating the new project size;

   b. A revised site map showing the acreage of the site completed, acreage currently under construction, acreage sold/transferred or added, and acreage currently stabilized in accordance with the Conditions for Termination of Coverage in Section II.D below.

   c. SWPPP revisions, as appropriate; and

   d. Certification that any new landowners have been notified of applicable requirements to obtain General Permit coverage. The certification shall include the name, address, telephone number, and e-mail address of the new landowner.

   e. If the project acreage has increased, dischargers shall mail payment of revised annual fees within 14 days of receiving the revised annual fee notification.

3. The discharger shall continue coverage under the General Permit for any parcel that has not achieved "Final Stabilization" as defined in Section II.D.

4. When an LRP with active General Permit coverage transfers its LRP status to another person or entity that qualifies as an LRP, the existing LRP shall inform the new LRP of the General Permit's requirements. In order for the new LRP to continue the construction activity on its parcel of property, the new LRP, or the new LRP's approved signatory, must submit PRDs in accordance with this General Permit's requirements.

D. Conditions for Termination of Coverage

1. Within 90 days of when construction is complete or ownership has been transferred, the discharger shall electronically file a Notice of Termination (NOT), a final site map, and photos through the State Water Boards SMARTS system. Filing a NOT certifies that all General Permit requirements have been met. The Regional Water Board will consider a construction site complete only when all portions of the site have been transferred to a new owner, or all of the following conditions have been met:

   a. For purposes of "final stabilization," the site will not pose any additional sediment discharge risk than it did prior to the commencement of construction activity;

   b. There is no potential for construction-related storm water pollutants to be discharged into site runoff;

   c. Final stabilization has been reached;

   d. Construction materials and wastes have been disposed of properly;

   e. Compliance with the Post-Construction Standards in Section XIII of this General Permit has been demonstrated;

   f. Post-construction storm water management measures have been installed and a long-term maintenance plan[7] has been established; and

   g. All construction-related equipment, materials and any temporary BMPs no longer needed are removed from the site.

[7] For the purposes of this requirement a long-term maintenance plan will be designed for a minimum of five years, and will describe the procedures to ensure that the post-construction storm water management measures are adequately maintained.

2. The discharger shall certify that final stabilization conditions are satisfied in their NOT. Failure to certify shall result in continuation of permit coverage and annual billing.

3. The NOT must demonstrate through photos, RUSLE or RUSLE2, or results of testing and analysis that the site meets all of the conditions above (Section II.D.1) and the final stabilization condition (Section II.D.1.a) is attained by one of the following methods:

   a. "70% final cover method," no computational proof required

      OR:

   b. "RUSLE or RUSLE2 method," computational proof required

      OR:

   c. "Custom method", the discharger shall demonstrate in some other manner than a or b, above, that the site complies with the "final stabilization" requirement in Section II.D.1.a.

III. DISCHARGE PROHIBITIONS

A. Dischargers shall not violate any discharge prohibitions contained in applicable Basin Plans or statewide water quality control plans. Waste discharges to Areas of Special Biological Significance (ASBS) are prohibited by the California Ocean Plan, unless granted an exception issued by the State Water Board.

B. All discharges are prohibited except for the storm water and non-storm water discharges specifically authorized by this General Permit or another NPDES permit.

C. Authorized non-storm water discharges may include those from de-chlorinated potable water sources such as: fire hydrant flushing, irrigation of vegetative erosion control measures, pipe flushing and testing, water to control dust, uncontaminated ground water from dewatering, and other discharges not subject to a separate general NPDES permit adopted by a Regional Water Board. The discharge of non-storm water is authorized under the following conditions:

1. The discharge does not cause or contribute to a violation of any water quality standard;

2. The discharge does not violate any other provision of this General Permit;

3. The discharge is not prohibited by the applicable Basin Plan;

4. The discharger has included and implemented specific BMPs required by this General Permit to prevent or reduce the contact of the non-storm water discharge with construction materials or equipment.

5. The discharge does not contain toxic constituents in toxic amounts or (other) significant quantities of pollutants;

6. The discharge is monitored and meets the applicable NALs; and

7. The discharger reports the sampling information in the Annual Report.

If any of the above conditions are not satisfied, the discharge is not authorized by this General Permit. The discharger shall notify the Regional Water Board of any anticipated non-storm water discharges not already authorized by this General Permit or another NPDES permit, to determine whether a separate NPDES permit is necessary.

D. Debris resulting from construction activities are prohibited from being discharged from construction sites.

E. 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 shall have those soils sampled and tested to ensure proper handling and public safety measures are implemented. The discharger shall notify the appropriate local, State, and federal agency(ies) when contaminated soil is found at a construction site, and will notify the appropriate Regional Water Board.

IV. SPECIAL PROVISIONS

A. Duty to Comply

1. The discharger shall comply with all of the conditions of this General Permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for enforcement action and/or removal from General Permit coverage.

2. The discharger shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this General Permit has not yet been modified to incorporate the requirement.

B. General Permit Actions

1. This General Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the discharger for a General Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not annul any General Permit condition.

2. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the CWA for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this General Permit, this General Permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the dischargers so notified.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this General Permit.

D. Duty to Mitigate

The discharger shall take all responsible steps to minimize or prevent any discharge in violation of this General Permit, which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The discharger 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 to achieve compliance with the conditions of this General Permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance may require the operation of backup or auxiliary facilities or similar systems installed by a discharger when necessary to achieve compliance with the conditions of this General Permit.

F. Property Rights

This General Permit does not convey any property rights of any sort or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor does it authorize any infringement of Federal, State, or local laws or regulations.

G. Duty to Maintain Records and Provide Information

1. The discharger shall maintain a paper or electronic copy of all required records, including a copy of this General Permit, for three years from the date generated or date submitted, whichever is last. These records shall be available at the construction site until construction is completed.

