Chapter 400 – Environmental Requirements

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Chapter 400
Environmental Requirements

401 COMPLIANCE WITH STATE ENVIRONMENTAL LAWS AND REGULATIONS

Most encroachment permits issued by Caltrans do not involve projects that are federally funded or that require federal approvals. Projects with no federal involvement are subject only to state environmental laws and regulations. Under state law Caltrans has discretionary approval authority, as provided in Section 670 of the Streets and Highway Code, to approve projects that encroach within the State's highway right-of-way. This discretionary authority gives Caltrans a "Responsible Agency" status under the California Environmental Quality Act (CEQA) for the part of a project that requires work within the State's highway right-of-way. For purposes of CEQA, the term "Responsible Agency" includes all public agencies other than the Lead Agency which have discretionary approval power over the project.

For example, the increased traffic generated by construction of a residential subdivision could require installation of channelization on a State highway intersection to lessen the traffic impact. The "Lead Agency," is the public agency that has principal responsibility for carrying out or approving the whole project. In this example, the Lead Agency would normally be the local agency that approves the subdivision and provides final conditions of approval on the project. Caltrans would, in this situation, be a Responsible Agency because it has discretionary approval authority only over the channelization improvements within the State's right-of-way but not over the subdivision itself.

Whether the encroachment permit applicant is a public agency or a private entity, a public agency other than Caltrans is usually the Lead Agency. An exception to this situation would be if Caltrans is the only public agency with approval authority or if several public agencies have discretionary authority over the project and the public agencies involved agree that Caltrans should be the Lead Agency. When Caltrans is the Lead Agency under CEQA for projects sponsored by others, it determines the appropriate level of environmental review for the project and is responsible for preparing documents or causing them to be prepared. As a Lead Agency, Caltrans can require the applicant to provide all information necessary to prepare a Categorical Exemption (CE), a Negative Declaration (ND) or an Environmental Impact Report (EIR) that complies with the provisions of CEQA.

In accordance with California Streets and Highways Code, section 671.5 (a), Caltrans is required to either approve or deny an encroachment permit application submittal within 60 calendar days, upon determination that the submittal is complete. Section 671.5 grants Caltrans the authority in

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determining what constitutes a complete submittal. The District Permit Engineer acts on behalf of the District Director in making that determination.

In addition to other required documentation, Caltrans requires that an approved environmental document accompany the "Standard Encroachment Permit Application" (form TR-0100). All required documentation, including environmental, must accompany the encroachment permit application before Caltrans deems the application complete. This is the case regardless of whether Caltrans is the Responsible or the Lead Agency. No new information can be required from an applicant once the application form with its accompanying documentation has been accepted as complete. However, the applicant can be asked to clarify, correct, or otherwise supplement the information submitted.

402 PROJECTS EXEMPT FROM CEQA REQUIREMENTS

Certain types of projects are exempt from the requirements of CEQA. Statutory exemptions are granted by the legislature and are listed in the CEQA Guidelines sections 15260 through 15285.

Categorical exemptions are classes of projects, which have been found by the Secretary of Resources not to have significant effect on the environment. Classes of projects determined to be categorically exempt are listed in the CEQA Guidelines sections 15300 through 15332.

In addition, other State laws, including those that protect historical, archaeological, and biological resources, may apply even for projects exempt from CEQA. Where these resources are known or are highly likely to be found, review by the District Environmental Branch is necessary to ensure compliance. To facilitate Permit Branch review of applications, the District Environmental Branch is responsible for providing to the District Permit Engineer the locations of all known environmentally sensitive areas (ESA) and if known, likely areas of high sensitivity, within State right-of-way. The absence of an ESA or area of high sensitivity, however, does not necessarily mean the absence of a sensitive resource.

Whether an area has been previously identified as an ESA or not, any permit application for work within the right-of-way that is on original ground (i.e. ground that has not been previously disturbed, or that has not been disturbed to the depth required by the proposed project), shall be submitted to the Environmental Branch for review. The Environmental Branch shall advise the District Permit Engineer if the proposed work can be accomplished without adverse impact through the attachment of permit conditions that would protect or avoid the resource. A project that requires mitigation to reduce or avoid impacts to resources is not categorically exempt.

