# DRAFT

June 9, 2003

**FACT SHEET**
**FOR**
**WATER QUALITY ORDER 2003 – XX - DWQ**

**STATE WATER RESOURCES CONTROL BOARD (SWRCB)**
**1001 I STREET, SACRAMENTO, CALIFORNIA 95814**

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)**
**GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY FROM SMALL LINEAR UNDERGROUND/OVERHEAD PROJECTS (GENERAL PERMIT)**

## BACKGROUND

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 an NPDES permit. The 1987 amendments to the CWA added Section 402(p) that 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) promulgated final regulations that establish storm water permit application requirements for specified categories of industries. These regulations require that discharges of storm water to waters of the United States associated with construction activities from projects that result in land disturbance greater than five (5) or more acres to be subject to an NPDES Permit. Regulations (Phase II Rule) that were promulgated on December 8, 1999 expand the existing NPDES program to address storm water discharges from construction sites that disturb land equal to or greater than one (1) acre and less then five (5) acres (small construction activity). These regulations require that small construction activity, other than those regulated under an individual or Regional Water Quality Control Board ( RWQCB) General Permit, must be permitted no later than March 10, 2003.

Currently the SWRCB has adopted one statewide NPDES General Storm Water Permit for Storm Water Discharges Associated with Construction Activities (Water Quality Order 99-08-DWQ referred to as Order 99-08) that applies to all storm water discharges associated with construction activities that disturb greater than one-acre of land unless the discharge is covered by a different NPDES permit. Requirements established in Order 99-08 are applied mostly to the more traditional construction projects such as residential and commercial developments, and large linear projects, that typically result in areas of disturbed land being exposed for extended periods of time. Construction activities associated with small linear underground/overhead projects that result in land disturbances greater than one acre, but less than five acres (hereafter referred to as small LUPs), are not like traditional construction projects. Small LUPs have a lower potential to impact receiving waters because these projects are typically short duration and constructed within or around hard paved surfaces that result~~ing~~ in minimal disturbed land area~~s~~ being exposed at the close of the construction day. Therefore, this

General Permit has been adopted statewide, and it is applicable to construction activities associated with small LUPs.

Underground/overhead facilities typically constructed as small 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 small 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 ~~and~~ 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.

## SMALL LUPs SUBJECT TO THIS PERMIT

Small LUPs vary in complexity and water quality concerns based on the type of project. This General Permit has varying application requirements based on the type of project and various permitting requirements depending on the ~~type and~~ complexity of the project. As discussed below, factors that lead to the characterization of the type and complexity of the project include location, whether the project is associated with private or municipal development, and the length of time the area is open to the elements.

### Determining the Type of Project

Small LUPs that may be subject to coverage under this General Permit can be categorized into two major types: (1) projects associated with private or municipal development projects, and (2) projects not associated with private or municipal development projects:

1. *Projects Associated with Private or Municipal Development Projects.* These are construction projects conducted by an owner or operator of the small LUP (hereafter referred to as discharger[1]) or its ~~duly~~ authorized representative[2] to relocate facilities in advance of pending developments or redevelopments or to provide new service to new development or redevelopment projects owned or operated by private parties or municipal or other public

[1] The term "discharger" means the utility company, municipality or other public or private company or agency that owns or operates the small LUP.

[2] An ~~duly~~ authorized representative is ~~either an employee of the utility company, municipality, or other public agency that owns or operates the small LUP or~~ a contractor employed by the owner or operator of the small LUP and is the person responsible for oversight of the day to day operations of construction activities associated with small LUPs. The appointment of an ~~duly~~ authorized representative by a discharger does not relieve the discharger of its responsibility for compliance with this General Permit. This term is different from that of the duly authorized representative, which is defined in Standard Provision F.9.b.

agencies. These projects can be further categorized into three types of development activities:

a. Linear Underground/Overhead Projects associated with pre-development activities. These are construction activities associated with small LUPs conducted by a discharger or its ~~duly~~ authorized representative to remove and/or relocate lines and facilities prior to the start of construction for new development and redevelopment projects that are owned or operated by third parties or municipal agencies. Soil disturbances from preconstruction projects are considered separately from the development or redevelopment projects for the purposes of determining if they meet minimum threshold requirements for areas of soil disturbance that would require coverage by a construction storm water permit.

b. Linear Underground/Overhead Projects associated with new development. These involve construction activities associated with small LUPs by dischargers or their ~~duly~~ authorized representatives to provide service to new development projects that are owned or operated by third parties or municipal agencies, and can be further categorized as:

   i. Activities associated with construction activities within the boundaries of the development project, and
   ii. Activities associated with bringing service from offsite up to the boundary of the development project (commonly referred to as bring-ups).

c. Linear Underground/Overhead Projects associated with redevelopment projects. These involve construction activities associated with small LUPs constructed by a discharger or its ~~duly~~ authorized representative to relocate lines or convert facilities from overhead to underground as a result of a redevelopment project owned or operated by a third party or municipal agency.

2. *Projects Not Associated with Private or Municipal Development Projects.* These involve construction activities associated with small LUPs that are: (1) constructed by dischargers or their duly authorized representatives of a small LUP, (2) typically constructed outside of developed areas, and (3) not associated with new development or redevelopment projects.

