



Linda S. Adams  
Secretary for  
Environmental Protection

Arnold Schwarzenegger  
Governor

CONSTRUCTION GENERAL PERMIT FACT SHEET TABLE OF CONTENTS

**I. BACKGROUND ..... 1**

A. History .....1

B. Legal Challenges and Court Decisions.....1

C. Blue Ribbon Panel of Experts and Feasibility of Numeric Effluent Limitations .....4

D. Summary of Panel Findings on Construction Activities .....4

E. How the Panel’s Findings are Used in this General Permit .....5

F. Summary of Significant Changes in This General Permit .....5

**II. RATIONALE ..... 7**

A. General Permit Approach.....7

B. Construction Activities Covered.....7

C. Construction Activities Not Covered .....9

D. Obtaining and Terminating Permit Coverage .....12

E. Discharge Prohibitions .....12

F. Effluent Standards for All Types of Discharges.....13

G. Receiving Water Limitations .....20

H. Training Qualifications and Requirements .....20

I. Sampling, Monitoring, Reporting and Record Keeping.....21

J. Risk Determination.....27

K. ATS Requirements.....35

L. Post-Construction Requirements .....37

M. Storm Water Pollution Prevention Plans .....46

N. Regional Water Board Authorities.....48

## LIST OF TABLES

Table 1 - Regional Water Board Basin Plans, Water Quality Objectives for Turbidity	16
Table 2 - Results of Ecoregion Analysis	16
Table 3 – ACL Sampling Data taken by Regional Water Board Staff	17
Table 4 - Required Monitoring Elements for Risk Levels	21
Table 5 - Storm Water Effluent Monitoring Requirements by Risk Level	23
Table 6 - Receiving Water Monitoring Requirements	26
Table 7 - Combined Risk Level Matrix	29
Table 8 -National Oceanic and Atmospheric Administration (NOAA) Definition of Probability of Precipitation (PoP)	31
Table 9 - Qualified SWPPP Developer/ Qualified SWPPP Practitioner Certification Criteria	47

## LIST OF FIGURES

Figure 1 -Statewide Map of K * LS	28
Figure 2 - Suite of Storm Events	37
Figure 3 - Northern CA (2009) Counties / Cities With SUSMP-Plus Coverage	39
Figure 4 - Southern CA (2009) Counties / Cities With SUSMP-Plus Coverage	40
Figure 5 - Schematic of the Lane Relationship	42
Figure 6 - Channel Changes Associated with Urbanization	43

## I. BACKGROUND

### A. History

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act [CWA]) was amended to provide that the discharge of pollutants to waters of the United States from any point source is unlawful unless the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. The 1987 amendments to the CWA added Section 402(p), which establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Program. On November 16, 1990, the U.S. Environmental Protection Agency (USEPA) published final regulations that established storm water permit application requirements for specified categories of industries. The regulations provide that discharges of storm water to waters of the United States from construction projects that encompass five or more acres of soil disturbance are effectively prohibited unless the discharge is in compliance with an NPDES Permit. Regulations (Phase II Rule) that became final on December 8, 1999 lowered the permitting threshold from five acres to one acre.

While federal regulations allow two permitting options for storm water discharges (Individual Permits and General Permits), the State Water Board has elected to adopt only one statewide General Permit at this time that will apply to most storm water discharges associated with construction activity.

On August 19, 1999, the State Water Board reissued the General Construction Storm Water Permit (Water Quality Order 99-08-DWQ). On December 8, 1999 the State Water Board amended Order 99-08-DWQ to apply to sites as small as one acre.

The General Permit accompanying this fact sheet regulates storm water runoff from construction sites. Regulating many storm water discharges under one permit will greatly reduce the administrative burden associated with permitting individual storm water discharges. To obtain coverage under this General Permit, dischargers shall electronically file the Permit Registration Documents (PRDs), which includes a Notice of Intent (NOI), Storm Water Pollution Prevention Plan (SWPPP), and other compliance related documents required by this General Permit and mail the appropriate permit fee to the State Water Board. It is expected that as the storm water program develops, the Regional Water Quality Control Boards (Regional Water Boards) may issue General Permits or Individual Permits containing more specific permit provisions. When this occurs, this General Permit will no longer regulate those dischargers.

### B. Legal Challenges and Court Decisions

#### 1. Early Court Decisions

Shortly after the passage of the CWA, the USEPA promulgated regulations exempting most storm water discharges from the NPDES permit requirements. (See 40 C.F.R. § 125.4 (1975); see also *Natural Resources Defense Council v. Costle* (D.C. Cir. 1977) 568 F.2d 1369, 1372 (*Costle*); *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1163 (*Defenders of Wildlife*)). When environmental groups challenged this exemption in federal court, the District of Columbia Court of Appeals invalidated the regulation, holding that the USEPA “does not have authority to exempt categories of point sources from the permit requirements of [CWA] § 402.” (*Costle*, 568 F.2d at 1377.) The *Costle* court rejected the USEPA’s argument that effluent-based storm sewer regulation was administratively infeasible because of the variable nature of storm water pollution and the number of affected storm sewers throughout the country. (*Id.* at 1377-82.) Although the court acknowledged the practical problems relating to storm sewer regulation, the court found the USEPA had the flexibility under the CWA to design regulations that would overcome these problems. (*Id.* at 1379-83.) In particular, the court pointed to general permits and permits based on requiring best management practices (BMPs).

During the next 15 years, the USEPA made numerous attempts to reconcile the statutory requirement of point source regulation with the practical problem of regulating possibly millions of diverse point source discharges of storm water. (See *Defenders of Wildlife*, 191 F.3d at 1163; see also Gallagher, Clean Water Act in Environmental Law Handbook (Sullivan, edit., 2003) p. 300 (Environmental Law Handbook); Eisen, *Toward a Sustainable Urbanism: Lessons from Federal Regulation of Urban Storm Water Runoff* (1995) 48 Wash. U.J. Urb. & Contemp. L.1, 40-41 [Regulation of Urban Storm Water Runoff].)

In 1987, Congress amended the CWA to require NPDES permits for storm water discharges. (See CWA § 402(p), 33 U.S.C. § 1342(p); *Defenders of Wildlife*, 191 F.3d at 1163; *Natural Resources Defense Council v. USEPA* (9th Cir. 1992) 966 F.2d 1292, 1296.) In these amendments, enacted as part of the Water Quality Act of 1987, Congress distinguished between industrial and municipal storm water discharges. With respect to industrial storm water discharges, Congress provided that NPDES permits "shall meet all applicable provisions of this section and section 1311 [requiring the USEPA to establish effluent limitations under specific timetables]." (CWA § 402(p)(3)(A), 33 U.S.C. § 1342(p)(3)(A); see also *Defenders of Wildlife*, 191 F.3d at 1163-64.)

In 1990, USEPA adopted regulations specifying what activities were considered "industrial" and thus required discharges of storm water associated with those activities to obtain coverage under NPDES permits. (55 Fed. Reg. 47,990 (1990); 40 C.F.R. § 122.26(b)(14).) Construction activities, deemed a subset of the industrial activities category, must also be regulated by an NPDES permit. (40 C.F.R. § 122.26(b)(14)(x)). In 1999, USEPA issued regulations for "Phase II" of storm water regulation, which required most small construction sites (1-5 acres) to be regulated under the NPDES program. (64 Fed. Reg. 68,722; 40 C.F.R. § 122.26(b)(15)(i).)

## 2. Court Decisions on Public Participation

Two recent federal court opinions have vacated USEPA rules that denied meaningful public review of NPDES permit conditions. On January 14, 2003, the Ninth Circuit Court of Appeals held that certain aspects of USEPA's Phase II regulations governing MS4s were invalid primarily because the general permit did not contain express requirements for public participation. (*Environmental Defense Center v. USEPA* (9th Cir. 2003) 344 F.3d 832.) Specifically, the court determined that applications for general permit coverage (including the Notice of Intent (NOI) and Storm Water Management Program (SWMP)) must be made available to the public, the applications must be reviewed and determined to meet the applicable standard by the permitting authority before coverage commences, and there must be a process to accommodate public hearings. (*Id.* at 852-54.) Similarly, on February 28, 2005, the Second Circuit Court of Appeals held that the USEPA's confined animal feeding operation (CAFO) rule violated the CWA because it allowed dischargers to write their own nutrient management plans without public review. (*Waterkeeper Alliance v. USEPA* (2d Cir. 2005) 399 F.3d 486.) Although neither decision involved the issuance of construction storm water permits, the State Water Board's Office of Chief Counsel has recommended that the new General Permit address the courts' rulings where feasible<sup>1</sup>.

---

<sup>1</sup> In *Texas Independent Producers and Royalty Owners Assn. v. USEPA* (7th Cir. 2005) 410 F.3d 964, the Seventh Circuit Court of Appeals held that the USEPA's construction general permit was not required to provide the public with the opportunity for a public hearing on the Notice of Intent or Storm Water Pollution Prevention Plan. The Seventh Circuit briefly discussed why it agreed with the Ninth Circuit's dissent in *Environmental Defense Center*, but

The CWA and the USEPA's regulations provide states with the discretion to formulate permit terms, including specifying best management practices (BMPs), to achieve strict compliance with federal technology-based and water quality-based standards. (*Natural Resources Defense Council v. USEPA* (9th Cir. 1992) 966 F.2d 1292, 1308.) Accordingly, this General Permit has developed specific BMPs as well as numeric action levels (NALs) in order to achieve these minimum federal standards. In addition, the General Permit requires a SWPPP and REAP (another dynamic, site-specific plan) to be developed but has removed all language requiring the discharger to implement these plans – instead, the discharger is required to comply with specific requirements. By requiring the dischargers to implement these specific BMPs and NALs, this General Permit ensures that the dischargers do not “write their own permits.” As a result this General Permit does not require each discharger's SWPPP and REAP to be reviewed and approved by the Regional Water Boards.

This General Permit also requires dischargers to electronically file all permit-related compliance documents. These documents include, but are not limited to, NOIs, SWPPPs, annual reports, Notice of Terminations (NOTs), and numeric action level (NAL) exceedance reports. Electronically submitted compliance information is immediately available to the public, as well as the Regional Water Quality Control Board (Regional Water Board) offices, via the Internet. In addition, this General Permit enables public review and hearings on permit applications when appropriate. Under this General Permit, the public clearly has a meaningful opportunity to participate in the permitting process.

---

generally did not discuss the substantive holdings in *Environmental Defense Center and Waterkeeper Alliance*, because neither court addressed the initial question of whether the plaintiffs had standing to challenge the permits at issue. However, notwithstanding the Seventh Circuit's decision, it is not binding or controlling on the State Water Board because California is located within the Ninth Circuit.

## **C. Blue Ribbon Panel of Experts and Feasibility of Numeric Effluent Limitations**

In 2005 and 2006, the State Water Board convened an expert panel (panel) to address the feasibility of numeric effluent limitations (NELs) in California's storm water permits. Specifically, the panel was asked to address:

"Is it technically feasible to establish numeric effluent limitations, or some other quantifiable limit, for inclusion in storm water permits? How would such limitations or criteria be established, and what information and data would be required?"

"The answers should address industrial general permits, construction general permits, and area-wide municipal permits. The answers should also address both technology-based limitations or criteria and water quality-based limitations or criteria. In evaluating establishment of any objective criteria, the panel should address all of the following:

The ability of the State Water Board to establish appropriate objective limitations or criteria;

How compliance determinations would be made;

The ability of dischargers and inspectors to monitor for compliance; and

The technical and financial ability of dischargers to comply with the limitations or criteria."

Through a series of public participation processes (State Water Board meetings, State Water Board workshops, and the solicitation of written comments), a number of water quality, public process and overall program effectiveness problems were identified. Some of these problems are addressed through this General Permit.

## **D. Summary of Panel Findings on Construction Activities**

The panel's final report can be downloaded and viewed through links at [www.waterboards.ca.gov](http://www.waterboards.ca.gov) or by clicking [here](#)<sup>2</sup>.

The panel made the following observations:

"Limited field studies indicate that traditional erosion and sediment controls are highly variable in performance, resulting in highly variable turbidity levels in the site discharge."

"Site-to-site variability in runoff turbidity from undeveloped sites can also be quite large in many areas of California, particularly in more arid regions with less natural vegetative cover and steep slopes."

---

<sup>2</sup> [http://www.waterboards.ca.gov/stormwtr/docs/numeric/swpanel\\_final\\_report.pdf](http://www.waterboards.ca.gov/stormwtr/docs/numeric/swpanel_final_report.pdf)

“Active treatment technologies involving the use of polymers with relatively large storage systems now exist that can provide much more consistent and very low discharge turbidity. However, these technologies have as yet only been applied to larger construction sites, generally five acres or greater. Furthermore, toxicity has been observed at some locations, although at the vast majority of sites, toxicity has not occurred. There is also the potential for an accidental large release of such chemicals with their use.”

“To date most of the construction permits have focused on TSS and turbidity, but have not addressed other, potentially significant pollutants such as phosphorus and an assortment of chemicals used at construction sites.”

“Currently, there is no required training or certification program for contractors, preparers of soil erosion and sediment control Storm Water Pollution Prevention Plans, or field inspectors.”

“The quality of storm water discharges from construction sites that effectively employ BMPs likely varies due to site conditions such as climate, soil, and topography.”

“The States of Oregon and Washington have recently adopted similar concepts to the Action Levels described earlier.”

In addition, the panel made the following conclusions:

“It is the consensus of the Panel that active treatment technologies make Numeric Limits technically feasible for pollutants commonly associated with storm water discharges from construction sites (e.g. TSS and turbidity) for larger construction sites. Technical practicalities and cost-effectiveness may make these technologies less feasible for smaller sites, including small drainages within a larger site, as these technologies have seen limited use at small construction sites. If chemical addition is not permitted, then Numeric Limits are not likely feasible.”

“The Board should consider Numeric Limits or Action Levels for other pollutants of relevance to construction sites, but in particular pH. It is of particular concern where fresh concrete or wash water from cement mixers/equipment is exposed to storm water.”

“The Board should consider the phased implementation of Numeric Limits and Action Levels, commensurate with the capacity of the dischargers and support industry to respond.”

## **E. How the Panel’s Findings are Used in this General Permit**

The State Water Board carefully considered the findings of the panel and related public comments. The State Water Board also reviewed and considered the comments regarding statewide storm water policy and the reissuance of the Industrial General Permit. From the input received the State Water Board identified some permit and program performance gaps that are addressed in this General Permit. The Summary of Significant Changes (below) in this General Permit are a direct result of this process.

## **F. Summary of Significant Changes in This General Permit**

The State Water Board has significant changes to Order 99-08-DWQ. This General Permit differs from Order 99-08-DWQ in the following significant ways:

**Rainfall Erosivity Waiver**: this General Permit includes the option allowing a small construction site (>1 and <5 acres) to self-certify if the rainfall erosivity value (R value) for their site's given location and time frame compute to be less than or equal to 5.