2. The discharger shall furnish the Regional Water Board, State Water Board, or U.S. EPA, within a reasonable time, any requested information to determine compliance with this General Permit. The discharger shall also furnish, upon request, copies of records that are required to be kept by this General Permit.

H. Inspection and Entry

The discharger shall allow the Regional Water Board, State Water Board, U.S. EPA, and/or, in the case of construction sites which discharge through a municipal separate storm sewer, an authorized representative of the municipal operator of the separate storm sewer system receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the discharger's premises at reasonable times where a regulated construction activity is being conducted or where records must be kept under the conditions of this General Permit;

2. Access and copy at reasonable times any records that must be kept under the conditions of this General Permit;

3. Inspect at reasonable times the complete construction site, including any off-site staging areas or material storage areas, and the erosion/sediment controls; and

4. Sample or monitor at reasonable times for the purpose of ensuring General Permit compliance.

I. Electronic Signature and Certification Requirements

1. All Permit Registration Documents (PRDs) and Notices of Termination (NOTs) shall be electronically signed, certified, and submitted via SMARTS to the State Water Board. Either the Legally Responsible Person (LRP), as defined in Appendix 5 – Glossary, or a person legally authorized to sign and certify PRDs and NOTs on behalf of the LRP (the LRP's Approved Signatory, as defined in Appendix 5 - Glossary) must submit all information electronically via SMARTS.

2. Changes to Authorization. If an Approved Signatory's authorization is no longer accurate, a new authorization satisfying the requirements of paragraph (a) of this section must be submitted via SMARTS prior to or together with any reports, information or applications to be signed by an Approved Signatory.

3. All Annual Reports, or other information required by the General Permit (other than PRDs and NOTs) or requested by the Regional Water Board, State Water Board, U.S. EPA, or local storm water management agency shall be certified and submitted by the LRP or the LRP's Approved Signatory.

J. Certification

Any person signing documents under Section IV.I above, shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

K. Anticipated Noncompliance

The discharger shall give advance notice to the Regional Water Board and local storm water management agency of any planned changes in the construction activity, which may result in noncompliance with General Permit requirements.

L. Bypass

Bypass[8] is prohibited. The Regional Water Board may take enforcement action against the discharger for bypass unless:

1. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;[9]

2. There were no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that could occur during normal periods of equipment downtime or preventative maintenance;

3. The discharger submitted a notice at least ten days in advance of the need for a bypass to the Regional Water Board; or

4. The discharger may allow a bypass to occur that does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation. In such a case, the above bypass conditions are not applicable. The discharger shall submit notice of an unanticipated bypass as required.

M. Upset

1. A discharger that wishes to establish the affirmative defense of an upset[10] in an action brought for noncompliance shall demonstrate,

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[8] The intentional diversion of waste streams from any portion of a treatment facility

[9] Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

[10] An exceptional incident in which there is unintentional and temporary noncompliance the technology based numeric effluent limitations because of factors beyond the reasonable control of the discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the discharger can identify the cause(s) of the upset

b. The treatment facility was being properly operated by the time of the upset

c. The discharger submitted notice of the upset as required; and

d. The discharger complied with any remedial measures required

2. No determination made before an action of noncompliance occurs, such as during administrative review of claims that noncompliance was caused by an upset, is final administrative action subject to judicial review.

3. In any enforcement proceeding, the discharger seeking to establish the occurrence of an upset has the burden of proof

N. Penalties for Falsification of Reports

Section 309(c)(4) of the CWA provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years or by both.

O. Oil and Hazardous Substance Liability

Nothing in this General Permit shall be construed to preclude the institution of any legal action or relieve the discharger from any responsibilities, liabilities, or penalties to which the discharger is or may be subject to under Section 311 of the CWA.

P. Severability

The provisions of this General Permit are severable; and, if any provision of this General Permit or the application of any provision of this General Permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this General Permit shall not be affected thereby.

Q. Reopener Clause

This General Permit may be modified, revoked and reissued, or terminated for cause due to promulgation of amended regulations, receipt of U.S. EPA guidance concerning regulated activities, judicial decision, or in accordance with 40 Code of Federal Regulations (CFR) 122.62, 122.63, 122.64, and 124.5.

R. Penalties for Violations of Permit Conditions

1. Section 309 of the CWA provides significant penalties for any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any such section in a permit issued under Section 402. Any person who violates any permit condition of this General Permit is subject to a civil penalty not to exceed $37,500[11] per calendar day of such violation, as well as any other appropriate sanction provided by Section 309 of the CWA.

2. The Porter-Cologne Water Quality Control Act also provides for civil and criminal penalties, which in some cases are greater than those under the CWA.

S. Transfers

This General Permit is not transferable.

T. Continuation of Expired Permit

This General Permit continues in force and effect until a new General Permit is issued or the SWRCB rescinds this General Permit. Only those dischargers authorized to discharge under the expiring General Permit are covered by the continued General Permit.

[11] May be further adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act.

V. EFFLUENT STANDARDS & RECEIVING WATER MONITORING

A. Narrative Effluent Limitations

1. Storm water discharges and authorized non-storm water discharges regulated by this General Permit shall not contain a hazardous substance equal to or in excess of reportable quantities established in 40 C.F.R. §§ 117.3 and 302.4, unless a separate NPDES Permit has been issued to regulate those discharges.

2. Dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.

Table 1- Numeric Action Levels, Test Methods, Detection Limits, and Reporting Units

Parameter	Test Method	Discharge Type	Min. Detection Limit	Units	Numeric Action Level
pH	Field test with calibrated portable instrument	Risk Level 2	0.2	pH units	lower NAL = 6.5 upper NAL = 8.5
		Risk Level 3			lower NAL = 6.5 upper NAL = 8.5
Turbidity	EPA 0180.1 and/or field test with calibrated portable instrument	Risk Level 2	1	NTU	250 NTU
		Risk Level 3			250 NTU

B. Numeric Action Levels (NALs)

1. For Risk Level 2 and 3 dischargers, the lower storm event average NAL for pH is 6.5 pH units and the upper storm event average NAL for

pH is 8.5 pH units. The discharger shall take actions as described below if the discharge is outside of this range of pH values.