402.1 CEQA Statutory Exemptions

Statutory exemptions listed in the CEQA Guidelines that are directly applicable to encroachment permits include, but are not limited to:

- restriping of streets or highways to relieve traffic congestion (Section 15282(k))

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- installation, maintenance, and repair of pipelines not to exceed one mile in length (Section 15282(l))
- minor alterations to utilities for purposes of complying with Health and Safety Code (Section 15282(n))
- emergency projects that meet the criteria set forth in Section 15269

  An emergency is defined in CEQA as a state of emergency that has been proclaimed by the Governor pursuant to the California Emergency Services Act. Statutorily exempt emergency projects include:

  - projects undertaken or carried out to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster
  - Emergency repairs to a public service facility that is necessary to maintain service essential to public health and safety.
  - specific actions that are necessary to prevent or mitigate an emergency, excluding long term projects for the purpose of preventing or mitigating a situation that has low probability of occurrence in the short-term.
  - projects undertaken, carried out, or approved by a public agency to maintain, repair or restore an existing highway damaged by fire, flood, storm, earthquake or subsidence.

Projects or actions which could alter significant historical resources are not included in this exemption, except when the resource's condition poses a clear and imminent danger requiring immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services (Public Resources Code, Section 5028).

A historical resource (e.g. architectural, archaeological, and cultural) is defined in Public Resources Code Section 21084.1 as a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subdivision (k) of Section 5020.1, or deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1, are presumed to be historically or culturally significant for the purpose of Section 21084.1.

The emergency exemption also does not apply to highways designated as official state scenic highways or to any expansion or widening of highways damaged by natural disasters.

Other State laws that protect historical, archaeological and biological resources also may apply.

The CEQA Guidelines, Statutory Exemptions Section, should always be consulted to ensure that a project, as described, meets all the specific criteria of an exemption.

402.2 CEQA Categorical Exemptions

To be classified as categorically exempt from CEQA, a project must meet all the criteria within one of the classes of projects found by the Secretary for Resources not to have a significant

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effect on the environment. Categorically exempt projects directly applicable to encroachment permit activities include, but are not necessarily limited to:

- repair, maintenance, and minor alteration to existing highways and streets, sidewalks, gutters, bicycle and pedestrian paths and similar facilities including grading for the purposes of public safety (Section 15301(c))
- addition of safety or health protection devices for use during construction (Section 15301(B)(f))
- new copy on existing on and off-premise signs (Section 15301(B)(g))
- maintenance of existing landscaping excluding the use of economic poisons (Section 15301(B)(h))
- demolition and removal of small structures (Section 15301(B)(l))
- replacement or reconstruction of existing structures located on the same site and having substantially the same purpose and capacity (Section 15302)
- replacement or reconstruction of existing utility systems involving no expansion of capacity (Section 15301(c))
- conversion of overhead electric utility distribution system facilities to underground where surface is restored to prior condition (Section 15302(d))
- construction and location of limited number of new, small, facilities (Section 15303)
- minor alterations to land, water and vegetation that does not involve the removal of healthy mature scenic trees (Section 15304)
- grading on land with a slope of less than 10% except in a waterway, in any wetland, or in an officially designated scenic area (Section 15304(a))
- new gardening and landscaping (Section 15304(b))
- fill into previously excavated land (Section 15304 (c))
- minor temporary use of land with negligible effect on environment such as sale of Christmas trees (Section 15304(e))
- minor trenching or backfill where the surface is restored (Section 15304(f))
- maintenance trenching (Section 15304(g))
- creation of bicycle lanes in existing right-of-way (Section 15304(h))
- fuel management activities within 30 feet of structures to reduce volume of flammable material (Section 15304(I))
- basic data collection, research, experimental management and resource evaluation activities (Section 15306)

The CEQA Guidelines, Categorical Exemption Section, should always be consulted to ensure that a project, as described, meets all the specific criteria of an exemption.

It is recognized that activities that normally are exempt from CEQA may have a significant effect on the environment in certain circumstances. Exceptions to categorical exemptions are outlined in the CEQA Guidelines in Section 15300.2. These exceptions may occur in

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particularly sensitive environments where the project may impact on environmental resources of hazardous or critical concern. Categorical exemptions may not be applicable when:

- cumulative impacts may be significant
- there is a reasonable possibility that due to unusual circumstances the activity will have significant effect
- damage may result to scenic resources within a highway officially designated as a state scenic highway
- the project is located on a hazardous waste site
- the project might cause a substantial adverse change in the significance of an historical resource

Review by the District Environmental Branch is necessary when the above conditions may pertain or if there is any other reasonable possibility that a significant impact might occur.

403 CALTRANS AS A CEQA RESPONSIBLE AGENCY

Under CEQA Responsible Agencies include all public agencies, other than the Lead Agency, which have discretionary approval power over a project in California (Public Resources Code, Sections 21069, 21080.3).