**Determining Project Complexity**

Once a project type for the small LUP has been established, the complexity of the project must be determined. As described below, small LUPs have been categorized into two tiers of complexity. The complexity of a project will be used to calculate land disturbance area of a proposed small LUP and to establish applicable permit requirements if it is determined the project is subject to this General Permit.

*Tier I Small LUPs*

Tier I small LUPs are those construction projects:

- Where 70 percent or more of the construction activity occurs continuously 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

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

  - Areas disturbed during construction will be returned to preconstruction 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 revegetated 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.

Tier I small 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[3], 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. This General Permit requires activity appropriate BMPs to be installed for construction activities conducted at Small LUPs. A listing of BMPs that are applicable to a number of construction activities typically conducted at Small LUPs is included in Section A of this General Permit. Alternative BMPs that provide equivalent protection, but which are not listed in Section A, may be implemented. This General Permit requires the discharger or its ~~duly~~ authorized representative to develop and implement a Tier I Storm Water Pollution Prevention Plan (SWPPP) using the template provided in Attachment 5. Sections A and B of this General Permit establishes the minimum requirements for construction activities that must be addressed in an SWPPP and monitoring requirements for Tier I projects.

*Tier II Small LUPs*

[3] Short period of time refers to a project duration of weeks to months, but typcially less than one-year in duration.

Tier II projects are all other small LUPs that do not meet the definition of Tier I projects. Tier II projects may have a higher potential to impact storm water quality, and they need to be regulated with a higher level of review and oversight. Like Tier I projects, Tier II projects are typically constructed over a short period of time. However, these projects have a higher potential to impact water quality because (1) typically they occur outside the more urban/developed areas, (2) they have larger areas of soil disturbance that are not closed or restored at the end of the day; (3) they may have onsite stockpiles of soil, spoil and other materials; (4) they cross or occur in close proximity to a wide variety of sensitive resources which may include, but are not limited to, steep topography and/or water bodies; and (5) they 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 or its ~~duly~~ authorized representative to develop and implement an SWPPP for these construction activities that are specific for project type, location and characteristics. Sections A and B of this General Permit establish the minimum requirements for SWPPP and monitoring programs for Tier II projects.

**Process and Methods for Calculating Land Disturbance Areas of Small LUPs**

To determine when~~if~~ a Notice of Intent (NOI) for individual Tier II projects and Tier I projects, or for Linear Construction Notifications (LCTN Tier I) ~~must be submitted for a small LUP~~, the discharger or its duly authorized representative must determine if the land area to be disturbed by the small LUP construction activity will be greater than one acre but less than five acres in size. As described below, the method to calculate the disturbed area will vary depending on the type and complexity of a project.

Depending on the project type, the following areas of a small LUP shall be included in calculating the disturbed area:

- Surface areas of trenches and laterals associated with small LUPs;
- Surface area of stockpiling/borrow areas as defined below;
- Paved surface areas constructed for the project;
- New roads constructed or major reconstruction to existing roads (e.g., improvements to two-track surfaces or road widening) for the sole purpose of accessing construction activities or as part of the final project;
- Equipment and material storage, staging, and preparation areas (laydown areas) not on paved surfaces;
- Soil areas outside the surface area of trenches, laterals, and ancillary facilities that will be graded or disturbed by the use of construction equipment, vehicles and, machinery during construction activities; and
- Surface areas of all other ancillary facilities (e.g., poles, pull boxes, fuse boxes, splice boxes, pads, etc.) associated with a small LUP.

Stockpiling areas, borrow areas, and removal of soils from a construction site may or may not be included when calculating the area of disturbed soil for a site depending on the following conditions:

- For stockpiling of soils onsite or immediately adjacent to a small LUP site and the stockpile is not on a paved surface, the area of the base of the stockpile is to be included in the disturbed area calculation.

- The surface area of borrow areas that are onsite or immediately adjacent to a project site are to be included in the disturbed area calculation.

- For soil that is hauled offsite to a location owned or operated by the discharger that is not a paved surface, the area of the base of the stockpile is to be included in the disturbed area calculation except when the offsite location is already subject to a separate storm water permit.

- For soil that is brought to the project from an offsite location owned or operated by the discharger, the surface area of the borrow pit is to be included in the disturbed area calculation except when the offsite location is already subject to a separate storm water permit.

- Trench spoils on a paved surface that are either returned to the trench or excavation or hauled away from the project daily for disposal or reuse will not be included in the disturbed area calculation.

All soil removed from the construction site will be hauled away in accordance with all applicable laws and regulations.

Any soil that is determined to be contaminated[4] by the discharger or its ~~duly~~ authorized representative shall be handled, stored, hauled, and disposed of in accordance with all applicable laws and regulations. The discharger or its ~~duly~~ authorized representative will notify the appropriate local, State, or federal agency(ies) and RWQCB when required.~~contaminated soil is found at a construction site.~~ This General Permit prohibits the discharge of contaminated soil in storm water runoff to storm drains and waterbodies unless such a discharge is authorized by an NPDES permit.