2. For Risk Level 2 and 3 dischargers, the NAL storm event daily average for turbidity is 250 NTU. The discharger shall take actions as described below if the discharge is outside of this range of turbidity values.

3. Whenever the results from a storm event daily average indicate that the discharge is below the lower NAL for pH, exceeds the upper NAL for pH, or exceeds the turbidity NAL (as listed in Table 1), the discharger shall conduct a construction site and run-on evaluation to determine whether pollutant source(s) associated with the site's construction activity may have caused or contributed to the NAL exceedance and shall immediately implement corrective actions if they are needed.

4. The site evaluation shall be documented in the SWPPP and specifically address whether the source(s) of the pollutants causing the exceedance of the NAL:

   a. Are related to the construction activities and whether additional BMPs are required to (1) meet BAT/BCT requirements; (2) reduce or prevent pollutants in storm water discharges from causing exceedances of receiving water objectives; and (3) determine what corrective action(s) were taken or will be taken and with a description of the schedule for completion.

      AND/OR:

   b. Are related to the run-on associated with the construction site location and whether additional BMPs measures are required to (1) meet BAT/BCT requirements; (2) reduce or prevent pollutants in storm water discharges from causing exceedances of receiving water objectives; and (3) what corrective action(s) were taken or will be taken with a description of the schedule for completion.

C. Receiving Water Monitoring Triggers

1. The receiving water monitoring triggers for Risk Level 3 dischargers with direct discharges to surface waters are triggered when the daily average effluent pH values during any site phase when there is a high risk of pH discharge[12] fall outside of the range of 6.0 and 9.0 pH units, or when the daily average effluent turbidity exceeds 500 NTU.

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2. Risk Level 3 dischargers with with direct discharges to surface waters shall conduct receiving water monitoring whenever their effluent monitoring results exceed the receiving water monitoring triggers. If the pH trigger is exceeded, the receiving water shall be monitored for pH for the duration of coverage under this General Permit. If the turbidity trigger is exceeded, the receiving water shall be monitored for turbidity and SSC for the duration of coverage under this general permit.

3. Risk Level 3 dischargers with direct discharges to surfaces waters shall initiate receiving water monitoring when the triggers are exceeded unless the storm event causing the exceedance is determined after the fact to equal to or greater than the 5-year 24-hour storm (expressed in inches of rainfall) as determined by using these maps:

   http://www.wrcc.dri.edu/pcpnfreq/nca5y24.gif
   http://www.wrcc.dri.edu/pcpnfreq/sca5y24.gif

   Verification of the 5-year 24-hour storm event shall be done by reporting on-site rain gauge readings as well as nearby governmental rain gauge readings.

4. If run-on is caused by a forest fire or any other natural disaster, then receiving water monitoring triggers do not apply.

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[12] A period of high risk of pH discharge is defined as a project's complete utilities phase, complete vertical build phase, and any portion of any phase where significant amounts of materials are placed directly on the land at the site in a manner that could result in significant alterations of the background pH of the discharges.

VI. RECEIVING WATER LIMITATIONS

A. The discharger shall ensure that storm water discharges and authorized non-storm water discharges to any surface or ground water will not adversely affect human health or the environment.

B. The discharger shall ensure that storm water discharges and authorized non-storm water discharges will not contain pollutants in quantities that threaten to cause pollution or a public nuisance.

C. The discharger shall ensure that storm water discharges and authorized non-storm water discharges will not contain pollutants that cause or contribute to an exceedance of any applicable water quality objectives or water quality standards (collectively, WQS) contained in a Statewide Water Quality Control Plan, the California Toxics Rule, the National Toxics Rule, or the applicable Regional Water Board's Water Quality Control Plan (Basin Plan).

D. Dischargers located within the watershed of a CWA § 303(d) impaired water body, for which a TMDL has been approved by the U.S. EPA, shall comply with the approved TMDL if it identifies "construction activity" or land disturbance as a source of the pollution.

VII. TRAINING QUALIFICATIONS AND CERTIFICATION REQUIREMENTS

A. General

The discharger shall ensure that all persons responsible for implementing requirements of this General Permit shall be appropriately trained in accordance with this Section. Training should be both formal and informal, occur on an ongoing basis, and should include training offered by recognized governmental agencies or professional organizations. Those responsible for preparing and amending SWPPPs shall comply with the requirements in this Section VII.

The discharger shall provide documentation of all training for persons responsible for implementing the requirements of this General Permit in the Annual Reports.

B. SWPPP Certification Requirements

1. **Qualified SWPPP Developer:** The discharger shall ensure that SWPPPs are written, amended and certified by a Qualified SWPPP Developer (QSD). A QSD shall have one of the following registrations or certifications, and appropriate experience, as required for:

   a. A California registered professional civil engineer;

   b. A California registered professional geologist or engineering geologist;

   c. A California registered landscape architect;

   d. A professional hydrologist registered through the American Institute of Hydrology;

   e. A Certified Professional in Erosion and Sediment Control (CPESC) ™ registered through Enviro Cert International, Inc.;

   f. A Certified Professional in Storm Water Quality (CPSWQ) ™ registered through Enviro Cert International, Inc.; or

   g. A professional in erosion and sediment control registered through the National Institute for Certification in Engineering Technologies (NICET).

Effective two years after the adoption date of this General Permit, a QSD shall have attended a State Water Board-sponsored or approved QSD training course.

2. The discharger shall list the name and telephone number of the currently designated Qualified SWPPP Developer(s) in the SWPPP.