Caltrans is a Responsible Agency when a public agency requests an encroachment permit for a public project, or when a private project proponent requests an encroachment permit to carry out work on a project for which another public agency is the Lead Agency. When a project involves activities outside Caltrans right-of-way, the entire project requires environmental compliance and encroachment permit work usually is incidental to the major part of the work that lies outside Caltrans' right-of-way. Therefore, Caltrans normally is a Responsible Agency for nearly all the fee encroachment permits it issues. However, Caltrans Project Development requirements must be followed when work on the State highway is more than minor or routine.

As a Responsible Agency, Caltrans is not required to prepare environmental documentation for the project. The Lead Agency is responsible for evaluating the project to assess its effect on the environment. The Lead Agency consults with responsible agencies, including Caltrans, in deciding what type of environmental document to prepare. The environmental document should address the concerns of responsible agencies as well as the Lead Agency.

Consultation requests submitted to the District by the Lead Agency are channeled through the District Intergovernmental Review (IGR) Coordinator for preparing and coordinating the District's comments. The IGR Coordinator shall be consulted on all permit requests accompanied by an EIR or ND. The District cooperates with the Lead Agency in consultations about the project. Responses must be made within the time allowed. The IGR Coordinator is responsible for ensuring that appropriate District units review and comment on the proposal and for

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preparing comments on documents received by the District. The District should advise local agencies of its need for early coordination on projects requiring permits from Caltrans.

In cases where the encroachment area has been identified as environmentally sensitive or may contain biological, historic or archeological resources, the IGR should consult with the District environmental specialists regarding the need for special studies. If the Lead Agency is preparing a categorical exemption the IGR should coordinate with the District specialists regarding the appropriateness of an exemption in the specific circumstance. If the Lead Agency is preparing an ND or EIR the IGR should coordinate with the District environmental specialists to comment prior to the receipt of the permit application. During the public review period for the environmental document, the District has an opportunity to examine the document and to comment on it. The comments of the environmental specialists regarding environmental compliance and documentation requirements should be included in the District's comment letter to the Lead Agency. Comments should encourage the Lead Agency to consult with the Native American Heritage Commission (NAHC) regarding any cultural concerns within the project area. If the project is within or contiguous to a reservation or rancheria, the District's comments shall include a recommendation that the tribe be contacted.

A permit application must include a Notice of Exemption or a certified environmental document (EIR or ND). For permits involving an EIR or ND, the Permit Engineer must certify on the permit that the information in the EIR or ND was reviewed and considered before permit approval.

403.1 Intergovernmental Review (IGR) and Permit Procedures

During the intergovernmental review process and before issuance of the encroachment permit, the procedure involving the District Permit Engineer for projects requiring environmental clearance or mitigation is listed as follows:

1. The District IGR Coordinator provides the District Permit Engineer with a copy of the draft environmental document and any supporting technical analysis provided by the Lead Agency or developer.
2. The District Permit Engineer’s comments on the draft environmental document are submitted to the IGR Coordinator for inclusion in Caltrans’ written response to the Lead Agency.
3. The District IGR Coordinator forwards to the District Permit Engineer a copy of the final environmental document containing all adopted approved conditions.

The District Permit Engineer should provide the District IGR Coordinator a copy of the Encroachment Permit Log on a mutually agreed upon schedule, e.g., weekly, monthly, etc. The District IGR Coordinator should review the Log and determine if the project was previously reviewed during the IGR process (more detailed information may be needed from specific permit

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files). The IGR Coordinator may then provide the District Permit Engineer with a list of mitigation measures requested during IGR/CEQA review process and a copy of the conditions of project approval included in the final environmental document.

The IGR Coordinators and permit engineers should not give any approval of project alternatives (either direct or implied) which will encroach within State highways having access-controlled right-of-way. Such encroachments require approval from Headquarters' Division of Design.

404 CALTRANS AS A CEQA LEAD AGENCY

A Lead Agency is responsible for preparing environmental documents and approving the project. The following procedures are followed when Caltrans is the Lead Agency under CEQA.

404.1 Procedures

Applications for permits that require preparation by Caltrans of a Categorical Exemption Determination form, a ND or an EIR are evaluated by the Permit Engineer, the Environmental Branch Chief, and other interested units as appropriate. Caltrans requires the project applicant to provide sufficient information so that Caltrans can prepare or cause the preparation of environmental documents. However, when Caltrans is the Lead Agency all environmental documents must reflect the independent evaluation and analysis of Caltrans.

404.2 Initial Study

If a project is not categorically exempt, an Initial Study must be prepared to determine the potential environmental effects of the project. From this study, Caltrans determines whether to prepare a ND or an EIR.