*Methods to Calculate Land Disturbance Areas*

Calculating the land disturbance area will depend on the complexity of a project. When the area calculated for a small LUP is greater than one acre, but less than five acres, the discharger or its

[4] Contaminated soil is soil that contains pollutants in concentrations that exceed the appropriate thresholds of various regulatory agencies for those substances. Preliminary testing of potentially contaminated soils will be based on odor, soil discoloration, or prior history of the site's chemical use and storage and other similar factors. When soil contamination is found or suspected and a responsible party is not identified, or the responsible party fails to promptly take the appropriate action, the discharger or ~~duly~~ authorized representative shall have those soils sampled and tested to ensure proper handling and public safety measures are implemented. The discharger or its ~~duly~~ authorized representative will notify the appropriate local, state or federal agency(ies) ~~and RWQCB~~ when contaminated soil is found at a construction site~~.~~, and will notify the RWQCB through the submittal of the LCTN or NOT at the completion of the project.

duly authorized representative must file for coverage under this General Permit or seek coverage under a separate NPDES permit for its construction activities. If the calculated area for a small LUP is greater than five acres, the discharger may not seek coverage under this General Permit. Instead, the discharger must file an NOI for coverage under Order 99-08 or seek coverage under a separate NPDES permit.

Tier I Small LUPs

Using the definitions and descriptions provided in the above discussion, the total land area disturbed for Tier I small LUPs (based on the activities listed below that are conducted by the discharger or their ~~duly~~ authorized representative) is the sum of the:

- Surface areas of trenches and laterals;
- Area of the base of stockpiles and laydown areas on unpaved surfaces;
- Surface area of the borrow area;
- Soil areas outside the surface area of trenches, laterals, and ancillary facilities that will be disturbed by the use of construction equipment, vehicles, and machinery during construction activities;
- Any graded areas; and
- Twenty-Five percent of the sum of the surface areas of the trench and laterals for electric projects[5] or 5 percent of the sum of the surface areas of the trench and laterals for all other projects to account for all ancillary facilities. Alternatively, a discharger may calculate the project specific soil disturbance area for ancillary facilities.

Tier II Small LUPs

Using the definitions and descriptions provide in the above discussion, the total land area disturbed for Tier II small LUPs (based on the activities listed below that are conducted by the discharger or their ~~duly~~ authorized representative) is the sum of the:

- Surface areas of trenches, laterals, and ancillary facilities;
- Area of the base of stockpiles on unpaved surfaces;
- Surface area of the borrow area;

~~Areas of paved surfaces constructed for the project;~~

- Areas of new roads constructed or areas of major reconstruction to existing roads (e.g., improvements to two-track surfaces or road widening) for the sole purpose of accessing construction activities or part of the final project;
- Equipment and material storage, staging, and preparation areas (laydown areas) not on paved surfaces;
- Area of any paved surfaces constructed for the project; and

[5] ~~Estimate provided by electric utility company based on actual electric projects is based on an estimate for 18 inch and 24 inch wide trenches.~~Percentage for underground electric projects was provided by an electric company and is an average estimate based on 18 inch and 24 inch trenches.

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

**Determining Who Must Submit the NOI Under This General Permit**

Once it is determined that a construction project is a small LUP project that is eligible for coverage under this General Permit, the discharger or its duly authorized representative must determine if the application for permit coverage must be submitted to obtain coverage under this General Permit, or if the construction activities are covered by a different NOI or NPDES permit. The type and location of the small LUP are factors to be considered to determine how a small LUP is to be covered by the requirements of this General Permit.

*Small LUPs associated with Private or Municipal Development Projects*

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

   The discharger or its duly authorized representative must seek coverage[6] under this General Permit for its pre-development and pre-redevelopment construction activities where the total disturbed land area of these construction activities is greater than one acre but is less than five acres.

2. For small LUPs associated with new development and redevelopment construction projects:

   The discharger or its duly authorized representative must seek coverage[5~~6~~] under this General Permit for small LUP construction activities associated with new development and redevelopment projects where the total disturbed land area of the small LUP is greater than one acre but is less than five acres. Coverage under this permit is not required where the small LUP construction activities are ~~not~~ covered by another NPDES permit (e.g., where the NOI and SWPPP of the owner or operator of ~~the~~ a new or redevelopment site includes the small LUP activities).

*Small LUPs not associated with private or municipal new development or redevelopment projects*:

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

[6] Seek coverage means filing either a Notice of Intent (NOI) or Linear Construction Activity Notification (LCAN) for the project. NOI and LCANs requirements are discussed under Permit Coverage and Requirements of this Fact Sheet.

## TEMPORARY PERMITTING EXTENSION FOR SMALL LUPS ASSOCIATED WITH OIL AND GAS EXPLORATION CONTRUCTION ACTIVITIES

Due to regulations promulgated by USEPA (40 CFR Part 122, [FRL-7464-2], RIN 2040-AC82) on March 5, 2003, oil and gas exploration, production, processing, and treatment operations, or transmission facilities (i.e., gathering lines, flow lines, feeder lines, and transmission lines) for projects encompassing from one to five acres, are exempt from this General Permit until March 10, 2005. The construction of water lines, electrical utility lines, etc., as part of the oil and gas exploration, production, processing, treatment, and transmission projects is also included in this exemption. This exemption does not include distribution lines that deliver natural gas to homes, businesses, etc., or those pipelines that transport refined petroleum product and chemicals from refineries and chemical plants.