**Technology-Based Numeric Action Levels:** this General Permit includes NALs for pH and turbidity.

**Risk-Based Permitting Approach:** this General Permit establishes three levels of risk possible for a construction site. Risk is calculated in two parts: 1) Project Sediment Risk, and 2) Receiving Water Risk.

**Minimum Requirements Specified:** this General Permit imposes more minimum BMPs and requirements that were previously only required as elements of the SWPPP or were suggested by guidance.

**Project Site Soil Characteristics Monitoring and Reporting:** this General Permit provides the option for dischargers to monitor and report the soil characteristics at their project location. The primary purpose of this requirement is to provide better risk determination and eventually better program evaluation.

**Effluent Monitoring and Reporting:** this General Permit requires effluent monitoring and reporting for pH and turbidity in storm water discharges. The purpose of this monitoring is to evaluate whether NALs and NELs for Active Treatment Systems included in this General Permit are exceeded.

**Receiving Water Monitoring and Reporting:** this General Permit requires some Risk Level 3 and LUP Type 3 dischargers to monitor receiving waters and conduct bioassessments.

**Post-Construction Storm Water Performance Standards:** this General Permit specifies runoff reduction requirements for all sites not covered by a Phase I or Phase II MS4 NPDES permit, to avoid, minimize and/or mitigate post-construction storm water runoff impacts.

**Rain Event Action Plan:** this General Permit requires certain sites to develop and implement a Rain Event Action Plan (REAP) that must be designed to protect all exposed portions of the site within 48 hours prior to any likely precipitation event.

**Annual Reporting:** this General Permit requires all projects that are enrolled for more than one continuous three-month period to submit information and annually certify that their site is in compliance with these requirements. The primary purpose of this requirement is to provide information needed for overall program evaluation and public information.

**Certification/Training Requirements for Key Project Personnel:** this General Permit requires that key personnel (e.g., SWPPP preparers, inspectors, etc.) have specific training or certifications to ensure their level of knowledge and skills are adequate to ensure their ability to design and evaluate project specifications that will comply with General Permit requirements.

**Linear Underground/Overhead Projects:** this General Permit includes requirements for all Linear Underground/Overhead Projects (LUPs).



## II. RATIONALE

### A. General Permit Approach

A general permit for construction activities is an appropriate permitting approach for the following reasons:

1. A general permit is an efficient method to establish the essential regulatory requirements for a broad range of construction activities under differing site conditions;
2. A general permit is the most efficient method to handle the large number of construction storm water permit applications;
3. The application process for coverage under a general permit is far less onerous than that for individual permit and hence more cost effective;
4. A general permit is consistent with USEPA's four-tier permitting strategy, the purpose of which is to use the flexibility provided by the CWA in designing a workable and efficient permitting system; and
5. A general permit is designed to provide coverage for a group of related facilities or operations of a specific industry type or group of industries. It is appropriate when the discharge characteristics are sufficiently similar, and a standard set of permit requirements can effectively provide environmental protection and comply with water quality standards for discharges. In most cases, the general permit will provide sufficient and appropriate management requirements to protect the quality of receiving waters from discharges of storm water from construction sites.

There may be instances where a general permit is not appropriate for a specific construction project. A Regional Water Board may require any discharger otherwise covered under the General Permit to apply for and obtain an Individual Permit or apply for coverage under a more specific General Permit. The Regional Water Board must determine that this General Permit does not provide adequate assurance that water quality will be protected, or that there is a site-specific reason why an individual permit should be required.

### B. Construction Activities Covered

#### 1. Construction activity subject to this General Permit:

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.

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

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 USEPA regulations, such as dairy barns or food processing facilities.

Construction activity associated with 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.

Discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.<sup>3</sup>

Storm water discharges from dredge spoil placement that occur outside of U.S. Army Corps of Engineers jurisdiction<sup>4</sup> (upland sites) and that disturb one or more acres of land surface from construction activity are covered by this General Permit. Construction projects that intend to disturb one or more acres of land within the jurisdictional boundaries of a CWA § 404 permit should contact the appropriate Regional Water Board to determine whether this permit applies to the project.

## **2. Linear Underground/Overhead Projects (LUPs) subject to this General Permit:**

Underground/overhead facilities typically constructed as LUPs include, but are not limited to, any conveyance, pipe, or pipeline for the transportation of any gaseous, liquid (including water, 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, 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.

Water Quality Order 2003-0007-DWQ regulated construction activities associated with small LUPs that resulted in land disturbances greater than one acre, but less than five acres. These projects were considered non-traditional construction projects. Attachment A of this Order now regulates all construction activities from LUPs resulting in land disturbances greater than one acre.

## **3. Common Plan of Development or Sale**

USEPA regulations include the term “common plan of development or sale” to ensure that acreage within a common project does not artificially escape the permit requirements because construction activities are phased, split among smaller parcels, or completed by different owners/developers. In the absence of an

---

<sup>3</sup> 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 USEPA'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.

<sup>4</sup> A construction site that includes a dredge and/or fill discharge to any water of the United States (e.g., wetland, channel, pond, or marine water) requires a CWA Section 404 permit from the U.S. Army Corps of Engineers and a CWA Section 401 Water Quality Certification from the Regional Water Board or State Water Board.

exact definition of “common plan of development or sale,” the State Water Board is required to exercise its regulatory discretion in providing a common sense interpretation of the term as it applies to construction projects and permit coverage. An overbroad interpretation of the term would render meaningless the clear “one acre” federal permitting threshold and would potentially trigger permitting of almost any construction activity that occurs within an area that had previously received area-wide utility or road improvements.

Construction projects generally receive grading and/or building permits (Local Permits) from local authorities prior to initiating construction activity. These Local Permits spell out the scope of the project, the parcels involved, the type of construction approved, etc. Referring to the Local Permit helps define “common plan of development or sale.” In cases such as tract home development, a Local Permit will include all phases of the construction project including rough grading, utility and road installation, and vertical construction. All construction activities approved in the Local Permit are part of the common plan and must remain under the General Permit until construction is completed. For custom home construction, Local Permits typically only approve vertical construction as the rough grading, utilities, and road improvements were already independently completed under the a previous Local Permit. In the case of a custom home site, the homeowner must submit plans and obtain a distinct and separate Local Permit from the local authority in order to proceed. It is not the intent of the State Water Board to require permitting for an individual homeowner building a custom home on a private lot of less than one acre if it is subject to a separate Local Permit. Similarly, the installation of a swimming pool, deck, or landscaping that disturbs less than one acre that was not part of any previous Local Permit are not required to be permitted.

The following are several examples of construction activity of less than one acre that would require permit coverage:

- a. A landowner receives a building permit(s) to build tract homes on a 100-acre site split into 200 one-third acre parcels, (the remaining acreage consists of streets and parkways) which are sold to individual homeowners as they are completed. The landowner completes and sells all the parcels except for two. Although the remaining two parcels combined are less than one acre, the landowner must continue permit coverage for the two parcels.
- b. One of the parcels discussed above is sold to another owner who intends to complete the construction as already approved in the Local Permit. The new landowner must file Permit Registration Documents (PRDs) to complete the construction even if the new landowner is required to obtain a separate Local Permit.
- c. Landowner in (1) above purchases 50 additional one half-acre parcels adjacent to the original 200-acre project. The landowner seeks a Local Permit (or amendment to existing Local permit) to build on 20 parcels while leaving the remaining 30 parcels for future development. The landowner must amend PRDs to include the 20 parcels 14 days prior to commencement of construction activity on those parcels.

## **C. Construction Activities Not Covered**

### **1. Traditional Construction Projects Not Covered**

This General Permit does not apply to the following construction activity:

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

- b. Disturbances to land surfaces solely related to agricultural operations such as disking, harrowing, terracing and leveling, and soil preparation.
- c. Discharges of storm water from areas on tribal lands; construction on tribal lands is regulated by a federal permit.
- d. 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 projects in this watershed must apply for the Lahontan Regional Water Board permit rather than the statewide Construction General Permit. Construction projects within the Lahontan region must also comply with the Lahontan Region Project Guideline for Erosion Control (R6T-2005-0007 Section), which can be found at [http://www.waterboards.ca.gov/lahontan/Adopted\\_Orders/2005/r6t\\_2005\\_0007.pdf](http://www.waterboards.ca.gov/lahontan/Adopted_Orders/2005/r6t_2005_0007.pdf)
- e. Construction activity that disturbs less than one acre of land surface, unless part of a larger common plan of development or the sale of one or more acres of disturbed land surface.
- f. Construction activity covered by an individual NPDES Permit for storm water discharges.
- g. Landfill construction activity that is subject to the Industrial General Permit.
- h. Construction activity that discharges to Combined Sewer Systems.
- i. Conveyances that discharge storm water runoff combined with municipal sewage.
- j. Discharges of storm water identified in CWA § 402(l)(2), 33 U.S.C. § 1342(l)(2).

## 2. Linear Projects Not Covered

- a. LUP construction activity does not include linear routine maintenance projects. Routine maintenance projects are projects associated with operations and maintenance activities that are conducted on existing lines and facilities and within existing right-of-way, easements, franchise agreements, or other legally binding agreements of the discharger. Routine maintenance projects include, but are not limited to projects that are conducted to:
  - i. Maintain the original purpose of the facility or hydraulic capacity.
  - ii. Update existing lines<sup>5</sup> and facilities to comply with applicable codes, standards, and regulations regardless if such projects result in increased capacity.
  - iii. Repairing leaks.

---

<sup>5</sup>Update existing lines includes replacing existing lines with new materials or pipes.

Routine maintenance does not include construction of new<sup>6</sup> lines or facilities resulting from compliance with applicable codes, standards, and regulations.

Routine maintenance projects do not include those areas of maintenance projects that are outside of an existing right-of-way, franchise, easements, or agreements. When a project must secure new areas, those areas may be subject to this General Permit based on the area of disturbed land outside the original right-of-way, easement, or agreement.

- b. LUP construction activity does not include field activities associated with the planning and design of a project (e.g., activities associated with route selection).
- c. Tie-ins conducted immediately adjacent to “energized” or “pressurized” facilities by the discharger are not considered construction activities where all other LUP construction activities associated with the tie-in are covered by an NOI and SWPPP of a third party or municipal agency.

### 3. EPA’s Small Construction Rainfall Erosivity Waiver

EPA’s Storm Water Phase II Final Rule provides the option for a Small Construction Rainfall Erosivity Waiver. This waiver applies to small construction sites between 1 and 5 acres, and allows permitting authorities to waive those sites that do not have adverse water quality impacts.

Dischargers eligible for this waiver are exempt from Construction General Permit Coverage. In order to obtain the waiver, the discharger must certify to the State Water 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). The period of construction activity begins at initial earth disturbance and ends with final stabilization. Where vegetation will be used for final stabilization, the date of installation of a practice that provides interim non-vegetative stabilization can be used for the end of the construction period. The operator must agree (as a condition waiver eligibility) to periodically inspect and properly maintain the area until the criteria for final stabilization as defined in the General Permit have been met. If use of this interim stabilization eligibility condition was relied on to qualify for the waiver, signature on the waiver with a certification statement constitutes acceptance of and commitment to complete the final stabilization process. The discharger must submit a waiver certification to the State Board prior to commencing construction activities.

USEPA funded a cooperative agreement with Texas A&M University to develop an online rainfall erosivity calculator. Dischargers can access the calculator from EPA’s website at: [www.epa.gov/npdes/stormwater/cgp](http://www.epa.gov/npdes/stormwater/cgp). Use of the calculator allows the discharger to determine potential eligibility for the rainfall erosivity waiver. It may also be useful in determining the time periods during which construction activity could be waived from permit coverage.

---

<sup>6</sup>New lines are those that are not associated with existing facilities and are not part of a project to update or replace existing lines.

## **D. Obtaining and Terminating Permit Coverage**

The appropriate Legally Responsible Person (LRP) must obtain coverage under this General Permit. To obtain coverage, the LRP or the LRP's Approved Signatory must 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.

To obtain coverage under this General Permit, LRPs must electronically file the PRDs, which include a Notice of Intent (NOI), Storm Water Pollution Prevention Plan (SWPPP), and other documents required by this General Permit, and mail the appropriate permit fee to the State Water Board. It is expected that as the storm water program develops, the Regional Water Boards may issue General Permits or Individual Permits that contain more specific permit provisions. When this occurs, this General Permit will no longer regulate those dischargers that obtain coverage under Individual Permits.

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.

The application requirements of the General Permit establish a mechanism to clearly identify the responsible parties, locations, and scope of operations of dischargers covered by the General Permit and to document the discharger's knowledge of the General Permit's requirements.

This General Permit provides a grandfathering exception to existing dischargers subject to Water Quality Order No. 99-08-DWQ. Construction projects covered under Water Quality Order No. 99-08-DWQ shall obtain permit coverage at Risk Level 1. LUP projects covered under Water Quality Order No. 2003-0007-DWQ shall obtain permit coverage at LUP Type 1. The Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ and 2003-0007-DWQ where they deem necessary.

LRPs must file a Notice of Termination (NOT) with the Regional Water Board when construction is complete and final stabilization has been reached or ownership has been transferred. The discharger must certify that all State and local requirements have been met in accordance with this General Permit. In order for construction to be found complete, the discharger must install post-construction storm water management measures and establish a long-term maintenance plan. This requirement is intended to ensure that the post-construction conditions at the project site do not cause or contribute to direct or indirect water quality impacts (i.e., pollution and/or hydromodification) upstream and downstream. Specifically, the discharger must demonstrate compliance with the post-construction standards set forth in this General Permit (Section XIII). The discharger is responsible for all compliance issues including all annual fees until the NOT has been filed and approved by the local Regional Water Board.

## **E. Discharge Prohibitions**

This General Permit authorizes the discharge of storm water to surface waters from construction activities that result in the disturbance of one or more acres of land, provided that the discharger satisfies all permit conditions set forth in the Order. This General Permit prohibits the discharge of pollutants other than storm water and non-storm water discharges authorized by this General Permit or another NPDES permit. This General Permit also 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. In addition, this General Permit incorporates discharge prohibitions contained in water quality control plans, as implemented by the nine Regional Water Boards. Discharges to Areas of Special Biological Significance (ASBS) are prohibited unless covered by an exception that the State Water Board has approved.

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 BMPs. The State Water Board recognizes, however, that certain non-storm water discharges may be necessary for the completion of construction projects. 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 dewatering, and other discharges not subject to a separate general NPDES permit adopted by a region. Therefore this General Permit authorizes such discharges provided they meet the following conditions.

These authorized non-storm water discharges must:

1. be infeasible to eliminate;
2. comply with BMPs as described in the SWPPP;
3. filter or treat, using appropriate technology, all dewatering discharges from sedimentation basins;
4. meet the NALs for pH and turbidity; and
5. not cause or contribute to a violation of water quality standards.

Additionally, authorized non-storm water discharges must not be used to clean up failed or inadequate construction or post-construction BMPs designed to keep materials onsite. Authorized non-storm water dewatering discharges may require a permit because some Regional Water Boards have adopted General Permits for dewatering discharges.