404.3 Environmental Impact Report or Negative Declaration

When an ND or EIR is required the entire project must be considered, not just the portion of the work within Caltrans' right-of-way.

The procedures for preparing and processing environmental documents are outlined in the Caltrans Environmental Handbook, Vol. 1, Chapter 2. The environmental process is completed for a ND when Caltrans, as the Lead Agency approves the project and files a Notice of Determination with the State Clearinghouse, Governor's Office of Planning and Research (OPR). The process is complete for an EIR when Caltrans certifies the EIR, approves the project, prepares a final EIR, makes findings, prepares a statement of overriding considerations, and files a Notice of Determination with the State Clearinghouse (OPR).

405 COMPLIANCE WITH FEDERAL ENVIRONMENTAL LAWS

Projects involving federal funds or approvals require compliance with the National Environmental Policy Act (NEPA), Section 4(f), as well as State environmental law (CEQA) and other State and federal environmental laws that may apply. Where historical, archaeological, and

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biological resources are known or are highly likely to be found, review by the District Environmental Branch is necessary to ensure compliance.

Compliance with federal laws and regulations may involve the preparation of NEPA documents or joint compliance documents that meet both federal and state requirements (e.g. a Categorical exemption/exclusion (CE/CE), a Finding of No Significant Impact /Negative Declaration (FONSI/ND), or an Environmental Impact Statement/Environmental Impact Report (EIS/EIR)), Caltrans can require the applicant to provide all necessary information and/or to prepare the environmental document. Requirements of the federal and State environmental acts are similar and the supporting documentation is generally compatible. Therefore, it usually is possible to perform a single environmental analysis that satisfies both federal and State requirements when federal approval is required. When preparing joint documents the stricter of the federal or State requirements take precedence. While most of the document's content and processing can be combined, some aspects of the environmental process require separate state/local and federal actions. Examples include, but are not limited to the following:

1. **Approval Procedures**

   State and federal agencies must take separate actions in the approval of environmental documents. FHWA issues determinations and approvals involving federal-aid projects and the NEPA. The State or local Lead Agency adopts the environmental document and approves the project under CEQA.

   Categorical exemptions/exclusions are documented on Caltrans's *Categorical Exemption, Categorical Exclusion/Programmatic Categorical Exclusion Determination Form* available on line at:

   http://www.dot.ca.gov/ser/forms.htm

   When a project has federal involvement both the CEQA and NEPA portions of the form must be completed. To comply with CEQA the CE form is filed with the State Clearinghouse, Governor's Office of Planning and Research (OPR). For purposes of federal compliance the form is processed differently depending on whether the federal exclusion is programmatic categorical or categorical (see Section 405.1 and 405.2).

   When a Negative or Mitigated Negative Declaration/FONSI has been prepared the Lead Agency must file a Notice of Determination with the State Clearinghouse (OPR). In compliance with NEPA the federal agency must prepare a statement which sets forth its finding that the project will have no significant impact. This finding is attached to the Environmental Assessment for the project. The documents are then forwarded to the District Permit Engineer for filing before issuing a permit.

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When an EIR/EIS has been completed the state or local Lead Agency must make findings and adopt a statement of overriding consideration for any impacts that are not mitigated below a level of significance. The federal agency must prepare a Record of Decision (ROD).

2. **Circulation Requirements**

State and federal circulation requirements differ for the ND and FONSI. Unlike CEQA NDs, FONSIs do not have a specified public comment period. Caltrans applies the state requirement of a 30-day public circulation period for joint documents.

3. **Categorical Exclusions/ Categorically Exemption Differences**

CEQA lists 32 standard categories of exemptions to which all state and local agencies must adhere. By contract, each federal agency adopts its own list of categorical exclusions that differ from agency to agency. FHWA has adopted exclusions which are listed in 23 CFR 771.117 (see Section 405.1). Under the authority provided in Section 771.117(d) Caltrans and FHWA have concurred through a programmatic agreement on additional actions which are deemed to have no environmental impact (See Section 405.2)

Documentation for state exempt projects must include information as to whether the project is statutorily or categorically exempt, and if the latter, under what class of exemptions. Documentation for federal exclusions must indicate if the project is a programmatic categorical exclusion (PCE) or a categorical exclusion (CE). For projects with federal involvement both the CEQA portion and the NEPA portion of the CE form is completed. If the project is exempt under 23 CFR 771.177 or falls under the provisions of the 1990 programmatic agreement no federal agency review or concurrence is required for either local agency projects or projects on the state highway system. If the project is not a programmatically excluded action, the signed CE form is forwarded to FHWA for signature by the FHWA Transportation Engineer.