## PROJECTS AND ACTIVITIES NOT DEFINED AS CONSTRUCTION ACTIVITY ~~COVERED BY THIS PERMIT~~

1. Small LUP construction ~~projects~~ activity does~~do~~ not include routine maintenance projects. Routine maintenance projects are projects associated with operations and maintenance activities that are conducted on existing lines and facilities and within existing right-of-way, easements, franchise agreements, or other legally binding agreements of the discharger. Routine maintenance projects include, but are not limited to projects that are conducted to:

   - Maintain the original purpose of the facility or hydraulic capacity.
   - Update existing lines[7] and facilities to comply with applicable codes, standards, and regulations regardless if such projects result in increased capacity.
   - Repairing leaks.

   Routine maintenance does not include construction of new[8] lines or facilities resulting from compliance with applicable codes, standards, and regulations.

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

2. Small LUPs ~~C~~construction ~~projects~~ activity does not include field activities associated with the planning and design of a project (e.g., activities associated with route selection).

3. Tie-ins conducted immediately adjacent to “energized” or “pressurized” facilities by the discharger or their ~~duly~~ authorized representative are not considered small construction

[7] Update existing lines includes replacing existing lines with new materials or pipes.
[8] New lines are those that are not associated with existing facilities and are not part of a project to update or replace existing lines.

activities where all other small LUP construction activities associated with the tie-in are covered by an NOI and SWPPP of a third party or municipal agency.

4. Small LUPs construction activity does not include ~~A~~activities associated with responding to emergencies to protect public health and safety and restoration of public services after natural or manmade disasters. ~~are not subject to this permit~~.

## PROJECTS NOT COVERED BY THIS PERMIT

~~5.~~This General Permit does not apply to storm water discharges from small LUPs for (a) those areas on Tribal Lands; (b) the Lake Tahoe Hydrologic Unit; (c) small LUPs which disturb less than one acre, unless directed by an RWQCB to obtain coverage under a construction storm water permit; (d) projects covered by another construction storm water general permit or an individual NPDES Permit for storm water discharges associated with construction activity; (e) linear construction projects that exceed five acres of soil disturbance;
(f) non-linear construction projects; (g) storm water discharges which are determined ineligible for coverage under this General Permit by an RWQCB.

Storm water discharges in the Lake Tahoe Hydrologic Unit are regulated by a separate permit(s) adopted by the Lahontan Regional Water Quality Control Board, (LRWQCB). Permit applications for storm water discharges that will be conducted in the Lake Tahoe Hydrologic Unit must be submitted directly to the LRWQCB.

USEPA regulates storm water discharges on Tribal Lands.

## PERMIT COVERAGE AND REQUIREMENTS

This General Permit incorporates permitting and implementation requirements to control and reduce the discharge of pollutants in storm water runoff associated with construction activities of small LUPs. Dischargers or their duly authorized representatives that seek coverage under this General Permit for small LUPs are required to:

1. Develop and implement an SWPPP which specifies BMPs to control and reduce discharges of pollutants associated with construction in storm water runoff into storm drains and receiving waters.

2. Eliminate or reduce nonstorm water discharges to storm sewer systems and waters of the United States.

3. Monitor the construction site to ensure all BMPs are implemented, maintained, and effective.

Permit requirements, such as NOI submittal requirements, minimum SWPPP elements, and the amount and degree of monitoring vary depending on the complexity of the small LUP. Because

Tier I projects have a lower threat to water quality than Tier II projects, Tier I projects have less stringent, more streamlined requirements.

**NOI Submittal Requirements**

This General Permit establishes different requirements for an NOI (see copy in Attachment 1) and fee submittal depending on the complexity of a small LUP. ~~It is the responsibility of~~ When using this permit the discharger or its duly authorized representative ~~to~~shall obtain coverage ~~under this General Permit~~ prior to commencement of small LUP construction activities that are eligible to be covered by this General Permit. Notification requirements of this General Permit are intended to establish a mechanism, which can be used to clearly identify the responsible parties, locations, and scope of operations of small LUPs covered by this General Permit and to notify the SWRCB and RWQCBs that the discharger or its duly authorized representative intends to comply with the requirements of this General Permit.

*Tier I Small LUPs NOI Submittal Requirements*

Prior to the start of construction the following must occur for a small LUP to be covered under this General Permit:

1. The discharger submits an NOI and appropriate fee to the SWRCB for each RWQCB office[9] where construction activities for the Tier I small LUPs are planned. The NOI authorizes a discharger or its duly authorized representative to construct any number of small LUPs within the jurisdictional area of the appropriate RWQCB office. The NOI submitted will remain in effect until the discharger requests termination and it is approved by the appropriate RWQCB office. By submitting the NOI the discharger is notifying the SWRCB and appropriate RWQCB office that all small LUPs covered by the NOI (i.e., those for which an LCAN is submitted) will be in compliance with requirements of this General Permit.