This General Permit prohibits the discharge of storm water that causes or threatens to cause pollution, contamination, or nuisance.

## **F. Effluent Standards for All Types of Discharges**

### **1. Technology-Based Effluent Limitations**

Permits for storm water discharges associated with construction activity must meet all applicable provisions of Sections 301 and 402 of the CWA. These provisions require controls of pollutant discharges that utilize best available technology economically achievable (BAT) for toxic pollutants and non conventional pollutants and best conventional pollutant control technology (BCT) for conventional pollutants. Additionally, these provisions require controls of pollutant discharges to reduce pollutants and any more stringent controls necessary to meet water quality standards. The USEPA has already established such limitations, known as effluent limitation guidelines (ELGs), for some industrial categories. This is not the case with construction discharges. In instances where there are no ELGs the permit writer is to use best professional judgment (BPJ) to establish requirements that the discharger must meet using BAT/BCT technology. This General Permit contains only narrative effluent limitations and does not contain numeric effluent limitations, except for Active Treatment Systems (ATS).

Order No. 2009-0009-DWQ, as originally adopted by the State Water Board on September 2, 2009, contained numeric effluent limitations for pH (within the range of 6.0 and 9.0 pH units) and turbidity (500 NTU) that applied only to Risk Level 3 and LUP Type 3 construction sites. The State Water Board adopted the numeric effluent limitations as technology-based effluent limitations based upon its best professional judgment. The California Building Industry Association, the Building Industry Legal Defense

Foundation, and the California Business Properties Association (petitioners) challenged Order No. 2009-0009-DWQ in *California Building Industry Association et al. v. State Water Resources Control Board*. On December 27, 2011, the Superior Court issued a judgment and writ of mandamus. The Superior Court ruled in favor of the State Water Board on almost all of the issues the petitioners raised, but the Superior Court invalidated the numeric effluent limitations for pH and turbidity for Risk Level 3 and LUP Type 3 sites because it determined that the State Water Board did not have sufficient BMP performance data to support those numeric effluent limitations. Therefore, the Superior Court concluded that the State Water Board did not comply with the federal regulations that apply to the use of best professional judgment. In invalidating the numeric effluent limitations, the Superior Court also suspended two ancillary requirements (a compliance storm event provision and receiving water monitoring at Risk Level 3 and LUP Type 3 sites that violated the numeric effluent limitations) that related solely to the invalidated numeric effluent limitations.

As a result of the Superior Court's writ of mandamus, this Order no longer contains numeric effluent limitations for pH and turbidity, except for ATS. In addition, as a result of the Superior Court's writ of mandamus, the receiving water monitoring requirements for Risk Level 3 and LUP Type 3 sites were suspended until the State Water Board amended this Order to restore the receiving water monitoring requirements. As amended, this Order now requires Risk Level 3 and LUP Type 3 Dischargers with direct discharges to surface waters to conduct receiving water monitoring whenever their effluent exceeds specified receiving water monitoring triggers. The receiving water monitoring triggers were established at the same levels as the previous numeric effluent limitations (effluent pH outside the range of 6.0 and 9.0 pH units or turbidity exceeding 500 NTU). In restoring the receiving water monitoring requirements, the State Water Board determined that it was appropriate to require receiving water monitoring for these types of sites with direct discharges to surface waters that exceeded the receiving water monitoring triggers under any storm event scenarios, because these sites represent the highest threat to receiving water quality. An exceedance of a receiving water monitoring trigger does not constitute a violation of this General Permit. These receiving water monitoring requirements take effect on the effective date of the amendment to this Order.

BAT/BCT technologies not only include passive systems such as conventional runoff and sediment control, but also treatment systems such as coagulation/flocculation using sand filtration, when appropriate. Such technologies allow for effective treatment of soil particles less 0.02 mm (medium silt) in diameter. The discharger must install structural-controls, as necessary, such as erosion and sediment controls that meet BAT and BCT to achieve compliance with water quality standards. The narrative effluent limitations constitute compliance with the requirements of the CWA.

Because the permit is an NPDES permit, there is no legal requirement to address the factors set forth in Water Code sections 13241 and 13263, unless the permit is more stringent than what federal law requires. (See *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 618, 627.) None of the requirements in this permit are more stringent than the minimum federal requirements, which include technology-based requirements achieving BAT/BCT and strict compliance with water quality standards. The inclusion of numeric effluent limitations (NELs) in the permit for Active Treatment Systems does not cause the permit to be more stringent than current federal law. NELs and best management practices are simply two different methods of achieving the same federal requirement: strict compliance with state water quality standards. Federal law authorizes both narrative and numeric effluent limitations to meet state water quality standards. The use of NELs to achieve compliance with water quality standards is not a more stringent requirement than the use of BMPs. (State Water Board Order No. WQ 2006-0012 (*Boeing*)). Accordingly, the State Water Board does not need to take into account the factors in Water Code sections 13241 and 13263.

The State Water Board has concluded that the establishment of BAT/BCT will not create or aggravate other environmental problems through increases in air pollution, solid waste generation, or energy consumption.—While there may be a slight increase in non-water quality impacts due to the implementation of additional monitoring or the construction of additional BMPs, these impacts will be negligible in comparison with the construction activities taking place on site and would be justified by the water quality benefits associated with compliance.



## **pH Receiving Water Monitoring Trigger**

Given the potential contaminants, the minimum standard method for control of pH in runoff requires the use of preventive measures such as avoiding concrete pours during rainy weather, covering concrete and directing flow away from fresh concrete if a pour occurs during rain, covering scrap drywall and stucco materials when stored outside and potentially exposed to rain, and other housekeeping measures. If necessary, pH-impaired storm water from construction sites can be treated in a filter or settling pond or basin, with additional natural or chemical treatment required to meet pH limits set forth in this permit. The basin or pond acts as a collection point and holds storm water for a sufficient period for the contaminants to be settled out, either naturally or artificially, and allows any additional treatment to take place. The State Water Board considers these techniques to be equivalent to BCT. In determining the pH concentration trigger for discharges, the State Water Board used BPJ to set these limitations.

The chosen trigger was established by calculating three standard deviations above and below the mean pH of runoff from highway construction sites<sup>7</sup> in California. Proper implementation of BMPs should result in discharges that are within the range of 6.0 to 9.0 pH Units.

## **Turbidity Receiving Water Monitoring Trigger**

The Turbidity receiving water monitoring trigger of 500 NTU is a technology-based trigger and was developed using three different analyses aimed at finding the appropriate threshold to set the technology-based limit to ensure environmental protection, effluent quality and cost-effectiveness. The analyses fell into three, main types: (1) an ecoregion-specific dataset developed by Simon et. al. (2004)<sup>8</sup>; (2) Statewide Regional Water Quality Control Board enforcement data; and (3) published, peer-reviewed studies and reports on in-situ performance of best management practices in terms of erosion and sediment control on active construction sites.

A 1:3 relationship between turbidity (expressed as NTU) and suspended sediment concentration (expressed as mg/L) is assumed based on a review of suspended sediment and turbidity data from three gages used in the USGS National Water Quality Assessment Program:

USGS 11074000 SANTA ANA R BL PRADO DAM CA  
USGS 11447650 SACRAMENTO R A FREEPORT CA  
USGS 11303500 SAN JOAQUIN R NR VERNALIS CA

The receiving water monitoring trigger represents staff determination that the trigger value is the most practicable based on available data. The turbidity receiving water monitoring trigger represents a bridge between the narrative effluent limitations and receiving water limitations. To support this receiving water monitoring trigger, State Water Board staff analyzed construction site discharge information (monitoring data, estimates) and receiving water monitoring information.

Since the turbidity receiving water monitoring trigger represents an appropriate threshold level expected at a site, compliance with this value does not necessarily represent compliance with either the narrative effluent limitations (as enforced through the BAT/BCT standard) or the receiving water limitations. In the San Diego region, some inland surface waters have a receiving water objective for turbidity equal to 20 NTU. Obviously a discharge up to, but not exceeding, the turbidity receiving water monitoring trigger of

---

<sup>7</sup> Caltrans Construction Sites Runoff Characterization Study, 2002. Available at: <http://www.dot.ca.gov/hq/env/stormwater/pdf/CTSW-RT-02-055.pdf>.

500 NTU may still cause or contribute to the exceedance of the 20 NTU standard. Most of the waters of the State are protected by turbidity objectives based on background conditions.

Table 1 - Regional Water Board Basin Plans, Water Quality Objectives for Turbidity

REGIONAL WATER BOARD	WQ Objective	Background/Natural Turbidity	Maximum Increase
1	Based on background	All levels	20%
2	Based on background	> 50 NTU	10%
3	Based on background	0-50 JTU 50-100 JTU > 100 JTU	20% 10 NTU 10%
4	Based on background	0-50 NTU > 50 NTU	20% 10%
5	Based on background	0-5 NTU 5-50 NTU 50-100 NTU >100 NTU	1 NTU 20% 10 NTU 10%
6	Based on background	All levels	10%
7	Based on background	N/A	N/A
8	Based on background	0-50 NTU 50-100 NTU >100 NTU	20% 10 NTU 10%
9	Inland Surface Waters, 20 NTU  All others, based on background	  0-50 NTU 50-100 NTU >100 NTU	  20% 10 NTU 10%

Table 2 shows the suspended sediment concentrations at the 1.5 year flow recurrence interval for the 12 ecoregions in California from Simon et. al (2004).

Table 2 - Results of Ecoregion Analysis

Ecoregion	Percent of California Land Area	Median Suspended Sediment Concentration (mg/L)
1	9.1	874
4	0.2	120
5	8.8	35.6
6	20.7	1530
7	7.7	122
8	3.0	47.4
9	9.4	284
13	5.2	143
14	21.7	5150
78	8.1	581
80	2.4	199
81	3.7	503
Area-weighted average		1633

If a 1:3 relationship between turbidity and suspended sediment is assumed, the median turbidity is 544 NTU.

The following table is composed of turbidity readings measured in NTUs from administrative civil liability (ACL) actions for construction sites from 2003 - 2009. This data was derived from the complete listing of construction-related ACLs for the six year period. All ACLs were reviewed and those that included turbidimeter readings at the point of storm water discharge were selected for this dataset.

Table 3 – ACL Sampling Data taken by Regional Water Board Staff

WDID#	Region	Discharger	Turbidity (NTU)
5S34C331884	5S	Bradshaw Interceptor Section 6B	1800
5S05C325110	5S	Bridalwood Subdivision	1670
5S48C336297	5S	Cheyenne at Browns Valley	1629
5R32C314271	5R	Grizzly Ranch Construction	1400
6A090406008	6T	El Dorado County Department of Transportation, Angora Creek	97.4
5S03C346861	5S	TML Development, LLC	1600
6A31C325917	6T	Northstar Village	See Subdata Set

Subdata Set - Turbidity for point of storm water runoff discharge at Northstar Village

Date	Turbidity (NTU)	Location
10/5/2006	900	Middle Martis Creek
11/2/2006	190	Middle Martis Creek
01/04/2007	36	West Fork, West Martis Creek
02/08/2007	180	Middle Martis Creek
02/09/2007	130	Middle Martis Creek
02/09/2007	290	Middle Martis Creek
02/09/2007	100	West Fork, West Martis Creek
02/10/2007	28	Middle Martis Creek
02/10/2007	23	Middle Martis Creek
02/10/2007	32	Middle Martis Creek
02/10/2007	12	Middle Martis Creek
02/10/2007	60	West Fork, West Martis Creek
02/10/2007	34	West Fork, West Martis Creek

A 95% confidence interval for mean turbidity in an ACL order was constructed. The data set used was a small sample size, so the 500 NTU (the value derived as the receiving water monitoring trigger for this General Permit) needed to be verified as a possible population mean. In this case, the population refers to a hypothetical population of turbidity measurements of which our sample of 20 represents. A t-distribution was assumed due to the small sample size:

<p><b>Mean:</b> 512.23 NTU Standard Deviation: 686.85 <b>Margin of Error:</b> 321.45 Confidence Interval: 190.78 NTU (Low) 833.68 NTU (High)</p>
--

Based on a constructed 95% confidence interval, an ACL order turbidity measurement will be between 190.78 – 833.68 NTU. 500 NTU falls within this range. Using the same data set, a small-sample hypothesis test was also performed to test if the ACL turbidity data set contains enough information to cast doubt on choosing a 500 NTU as a mean. 500 NTU was again chosen due to its proposed use as an acceptable value. The test was carried out using a 95% confidence interval. Results indicated that the ACL turbidity data set *does not* contain significant sample evidence to reject the claim of 500 NTU as an acceptable mean for the ACL turbidity population.

There are not many published, peer-reviewed studies and reports on in-situ performance of best management practices in terms of erosion and sediment control on active construction sites. The most often cited study is a report titled, “Improving the Cost Effectiveness of Highway Construction Site Erosion and Pollution Control” (Horner, Guedry, and Kortenof 1990, <http://www.wsdot.wa.gov/Research/Reports/200/200.1.htm>). In a comment letter summarizing this report sent to the State Water Board, the primary author, Dr. Horner, states:

“The most effective erosion control product was wood fiber mulch applied at two different rates along with a bonding agent and grass seed in sufficient time before the tests to achieve germination. Plots treated in this way reduced influent turbidity by more than 97 percent and discharged effluent exhibiting mean and maximum turbidity values of 21 and 73 NTU, respectively. Some other mulch and blanket materials performed nearly as well. These tests demonstrated the control ability of widely available BMPs over a very broad range of erosion potential.”

Other technologies studied in this report produced effluent quality at or near 100 NTU. It is the BPJ of the State Water Board staff that erosion control, while preferred, is not always an option on construction sites and that technology performance in a controlled study showing effluent quality directly leaving a BMP is always easier and cheaper to control than effluent being discharged from the project (edge of property, etc.). As a result, it is the BPJ of the State Water Board staff that it is not cost effective or feasible, at this time, for all risk level and type 3 sites in California to achieve effluent discharges with turbidity values that are less than 100 NTU.

To summarize, the analysis showed that: (1) results of the Simon et. al dataset reveals turbidity values in background receiving water in California’s ecoregions range from 16 NTU to 1716 NTU (with a mean of 544 NTU); (2) based on a constructed 95% confidence interval, construction sites will be subject to administrative civil liability (ACL) when their turbidity measurement falls between 190.78 – 833.68 NTU; and (3) sites with highly controlled discharges employing and maintaining good erosion control practices can discharge effluent from the BMP with turbidity values less than 100 NTU. State Water Board staff has determined, using its BPJ, that it is most cost effective to set the receiving water monitoring trigger for turbidity at 500 NTU.

#### **i. Compliance Storm Event**

While this General Permit no longer contains “compliance storm event” exceptions from technology-based NELs, the “compliance storm event” exception from the ATS NELs remain in effect. See Section K of this Fact Sheet, and Attachment F of this General Permit for more information.