405.1 FHWA Categorical Exclusions

The following actions defined in 23 CFR 771.177 are excluded as actions that normally do not involve significant environmental impact and require no approval actions by FHWA. For these actions the NEPA section of CE form is completed, but the FHWA Transportation Engineer does not sign the form.

- The actions does not have any significant environmental impacts as described in 23 CFR 771.117(a);
- The actions does not involve unusual circumstances as described in 23 CFR 771.117(b);

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- Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.
- Approval of utility installations along or across a transportation facility.
- Construction of bicycle and pedestrian lanes, paths, and facilities.
- Activities included in the State's highway safety plan under 23 U.S.C. 402.
- Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.
- The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
- Landscaping.
- Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
- Emergency repairs under 23 U.S.C. 125.
- Acquisition of scenic easements.
- Determination of payback under 23 CFR part 480 for property previously acquired with Federal-aid participation.
- Improvements to existing rest areas and truck weigh stations.
- Ridesharing activities.
- Bus and rail car rehabilitation.
- Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
- Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
- The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.
- Track and railbed maintenance and improvements when carried out within the existing right-of-way.
- Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
- Promulgation of rules, regulations, and directives.

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405.2 Programmatic Exclusions (1990 Programmatic Agreement)

In addition, Caltrans and FHWA have agreed through the Programmatic Agreement, September 7, 1990, that additional actions programmatically are approved if they meet all of the conditions listed below. These actions require no approval actions by FHWA. For these actions the NEPA section of CE form is completed, but the FHWA Transportation Engineer does not sign the form.

Actions which qualify under 23 CFR 771.117(d) and do not involve the following:

- The acquisition of more than minor amounts of temporary or permanent strips of right-of-way for construction of such items as clear vision corners and grading. Such acquisitions will not require any commercial or residential displacements.
- The use of properties protected by Section 4(f) of the Department of Transportation Act (49 USC 303).
- A determination of adverse effect by the State Historic Preservation Officer.
- Any US Coast Guard construction permits or any US Army Corps of Engineers Section 404 permits [other than nationwide (blanket) permits].
- Any work in wetlands.
- Any work permanently encroaching on a regulatory floodway of any work affecting the base floodplain (100-year flood) elevations of a watercourse or lake.
- Construction in, across, or adjacent to a river designated as a component or proposed for inclusion in the National System of Wild and Scenic Rivers published by the US Department of the Interior/US Department of Agriculture.
- Any changes in access control.
- The use of a temporary road, detour or ramp closure unless the use of such facilities satisfy the following conditions:
    i. Provisions are made for access by local traffic and so posted.
    ii. Through-traffic dependent business will not be adversely affected.
    iii. The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival.
    iv. The temporary road, detour, or ramp closure does not substantially change the environmental consequences of the action.
    v. There is no substantial controversy associated with the temporary road, detour, or ramp closure.

- Any known hazardous materials sites or hazardous materials remains within the right-of-way.
- The action conforms to the Air Quality Implementation Plan that is approved or promulgated by the Environmental Protection Agency in air quality nonattainment areas.
- The action is consistent with the State's Coastal Zone Management Plan.

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- The action does not affect federally listed endangered or threatened species or critical habitat.

All determinations made by Caltrans under the programmatic approach must be documented. The documentation shall be available for FHWA review upon request.

If one or more of the above conditions are not satisfied the categorical exclusion requires the review and approval of FHWA. Separate environmental documentation which demonstrates that the specific conditions or criteria for the CE's is satisfied and that significant environmental the impacts will not result must be submitted to FHWA to support the classification. A categorical exclusion will not apply if there are any "unusual circumstances" (23 CFR section 771.17). Unusual circumstances include:

- significant environmental impacts
- substantial controversy on environmental grounds
- significant impact to properties protected under Section 4(f) or Section 106
- inconsistencies with any federal, state or local laws

406 ENCROACHMENT PERMITS STORM WATER MANAGEMENT

Caltrans Headquarters and District Encroachment Permits Offices have a commitment to oversee non-Caltrans projects in order to prevent pollution in storm water and non-storm water runoff from and into the State highway right-of-way. This section constitutes the Quality Assurance (QA) plan for the Encroachment Permits Program to ensure statewide consistency and compliance with the Caltrans National Pollutant Discharge Elimination System (NPDES) permit (Order) and the Caltrans Statewide Storm Water Management Plan (SWMP).