3. **Qualified SWPPP Practitioner:** The discharger shall ensure that all BMPs required by this General Permit are implemented by a Qualified SWPPP Practitioner (QSP). A QSP is a person responsible for non-storm water and storm water visual observations, sampling and analysis. Effective two years from the date of adoption of this General Permit, a QSP shall be either a QSD or have one of the following certifications:

   a. A certified erosion, sediment and storm water inspector registered through Enviro Cert International, Inc.; or

   b. A certified inspector of sediment and erosion control registered through Certified Inspector of Sediment and Erosion Control, Inc.

   Effective two years after the adoption date of this General Permit, a QSP shall have attended a State Water Board-sponsored or approved QSP training course.

4. The LRP shall list in the SWPPP, the name of any Approved Signatory, and provide a copy of the written agreement or other mechanism that provides this authority from the LRP in the SWPPP.

5. The discharger shall include, in the SWPPP, a list of names of all contractors, subcontractors, and individuals who will be directed by the Qualified SWPPP Practitioner. This list shall include telephone numbers and work addresses. Specific areas of responsibility of each subcontractor and emergency contact numbers shall also be included.

6. The discharger shall ensure that the SWPPP and each amendment will be signed by the Qualified SWPPP Developer. The discharger shall include a listing of the date of initial preparation and the date of each amendment in the SWPPP.

VIII. RISK DETERMINATION

The discharger shall calculate the site's sediment risk and receiving water risk during periods of soil exposure (i.e. grading and site stabilization) and use the calculated risks to determine a Risk Level(s) using the methodology in

Appendix 1. For any site that spans two or more planning watersheds,[13] the discharger shall calculate a separate Risk Level for each planning watershed. The discharger shall notify the State Water Board of the site's Risk Level determination(s) and shall include this determination as a part of submitting the PRDs. If a discharger ends up with more than one Risk Level determination, the Regional Water Board may choose to break the project into separate levels of implementation.

IX. RISK LEVEL 1 REQUIREMENTS

Risk Level 1 Dischargers shall comply with the requirements included in Attachment C of this General Permit.

X. RISK LEVEL 2 REQUIREMENTS

Risk Level 2 Dischargers shall comply with the requirements included in Attachment D of this General Permit.

XI. RISK LEVEL 3 REQUIREMENTS

Risk Level 3 Dischargers shall comply with the requirements included in Attachment E of this General Permit.

XII. ACTIVE TREATMENT SYSTEMS (ATS)

Dischargers choosing to implement an ATS on their site shall comply with all of the requirements in Attachment F of this General Permit.

[13] Planning watershed: defined by the Calwater Watershed documents as a watershed that ranges in size from approximately 3,000 to 10,000 acres http://cain.ice.ucdavis.edu/calwater/calwfaq.html, http://gis.ca.gov/catalog/BrowseRecord.epl?id=22175 .

XIII. POST-CONSTRUCTION STANDARDS

A. All dischargers shall comply with the following runoff reduction requirements unless they are located within an area subject to post-construction standards of an active Phase I or II municipal separate storm sewer system (MS4) permit that has an approved Storm Water Management Plan.

1. This provision shall take effect three years from the adoption date of this permit, or later at the discretion of the Executive Officer of the Regional Board.

2. The discharger shall demonstrate compliance with the requirements of this section by submitting with their NOI a map and worksheets in accordance with the instructions in Appendix 2. The discharger shall use non-structural controls unless the discharger demonstrates that non-structural controls are infeasible or that structural controls will produce greater reduction in water quality impacts.

3. The discharger shall, through the use of non-structural and structural measures as described in Appendix 2, replicate the pre-project water balance (for this permit, defined as the volume of rainfall that ends up as runoff) for the smallest storms up to the 85th percentile storm event (or the smallest storm event that generates runoff, whichever is larger). Dischargers shall inform Regional Water Board staff at least 30 days prior to the use of any structural control measure used to comply with this requirement. Volume that cannot be addressed using non-structural practices shall be captured in structural practices and approved by the Regional Water Board. When seeking Regional Board approval for the use of structural practices, dischargers shall document the infeasibility of using non-structural practices on the project site, or document that there will be fewer water quality impacts through the use of structural practices.

4. For sites whose disturbed area exceeds two acres, the discharger shall preserve the pre-construction drainage density (miles of stream length per square mile of drainage area) for all drainage areas within the area serving a first order stream[14] or larger stream and ensure that post-project time of runoff concentration is equal or greater than pre-project time of concentration.

[14] A first order stream is defined as a stream with no tributaries.

B. All dischargers shall implement BMPs to reduce pollutants in storm water discharges that are reasonably foreseeable after all construction phases have been completed at the site (Post-construction BMPs).

XIV. SWPPP REQUIREMENTS

A. The discharger shall ensure that the Storm Water Pollution Prevention Plans (SWPPPs) for all traditional project sites are developed and amended or revised by a QSD. The SWPPP shall be designed to address the following objectives:

1. All pollutants and their sources, including sources of sediment associated with construction, construction site erosion and all other activities associated with construction activity are controlled;

2. Where not otherwise required to be under a Regional Water Board permit, all non-storm water discharges are identified and either eliminated, controlled, or treated;

3. Site BMPs are effective and result in the reduction or elimination of pollutants in storm water discharges and authorized non-storm water discharges from construction activity to the BAT/BCT standard;

4. Calculations and design details as well as BMP controls for site run-on are complete and correct, and

5. Stabilization BMPs installed to reduce or eliminate pollutants after construction are completed.

B. To demonstrate compliance with requirements of this General Permit, the QSD shall include information in the SWPPP that supports the conclusions, selections, use, and maintenance of BMPs.

C. The discharger shall make the SWPPP available at the construction site during working hours while construction is occurring and shall be made available upon request by a State or Municipal inspector. When the original SWPPP is retained by a crewmember in a construction vehicle and is not currently at the construction site, current copies of the BMPs and map/drawing will be left with the field crew and the original SWPPP shall be made available via a request by radio/telephone.