#### **a. TMDLs and Waste Load Allocations**

Dischargers located within the watershed of a CWA § 303(d) impaired water body, for which a TMDL for sediment has been adopted by the Regional Water Board or USEPA, must comply with the approved TMDL if it identifies “construction activity” or land disturbance as a source of sediment. If it does, the

TMDL should include a specific waste load allocation for this activity/source. The discharger, in this case, may be required by a separate Regional Water Board order to implement additional BMPs, conduct additional monitoring activities, and/or comply with an applicable waste load allocation and implementation schedule. If a specific waste load allocation has been established that would apply to a specific discharge, the Regional Water Board may adopt an order requiring specific implementation actions necessary to meet that allocation. In the instance where an approved TMDL has specified a general waste load allocation to construction storm water discharges, but no specific requirements for construction sites have been identified in the TMDL, dischargers must consult with the state TMDL authority<sup>9</sup> to confirm that adherence to a SWPPP that meets the requirements of the General Permit will be consistent with the approved TMDL.

## 2. Determining Compliance with Effluent Standards

### a. Technology-Based Numeric Action Levels (NALs)

This General Permit contains technology-based NALs for pH and turbidity, and requirements for effluent monitoring at all Risk level 2 & 3, and LUP Type 2 & 3 sites. Numeric action levels are essentially numeric benchmark values for certain parameters that, if exceeded in effluent sampling, trigger the discharger to take actions. Exceedance of an NAL does not itself constitute a violation of the General Permit. If the discharger fails to take the corrective action required by the General Permit, though, that may constitute a violation.

The primary purpose of NALs is to assist dischargers in evaluating the effectiveness of their on-site measures. Construction sites need to employ many different systems that must work together to achieve compliance with the permit's requirements. The NALs chosen should indicate whether the systems are working as intended.

Another purpose of NALs is to provide information regarding construction activities and water quality impacts. This data will provide the State and Regional Water Boards and the rest of the storm water community with more information about levels and types of pollutants present in runoff and how effective the dischargers BMPs are at reducing pollutants in effluent. The State Water Board also hopes to learn more about the linkage between effluent and receiving water quality. In addition, these requirements will provide information on the mechanics needed to establish compliance monitoring programs at construction sites in future permit deliberations.

#### i. *pH*

The chosen limits were established by calculating one standard deviation above and below the mean pH of runoff from highway construction sites<sup>10</sup> in California. Proper implementation of BMPs should result in discharges that are within the range of 6.5 to 8.5 pH Units.

---

<sup>9</sup> <http://www.waterboards.ca.gov/tmdl/tmdl.html>.

<sup>10</sup> Caltrans Construction Sites Runoff Characterization Study, 2002. Available at: <http://www.dot.ca.gov/hq/env/stormwater/pdf/CTSW-RT-02-055.pdf>.

The Caltrans study included 33 highway construction sites throughout California over a period of four years, which included 120 storm events. All of these sites had BMPs in place that would be generally implemented at all types of construction sites in California.

## ii. *Turbidity*

BPJ was used to develop an NAL that can be used as a learning tool to help dischargers improve their site controls, and to provide meaningful information on the effectiveness of storm water controls. A statewide turbidity NAL has been set at 250 NTU.

## **G. Receiving Water Limitations**

Construction-related activities that cause or contribute to an exceedance of water quality standards must be addressed. The dynamic nature of construction activity gives the discharger the ability to quickly identify and monitor the source of the exceedances. This is because when storm water mobilizes sediment, it provides visual cues as to where corrective actions should take place and how effective they are once implemented.

This General Permit requires that storm water discharges and authorized non-storm water discharges must not contain pollutants that cause or contribute to an exceedance of any applicable water quality objective or water quality standards. The monitoring requirements in this General Permit for sampling and analysis procedures will help determine whether BMPs installed and maintained are preventing pollutants in discharges from the construction site that may cause or contribute to an exceedance of water quality standards.

Water quality standards consist of designated beneficial uses of surface waters and the adoption of ambient criteria necessary to protect those uses. When adopted by the State Water Board or a Regional Water Board, the ambient criteria are termed “water quality objectives.” If storm water runoff from construction sites contains pollutants, there is a risk that those pollutants could enter surface waters and cause or contribute to an exceedance of water quality standards. For that reason, dischargers should be aware of the applicable water quality standards in their receiving waters. (The best method to ensure compliance with receiving water limitations is to implement BMPs that prevent pollutants from contact with storm water or from leaving the construction site in runoff.)

In California, water quality standards are published in the Basin Plans adopted by each Regional Water Board, the California Toxics Rule (CTR), the National Toxics Rule (NTR), and the Ocean Plan.

Dischargers can determine the applicable water quality standards by contacting Regional Water Board staff or by consulting one of the following sources. The actual Basin Plans that contain the water quality standards can be viewed at the website of the appropriate Regional Water Board. (<http://www.waterboards.ca.gov/regions.html>), the State Water Board site for statewide plans (<http://www.waterboards.ca.gov/plnspols/index.html>), or the USEPA regulations for the NTR and CTR (40 C.F.R. §§ 131.36-38). Basin Plans and statewide plans are also available by mail from the appropriate Regional Water Board or the State Water Board. The USEPA regulations are available at <http://www.epa.gov/>. Additional information concerning water quality standards can be accessed through [http://www.waterboards.ca.gov/stormwtr/gen\\_const.html](http://www.waterboards.ca.gov/stormwtr/gen_const.html).

## **H. Training Qualifications and Requirements**

The Blue Ribbon Panel (BRP) made the following observation about the lack of industry-specific training requirements:

“Currently, there is no required training or certification program for contractors, preparers of soil erosion and sediment control Storm Water Pollution Prevention Plans, or field inspectors.”

Order 99-08-DWQ required that all dischargers train their employees on how to comply with the permit, but it did not specify a curriculum or certification program. This has resulted in inconsistent implementation by all affected parties - the dischargers, the local governments where the construction activity occurs, and the regulators required to enforce 99-08-DWQ. This General Permit requires Qualified SWPPP Developers and practitioners to obtain appropriate training, and makes this curriculum mandatory two years after adoption, to allow time for course completion. The State and Regional Water Board are working with many stakeholders to develop the curriculum and mechanisms needed to develop and deliver the courses.

To ensure that the preparation, implementation, and oversight of the SWPPP is sufficient for effective pollution prevention, the Qualified SWPPP Developer and Qualified SWPPP Practitioners responsible for creating, revising, overseeing, and implementing the SWPPP must attend a State Water Board-sponsored or approved Qualified SWPPP Developer and Qualified SWPPP Practitioner training course.

## I. Sampling, Monitoring, Reporting and Record Keeping

### 1. Traditional Construction Monitoring Requirements

This General Permit requires visual monitoring at all sites, and effluent water quality at all Risk Level 2 & 3 sites. It requires receiving water monitoring at some Risk Level 3 sites. All sites are required to submit annual reports, which contain various types of information, depending on the site characteristics and events. A summary of the monitoring and reporting requirements is found in Table 4.

**Table 4 - Required Monitoring Elements for Risk Levels**

	Visual	Non-visible Pollutant	Effluent	Receiving Water
Risk Level 1			where applicable	not required
Risk Level 2			pH, turbidity	not required
Risk Level 3	three types required for all Risk Levels: non-storm water, pre-rain and post-rain	As needed for all Risk Levels (see below)	pH, turbidity	(if Receiving Water Monitoring Trigger exceeded) pH, turbidity and SSC. Bioassessment for sites 30 acres or larger.

#### a. Visual

All dischargers are required to conduct quarterly, non-storm water visual inspections. For these inspections, the discharger must visually observe each drainage area for the presence of (or indications of prior) unauthorized and authorized non-storm water discharges and their sources. For storm-related inspections, dischargers must visually observe storm water discharges at all discharge locations within two business days after a qualifying event. For this requirement, a qualifying rain event is one producing precipitation of ½ inch or more of discharge. Dischargers must conduct a post-storm event inspection to (1) identify whether BMPs were adequately designed, implemented, and effective, and (2) identify any additional BMPs necessary and revise the SWPPP accordingly. Dischargers must maintain on-site records of all visual observations, personnel performing the observations, observation dates, weather conditions, locations observed, and corrective actions taken in response to the observations.

## **b. Non-Visible Pollutant Monitoring**

This General Permit requires that all dischargers develop a sampling and analysis strategy for monitoring pollutants that are not visually detectable in storm water. Monitoring for non-visible pollutants must be required at any construction site when the exposure of construction materials occurs and where a discharge can cause or contribute to an exceedance of a water quality objective.

Of significant concern for construction discharges are the pollutants found in materials used in large quantities at construction sites throughout California and exposed throughout the rainy season, such as cement, flyash, and other recycled materials or by-products of combustion. The water quality standards that apply to these materials will depend on their composition. Some of the more common storm water pollutants from construction activity are not CTR pollutants. Examples of non-visible pollutants include glyphosate (herbicides), diazinon and chlorpyrifos (pesticides), nutrients (fertilizers), and molybdenum (lubricants). The use of diazinon and chlorpyrifos is a common practice among landscaping professionals and may trigger sampling and analysis requirements if these materials come into contact with storm water. High pH values from cement and gypsum, high pH and SSC from wash waters, and chemical/fecal contamination from portable toilets, also are not CTR pollutants. Although some of these constituents do have numeric water quality objectives in individual Basin Plans, many do not and are subject only to narrative water quality standards (i.e. not causing toxicity). Dischargers are encouraged to discuss these issues with Regional Water Board staff and other storm water quality professionals.

The most effective way to avoid the sampling and analysis requirements, and to ensure permit compliance, is to avoid the exposure of construction materials to precipitation and storm water runoff. Materials that are not exposed do not have the potential to enter storm water runoff, and therefore receiving waters sampling is not required. Preventing contact between storm water and construction materials is one of the most important BMPs at any construction site.

Preventing or eliminating the exposure of pollutants at construction sites is not always possible. Some materials, such as soil amendments, are designed to be used in a manner that will result in exposure to storm water. In these cases, it is important to make sure that these materials are applied according to the manufacturer's instructions and at a time when they are unlikely to be washed away. Other construction materials can be exposed when storage, waste disposal or the application of the material is done in a manner not protective of water quality. For these situations, sampling is required unless there is capture and containment of all storm water that has been exposed. In cases where construction materials may be exposed to storm water, but the storm water is contained and is not allowed to run off the site, sampling will only be required when inspections show that the containment failed or is breached, resulting in potential exposure or discharge to receiving waters.

The discharger must develop a list of potential pollutants based on a review of potential sources, which will include construction materials soil amendments, soil treatments, and historic contamination at the site. The discharger must review existing environmental and real estate documentation to determine the potential for pollutants that could be present on the construction site as a result of past land use activities.

Good sources of information on previously existing pollution and past land uses include:

- i. Environmental Assessments;
- ii. Initial Studies;
- iii. Phase 1 Assessments prepared for property transfers; and
- iv. Environmental Impact Reports or Environmental Impact Statements prepared under the requirements of the National Environmental Policy Act or the California Environmental Quality Act.

In some instances, the results of soil chemical analyses may be available and can provide additional information on potential contamination.



The potential pollutant list must include all non-visible pollutants that are known or should be known to occur on the construction site including, but not limited to, materials that:

- i. are being used in construction activities;
- ii. are stored on the construction site;
- iii. were spilled during construction operations and not cleaned up;
- iv. were stored (or used) in a manner that created the potential for a release of the materials during past land use activities;
- v. were spilled during previous land use activities and not cleaned up; or
- vi. were applied to the soil as part of past land use activities.

**C. Effluent Monitoring**

Federal regulations<sup>11</sup> require effluent monitoring for discharges subject to NALs. Subsequently, all Risk Level 2 and 3 dischargers must perform sampling and analysis of effluent discharges to characterize discharges associated with construction activity from the entire area disturbed by the project. Dischargers must collect samples of stored or contained storm water that is discharged subsequent to a storm event producing precipitation of ½ inch or more at the time of discharge.

**Table 5 - Storm Water Effluent Monitoring Requirements by Risk Level**

	Frequency	Effluent Monitoring (Section E, below)
Risk Level 1	when applicable	non-visible pollutant parameters (if applicable)
Risk Level 2	Minimum of 3 samples per day during qualifying rain event characterizing discharges associated with construction activity from the entire project disturbed area.	pH, turbidity, and non-visible pollutant parameters (if applicable)
Risk Level 3	Minimum of 3 samples per day during qualifying rain event characterizing discharges associated with construction activity from the entire project disturbed area.	pH, turbidity, and non-visible pollutant parameters if applicable

Risk Level 1 dischargers must analyze samples for:

- i. any parameters indicating the presence of pollutants identified in the pollutant source assessment required in Attachment C contained in the General Permit.

---

<sup>11</sup> 40 C.F.R. § 122.44.

Risk Level 2 dischargers must analyze samples for:

- i. pH and turbidity;
- ii. any parameters indicating the presence of pollutants identified in the pollutant source assessment required in Attachment D contained in the General Permit, and
- iii. any additional parameters for which monitoring is required by the Regional Water Board.

Risk Level 3 dischargers must analyze samples for:

- i. pH, turbidity;
- ii. any parameters indicating the presence of pollutants identified in the pollutant source assessment required in Attachment E contained in the General Permit, and
- iii. any additional parameters for which monitoring is required by the Regional Water Board.

## **2. Linear Monitoring and Sampling Requirements**

Attachment A, establishes minimum monitoring and reporting requirements for all LUPs. It establishes different monitoring requirements depending on project complexity and risk to water quality. The monitoring requirements for Type 1 LUPs are less than Type 2 & 3 projects because Type 1 projects have a lower potential to impact water quality.

A discharger shall prepare a monitoring program prior to the start of construction and immediately implement the program at the start of construction for LUPs. The monitoring program must be implemented at the appropriate level to protect water quality at all times throughout the life of the project.

### **a. Type 1 LUP Monitoring Requirements**

A discharger must conduct daily visual inspections of Type 1 LUPs during working hours while construction activities are occurring. Inspections are to be conducted by qualified personnel and can be conducted in conjunction with other daily activities. Inspections will be conducted to ensure the BMPs are adequate, maintained, and in place at the end of the construction day. The discharger will revise the SWPPP, as appropriate, based on the results of the daily inspections. Inspections can be discontinued in non-active construction areas where soil disturbing activities have been completed and final stabilization has been achieved (e.g., trench has been paved, substructures have been installed, and successful final vegetative cover or other stabilization criteria have been met).

A discharger shall implement the monitoring program for inspecting Type 1 LUPs. This program requires temporary and permanent stabilization BMPs after active construction is completed. Inspection activities will continue until adequate permanent stabilization has been established and will continue in areas where re-vegetation is chosen until minimum vegetative coverage has been established. Photographs shall be taken during site inspections and submitted to the State Water Board.

### **b. Type 2 & 3 LUP Monitoring Requirements**

A discharger must conduct daily visual inspections of Type 2 & 3 LUPs during working hours while construction activities are occurring. Inspections are to be conducted by qualified personnel and can be in conjunction with other daily activities.