Section 406 does not encompass all water quality laws and regulations but provides guidance on the processes used by the Encroachment Permits Program to review and inspect storm water elements associated with projects approved using the encroachment permit process. Projects not approved using the encroachment permit process, such as Oversight projects (see Section 108), may have different requirements. This section does not relieve the project sponsor or contractor from their responsibility to comply with all Federal, State, and local laws, regulations, and policies that apply to their project.

Best Management Practices (BMPs) are used to reduce the discharge of pollutants. BMPs include management practices, control techniques and system, design and engineering methods. This section discusses requirements to design, document, use, and maintain BMPs on encroachment permit projects.

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The applicant must incorporate Design Pollution Prevention BMPs for all projects that disturb soil, or are near or in an Environmentally Sensitive Area[1] (ESA). Construction site BMPs are required during construction. Post-construction BMPs are used to minimize the project's potential effects on water quality. Projects with post-construction BMPs may need to be approved using the Oversight Project process (see Section 108) not the Encroachment Permit process.

All BMPs must be Caltrans approved. For approved BMPs, tools, and further guidance, go to:

http://www.dot.ca.gov/hq/oppd/stormwtr/bmps.htm

For further information go to Appendix A in the Caltrans Storm Water Quality Handbooks, Project Planning and Design Guide (PPDG):

http://www.dot.ca.gov/hq/oppd/stormwtr/ppdg/swdr2012/PPDG-May-2012.pdf

Section 406 - Encroachment Permits Storm Water Management is organized as follows:

406.1 Overview and Background
406.2 Best Management Practices and Storm Water Document Selection and Preparation
406.3 Encroachment Permit Application Review
406.4 Construction Site Inspection
406.5 Construction Site Quality Control/ Quality Assurance Plan
406.6 Notice of Termination
406.7 Record Keeping and Archiving
406.8 Encroachment Permit Stormwater Training

406.1 Overview and Background

The following is from the PPDG, July, 2010. Federal regulations for controlling discharges of pollutants from Municipal Separate Storm Sewer Systems (MS4s), construction sites, and industrial activities were incorporated into the NPDES permit process by the 1987 amendments to the Clean Water Act (CWA) and by the subsequent 1990 promulgation of federal storm water regulations issued by the U.S. Environmental Protection Agency (EPA). The EPA regulations require municipal, construction and industrial storm water discharges to comply with an NPDES permit. In California, the EPA delegated its authority to the State Water Resources Control Board (SWRCB) to issue NPDES permits.

The SWRCB issued an NPDES Statewide Storm Water Permit to Caltrans in 2012 (Order No. 2012-00-11-DWQ) (CAS000003), to regulate storm water discharges from Caltrans facilities. For the Order, go to:

[1] An ESA is defined in Section 5.3.2 of the Draft SWMP, July 2012.

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http://www.waterboards.ca.gov/water_issues/programs/stormwater/caltrans.shtml

The Order contains three basic requirements:

1. Caltrans must comply with the requirements of the Construction General Permit (CGP) or the Lake Tahoe Construction General Permit
2. Caltrans must implement a year-round program in all parts of the State to effectively control storm water and non-storm water discharges
3. Caltrans storm water discharges must meet water quality standards through implementation of permanent and temporary construction BMPs and other measures

To comply with the Order, Caltrans has developed a statewide SWMP. The SWMP is the Caltrans policy document that describes how Caltrans conducts its storm water management activities (i.e., procedures and practices), provides descriptions of each of the major management program elements, discusses the processes used to evaluate and select appropriate BMPs, and presents key implementation responsibilities and schedules. All projects within the State right-of-way, regardless of who funds or administers the project, are required to comply with the SWMP.

Caltrans uses the encroachment permit process as a quality assurance program to ensure project sponsors comply with storm water laws and regulations. For a glossary of terms used in this section, go to:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_app_6.pdf

406.2 Best Management Practices and Storm Water Document Selection and Preparation

This section assists the applicant in selecting the appropriate BMPs and preparing the appropriate storm water document to submit with the encroachment permit application. Depending on the amount of Disturbed Soil Area (DSA) and other project conditions, the applicant provides an Erosion and Sediment Control Plan (ESCP), a Water Pollution Control Program (WPCP), a Storm Water Pollution Prevention Plan (SWPPP), and/or authorizing documents for dewatering activities.

406.2A BMP Selection

The applicant is responsible for controlling discharges of storm water and non-storm water from the construction site. The applicant shall prevent discharges from flowing through areas that have been disturbed by construction unless appropriate conveyance systems are in-place. All projects that disturb soil must incorporate Design Pollution Prevention (DPP) BMPs. The applicant must submit a completed DPP-1 checklist to document BMP consideration. The checklist is in the PPDG, Appendix E. The plans need to show which BMPs were selected and their location.