2. The discharger or its duly authorized representative must submit a Linear Construction Activity Notification (LCAN) (see copy in Attachment 2) to the appropriate RWQCB for all small LUPs to be constructed within the RWQCB jurisdictional boundaries. LCANs are to be submitted prior to the start of construction for each small LUP. The discharger or its duly authorized representative may submit one LCAN for multiple projects or one LCAN for an individual project. For a multiple project LCAN, the discharger or its duly authorized representative should submit the LCAN on at least a quarterly basis. At a minimum, LCANs will provide the Waste Discharge Identification (WDID) number of the NOI, project name and/or reference number, location of the project, approximate size of the project, estimated start and end date, type of project, and project contact name, phone number, and address.

[9] RWQCB offices are located in the following regions: Region 1 in Santa Rosa; Region 2 in Oakland; Region 3 in San Luis Obispo; Region 4 in Los Angeles; Region 5a in Redding; Region 5b in Sacramento; Region 5c in Fresno; Region 6a in South Lake Tahoe; Region 6b in Victorville; Region 7 in Palm Desert; Region 8 in Riverside; and Region 9 in San Diego.

3. The discharger or its ~~duly~~ authorized representative is to develop and implement ~~and~~ a SWPPP for each project including monitoring requirements in accordance with the requirements of this General Permit and Sections A and B.

*Tier II Small LUPs NOI Submittal Requirements*

Prior to the start of construction activities, a discharger or its duly authorized representative seeking coverage under this General Permit must submit one NOI and fee to the SWRCB for each Tier II small LUP. They must also:~~To seek coverage under this General Permit, a discharger or its duly authorized representative must:~~

1. Submit ~~an NOI~~ along with the NOI ~~application fee to the to the SWRCB. A~~a ~~shall accompany the NOIs~~site vicinity map and a map delineating the project area.
2. Develop and implement an SWPPP for each project including monitoring and reporting requirements in accordance with the requirements of this General Permit and Sections A and B.

*New and Ongoing Small LUPs*

Owners or operators of new small LUPs that commence construction activities after the adoption date of this General Permit shall file an NOI prior to the commencement of construction and implement the SWPPP upon the start of construction. For Tier I small LUPs, the discharger or its duly authorized representative shall also submit an LCAN to the appropriate RWQCB office before the start of construction activities.

Construction activities may commence only after the discharger or its duly authorized representative has submitted of an NOI and LCAN (Tier 1) or NOI (Tier II), and has developed an SWPPP. The SWPPP is to be implemented concurrent with the start of construction.

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

*Where NOIs and LCANs are to be Submitted*

The NOI and appropriate fee must be sent to the following address prior to the start of construction activities:

State Water Resources Control Board
Division of Water Quality
Storm Water Permit Section

P.O. Box 1977
Sacramento, CA 95812-1977

Annual fees are established through regulations adopted by the SWRCB. The current annual fee for storm water general permits is $700.

All LCANs are to be submitted without a fee to the appropriate RWQCB office. A listing of the RWQCB offices is available at www.swrcb.ca.gov/stormwtr/contact.html under *Contacts.*

Dischargers who meet the criteria for requiring coverage under a construction storm water permit, but fail to obtain coverage under this General Permit or another general or individual construction storm water permit for storm water discharges to surface waters, will be in violation of the CWA and the California Water Code.

## TERMINATING COVERAGE UNDER THIS GENERAL PERMIT AND CERTIFICATION OF COMPLIANCE

When construction of a small LUP is complete, the discharger or its duly authorized representative must notify the RWQCB office in writing. The process for notifying the RWQCB will be different depending on the project complexity. Given the short duration of these projects, the discharger or its duly authorized representative will not be required to conduct an annual certification of these projects. Instead, the discharger or its duly authorized representative will be required to submit a statement with its written notification that certifies construction activities for small LUPs were in compliance with the requirements of this General Permit. All notices of termination are to be signed and certified in accordance with Standard Provisions of this General Permit.

### Termination Requirements for Tier I Small LUPs:

A discharger or its duly authorized representative shall file a Linear Construction Termination Notification (LCTN) to the appropriate RWQCB office certifying that construction activities for each Tier I small LUPs are complete and that the site was in full compliance with requirements of this General Permit during active construction and was compliant with soil stabilization requirements, where appropriate. A discharger or its duly authorized representative may submit an LCTN for multiple projects completed over a specified period of time or may submit an LCTN for an individual small LUP. Photographs of the completed construction site will be submitted upon request by the RWQCB. Attachment 3 provides a copy of the LCTN to be used by the discharger or its duly authorized representative.

The discharger must submit a Notice of Termination (NOT) request (see copy Attachment 4) to the appropriate RWQCB office to terminate coverage under this General Permit for Tier I small LUPs within a specific RWQCB office. Upon approval by the appropriate RWQCB office, permit coverage will be terminated; and the discharger will no longer be authorized to conduct Tier I small LUPs within the RWQCB office's jurisdictional area until such time the company

has obtained coverage under this General Permit or another NPDES storm water permit for these activities.