All dischargers of Type 2 & 3 LUPs are required to conduct inspections by qualified personnel of the construction site during normal working hours prior to all anticipated storm events and after actual storm events. During extended storm events, the discharger shall conduct inspections during normal working hours for each 24-hour period. Inspections can be discontinued in non-active construction areas where soil disturbing activities have been completed and final stabilization has been achieved (e.g., trench has been paved, substructures installed, and successful vegetative cover or other stabilization criteria have been met).

The goals of these inspections are (1) to identify areas contributing to a storm water discharge; (2) to evaluate whether measures to reduce pollutant loadings identified in the SWPPP are adequate and properly installed and functioning in accordance with the terms of the General Permit; and (3) to determine whether additional control practices or corrective maintenance activities are needed. Equipment, materials, and workers must be available for rapid response to failures and emergencies. All corrective maintenance to BMPs shall be performed as soon as possible, depending upon worker safety.

All dischargers shall develop and implement a monitoring program for inspecting Type 2 & 3 LUPs that require temporary and permanent stabilization BMPs after active construction is completed. Inspections will be conducted to ensure the BMPs are adequate and maintained. Inspection activities will continue until adequate permanent stabilization has been established and will continue in areas where revegetation is chosen until minimum vegetative coverage has been established.

A log of inspections conducted before, during, and after the storm events must be maintained in the SWPPP. The log will provide the date and time of the inspection and who conducted the inspection. Photographs must be taken during site inspections and submitted to the State Water Board.

### **C. Sampling Requirements for all LUP Project Types**

LUPs are also subject to sampling and analysis requirements for visible pollutants (i.e., sedimentation/siltation, turbidity) and for non-visible pollutants.

Sampling for visible pollutants is required for Type 2 & 3 LUPs.

Non-visible pollutant monitoring is required for pollutants associated with construction sites and activities that (1) are not visually detectable in storm water discharges, and (2) are known or should be known to occur on the construction site, and (3) could cause or contribute to an exceedance of water quality objectives in the receiving waters. Sample collection for non-visible pollutants must only be required (1) during a storm event when pollutants associated with construction activities may be discharged with storm water runoff due to a spill, or in the event there was a breach, malfunction, failure, and/or leak of any BMP, and (2) when the discharger has failed to adequately clean the area of material and pollutants. Failure to implement appropriate BMPs will trigger the same sampling requirements as those required for a breach, malfunction and/or leak, or when the discharger has failed to implement appropriate BMPs prior to the next storm event.

Additional monitoring parameters may be required by the Regional Water Boards.

It is not anticipated that many LUPs will be required to collect samples for pollutants not visually detected in runoff due to the nature and character of the construction site and activities as previously described in this fact sheet. Most LUPs are constructed in urban areas with public access (e.g., existing roadways, road shoulders, parking areas, etc.). This raises a concern regarding the potential contribution of pollutants from vehicle use and/or from normal activities of the public (e.g., vehicle washing, landscape fertilization, pest spraying, etc.) in runoff from the project site. Since the dischargers are not the land owners of the project area and are not able to control the presence of these pollutants in the storm water that runs through their projects, it is not the intent of this General Permit to require dischargers to sample for these pollutants. This General Permit does not require the discharger to sample for these types of pollutants except where the discharger has brought materials onsite that contain these pollutants and when a condition (e.g., breach, failure, etc.) described above occurs.

### 3. Receiving Water Monitoring

In order to ensure that receiving water limitations are met, discharges subject to receiving water monitoring triggers (i.e., Risk Level 3 and LUP Type 3 sites) or numeric effluent limitations (i.e., Risk Level 3 and LUP Type 3 sites utilizing ATS with direct discharges into receiving waters) must also monitor the downstream receiving water(s) for turbidity, SSC, and pH (if applicable) when a receiving water monitoring trigger or NEL is exceeded.

#### a. Bioassessment Monitoring

This General Permit requires a bioassessment of receiving waters for dischargers of Risk Level 3 or LUP Type 3 construction projects equal to or larger than 30 acres with direct discharges into receiving waters. Benthic macroinvertebrate samples will be taken upstream and downstream of the site's discharge point in the receiving water. Bioassessments measure the quality of the stream by analyzing the aquatic life present. Higher levels of appropriate aquatic species tend to indicate a healthy stream; whereas low levels of organisms can indicate stream degradation. Active construction sites have the potential to discharge large amounts of sediment and pollutants into receiving waters. Requiring a bioassessment for large project sites, with the most potential to impact water quality, provides a snapshot of the health of the receiving water prior to initiation of construction activities. This snapshot can be used in comparison to the health of the receiving water after construction has commenced.

Each ecoregion (biologically and geographically related area) in the State has a specific yearly peak time where stream biota is in a stable and abundant state. This time of year is called an Index Period. The bioassessment requirements in this General Permit, requires benthic macroinvertebrate sampling within a sites index period. The State Water Board has developed a map designating index periods for the ecoregions in the State (see State Water Board Website).

This General Permit requires the bioassessment methods to be in accordance with the Surface Water Ambient Monitoring Program (SWAMP) in order to provide data consistency within the state as well as generate useable biological stream data.

**Table 6 - Receiving Water Monitoring Requirements**

	Receiving Water Monitoring Parameters
Risk Level 1 /LUP Type 1	not required
Risk Level 2 / LUP Type 2	not required
Risk Level 3 / LUP Type 3	If Receiving Water Monitoring Trigger exceeded: pH (if applicable), turbidity, and SSC. Bioassessment for sites 30 acres or larger.

### 4. Reporting Requirements

#### a. NAL Exceedance Report

All Risk Level 3 and LUP Type 3 dischargers must electronically submit all storm event sampling results to the State And Regional Boards, via the electronic data system, no later than 10 days after the conclusion of the storm event.

#### b. Annual Report

All dischargers must prepare and electronically submit an annual report no later than September 1 of each year using the Storm water Multi-Application Reporting and Tracking System (SMARTS). The

Annual Report must include a summary and evaluation of all sampling and analysis results, original laboratory reports, chain of custody forms, a summary of all corrective actions taken during the compliance year, and identification of any compliance activities or corrective actions that were not implemented.

## 5. Record Keeping

According to 40 C.F.R. Parts 122.21(p) and 122.41(j), the discharger is required to retain paper or electronic copies of all records required by this General Permit for a period of at least three years from the date generated or the date submitted to the State Water Board or Regional Water Boards. A discharger must retain records for a period beyond three years as directed by Regional Water Board.

## J. Risk Determination

### 1. Traditional Projects

#### a. Overall Risk Determination

There are two major requirements related to site planning and risk determination in this General Permit. The project's overall risk is broken up into two elements – (1) project sediment risk (the relative amount of sediment that can be discharged, given the project and location details) and (2) receiving water risk (the risk sediment discharges pose to the receiving waters).

Project Sediment Risk:

Project Sediment Risk is determined by multiplying the R, K, and LS factors from the Revised Universal Soil Loss Equation (RUSLE) to obtain an estimate of project-related bare ground soil loss expressed in tons/acre. The RUSLE equation is as follows:

$$A = (R)(K)(LS)(C)(P)$$

Where: A = the rate of sheet and rill erosion

R = rainfall-runoff erosivity factor

K = soil erodibility factor

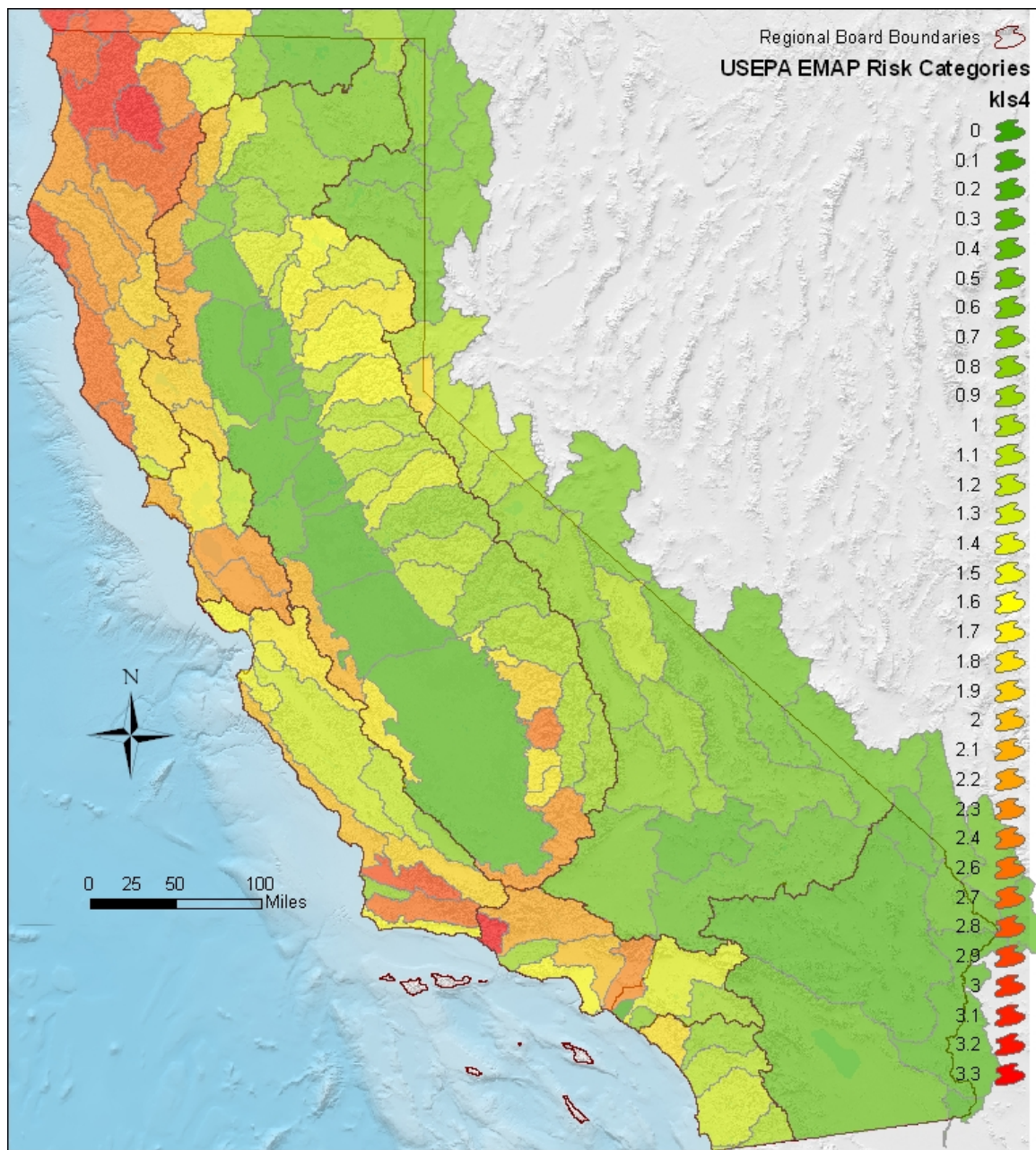
LS = length-slope factor

C = cover factor (erosion controls)

P = management operations and support practices (sediment controls)

The C and P factors are given values of 1.0 to simulate bare ground conditions.

There is a map option and a manual calculation option for determining soil loss. For the map option, the R factor for the project is calculated using the online calculator at <http://cfpub.epa.gov/npdes/stormwater/LEW/lewCalculator.cfm>. The product of K and LS are shown on Figure 1. To determine soil loss in tons per acre, the discharger multiplies the R factor times the value for K times LS from the map.



State Water Resources Control Board, January 15, 2008

**Figure 1 -Statewide Map of K \* LS**

For the manual calculation option, the R factor for the project is calculated using the online calculator at <http://cfpub.epa.gov/npdes/stormwater/LEW/lewCalculator.cfm>. The K and LS factors are determined using Appendix 1.

Soil loss of less than 15 tons/acre is considered **low** sediment risk.  
 Soil loss between 15 and 75 tons/acre is **medium** sediment risk.  
 Soil loss over 75 tons/acre is considered **high** sediment risk.

The soil loss values and risk categories were obtained from mean and standard deviation RKLS values from the USEPA EMAP program. High risk is the mean RKLS value plus two standard deviations. Low risk is the mean RKLS value minus two standard deviations.

**Receiving Water Risk:**

Receiving water risk is based on whether a project drains to a sediment-sensitive waterbody. A sediment-sensitive waterbody is either

- on the most recent 303d list for waterbodies impaired for sediment;
- has a USEPA-approved Total Maximum Daily Load implementation plan for sediment; **or**
- has the beneficial uses of COLD, SPAWN, and MIGRATORY.

A project that meets at least one of the three criteria has a high receiving water risk. A list of sediment-sensitive waterbodies will be posted on the State Water Board's website. It is anticipated that an interactive map of sediment sensitive water bodies in California will be available in the future.

The Risk Levels have been altered by eliminating the possibility of a Risk Level 4, and expanding the constraints for Risk Levels 1, 2, and 3. Therefore, projects with high receiving water risk and high sediment risk will be considered a Risk Level 3 risk to water quality.

In response to public comments, the Risk Level requirements have also been changed such that Risk Level 1 projects will be subject to minimum BMP and visual monitoring requirements, Risk Level 2 projects will be subject to NALs and some additional monitoring requirements, and Risk Level 3 projects will be subject to NALs, and more rigorous monitoring requirements such as receiving water monitoring and in some cases bioassessment.

**Table 7 - Combined Risk Level Matrix**

Combined Risk Level Matrix			
Receiving Water Risk		Sediment Risk	
		Low	Medium
	Low	Level 1	Level 2
High	Level 2		Level 3

**b. Effluent Standards**

All dischargers are subject to the narrative effluent limitations specified in the General Permit. The narrative effluent limitations require storm water discharges associated with construction activity to meet all applicable provisions of Sections 301 and 402 of the CWA. These provisions require controls of pollutant discharges that utilize BAT and BCT to reduce pollutants and any more stringent controls necessary to meet water quality standards.

Risk Level 2 dischargers that pose a medium risk to water quality are subject to technology-based NALs for pH and turbidity. Risk Level 3 dischargers that pose a high risk to water quality are also subject to technology-based NALs for pH and turbidity.

### **C. Good Housekeeping**

Proper handling and managing of construction materials can help minimize threats to water quality. The discharger must consider good housekeeping measures for: construction materials, waste management, vehicle storage & maintenance, landscape materials, and potential pollutant sources. Examples include; conducting an inventory of products used, implementing proper storage & containment, and properly cleaning all leaks from equipment and vehicles.

### **d. Non-Storm Water Management**

Non-storm water discharges directly connected to receiving waters or the storm drain system have the potential to negatively impact water quality. The discharger must implement measures to control all non-storm water discharges during construction, and from dewatering activities associated with construction. Examples include; properly washing vehicles in contained areas, cleaning streets, and minimizing irrigation runoff.