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During the project planning and design process, the applicant is responsible for incorporating treatment BMPs for all projects subject to the Order, and which meet the following criteria:

Table 4 1
Threshold for Consideration of Structural Treatment BMPs

Project Category	Threshold – Net New Impervious Surface (4)
Non- Highway Facilities (Rest Areas and Vista Points, Park and Ride Lots, Maintenance and support facilities)	5,000 square feet or more
Highway (1) (3)	43,560 square feet (1 acre) or more

(1) Pedestrian/bike path projects do not require treatment BMPs.
(2) If the net impervious area constitutes 50 percent or more of the original facility, post-construction BMPs will be designed for the entire facility.
(3) Emergency projects are exempt from treatment BMPs based on the immediate need to provide service and protection for the public.
(4) Routine Maintenance Activities are not required to incorporate treatment BMPs.

The applicant must use Caltrans approved BMPs. For a list of BMPs, go to:

http://www.dot.ca.gov/hq/construc/stormwater/factsheets.htm

Caltrans approved treatment BMPs include: Biofiltration strips and swales; infiltration devices; detention devices; wet basins; media filters; multi-chamber treatment train; dry weather flow diversion; gross solids removal devices; traction sand traps. See the PPDG for further guidance on use, design, and specifications.

All new development and redevelopment projects subject to consideration of treatment BMPs must also analyze the project's potential to contribute to hydromodification impacts. There are many different approaches to managing hydromodification impacts from urbanization. In general, in-stream solutions are most appropriate for Caltrans facilities, and focus on managing the receiving stream to accept localized flow changes without becoming unstable.

406.2B Storm Water Document Selection

The type of storm water document required depends on the amount of total *disturbed soil area* (DSA) and specific project elements such as dewatering, new impervious surface area, and proximity to an ESA. DSA is exposed, erodible soil within the construction limits because of construction activities. The total construction site DSA includes DSA inside and outside the State right-of-way. The DSA calculation must be documented in the appropriate storm water document.

For Linear Utility Projects (LUP), the DSA calculation must be documented in the storm water document and must account for all ground disturbances, not just the trenching activity itself. Examples of DSA to include are truck tracks, stock pile locations, access roads, etc. The

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applicant should use the guidance titled "Calculating Land Disturbance Areas in LUPs" in the CGP, A.2 for DSA calculations.

Where discrete LUP construction projects within a larger common plan of development are located at least 1/4 mile apart and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development provided any interconnecting road, pipeline or utility project that is part of the same "common plan of development" is not concurrently being disturbed.

For information on non-contiguous projects refer to EPAs Fact Sheet (page 7 of 52, 2nd paragraph)

http://www.epa.gov/npdes/pubs/cgp2008_finalfactsheet.pdf

An applicant's questions pertaining to DSA, discharge exemption, permit coverage, and general storm water requirements should be addressed to the District Encroachment Permits Storm Water Coordinator (EPSWC). Final determinations are made by the local Regional Water Quality Control Board (RWQCB). The applicant must submit a letter of concurrence from the local RWQCB concerning the determination on whether discharges from a part of a larger common plan or DSA may be exempted from coverage under the CGP.

All storm water documents should provide a simple narrative and diagram that locates the construction site, identifies potential pollutant sources on site, and shows the location of the design, construction, and post-construction BMPs. The storm water documents should also describe measures which eliminate or reduce pollution of storm water runoff by any chemicals and materials used during each phase of the construction process. The level of detail will vary with the intensity, size, and type of construction.

No Disturbed Soil Area and No Construction Site

The applicant is not required to submit a storm water document if the project does not disturb any soil and does not have a construction site: projects such as hanging banners or conducting traffic counts.

Erosion and Sediment Control Plan

The applicant must submit an ESCP if the construction site meets *all* of the following conditions:

1. Total DSA is less than one-quarter (¼) acre
2. Construction site *does not* discharge directly[2] or indirectly[3] to receiving waters[4]

[2] Direct Discharge: Any discharge from the MS4 that does not meet the definition of an indirect discharge (Order).
[3] Indirect Discharge: Any discharge from the MS4 that is conveyed to the receiving water through 300 feet or more of an unlined ditch or channel as measured between the discharge point from the MS4 and the receiving water (Order).
[4] Receiving Water: A river, lake, ocean, stream or other watercourse into which wastewater or treated effluent is discharged as provided in the "Terms of Environment" (U.S. EPA Office of Communications, Education, and Public Affairs: December 1997).