XV. REGIONAL WATER BOARD AUTHORITIES

A. In the case where the Regional Water Board does not agree with the discharger's self-reported risk level (e.g., they determine themselves to be a Level 1 Risk when they are actually a Level 2 Risk site), Regional Water Boards may either direct the discharger to reevaluate the Risk Level(s) for their site or terminate coverage under this General Permit.

B. Regional Water Boards may terminate coverage under this General Permit for dischargers who fail to comply with its requirements or where they determine that an individual NPDES permit is appropriate.

C. Regional Water Boards may require dischargers to submit a Report of Waste Discharge / NPDES permit application for Regional Water Board consideration of individual requirements.

D. Regional Water Boards may require additional Monitoring and Reporting Program Requirements, including sampling and analysis of discharges to sediment-impaired water bodies.

E. Regional Water Boards may require dischargers to retain records for more than the three years required by this General Permit.

XVI. ANNUAL REPORTING REQUIREMENTS

A. All dischargers shall prepare and electronically submit an Annual Report no later than September 1 of each year.

B. The discharger shall certify each Annual Report in accordance with the Special Provisions.

C. The discharger shall retain an electronic or paper copy of each Annual Report for a minimum of three years after the date the annual report is filed.

D. The discharger shall include storm water monitoring information in the Annual Report consisting of:

1. a summary and evaluation of all sampling and analysis results, including copies of laboratory reports;

2. the analytical method(s), method reporting unit(s), and method detection limit(s) of each analytical parameter (analytical results that are less than the method detection limit shall be reported as "less than the method detection limit");

3. a summary of all corrective actions taken during the compliance year;

4. identification of any compliance activities or corrective actions that were not implemented;

5. a summary of all violations of the General Permit;

6. the names of individual(s) who performed the facility inspections, sampling, visual observation (inspections), and/or measurements;

7. the date, place, time of facility inspections, sampling, visual observation (inspections), and/or measurements, including precipitation (rain gauge); and

8. the visual observation and sample collection exception records and reports specified in Attachments C, D, and E.

E. The discharger shall provide training information in the Annual Report consisting of:

1. documentation of all training for individuals responsible for all activities associated with compliance with this General Permit;

2. documentation of all training for individuals responsible for BMP installation, inspection, maintenance, and repair; and

3. documentation of all training for individuals responsible for overseeing, revising, and amending the SWPPP.

Commentor ID	TMDL Comment Summary	Comment Response
	because discharges must not cause or contribute to an exceedance of a water quality standard?	
68	The Board's approach to construction storm water discharges in TMDL watersheds appears to be workable but needs to be clarified. Our only concern involves the possible misinterpretation of the phrase "within the watershed." We believe that the Board's approach is suitable for all discharges within, but not outside, an impaired segment subject to a TMDL. To better reflect this scope of application, we request that the Board revise CGP Part VI.D to read as follows: Dischargers located within the watershed of a CWA §303(d) impaired water body, for which a TMDL has been approved by the USEPA, shall comply with the approved TMDL if it identifies "construction activity" or land disturbance as a source of the pollution.	Comment Noted
112	The fact sheet should note that compliance is required for all pollutants (not just sediment) which may be limited in a TMDL which addresses construction sites. In addition, the discussion in the fact sheet incorrectly suggests that compliance might be required only after a separate order were issued by a Regional Board. Recommend the permit require permittees to document consistency with applicable TMDLs. The permit should require that permittees first investigate whether or not a given construction project is subject to a TMDL; a summary of the findings of the investigation could be included in the SWPPP. There is an applicable TMDL, the SWPPP should document the control measures included to ensure consistency with applicable Was.	Appendix 4 has been expanded to include all sediment and non-sediment TMDLs that apply to construction storm water discharges.

TRAINING & CERTIFICATIONS

Commentor ID	Training & Certifications Comment Summary	Comment Response
20	Page 32.VII. B. e & f CPESC is now identified as EnviroCert International.	Comment Noted. Clarification has been added to permit.
21	What is not clear under the proposed text is the degree to which any Qualified SWPP Developer (QSD) , who may not be a licensed engineer, may engage in activities that may constitute a cross-over into the professional practice of civil engineering. Existing license laws specifically restrict the practice of civil engineering to only those qualified and licensed as such. The proposed regulations should reflect this in an unambiguous manner. The following language is proposed for your consideration: "All engineering work shall be	Comment Noted. A finding has been added to the draft permit stating: "The Professional Engineers Act (Bus. & Prof. Code section 6700, et seq.) requires that all engineering work must be performed by a California licensed engineer."