**Termination Requirements for Tier II Small LUPs**

The discharger or its duly authorized representative shall file an NOT to the appropriate RWQCB office certifying that construction activities for Tier II small LUPs are complete and that the site was in full compliance with requirements of this General Permit during active construction and was compliant with soil stabilization requirements, where appropriate. Upon approval by the appropriate RWQCB office, permit coverage will be terminated. Photographs of the completed construction site must be submitted with the NOT. Attachment 4 provides a copy of the NOT to be used by the discharger or its duly authorized representative.

## DESCRIPTION OF GENERAL PERMIT CONDITIONS

The following is a brief description of the major provisions of the General Permit and the basis for the General Permit.

### Prohibitions

This General Permit authorizes the discharge of storm water directly and indirectly to surface waters from small linear underground/overhead construction activities that result in land disturbance of one or more, but less than five acres (referred to as small LUPs). It prohibits the discharge of non-storm water discharges and all discharges not authorized by this or another permit which contain a hazardous substance in excess of reportable quantities established at Title 40 Code of Federal Regulations (CFR) Section 117.3 or 40 CFR 302.4 unless a separate NPDES Permit has been issued to regulate those discharges. In addition, this General Permit contains provisions that incorporate discharge prohibitions contained in water quality control plans adopted by the nine RWQCBs.

Elimination or reduction of non-storm water discharges is a major goal of this General Permit. Non-storm water discharges include a wide variety of sources, including improper dumping, spills, or leakage from storage tanks or transfer areas. Non-storm water discharges may contribute a significant pollutant load to receiving waters. Measures to control spills, leakage, and dumping and to prevent illicit connections during construction shall be addressed through structural as well as non-structural BMPs.

This General Permit prohibits the discharge of non-storm water not authorized by this Permit or authorized by a separate NPDES permit. This General Permit authorizes certain non-storm water discharges provided that they are not relied upon to clean up failed or inadequate construction or post-construction BMPs designed to keep materials onsite. These authorized non-storm water discharges shall; (1) be infeasible to eliminate, (2) comply with BMPs as described in the SWPPP, and (3) not cause or contribute to a violation of water quality standards. Special Provision D.6 of this General Permit establishes the requirements for identifying, controlling and preventing non-storm water discharges from a small LUP construction site. Special Provision

D.6 describes the conditions under which some non-storm water discharges are prohibited or subject to a different NPDES permit.

**Effluent Limitations**

Permits for storm water discharges associated with small LUPs shall meet all applicable provisions of CWA Sections 301 and 402. These provisions require control of pollutant discharges that utilize best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) to reduce pollutants and any more stringent controls necessary to meet water quality standards. This General Permit is performance-based to the extent that it prohibits the discharge of storm water that causes or threatens to cause pollution, contamination, or nuisance; but it also allows the discharger or its ~~duly~~ authorized representative to determine the most economical, effective, and possibly innovative BMPs.

Title 40 (CFR) Section 122.44(k)(2) allows the SWRCB to require implementation of BMPs to control or abate the discharges of pollutants from storm water authorized under CWA Section 402(p). Section 122.44(k)(4) of the regulations allows the implementation of BMPs where BMPs are necessary to carry out the purposes and intent of the CWA. Therefore, the effluent limitations contained in this General Permit are narrative and require a discharger or its ~~duly~~ authorized representative to implement appropriate BMPs to reduce the discharge of pollutants in storm water runoff to comply with BAT/BCT discharge standards. The BMPs shall primarily emphasize source controls, such as erosion control and pollution prevention methods. The discharger or its ~~duly~~ authorized representative shall also install structural controls, as necessary, such as sediment control, which will constitute BAT and BCT and will achieve compliance with water quality standards.

The requirements of this General Permit are intended to be implemented on a year-round basis, not just during the part of the year when there is a high probability of a precipitation event which results in storm water runoff. The permit should be implemented at the appropriate level and in a proactive manner during all seasons while construction on small LUPs is ongoing.

Weather and storm predictions or weather information concerning storm events and mean annual rainfall can be obtained via the internet at http://iwin.nws.noaa/iwin/ca/ca.html.

**Receiving Water Limitation Language**

The receiving water limitation language in this General Permit is identical to the receiving water limitation language contained in Order 99-08. Construction related activities associated with small LUPs that cause or contribute to an exceedance of water quality standards must be corrected immediately. The dynamic nature of linear construction activity allows the discharger or its ~~duly~~ authorized representative the ability to more quickly identify and correct the source of the exceedances. Therefore, the discharger or its ~~duly~~ authorized representative is required to take immediate corrective action and the discharger is to provide a report to the appropriate RWQCB within 14 calendar days of the violation describing the corrective action.

**Storm Water Pollution Prevention Plan (SWPPP)**

This General Permit requires development and implementation of an SWPPP for all tiers of project complexity. This General Permit establishes different SWPPP requirements depending on the complexity of the small LUP. In all cases, there is an emphasis on 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 small LUP construction activities.