### **e. Erosion Control**

The best way to minimize the risk of creating erosion and sedimentation problems during construction is to disturb as little of the land surface as possible by fitting the development to the terrain. When development is tailored to the natural contours of the land, little grading is necessary and, consequently, erosion potential is lower.<sup>14</sup> Other effective erosion control measures include: preserving existing vegetation where feasible, limiting disturbance, and stabilizing and re-vegetating disturbed areas as soon as possible after grading or construction activities. Particular attention must be paid to large, mass-graded sites where the potential for soil exposure to the erosive effects of rainfall and wind is great and where there is potential for significant sediment discharge from the site to surface waters. Until permanent vegetation is established, soil cover is the most cost-effective and expeditious method to protect soil particles from detachment and transport by rainfall. Temporary soil stabilization can be the single most important factor in reducing erosion at construction sites. The discharger is required to consider measures such as: covering disturbed areas with mulch, temporary seeding, soil stabilizers, binders, fiber rolls or blankets, temporary vegetation, and permanent seeding. These erosion control measures are only examples of what should be considered and should not preclude new or innovative approaches currently available or being developed. Erosion control BMPs should be the primary means of preventing storm water contamination, and sediment control techniques should be used to capture any soil that becomes eroded.<sup>12</sup>

Risk Level 3 dischargers pose a higher risk to water quality and are therefore additionally required to ensure that post-construction soil loss is equivalent to or less than the pre-construction levels.

### **f. Sediment Control**

Sediment control BMPs should be the secondary means of preventing storm water contamination. When erosion control techniques are ineffective, sediment control techniques should be used to capture any soil that becomes eroded. The discharger is required to consider perimeter control measures such as: installing silt fences or placing straw wattles below slopes. These sediment control measures are only

---

<sup>12</sup> U.S. Environmental Protection Agency. 2007. Developing Your Storm Water Pollution Prevention Plan: A Guide for Construction Sites.



examples of what should be considered and should not preclude new or innovative approaches currently available or being developed.

Because Risk Level 2 and 3 dischargers pose a higher risk to water quality, additional requirements for the application of sediment controls are imposed on these projects. This General Permit also authorizes the Regional Water Boards to require Risk Level 3 dischargers to implement additional site-specific sediment control requirements if the implementation of other erosion or sediment controls are not adequately protecting the receiving waters.

#### **g. Run-on and Runoff Control**

Inappropriate management of run-on and runoff can result in excessive physical impacts to receiving waters from sediment and increased flows. The discharger is required to manage all run-on and runoff from a project site. Examples include: installing berms and other temporary run-on and runoff diversions.

Risk Level 1 dischargers with lower risks to impact water quality are not subject to the run-on and runoff control requirements unless an evaluation deems them necessary or visual inspections show that such controls are required.

#### **h. Inspection, Maintenance and Repair**

All measures must be periodically inspected, maintained and repaired to ensure that receiving water quality is protected. Frequent inspections coupled with thorough documentation and timely repair is necessary to ensure that all measures are functioning as intended.

#### **i. Rain Event Action Plan (REAP)**

A Rain Event Action Plan (REAP) is a written document, specific for each rain event. A REAP should be designed that when implemented it protects all exposed portions of the site within 48 hours of any likely precipitation event forecast of 50% or greater probability.

This General Permit requires Risk Level 2 and 3 dischargers to develop and implement a REAP designed to protect all exposed portions of their sites within 48 hours prior to any likely precipitation event. The REAP requirement is designed to ensure that the discharger has adequate materials, staff, and time to implement erosion and sediment control measures that are intended to reduce the amount of sediment and other pollutants generated from the active site. A REAP must be developed when there is likely a forecast of 50% or greater probability of precipitation in the project area. (The National Oceanic and Atmospheric Administration (NOAA) defines a chance of precipitation as a probability of precipitation of 30% to 50% chance of producing precipitation in the project area.<sup>13</sup> NOAA defines the probability of precipitation (PoP) as the likelihood of occurrence (expressed as a percent) of a measurable amount (0.01 inch or more) of liquid precipitation (or the water equivalent of frozen precipitation) during a specified period of time at any given point in the forecast area.) Forecasts are normally issued for 12-hour time periods. Descriptive terms for uncertainty and aerial coverage are used as follows:

#### **Table 8 -National Oceanic and Atmospheric Administration (NOAA) Definition of Probability of Precipitation (PoP)**

---

<sup>13</sup> <http://www.crh.noaa.gov/lot/severe/wxterms.php>.

PoP	Expressions of Uncertainty	Aerial Coverage
0%	none used	none used
10%	none used	isolated
20%	slight chance	isolated
30-50%	chance	scattered
60-70%	likely	numerous
80-100%	none used	none used

The discharger must obtain the precipitation forecast information from the National Weather Service Forecast Office (<http://www.srh.noaa.gov/>).

## 2. Linear Projects

### a. Linear Risk Determination

LUPs vary in complexity and water quality concerns based on the type of project. This General Permit has varying application requirements based on the project's risk to water quality. Factors that lead to the characterization of the project include location, sediment risk, and receiving water risk.

Based on the location and complexity of a project area or project section area, LUPs are separated into project types. As described below, LUPs have been categorized into three project types.

#### i. *Type 1 LUPs*

Type 1 LUPs are those construction projects where:

- (1) 70 percent or more of the construction activity occurs on a paved surface and where areas disturbed during construction will be returned to preconstruction conditions or equivalent protection established at the end of the construction activities for the day, or
- (2) greater than 30 percent of construction activities occur within the non-paved shoulders or land immediately adjacent to paved surfaces, or where construction occurs on unpaved improved roads, including their shoulders or land immediately adjacent to them where:

Areas disturbed during construction will be returned to pre-construction conditions or equivalent protection established at the end of the construction activities for the day to minimize the potential for erosion and sediment deposition, and

Areas where established vegetation was disturbed during construction will be stabilized and re-vegetated by the end of project. When required, adequate temporary stabilization Best Management Practices (BMPs) will be installed and maintained until vegetation is established to meet minimum cover requirements established in this General Permit for final stabilization.

Type 1 LUPs typically do not have a high potential to impact storm water quality because (1) these construction activities are not typically conducted during a rain event, (2) these projects are normally constructed over a short period of time<sup>14</sup>, minimizing the duration that pollutants could potentially be exposed to rainfall; and (3) disturbed soils such as those from trench excavation are required to be hauled away, backfilled into the trench, and/or covered (e.g., metal plates, pavement, plastic covers over spoil piles) at the end of the construction day.

Type 1 LUPs are determined during the risk assessment found in Attachment A.1 to be 1) low sediment risk and low receiving water risk; 2) low sediment risk and medium receiving water risk; and 3) medium sediment risk and low receiving water risk.

This General Permit requires the discharger to ensure a SWPPP is developed for these construction activities that is specific to project type, location and characteristics.

**ii. Type 2 LUPs:**

Type 2 projects are determined to have a combination of High, Medium, and Low project sediment risk along with High, Medium, and Low receiving water risk. Like Type 1 projects, Type 2 projects are typically constructed over a short period of time. However, these projects have a higher potential to impact water quality because they:

- (1) typically occur outside the more urban/developed areas;
- (2) have larger areas of soil disturbance that are not closed or restored at the end of the day;
- (3) may have onsite stockpiles of soil, spoil and other materials;
- (4) cross or occur in close proximity to a wide variety of sensitive resources that may include, but are not limited to, steep topography and/or water bodies; and
- (5) have larger areas of disturbed soils that may be exposed for a longer time interval before final stabilization, cleanup and/or reclamation occurs.

This General Permit requires the discharger to develop and implement a SWPPP for these construction activities that are specific for project type, location and characteristics.

**iii. Type 3 LUPs:**

---

<sup>14</sup> Short period of time refers to a project duration of weeks to months, but typically less than one year in duration.

Type 3 projects are determined to have a combination of High and Medium project sediment risk along with High and Medium receiving water risk. Similar to Type 2 projects, Type 3 projects have a higher potential to impact water quality because they:

- (1) typically occur outside of the more urban/developed areas;
- (2) have larger areas of soil disturbance that are not closed or restored at the end of the day;
- (3) may have onsite stockpiles of soil, spoil and other materials;
- (4) cross or occur in close proximity to a wide variety of sensitive resources that may include, but are not limited to, steep topography and/or water bodies; and
- (5) have larger areas of disturbed soils that may be exposed for a longer time interval before final stabilization, cleanup and/or reclamation occurs.

This General Permit requires the discharger to develop and implement a SWPPP for these construction activities that are specific for project type, location, and characteristics.

#### **b. Linear Effluent Standards**

All LUPs are subject to the narrative effluent limitations specified in the General Permit.

Type 2 and Type 3 projects are subject to technology-based NALs for pH and turbidity.

#### **c. Linear Good Housekeeping**

Improper use and handling of construction materials could potentially cause a threat to water quality. In order to ensure proper site management of these construction materials, all LUP dischargers must comply with a minimum set of Good Housekeeping measures specified in Attachment A of this General Permit.

#### **d. Linear Non-Storm Water Management**

In order to ensure control of all non-storm water discharges during construction, all LUP dischargers must comply with the Non-Storm Water Management measures specified in Attachment A of this General Permit.

#### **e. Linear Erosion Control**

This General Permit requires all LUP dischargers to implement effective wind erosion control measures, and soil cover for inactive areas. Type 3 LUPs posing a higher risk to water quality are additionally required to ensure the post-construction soil loss is equivalent to or less than the pre-construction levels.

#### **f. Linear Sediment Control**

In order to ensure control and containment of all sediment discharges, all LUP dischargers must comply with the general Sediment Control measures specified in Attachment A or this General Permit. Additional requirements for sediment controls are imposed on Type 2 & 3 LUPs due to their higher risk to water quality.

### **g. Linear Run-on and Runoff Control**

Discharges originating outside of a project's perimeter and flowing onto the property can adversely affect the quantity and quality of discharges originating from a project site. In order to ensure proper management of run-on and runoff, all LUPs must comply with the run-on and runoff control measures specified in Attachment A of this General Permit. Due to the lower risk of impacting water quality, Type 1 LUPs are not required to implement run-on and runoff controls unless deemed necessary by the discharger.

### **h. Linear Inspection, Maintenance and Repair**

Proper inspection, maintenance, and repair activities are important to ensure the effectiveness of on-site measures to control water quality. In order to ensure that inspection, maintenance, and repair activities are adequately performed, the all LUP dischargers are required to comply with the Inspection, Maintenance, and Repair requirements specified in Attachment A of this General Permit.

## **K. ATS<sup>15</sup> Requirements**

There are instances on construction sites where traditional erosion and sediment controls do not effectively control accelerated erosion. Under such circumstances, or under circumstances where storm water discharges leaving the site may cause or contribute to an exceedance of a water quality standard, the use of an Active Treatment System (ATS) may be necessary. Additionally, it may be appropriate to use an ATS when site constraints inhibit the ability to construct a correctly sized sediment basin, when clay and/or highly erosive soils are present, or when the site has very steep or long slope lengths.<sup>16</sup>

Although treatment systems have been in use in some form since the mid-1990s, the ATS industry in California is relatively young, and detailed regulatory standards have not yet been developed. Many developers are using these systems to treat storm water discharges from their construction sites. The new ATS requirements set forth in this General Permit are based on those in place for small wastewater treatment systems, ATS regulations from the Central Valley Regional Water Quality Control Board (September 2005 memorandum "2005/2006 Rainy Season – Monitoring Requirements for Storm Water Treatment Systems that Utilize Chemical Additives to Enhance Sedimentation"), the Construction Storm Water Program at the State of Washington's Department of Ecology, as well as recent advances in technology and knowledge of coagulant performance and aquatic safety.

The effective design of an ATS requires a detailed survey and analysis of site conditions. With proper planning, ATS performance can provide exceptional water quality discharge and prevent significant impacts to surface water quality, even under extreme environmental conditions.

These systems can be very effective in reducing the sediment in storm water runoff, but the systems that use additives/polymers to enhance sedimentation also pose a potential risk to water quality (e.g., operational failure, equipment failure, additive/polymer release, etc.). The State Water Board is concerned about the potential acute and chronic impacts that the polymers and other chemical additives may have on fish and aquatic organisms if released in sufficient quantities or concentrations. In addition

---

<sup>15</sup> An ATS is a treatment system that employs chemical coagulation, chemical flocculation, or electrocoagulation in order to reduce turbidity caused by fine suspended sediment.

<sup>16</sup> Pitt, R., S. Clark, and D. Lake. 2006. Construction Site Erosion and Sediment Controls: Planning, Design, and Performance. DEStech Publications. Lancaster, PA. 370pp.

to anecdotal evidence of polymer releases causing aquatic toxicity in California, the literature supports this concern.<sup>17</sup> For example, cationic polymers have been shown to bind with the negatively charged gills of fish, resulting in mechanical suffocation.<sup>18</sup> Due to the potential toxicity impacts, which may be caused by the release of additives/polymers into receiving waters, this General Permit establishes residual polymer monitoring and toxicity testing requirements have been established in this General Permit for discharges from construction sites that utilize an ATS in order to protect receiving water quality and beneficial uses.

The primary treatment process in an ATS is coagulation/flocculation. ATS's operate on the principle that the added coagulant is bound to suspended sediment, forming floc, which is gravitationally settled in tanks or a basin, or removed by sand filters. A typical installation utilizes an injection pump upstream from the clarifier tank, basin, or sand filters, which is electronically metered to both flow rate and suspended solids level of the influent, assuring a constant dose. The coagulant mixes and reacts with the influent, forming a dense floc. The floc may be removed by gravitational setting in a clarifier tank or basin, or by filtration. Water from the clarifier tank, basin, or sand filters may be routed through cartridge(s) and/or bag filters for final polishing. Vendor-specific systems use various methods of dose control, sediment/floc removal, filtration, etc., that are detailed in project-specific documentation. The particular coagulant/flocculant to be used for a given project is determined based on the water chemistry of the site because the coagulants are specific in their reactions with various types of sediments. Appropriate selection of dosage must be carefully matched to the characteristics of each site.

ATS's are operated in two differing modes, either Batch or Flow-Through. Batch treatment can be defined as Pump-Treat-Hold-Test-Release. In Batch treatment, water is held in a basin or tank, and is not discharged until treatment is complete. Batch treatment involves holding or recirculating the treated water in a holding basin or tank(s) until treatment is complete or the basin or storage tank(s) is full. In Flow-Through treatment, water is pumped into the ATS directly from the runoff collection system or storm water holding pond, where it is treated and filtered as it flows through the system, and is then directly discharged. "Flow-Through Treatment" is also referred to as "Continuous Treatment."

## 1. Effluent Standards

This General Permit establishes NELs for discharges from construction sites that utilize an ATS. These systems lend themselves to NELs for turbidity and pH because of their known reliable treatment. Advanced systems have been in use in some form since the mid-1990s. An ATS is considered reliable, can consistently produce a discharge of less than 10 NTU, and has been used successfully at many sites in several states since 1995 to reduce turbidity to very low levels.<sup>19</sup>

This General Permit contains "compliance storm event" exceptions from the technology-based NELs for ATS discharges. The rationale is that technology-based requirements are developed assuming a certain design storm. In the case of ATS the industry-standard design storm is 10-year, 24-hour (as stated in

---

<sup>17</sup> Romøen, K., B. Thu, and Ø. Evensen. 2002. Immersion delivery of plasmid DNA II. A study of the potentials of a chitosan based delivery system in rainbow trout (*Oncorhynchus mykiss*) fry. *Journal of Controlled Release* **85**: 215-225.