Commentor ID	Training & Certifications Comment Summary	Comment Response
	performed by a California licensed professional in compliance with the requirements of the Professional Engineers Act, Business and Professions Code sections 6700-6799."	
22	Section VII- The five-year professional experience requirement is redundant and may result in abuse. If the QSD or QSP has the required certifications, they should not be required to take a state- approved class to train and qualify QSDs or QSPs, then the State Board should use that training as one of the stand alone qualifiers to QSD or QSP. Recommend deleting Section VII, B.1.g; add clause to recognize a state-approved training course for qualifying QSDs or QSPs as meeting minimum certification requirements.	The five-year experience in developing SWPPPs has been deleted. The combination of having a qualified certification as well as attending the State Water Board sponsored training class is essential in ensuring that all QSDs and QSPs are properly certified. Prior experience with other CGP requirements is not necessarily a good measure of the skills and knowledge required to comply with the new requirements.
22	Can you have more than one QSP and QSD per company/NOI/Permit/site?	More than one QSP and QSD may be designated per company/NOI/Permit/site. Only one QSD is required for certification of the SWPPP. Inspection reports are certified by qualified inspectors with the proper training.
22	In regards to: "The discharger shall include, in the SWPPP, a list of names of all contractors, subcontractors, and individuals who will be directed by the Qualified SWPPP Practitioner." The list should be specific to include the names and addresses and contact information of those responsible for storm water management only. The specific list should include those responsible for: 1) installation and maintenance of erosion and sediment controls, 2) installation and maintenance of temporary and permanent stabilization, 3) installation and maintenance of non storm water BMPs, 4) those responsible for non structural BMPs, i.e. housekeeping, spill response, storm water sampling, etc.	The SWPPP should be designed to address compliance with the CGP. Contact information for all contractors, subcontractors, and individuals directed by the QSP in compliance with the CGP should include those responsible for erosion and sediment controls, installation and maintenance for stabilization controls, and installation of BMPs as well as those implementing the controls at the site.
22	Request clarification on the training and documentation required for "qualified personnel" (other than the QSDs and QSPs) installing, maintaining and repairing BMPs (especially if the predominant form of training is on-the-job).	"Qualified personnel" are individuals trained by the QSP or trained by those authorized to conduct trainings by the QSP. Documentation of training content, signatures and intervals are to be kept in site records.
25	QSDs for Type 1 projects should be allowed to be "certified" solely through attending the State Water Board's training program. This same rationale should be used to allow QSPs for Type 1 projects to be "certified" solely through attending the State Water Board's training program.	QSD and QSP certification is unrelated to a project's risk. A QSD for a company or agency should be able to produce SWPPPs for all projects regardless of risk as well as a QSP being able to implement SWPPPs at all project risks and types.
25	Permit page 7, Finding 43 – The QSD & QSP requirements should be removed from the permit unless the State Water Board CGP Training Team has been established, and has funding and the required training is available for persons to take when the permit is adopted. Alternately, training should not be required any sooner than 2 years after the training becomes available statewide.	Comment Noted. The CGP Training Team has been established.

Commentor ID	Training & Certifications Comment Summary	Comment Response
27	Complying with the QSP requirements will require hiring additional personnel or finding contractor laborers. This will be difficult, since persons trained as a QSP is a hard-to-find skill set.	Comment Noted. The intent for the QSD/QSP requirements are to ensure that the proper individuals develop and implement SWPPPs.
29, 62, 89	Recommends that provisions be added to the Draft CGP clarifying that QSDs and QSPs are in responsible charge of developing and implementing SWPPPs. The phrase "responsible charge of work" means the independent control and direction, by the use of initiative, skill, and independent judgment, for the investigation, evaluation, specification, design, and implementation of water pollution prevention at construction sites, including the direct supervision and responsibility for work of subordinates. The phrase does not refer to the concept of financial or pollution liability, which remains with the Discharger. A subordinate is any person who assists a QSD or QSP in their practice without assuming responsible charge of work. A subordinate need not be qualified as a QSD or QSP. This phrase should be added to the definitions section of the permit.	The discharger is ultimately responsible for the quality of the storm water discharge for its site. However, qualified personnel must be trained by a QSD or a QSP, or someone authorized to train such personnel.
29	The responsibilities of the QSD and Discharger must be clarified. For instance, the Draft CGP states the "QSD shall ensure SWPPPs ... are developed, amended or revised..." This is the Discharger's responsibility; the QSD develops amends or revises the documents at the direction of the Discharger.	Permit language has been revised to clarify that the discharger is responsible for all permit compliance.
29	CASQA has reservations about the "qualification by experience" for QSDs and QSPs and suggests that if retained this qualification be augmented with a requirement to document the experience. Once such individuals successfully complete the QSD or QSP training course the need to provide such documentation can be reduced. CASQA briefly reviewed the National Institute for Certification in Engineering Technologies (NICET) qualifications program and found that NICET offers several levels of certification) (I-IV) with progressively increasing experience and skill requirements. CASQA recommends that the State Water Board examine the certification levels and identify those that indicate the appropriate experience and skill sets for QSD and QSP pre-requisites.	Comment Noted, 5 years experience option has been taken out of the CGP Order.
29	CASQA believes the language of the Draft CGP needs to be focused on qualifications rather than training to achieve its purpose because qualifications are the desired endpoint whereas training is simply one possible pathway for getting to the endpoint. The reference to the development of a training curriculum is not a Finding and therefore should be moved to the Fact Sheet. Finding F Training Qualifications 43. In order to improve compliance with and to maintain consistent enforcement implementation and maintenance of the SWPPP requirements this General Permit, all dischargers are required to	Comment Noted

Commentor ID	Training & Certifications Comment Summary	Comment Response
	appoint two positions - the Qualified SWPPP Developer (QSD) and the Qualified SWPPP Practitioner (QSP). To serve as a QSD or QSP, the individual shall achieve and maintain the credentials specified in this General Permit for their respective roles. who must obtain appropriate training. Together with the key stakeholders, the State and Regional Water Boards are leading the development of this curriculum through a collaborative organization called The Construction General Permit (CGP) Training Team. Section VII Recommended edit: VII. QUALIFICATIONS, CONTINUING EDUCATION, AND TRAINING A. General The discharger shall retain a Qualified SWPPP Developer (QSD) and a Qualified SWPPP Practitioner (QSP) to be in responsible charge of preparing and implementing the SWPPP, respectively. The discharger shall retain or utilize trained individuals for implementing water pollution control. The qualifications of the QSD and QSP shall be in accordance with this Section VII. The discharger shall provide documentation of QSD and QSP qualifications in the SWPPP, and update the documentation as necessary in the Annual Reports. B. Qualifications 1. QSD – An individual who has achieved and maintains one or more of the following credentials: California registered professional civil engineer; California registered professional geologist or engineering geologist; California registered landscape architect; professional hydrologist registered through the American Institute of Hydrology; certified professional in erosion and sediment control registered through EnviroCert International, Inc.; certified professional in storm water quality registered through EnviroCert International, Inc.; certified professional in erosion and sediment control (Level III or above) registered through the National Institute for Certification in Engineering Technologies; or 5-years documented experience developing SWPPPs. 2. QSP – An individual who is a QSD as defined in this Permit or who has achieved and maintains one or more of the following credentials and experience: certified erosion, sediment and storm water inspector registered through EnviroCert International, Inc.; certified inspector of sediment and erosion control registered through Certified Inspector of Sediment and Erosion Control, Inc.; certified professional in erosion and sediment control (Level II or above) registered through the National Institute for Certification in Engineering Technologies or 5-years documented experience implementing SWPPPs. C. Continuing Education – QSDs and QSPs shall comply with the continuing education requirements to maintain their license, registration, or certification used to qualify as a QSD or QSP. Where the license, registration, or certification used to qualify as a QSD or QSP does not include continuing education requirements, a minimum of 10 professional development hours of continuing education related to storm water quality control shall be obtained every two years. D. Training – Effective [two years after the date of	