A discharger or its ~~duly~~ authorized representative shall prepare an SWPPP prior to the start of construction and immediately implement the SWPPP at the start of construction for small LUPs. The SWPPP must be implemented at the appropriate level to protect water quality at all times throughout the life of the project. Non-storm water BMPs must be implemented at all times during the project. The SWPPP shall be available at the construction site during working hours while construction is occurring and shall be made available upon request. When the original SWPPP is retained by a crewmember in a construction vehicle and is not currently at the construction site, copies of the BMPs and map/drawing will be left with the field crew and the original SWPPP shall be made available via a request by radio/telephone.

The SWPPP has two major objectives: (1) to help identify the sources of sediment and other pollutants associated with a construction project and activities 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 as well as non-storm water discharges. The SWPPP shall include BMPs that address source control and, if necessary, shall also include BMPs that address pollutant control and treatment when necessary.

Section A establishes the required elements of an SWPPP and varies depending on the complexity of the small LUP.

**Tier I Small LUPs SWPPP Requirements**

Attachment 5 of this General Permit provides the Tier I SWPPP template that must be used to fulfill the SWPPP requirements. If needed, a discharger may attach supplemental information to the Tier I SWPPP form. It is a simple SWPPP that provides basic project information, such as project location, contact, size, construction start date and estimated completion date, and type of project being constructed, and provides a check list of the activities to be conducted and BMPs to be implemented. The SWPPP will include a construction drawing or other appropriate drawing/map showing the locations of storm drain inlets and waterbodies that may receive discharges from the construction activities and will show locations of BMPs to be installed for all those that can be illustrated on the drawing/map. If storm drain inlets, waterbodies, and/ or BMPs cannot be adequately shown on the drawing/map they will be described in detail within the SWPPP. ~~The SWPPP will include a construction drawing or other appropriate drawing/map showing the locations of storm drain inlets and water bodies that may receive discharges from the construction activities and will show the locations of BMPs to be installed.~~ Each SWPPP shall initially be signed and certified by the discharger or its duly authorized representative and

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

The discharger or its ~~duly~~ authorized representative for the SWPPP must complete Table 1 of the Tier I SWPPP form. Table 2 of the SWPPP form must be used as a reference for completing Table1. Table 1 is to be used; (1) to identify the construction practices to be conducted at the site, and (2) to identify one or more BMPs to be implemented to address the practices. These must include BMPs addressing non-storm water discharges. Table 2 lists the same activities and BMPs provided in Table 1. The construction practices listed are those that are typically conducted during Tier I small LUPs. Table 2 identifies the BMPs (e.g., storm drain inlet protection, saw-cutting, street sweeping, etc.) that may be implemented for these practices. The discharger or its ~~duly~~ authorized representative must select from the BMPs provided in Table 2 that are associated with a particular construction activity. Attachment 6 of this General Permit provides fact sheets for the BMPs listed in Tables 1 and 2.

When an activity or BMP is not listed the discharger or its ~~duly~~ authorized representative must add the activity or BMP to Table 1. Alternative BMPs that provide equivalent protection as those identified in Table 2 may also be listed. When new or alternate BMPs are added to Table 1, the discharger or its ~~duly~~ authorized representative must include additional information about the BMPs in the SWPPP, including but not limited to BMP reference(s), BMP description(s), and drawings or other attachments to describe the BMPs in the SWPPP.

Additional references for applicable construction site BMPs can be found at the SWRCB website at http://www.swrcb.ca.gov/stormwtr

For small LUPs that result in soil disturbance outside of paved areas, the SWPPP will identify types and locations of BMPs for temporary and permanent soil stabilization.

**Tier II Small LUP SWPPP Requirements**

Section A of this General Permit establishes the minimum SWPPP requirements for Tier II small LUPs. These SWPPPs are developed based on project and site specific characteristics because these types of projects have a higher degree of complexity and exposed disturbed soil than Tier I projects. Tier II SWPPPs may be developed on standard project construction plans or equivalent plans that provide the following minimum elements:

- Project location and area of project.
- Location of right-of-way, easement. and agreements.
- Location of storm inlets, conveyances, and water bodies.
- Location of applicable project activities including areas for staging, stockpiling, laydown, equipment and material storage, fueling, and other areas related to the construction activities.

- A description of all BMPs to be implemented in the construction notes or attachments and the location of certain BMPs as appropriate. Standard drawings and specifications will be included on the plans (or attached) as needed. BMPs will include those to be implemented during active construction and after construction activities are complete, including BMPs for temporary and permanent soil stabilization.
- Construction notes as needed for implementing and maintaining the SWPPP and BMPs during the life of the project.
- Certification statement and signature in accordance with signatory requirements established in this General Permit.
- Where construction activities listed in Table 2 apply to Tier II small LUPs, select BMPs in Table 2, or identify and justify alternative BMPs~~.~~, alternative BMPs that provide equivalent protection as those identified in Table 2 may also be listed. When new or alternate BMPs are added to Table 1, the discharger or its authorized representative must include additional information about the BMPs in the SWPPP, including but not limited to BMP reference(s), BMP description(s), and drawings or other attachments to describe the BMPs in the SWPPP.

**SWPPP Requirements Applicable to all Tiers**

To ensure that the preparation, implementation, and oversight of the SWPPP is sufficient for effective pollution prevention, individuals responsible for creating, revising, overseeing, and implementing the SWPPP should participate in applicable training programs and document such training in the discharger's records.