<sup>18</sup> Bullock, G., V. Blazer, S. Tsukuda, and S. Summerfelt. 2000. Toxicity of acidified chitosan for cultured rainbow trout (*Oncorhynchus mykiss*). *Aquaculture* **185**:273-280.

<sup>19</sup> Currier, B., G. Minton, R. Pitt, L. Roesner, K. Schiff, M. Stenstrom, E. Strassler, and E. Strecker. 2006. The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.

Attachment F of this General Permit), so the compliance storm event has been established as the 10-year 24-hour event as well to provide consistency.

## 2. Training

Operator training is critical to the safe and efficient operation and maintenance of the ATS, and to ensure that all State Water Board monitoring and sampling requirements are met. The General Permit requires that all ATS operators have training specific to using ATS's liquid coagulants.

## L. Post-Construction Requirements

Under past practices, new and redevelopment construction activities have resulted in modified natural watershed and stream processes. This is caused by altering the terrain, modifying the vegetation and soil characteristics, introducing impervious surfaces such as pavement and buildings, increasing drainage density through pipes and channels, and altering the condition of stream channels through straightening, deepening, and armoring. These changes result in a drainage system where sediment transport capacity is increased and sediment supply is decreased. A receiving channel's response is dependent on dominant channel materials and its stage of adjustment.

Construction activity can lead to impairment of beneficial uses in two main ways. First, during the actual construction process, storm water discharges can negatively affect the chemical, biological, and physical properties of downstream receiving waters. Due to the disturbance of the landscape, the most likely pollutant is sediment, however pH and other non-visible pollutants are also of great concern. Second, after most construction activities are completed at a construction site, the finished project may result in significant modification of the site's response to precipitation. New development and redevelopment projects have almost always resulted in permanent post-construction water quality impacts because more precipitation ends up as runoff and less precipitation is intercepted, evapotranspired, and infiltrated.

General Permit 99-08-DWQ required the SWPPP to include a description of all post-construction BMPs on a site and a maintenance schedule. An effective storm water management strategy must address the full suite of storm events (water quality, channel protection, overbank flood protection, extreme flood protection) (Figure 2).

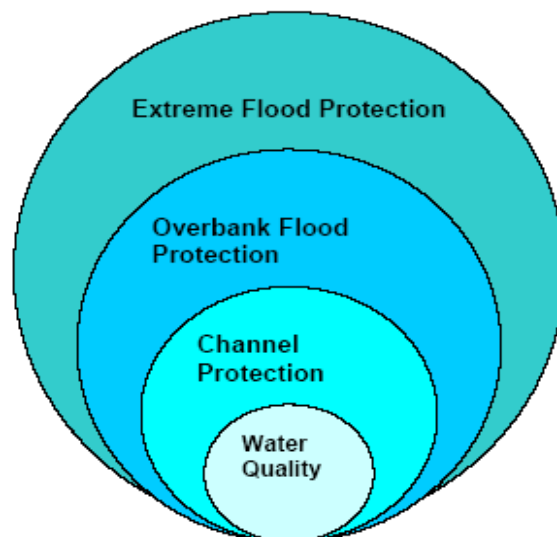


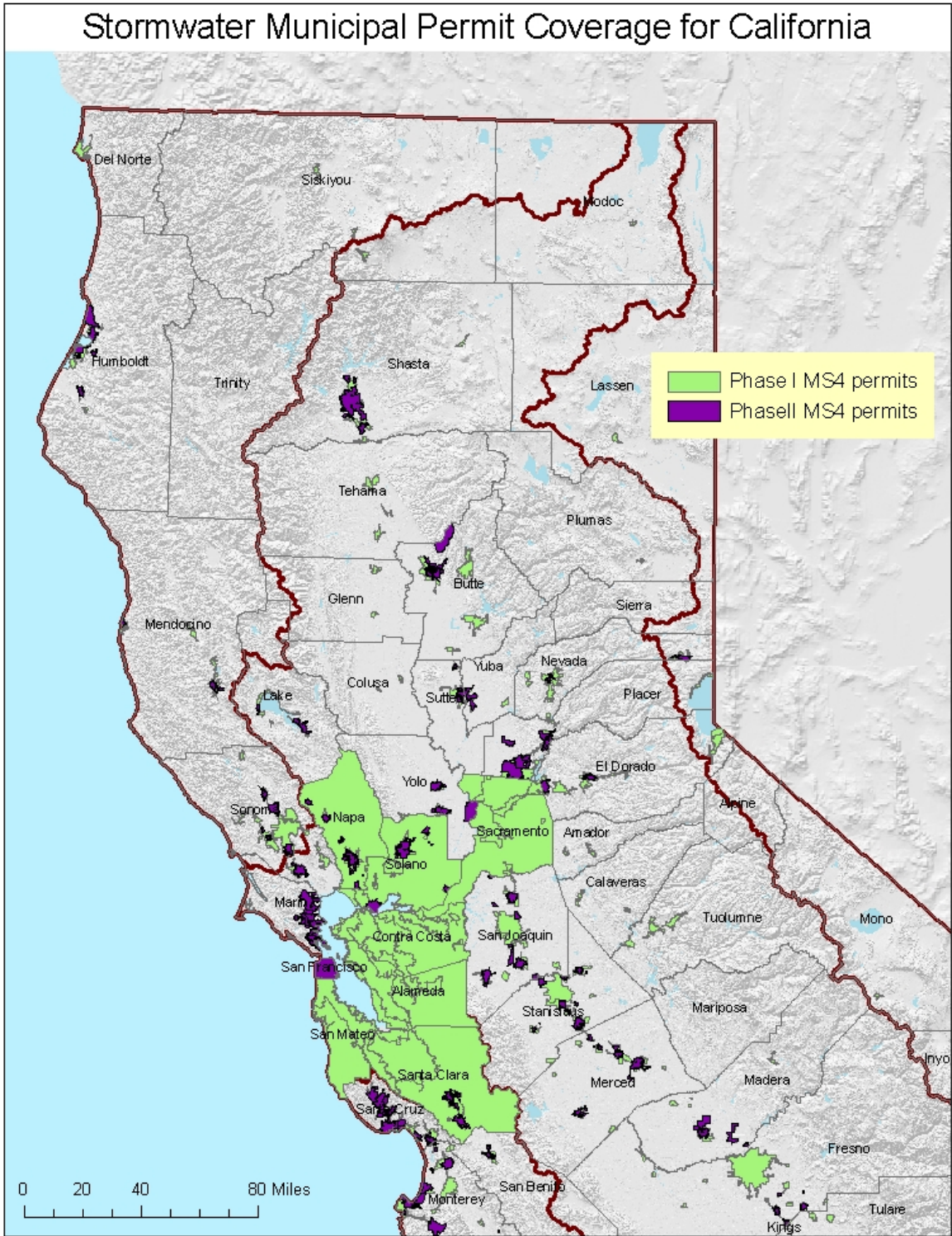
Figure 2 - Suite of Storm Events

The post-construction storm water performance standards in this General Permit specifically address water quality and channel protection events. Overbank flood protection and extreme flood protection events are traditionally dealt with in local drainage and flood protection ordinances. However, measures in this General Permit to address water quality and channel protection also reduce overbank and extreme flooding impacts. This General Permit aims to match post-construction runoff to pre-construction runoff for the 85<sup>th</sup> percentile storm event, which not only reduces the risk of impact to the receiving water's channel morphology but also provides some protection of water quality.

This General Permit clarifies that its runoff reduction requirements only apply to projects that lie outside of jurisdictions covered by a Standard Urban Storm water Management Plan (SUSMP) (or other more protective) post-construction requirements in either Phase I or Phase II permits.

Figures 3 and 4, below, show the General Permit enrollees (to Order 99-08-DWQ, as of March 10, 2008) overlaid upon a map with SUSMP (or more protective) areas in blue and purple. Areas without blue or purple indicate where the General Permit's runoff reduction requirements would actually apply.





**Figure 3 - Northern CA (2009) Counties / Cities With SUSMP-Plus Coverage**



Figure 4 - Southern CA (2009) Counties / Cities With SUSMP-Plus Coverage

#### Water Quality:

This General Permit requires dischargers to replicate the pre-project runoff water balance (defined as the amount of rainfall that ends up as runoff) for the smallest storms up to the 85<sup>th</sup> percentile storm event, or the smallest storm event that generates runoff, whichever is larger. Contemporary storm water management generally routes these flows directly to the drainage system, increasing pollutant loads and potentially causing adverse effects on receiving waters. These smaller water quality events happen much more frequently than larger events and generate much higher pollutant loads on an annual basis. There are other adverse hydrological impacts that result from not designing according to the site's pre-construction water balance. In Maryland, Klein<sup>20</sup> noted that baseflow decreases as the extent of urbanization increases. Ferguson and Suckling<sup>21</sup> noted a similar relation in watersheds in Georgia. On Long Island, Spinello and Simmons<sup>22</sup> noted substantial decreases in base flow in intensely urbanized watersheds.

The permit emphasizes runoff reduction through on-site storm water reuse, interception, evapotranspiration and infiltration through non-structural controls and conservation design measures (e.g., downspout disconnection, soil quality preservation/enhancement, interceptor trees). Employing these measures close to the source of runoff generation is the easiest and most cost-effective way to comply with the pre-construction water balance standard. Using low-tech runoff reduction techniques close to the source is consistent with a number of recommendations in the literature.<sup>23</sup> In many cases, BMPs implemented close to the source of runoff generation cost less than end-of the pipe measures.<sup>24</sup> Dischargers are given the option of using Appendix 2 to calculate the required runoff volume or a watershed process-based, continuous simulation model such as the EPA's Storm Water Management Model (SWMM) or Hydrologic Simulation Program Fortran (HSPF). Such methods used by the discharger will be reviewed by the Regional Water Board upon NOT application.

#### Channel Protection:

In order to address channel protection, a basic understanding of fluvial geomorphic concepts is necessary. A dominant paradigm in fluvial geomorphology holds that streams adjust their channel dimensions (width and depth) in response to long-term changes in sediment supply and bankfull discharge (1.5 to 2 year recurrence interval). The bankfull stage corresponds to the discharge at which channel maintenance is the most effective, that is, the discharge at which the moving sediment, forming or removing bars, forming or changing bends and meanders, and generally doing work that results in the average morphologic characteristics of channels.<sup>25</sup> Lane (1955 as cited in Rosgen 1996<sup>26</sup>) showed the generalized relationship between sediment load, sediment size, stream discharge and stream slope in

---

<sup>20</sup> Klein 1979 as cited in Delaware Department of Natural Resources (DDNR). 2004. Green Technology: The Delaware Urban Runoff Management Approach. Dover, DE. 117 pp.

<sup>21</sup> Ferguson and Suckling 1990 as cited Delaware Department of Natural Resources (DDNR). 2004. Green Technology: The Delaware Urban Runoff Management Approach. Dover, DE. 117 pp.

<sup>22</sup> Center for Watershed Protection (CWP). 2000. The Practice of Watershed Protection: Techniques for protecting our nation's streams, lakes, rivers, and estuaries. Ellicott City, MD. 741 pp.

<sup>23</sup> Bay Area Storm Water Management Agencies Association (BASMAA). 1997. Start at the Source: Residential Site Planning and Design Guidance Manual for Storm Water Quality Protection. Palo Alto, CA;

McCuen, R.H. 2003 Smart Growth: hydrologic perspective. Journal of Professional Issues in Engineering Education and Practice. Vol (129), pp.151-154;

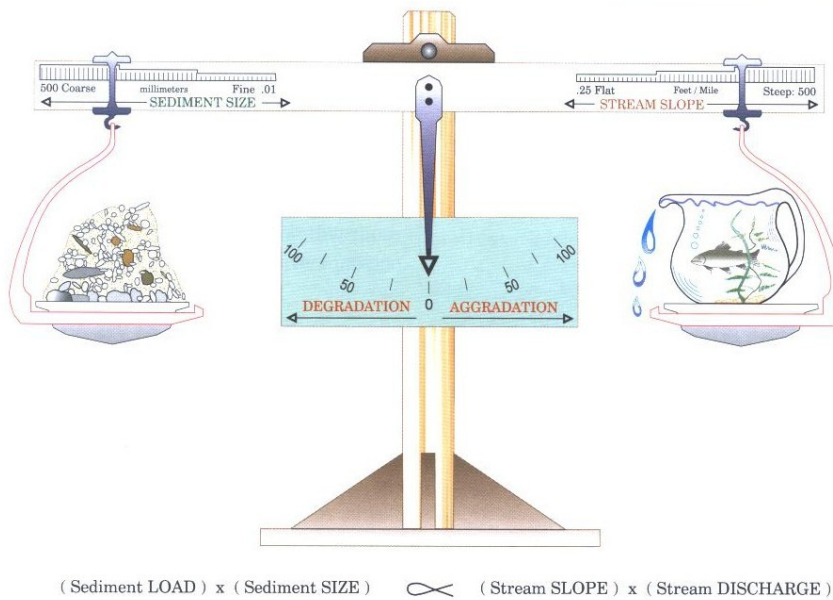
Moglen, G.E. and S. Kim. 2007. Impervious imperviousness-are threshold based policies a good idea? Journal of the American Planning Association, Vol 73 No. 2. pp 161-171.

<sup>24</sup> Delaware Department of natural Resources (DDNR). 2004. Green technology: The Delaware urban Runoff Management Approach. Dover, DE. 117 pp.

<sup>25</sup> Dunne, T and L.B. Leopold. 1978. Water in Environmental Planning. San Francisco W.H. Freeman and Company

<sup>26</sup> Rosgen. D.L. 1996. Applied River Morphology. Pagosa Springs. Wildland Hydrology

Figure 5. A change in any one of these variables sets up a series of mutual adjustments in the companion variables with a resulting direct change in the physical characteristics of the stream channel.