Commentor ID	Training & Certifications Comment Summary	Comment Response
	adoption of this General Permit] QSD and QSPs shall have attended a State Water Board-sponsored or approved training course.	
31	Training Request that the National Storm Water Center be listed in the permit along with Certified Professional in Erosion and Sediment Control organization as nonprofit entities certified by the state to teach SWPPP courses. I think it is unfair to list one and not the other. However, we recognize that our staff is qualified to instruct under the proposed Order (SWPPP Certification Requirements) that defines the criteria including those having a minimum of five years of experience developing construction SWPPPs in California.	Permit language has been revised to eliminate the QSD criteria of 5 years experience developing SWPPPs. All available certifications related to this topic were evaluated by staff in preparing the draft requirements and we chose to only list the ones where there was significant emphasis on the principles of soil erosion, water quality, pollution control, and regulatory requirements. Additionally, we only chose certifications where there was a test or evaluation that demonstrated the certificate holder actually understood the requirements. The training currently offered by the National Storm Water Center (and many others) did not completely meet this criteria.
38	Draft General Permit, Pg 32, Section VII The requirement of Qualified SWPP Developer (QSD) and Qualified SWPPP Practitioner (QSP), the required training qualifications and certification are excessive. Construction practices will require multiple personnel to be responsible for the preparation and implementation of the SWPPP besides designated QSD and QSP. Input from the construction industry on the content and degree of training required for leading SWPPP development and implementation is encouraged.	Comment Noted. The CGP Training Team is developing the training criteria for QSDs and QSPs and this team consists of representatives from the State Water Board, Regional Water Board, academia, municipalities, the construction industry and various other trainers and stakeholders.
52	The Draft Order makes it clear that preparers of SWPPP' s and REAP's must be prepared by a Qualified SWPPP Developer and implemented by a Qualified SWPPP Practitioner. Are the public agency inspectors also required to have similar training?	The CGP does not require public agency inspectors to have similar training.
56	F- Training F -43: I. Clarify "discharger" in this statement vice the definition in the glossary (App.7). Relative to a QSD and QSP, on a military base, is the discharger considered the Base or the contractor? Would anyone providing oversight by the Base need to be a trained QSP/QSD?	"Discharger" is defined in this permit as the legally responsible person or entity subject to this General Permit.
34, 56, 60, 63, 107	B-1 (a-h): Qualified SWPPP Developer (pg 32/33): How does 5 years experience equate to a PE? You can be a QSD with 5 years experience, but cannot sign the SWPPP? Please also clarify what will be required during the 2 year period after the adoption of the CGP.	The requirement of 5 years or more experience of preparing SWPPPs has been eliminated from the CGP.
56	B4: Qualified SWPPP Practitioner (pg 33): Relative to military bases, would all the contract leads and quality assurance officers have to be QSPs, or just their supervisor? What do they do during the two year interim?	The discharger is ultimately responsible for the quality of the storm water discharge for its site. However, qualified personnel must be trained by a QSD or a QSP, or someone authorized to train such personnel.

Commentor ID	Training & Certifications Comment Summary	Comment Response
59	Concerned about the limitation of the QSD and QSP to certain professions or degrees, especially when it is not evident that the professions or degrees specified provide an adequate background in construction storm water pollution prevention plan development. The specification of these professions and degrees will also limit the pool of otherwise qualified and experienced SWPPP developers. The permit language should make it clear that implementation of SWPPPs on a construction site and development of SWPPP can be done by trained personnel working under the direction of a QSD or QSP provided that the QSD or QSP stamps or signs the documents. Similarly, sampling personnel following the monitoring program identified in the SWPPP should not need to be QSPs. Additionally, we recommend that the State consider accepting the Caltrans 24 Hour SWPPP training program certification for qualification as a QSD and QSP. We believe that this program addresses the appropriate SWPPP development processes and techniques, will be less burdensome for those needing to comply, and provide additional resources which are now established and readily available.	Individuals implementing the SWPPP and carrying out any sampling for the CGP do not have to be a QSP. They may be trained by the QSP in how to implement the SWPPP and properly sample in order to comply with the CGP.
64	Qualified Personnel (Developers and Practitioners) Appropriate training and qualifications should be standardized and consistent; however, prescribing specific certifications by specific organizations is inequitable for many organizations and individuals that are qualified to perform the work. This message was very clear during all phases of the public comment. Creating complexity and adding new layers of requirements will not necessarily lead to better performance when emphasizing the existing fundamentals is the best approach to improving performance across the industry.	All available certifications related to this topic were evaluated by staff in preparing the draft requirements and we chose to only list the ones where there was significant emphasis on the principles of soil erosion, water quality, pollution control, and regulatory requirements. Additionally, we only chose certifications where there was a test or evaluation that demonstrated the certificate holder actually understood the requirements. The training currently offered by the National Storm Water Center (and many others) did not completely meet this criteria.
65	Training: It is our firm belief that the person in the field and working the site is in the best position to make reactive and pro-active improvements to the site's storm water management program the quickest. The training requirements considered for the DCGP are still unpublished to the public, and Graniterock hopes that the Board factor in options for hands-on and field learning when these requirements are finally issued to the public. Further, we request a small modification in the definitions of QSD and QSP. DCGP currently notes those with 5 years or more experience of preparing the SWPPP are considered qualified, and Graniterock requests that this be expanded to include experience not just in writing the SWPPP but also in implementing the SWPPP and in managing pollution control and storm water programs.	The requirement of 5 years or more experience of preparing SWPPPs has been eliminated from the permit
89	Permit Section XVI.E.2, Page. 39 Will "individuals responsible for BMP	Individuals responsible for BMP installation, inspection,