SWPPPs are to be available to the public and will be made available by the RWQCB upon request.

**Monitoring Program**

Section B of this General Permit establishes minimum monitoring and reporting requirements for all small LUPs. It establishes different monitoring requirements depending on project complexity. The monitoring requirements for Tier I small LUPs are less than Tier II projects because of the lower potential these types of projects have to impact water quality.

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

**Tier I Small LUPs Monitoring Requirements**

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

representative 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). ~~and permit coverage for the area stabilized is terminated.~~

A discharger or its ~~duly~~ authorized representative shall implement the monitoring program for inspecting Tier I small LUPs provided in the Tier I small LUP SWPPP (Attachment 5). 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 revegetation is chosen until minimum vegetative coverage has been established.

**Tier II Small LUPs Monitoring Requirements**

A discharger or its ~~duly~~ authorized representative must conduct daily visual inspections of Tier II small LUPs during working hours ~~and during active~~while construction activities are occurring. Inspections are to be conducted by qualified personnel and can be in conjunction with other daily activities.

All dischargers or their ~~duly~~ authorized representatives of Tier II small 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 or its ~~duly~~ authorized representative 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 or their ~~duly~~ authorized representatives shall develop and implement a monitoring program for inspecting Tier II small 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 the pre-, during, and post-rain inspections conducted will be maintained in the SWPPP. The log will provide the date and time of the inspection and who conducted the inspection.

**Sampling Requirements for all Tiers**

This permit contains sampling and analysis requirements for visible pollutants (i.e., sedimentation/siltation, turbidity) and for non-visible pollutants.

- Sampling for visible pollutants is required only when a small LUP has a direct discharge to a water body segment that is listed on the SWRCB's CWA Section 303(d) list as impaired for sedimentation/ siltation, or turbidity. The current CWA Section 303(d) list is provided in Attachment 7.

- 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 shall 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) the discharger or its ~~duly~~ authorized representative has failed to adequately clean the area of material and pollutants. Also a failure to implement appropriate BMPs will trigger sampling requirements the same as those required for a breach, malfunction and/or leak, when the discharger or its ~~duly~~ authorized representative has failed to implement appropriate BMPs prior to the next storm event.

It is not anticipated that many small LUPs subject to this General Permit 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 small 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 or its ~~duly~~ authorized representative to sample for these types of pollutants except where the discharger or its ~~duly~~ authorized representative has brought materials onsite that contain these pollutants and when a condition (e.g., breach, failure, etc.) described above occurs.

On August 19, 1999, the SWRCB reissued Order 99-08. The San Francisco BayKeeper, Santa Monica BayKeeper, San Diego BayKeeper, and Orange Coast Keeper filed a petition for writ of mandate challenging Order 99-08 in the Superior Court, County of Sacramento. The Court issued a judgment and writ of mandate on September 15, 2000. The Court directed the SWRCB to modify the provisions of the Order 99-08 to require specific sampling and analytical

procedures to determine whether BMPs implemented on a construction site are: (1) preventing further impairment by sediment in storm waters discharged directly into waters listed as impaired for sediment or silt, and (2) preventing other pollutants that are known or should be known by permittees to occur on construction sites and are not visually detectable in storm water discharges from causing or contributing to exceedances of water quality objectives. The monitoring requirements established in Order 99-08 pursuant to the Court's decision have been incorporated into this General Permit.

**RWQCB Authorities**

RWQCBs will be responsible for implementing and enforcing this General Permit. Under its authority, the RWQCB may require the discharger or its ~~duly~~ authorized representative to revise an SWPPP, implement additional monitoring, implement additional BMPs, or implement other actions as needed to ensure full compliance with this General Permit. RWQCBs may take enforcement against a discharger and/or its authorized representative for violating or threatening to violate requirements and conditions of this General Permit. The RWQCB may direct a discharger to seek coverage under Order 99-08 or a separate NPDES permit for small LUPs meeting the land disturbance threshold for coverage under this General Permit.

**Retention of Records**

The discharger is required to retain records of all monitoring information, copies of all reports required by this General Permit, and records of all data used to complete the NOI and LCANs for all small LUPs covered by this General Permit for a period of at least three years from the date generated. This period may be extended by request of the SWRCB and/or the appropriate RWQCB. With the exception of reporting noncompliance to the appropriate RWQCB office, dischargers are not required to submit the records, except upon specific request by the appropriate RWQCB.

**Relationship with U.S. Corps Army of Engineer's CWA Section 404 Permits**

Small LUPs that involve the discharge of dredge and fill material to a water of the United States (e.g., wetland, stream or other channel, pond, or marine water) will need a U.S. Army Corps of Engineer's Permit and State water quality certification pursuant respectively to CWA Sections 404 and 401. The 404 permit and 401 certification specifically authorize dredge and fill discharge. In addition, the CWA Section 401 certification must also generally ensure compliance with all applicable water quality standards. This General Permit authorizes the potential discharge of storm water from small LUPs pursuant to CWA Section 402(p). Small LUPs regulated by this General Permit that also have dredge and fill activities must comply with CWA Sections 404 permit and 401 certification requirements and the requirements of this General Permit.