**Figure 5 - Schematic of the Lane Relationship**  
**After Lane (1955) as cited in Rosgen (1996)**

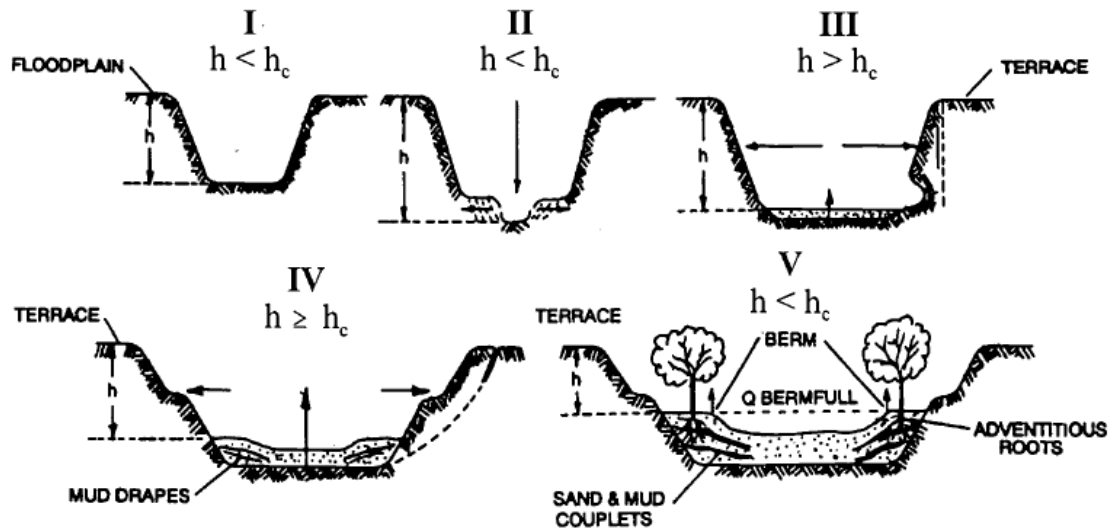
Stream slope multiplied by stream discharge (the right side of the scale) is essentially an approximation of stream power, a unifying concept in fluvial geomorphology (Bledsoe 1999). Urbanization generally increases stream power and affects the resisting forces in a channel (sediment load and sediment size represented on the left side of the scale).

During construction, sediment loads can increase from 2 to 40,000 times over pre-construction levels.<sup>27</sup> Most of this sediment is delivered to stream channels during large, episodic rain events.<sup>28</sup> This increased sediment load leads to an initial aggradation phase where stream depths may decrease as sediment fills the channel, leading to a decrease in channel capacity and increase in flooding and overbank deposition. A degradation phase initiates after construction is completed.

Schumm et. al (1984) developed a channel evolution model that describes the series of adjustments from initial downcutting, to widening, to establishing new floodplains at lower elevations (Figure 6).

<sup>27</sup> Goldman S.J., K. Jackson, and T.A. Bursztynsky. 1986. Erosion and Sediment Control Handbook. McGraw Hill. San Francisco.

<sup>28</sup> Wolman 1967 as cited in Paul, M.P. and J.L. Meyer. 2001. Streams in the Urban Landscape. *Annu. Rev.Ecol. Syst.* 32: 333-365.



**Figure 6 - Channel Changes Associated with Urbanization**

After Incised Channel Evolution Sequence in Schumm et. al 1984

Channel incision (Stage II) and widening (Stages III and to a lesser degree, Stage IV) are due to a number of fundamental changes on the landscape. Connected impervious area and compaction of pervious surfaces increase the frequency and volume of bankfull discharges.<sup>29</sup> Increased drainage density (miles of stream length per square mile of watershed) also negatively impacts receiving stream channels.<sup>30</sup> Increased drainage density and hydraulic efficiency leads to an increase in the frequency and volume of bankfull discharges because the time of concentration is shortened. Flows from engineered pipes and channels are also often “sediment starved” and seek to replenish their sediment supply from the channel.

Encroachment of stream channels can also lead to an increase in stream slope, which leads to an increase in stream power. In addition, watershed sediment loads and sediment size (with size generally represented as the median bed and bank particle size, or  $d_{50}$ ) decrease during urbanization.<sup>31</sup> This means

<sup>29</sup> Booth, D. B. and C. R. Jackson. 1997. Urbanization of Aquatic Systems: Degradation Thresholds, Storm Water Detection, and the Limits of Mitigation. *Journal of the American Water Resources Association* Vol. 33, No.5, pp. 1077-1089.

<sup>30</sup> May, C.W. 1998. Cumulative effects of urbanization on small streams in the Puget Sound Lowland ecoregion. Conference proceedings from Puget Sound Research '98 held March 12, 13 1998 in Seattle, WA;

Santa Clara Valley Urban Runoff Pollution Prevention Program. 2002. Hydromodification Management Plan Literature Review. 80 pp.

<sup>31</sup> Finkenbine, J.K., D.S. Atwater, and D.S. Mavinic. 2000. Stream health after urbanization. *J. Am. Water Resour. Assoc.* 36:1149-60;

that even if pre- and post-development stream power are the same, more erosion will occur in the post-development stage because the smaller particles are less resistant (provided they are non-cohesive).

As shown in Stages II and III, the channel deepens and widens to accommodate the increased stream power<sup>32</sup> and decrease in sediment load and sediment size. Channels may actually narrow as entrained sediment from incision is deposited laterally in the channel. After incised channels begin to migrate laterally (Stage III), bank erosion begins, which leads to general channel widening.<sup>33</sup> At this point, a majority of the sediment that leaves a drainage area comes from within the channel, as opposed to the background and construction related hillslope contribution. Stage IV is characterized by more aggradation and localized bank instability. Stage V represents a new quasi-equilibrium channel morphology in balance with the new flow and sediment supply regime. In other words, stream power is in balance with sediment load and sediment size.

The magnitude of the channel morphology changes discussed above varies along a stream network as well as with the age of development, slope, geology (sand-bedded channels may cycle through the evolution sequence in a matter of decades whereas clay-dominated channels may take much longer), watershed sediment load and size, type of urbanization, and land use history. It is also dependent on a channel's stage in the channel evolution sequence when urbanization occurs. Management strategies

---

Pizzuto, J.E. W.S. Hession, and M. McBride. 2000. Comparing gravel-bed rivers in paired urban and rural catchments of southeastern Pennsylvania. *Geology* 28:79-82.

<sup>32</sup> Hammer 1973 as cited in Delaware Department of Natural Resources (DDNR). 2004. Green Technology: The Delaware Urban Runoff Management Approach. Dover, DE. 117 pp;

Booth, D.B. 1990. Stream Channel Incision Following Drainage Basin Urbanization. *Water Resour. Bull.* 26:407-417.

<sup>33</sup> Trimble, S.W. 1997. Contribution of Stream Channel Erosion to Sediment Yield from an Urbanizing Watershed. *Science*: Vol. 278 (21), pp. 1442-1444.

must take into account a channel's stage of adjustment and account for future changes in the evolution of channel form (Stein and Zaleski 2005).<sup>34</sup>

Traditional structural water quality BMPs (e.g. detention basins and other devices used to store volumes of runoff) unless they are highly engineered to provide adequate flow duration control, do not adequately protect receiving waters from accelerated channel bed and bank erosion, do not address post-development increases in runoff volume, and do not mitigate the decline in benthic macroinvertebrate communities in the receiving waters<sup>35</sup> suggest that structural BMPs are not as effective in protecting aquatic communities as a continuous riparian buffer of native vegetation. This is supported by the findings of Zucker and White<sup>36</sup>, where instream biological metrics were correlated with the extent of forested buffers.

This General Permit requires dischargers to maintain pre-development drainage densities and times of concentration in order to protect channels and encourages dischargers to implement setbacks to reduce channel slope and velocity changes that can lead to aquatic habitat degradation.

There are a number of other approaches for modeling fluvial systems, including statistical and physical models and simpler stream power models.<sup>37</sup> The use of these models in California is described in Stein and Zaleski (2005).<sup>38</sup> Rather than prescribe a specific one-size-fits-all modeling method in this permit, the State Water Board intends to develop a stream power and channel evolution model-based framework to assess channels and develop a hierarchy of suitable analysis methods and management strategies. In time, this framework may become a State Water Board water quality control policy.

#### Permit Linkage to Overbank and Extreme Flood Protection

Site design BMPs (e.g. rooftop and impervious disconnection, vegetated swales, setbacks and buffers) filter and settle out pollutants and provide for more infiltration than is possible for traditional centralized structural BMPs placed at the lowest point in a site. They provide source control for runoff and lead to a reduction in pollutant loads. When implemented, they also help reduce the magnitude and volume of larger, less frequent storm events (e.g., 10-yr, 24-hour storm and larger), thereby reducing the need for expensive flood control infrastructure. Nonstructural BMPs can also be a landscape amenity, instead of a large isolated structure requiring substantial area for ancillary access, buffering, screening and maintenance facilities.<sup>25</sup> The multiple benefits of using non-structural benefits will be critically important as the state's population increases and imposes strains upon our existing water resources.

Maintaining predevelopment drainage densities and times of concentration will help reduce post-development peak flows and volumes in areas not covered under a municipal permit. The most effective way to preserve drainage areas and maximize time of concentration is to implement landform grading,

---

<sup>34</sup> Stein, E.S. and S. Zaleski. 2005. Managing runoff to protect natural stream: the latest developments on investigation and management of hydromodification in California. Southern California Coastal Water Research Project Technical Report 475. 26 pp.

<sup>35</sup> Horner, R.R. 2006. Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices (LID) for the San Diego Region. Available at: [http://www.projectcleanwater.org/pdf/permit/case-study\\_lid.pdf](http://www.projectcleanwater.org/pdf/permit/case-study_lid.pdf).

<sup>36</sup> Delaware Department of Natural Resources (DDNR). 2004. Green Technology: The Delaware Urban Runoff Management Approach. Dover, DE. 117 pp.

<sup>37</sup> Finlayson, D.P. and D.R. Montgomery. 2003. Modeling large-scale fluvial erosion in geographic information systems. *Geomorphology* (53), pp. 147-164).

<sup>38</sup> Stein, E.S. and S. Zaleski. 2005. Managing runoff to protect natural stream: the latest developments on investigation and management of hydromodification in California. Southern California Coastal Water Research Project Technical Report 475. 26 pp.

incorporate site design BMPs and implement distributed structural BMPs (e.g., bioretention cells, rain gardens, rain cisterns).

## **M. Storm Water Pollution Prevention Plans**

USEPA's Construction General Permit requires that qualified personnel conduct inspections. USEPA defines qualified personnel as "a person knowledgeable in the principles and practice of erosion and sediment controls who possesses the skills to assess conditions at the construction site that could impact storm water quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of storm water discharges from the construction activity."<sup>39</sup> USEPA also suggests that qualified personnel prepare SWPPPs and points to numerous states that require certified professionals to be on construction sites at all times. States that currently have certification programs are Washington, Georgia, Florida, Delaware, Maryland, and New Jersey. The Permit 99-08-DWQ did not require that qualified personnel prepare SWPPPs or conduct inspections. However, to ensure that water quality is being protected, this General Permit requires that all SWPPPs be written, amended, and certified by a Qualified SWPPP Developer. A Qualified SWPPP Developer must possess one of the eight certifications and or registrations specified in this General Permit and effective two years after the adoption date of this General Permit, must have attended a State Water Board-sponsored or approved Qualified SWPPP Developer training course. Table 9 provides an overview of the criteria used in determining qualified certification titles for a QSD and QSP.

---

39 US Environmental Protection Agency. Stormwater Pollution Prevention Plans for Construction Activities. <<http://cfpub.epa.gov/npdes/stormwater/swppp.cfm>> and <[http://www.epa.gov/npdes/pubs/sw\\_swppp\\_guide.pdf](http://www.epa.gov/npdes/pubs/sw_swppp_guide.pdf)>.



Table 9 - Qualified SWPPP Developer/ Qualified SWPPP Practitioner Certification Criteria

Certification/ Title	Registered By	QSD/QSP	Certification Criteria
Professional Civil Engineer	California	Both	1. Approval Process 2. Code of Ethics 3. Accountability 4. Pre-requisites
Professional Geologist or Engineering Geologist	California	Both	1. Approval Process 2. Code of Ethics 3. Accountability 4. Pre-requisites
Landscape Architect	California	Both	1. Approval Process 2. Code of Ethics 3. Accountability 4. Pre-requisites
Professional Hydrologist	American Institute of Hydrology	Both	1. Approval Process 2. Code of Ethics 3. Accountability 4. Pre-requisites
Certified Professional in Erosion and Sediment Control™ (CPESC)	Enviro Cert International Inc.	Both	1. Approval Process 2. Code of Ethics 3. Accountability 4. Pre-requisites 5. Continuing Education
Certified Inspector of Sediment and Erosion Control™ (CISEC)	Certified Inspector of Sediment and Erosion Control, Inc.	QSP	1. Approval Process 2. Code of Ethics 3. Accountability 4. Pre-requisites 5. Continuing Education
Certified Erosion, Sediment and Storm Water Inspector™ (CESSWI)	Enviro Cert International Inc.	QSP	1. Approval Process 2. Code of Ethics 3. Accountability 4. Pre-requisites 5. Continuing Education
Certified Professional in Storm Water Quality™ (CPSWQ)	Enviro Cert International Inc.	Both	1. Approval Process 2. Code of Ethics 3. Accountability 4. Pre-requisites 5. Continuing Education

The previous versions of the General Permit required development and implementation of a SWPPP as the primary compliance mechanism. The SWPPP has two major objectives: (1) to help identify the sources of sediment and other pollutants that affect the quality of storm water discharges; and (2) to describe and ensure the implementation of BMPs to reduce or eliminate sediment and other pollutants in storm water and non-storm water discharges. The SWPPP must include BMPs that address source control, BMPs that address pollutant control, and BMPs that address treatment control.

This General Permit shifts some of the measures that were covered by this general requirement to specific permit requirements, each individually enforceable as a permit term. This General Permit emphasizes the use of appropriately selected, correctly installed and maintained pollution reduction BMPs. This approach provides the flexibility necessary to establish BMPs that can effectively address source control of pollutants during changing construction activities. These specific requirements also improve both the clarity and the enforceability of the General Permit so that the dischargers understand, and the public can determine whether the discharges are in compliance with, permit requirements.

The SWPPP must be implemented at the appropriate level to protect water quality at all times throughout the life of the project. The SWPPP must remain on the site during construction activities, commencing with the initial mobilization and ending with the termination of coverage under the General Permit. For LUPs the discharger shall make the SWPPP available at the construction site during working hours while construction is occurring and shall be made available upon request by a State or Municipal inspector. When the original SWPPP is retained by a crewmember in a construction vehicle and is not currently at the construction site, current copies of the BMPs and map/drawing will be left with the field crew and the original SWPPP shall be made available via a request by radio or telephone. Once construction activities are complete, until stabilization is achieved, the SWPPP shall be available from the SWPPP contact listed in the PRDs

A SWPPP must be appropriate for the type and complexity of a project and will be developed and implemented to address project specific conditions. Some projects may have similarities or complexities, yet each project is unique in its progressive state that requires specific description and selection of BMPs needed to address all possible generated pollutants

## **N. Regional Water Board Authorities**

Because this General Permit will be issued to thousands of construction sites across the State, the Regional Water Boards retain discretionary authority over certain issues that may arise from the discharges in their respective regions. This General Permit does not grant the Regional Water Boards any authority they do not otherwise have; rather, it merely emphasizes that the Regional Water Boards can take specific actions related to this General Permit. For example, the Regional Water Boards will be enforcing this General Permit and may need to adjust some requirements for a discharger based on the discharger's compliance history.