Commentor ID	Training & Certifications Comment Summary	Comment Response
	installation, inspection, maintenance and repair" still be required to receive formal and informal SWPPP training? Please confirm that these individuals are not considered QSPs.	maintenance and repair would be trained by the QSP and are not considered to be QSPs. The QSP is responsible for the implementation of the SWPPP, which includes training on site personnel/workers.
94	Page 7, Item 43 requires two appointed positions - the Qualified SWPPP Developer and the Qualified SWPPP Practitioner who must obtain appropriate training defined on pages 32-33. The State Water Board should allow sufficient time for dischargers to implement these new training requirements.	The permit allows 2 years from the adoption date of this General Permit for dischargers to implement the new training requirements.
101	Qualifications and Training Requirements – SCVURPPP supports the inclusion of qualifications for individuals preparing and implementing construction SWPPPs. However, our Co-permittees are concerned about meeting these requirements within the prescribed timeframes and need more information on the specifics of the training program. Many of our Co-permittees have attended construction site management workshops provided by our Regional Water Board (SCVURPPP sponsors such a workshop every year), and it would be helpful if the training requirements could give credit for workshops that have been attended within the past two years. Also, there are still inconsistencies and confusing language in the draft permit regarding the role and responsibilities of the QSDs and QSPs. We recommend that Board staff consider the replacement language provided by CASQA in Attachment 1 of its comment letter.	Comment Noted. The information learned at previous workshops is still valuable in that they provide a foundation on understanding principles on how storm water pollution can relate to construction sites and how this can be prevented, but the proposed CGP has very permit specific information in it that requires new trainings. Dischargers have 2 years after the adoption date of this CGP to adhere to the training requirements set forth in the CGP.
106	Paragraph VII.B.1., requires that, effective two years after the adoption of the General Permit, a QSD must attend a State Water Board-sponsored or approved QSD training course. Registered professional civil engineers are already qualified to perform the engineering functions defined in Business and Professions Code Section 6731. Most all registered civil engineers have at least a Bachelor's degree and many have additional Master's and Doctorate levels of education, coupled with the experience requirements in the Professional Engineers Act, and they must pass statewide and national tests before they are registered as civil engineers. That registration scheme exists autonomously from the proposed regulations developed by the Board, but because this Order imposes additional qualifications on civil engineers in addition to those in the Professional Engineers Act, they are inconsistent with the purpose, intent and statutory provisions in the Professional Engineers Act.	Professional Civil Engineers are not trained on specific requirements in this Construction General Permit, therefore the class is required.
107	General definition This permit refers to qualified personnel other than QSD and QSPs in several areas of the permit. A definition of qualified personnel is needed. This includes tasks such as installing, maintaining and repairing BMPs. Please provide guidance on what the Board considers "qualified" in this instance.	Individuals implementing the SWPPP and carrying out any sampling for the CGP do not have to be a QSP. They may be trained by the QSP in how to implement the SWPPP and properly sample in order to comply with the CGPt.

Commentor ID	Training & Certifications Comment Summary	Comment Response
108	1. Page 32 VII.B.1 Qualified SWPPP Developer 2. Page 32 VII.B.4 Qualified SWPPP Practitioner We believe this section is in violation of California Anti Trust laws in that it restrains education providers to just a few organizations, and disallows other legitimate, credible, accepted, education providers and therefore stands to create a monopoly on education providers. We ask that the language in the current version (previous to the Draft) of the CA General permit remain; or simply we ask to be included as education providers for Inspectors and SWPPP preparers; or that the CA EPA adopt a written standard for education that serves to encourage competition in the educational arena. Currently Stormwater USA has 410 California Students in our Certified Compliance Inspector f Stormwater (CCISR) class and Certified Preparer of SWPPP (CPSWPPPR) class. We have over 2000 students nationally enrolled in our classes. 98% of our students would recommend our class to others. Stormwater USA, LLC asks to be included as an acceptable online education provider for SPWPPP preparers and storm water Inspectors by the state. Our program exceeds all written California and Federal requirements for education providers for storm water Compliance. In addition, our program would provide the following additional benefits to the citizens of California who will be required to participate in Storm Water Compliance Education as follows (see original comment for business model)	Comment Noted
111	The Draft Permit requires the Discharger to provide documentation of training in the annual report. Clarification is requested on what type of training (topics, activities) is acceptable and what training records are required for construction workers in the field, installing, maintaining, and repairing BMPs.	The CGP does not specify what type of training is acceptable. This is determined by the QSP who is in charge of implementing the SWPPP at the project site.
112	The permit indicates that the QSP would be responsible for full compliance with the permit, which might be interpreted to transfer liability for noncompliance from the permittee to the QSP. The permit may require that the permittee ensure that BMPs be implemented by persons with the qualifications of a QSP as set forth in the permit, but it should also clarify that the permittee remains fully responsible for compliance with the permit.	The discharger alone is responsible for complying with all the requirements of the permit.

ATTACHMENT A - LINEAR UNDERGROUND/OVERHEAD UTILITY PROJECTS (LUPs)

Commentor ID	LUP Comment Summary	Comment Response
17, 56, 58, 59	Linear projects should not be regulated under the Permit. Attachment A (the	It was the intent for the CGP to apply to all construction activities