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3. Is not within an ESA nor discharges to an ESA

The applicant must submit six copies of the ESCP with the encroachment permit application package.

The applicant must refer to the local entity (City or County) or local Municipal Storm Water System owner for guidance on preparing this storm water document. The applicant must also incorporate any local city and county requirements.

The ESCP must provide the name and contact information for the construction superintendent or property owner, and must show on a construction site layout sheet the location of: selected BMPs; concentrated flows; project entry and exit; material storage; stockpiles.

Water Pollution Control Program

The applicant must submit a WPCP if the construction site is not in an ESA, and does not discharge to an ESA, and meets one of the following conditions:

1. The total DSA is less than one-quarter (¼) acre and discharges directly, or indirectly, to a receiving water body
2. The total DSA is one-quarter (¼) acre or more but less than one (1) acre
3. The total DSA is one (1) acre or more but less than five (5) acres, and qualifies under the U. S. EPA Rainfall Erosivity Waiver (REW) certification.

The applicant must submit six copies of the WPCP, the Qualified Storm Water Pollution Prevention Plan Practitioner's (QSP) certification and contact information, and if applicable, the US EPA REW certification. If submitting an EPA REW, then the applicant must also submit the Notice of Intent (NOI), the Sediment Risk form, and other appropriate documents through the SWRCB Storm Water Multiple Application & Report Tracking System (SMARTS).

The WPCP must be prepared by a QSP. The QSP must use the Caltrans WPCP template.

For the WPCP template and preparation manual for completing it, go to:

http://www.dot.ca.gov/hq/construc/stormwater/

Construction Sites under the US EPA REW seeking Time Extension (Rider): A time extension cannot be issued until the applicant submits a revised EPA REW certification from SMARTS. If the new construction times do not qualify for REW certification, the applicant is required to submit a SWPPP and a Waste Discharge Identification (WDID) number as a condition of the encroachment permit time extension.

Storm Water Pollution Prevention Plan

The applicant must submit a SWPPP if the construction site meets *one* of the following conditions:

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1. Total DSA is one (1) acre or more and does not have an REW
2. Is within an ESA or may discharge to an ESA
3. Is a Type 1 or Type 2 LUP (see the CGP, Attachment A & A.1)

For projects requiring only design-approval and are not ready for construction, the applicant can provide the Construction Site BMP Consideration Form, and associated checklists (Appendix E, PPDG) in lieu of the SWPPP. Submit a detailed cost estimate of the proposed BMPs with the form. The estimate must include consideration of the following items: Design Pollution Prevention, Treatment, and Construction Site BMPs; Preparation of SWPPP; right-of-way acquisition.

When applying for a double permit, or a permit for construction, the permit applicant must submit six copies each of; the SWPPP, the Notice of Intent (including an active WDID), and the Qualified SWPPP Developer's (QSD) certification and contact information.

The SWPPP must be prepared by a QSD. The QSD must approve and certify the SWPPP and ensure it is uploaded correctly into the SMARTS.

The SWPPP must address all areas that are directly related to the construction site, including but not limited to staging areas, storage yards, material borrow areas, water sampling sites, and access roads, etc.

The permit applicant must ensure that their SWPPP includes a Quality Control and Assurance Plan (QC) that describes roles, responsibilities and actions that will be implemented by the LRP's or Contractor's QSP to ensure the project activities comply with the SWPPP.

The QSD can prepare the SWPPP using templates developed by Caltrans or the California Stormwater Quality Association (CASQA). Caltrans will also accept SWPPP's developed using templates that may be required by utility districts or local agencies. The templates must contain the elements required by Caltrans and the CGP.

For the Caltrans SWPPP preparation manual and template, go to:

http://www.dot.ca.gov/hq/construc/stormwater/

For the CASQA template, go to:

http://www.cabmphandbooks.com

Dewatering Plan

For projects involving dewatering, the applicant must submit:

1. A dewatering plan and a separate Dewatering Permit (DWP) from the RWQCB, or
2. dewatering waiver acknowledgement from the RWQCB, or
3. letter of authorization from local sewer district where the effluent will be discharged

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Dewatering activities must comply with the local RWQCB requirements. The applicant must submit the required documents before an encroachment permit is issued. For permits to construct (double permits), the DWP number must be submitted also. The dewatering plan must conform to Section 13-4.03G of the Standard Specifications. The dewatering plan may involve designing, installing, operating, maintaining, and removing a temporary active treatment system for the accumulated water, groundwater or surface water from excavation or temporary containment facilities. Active treatment systems must conform to the CGP, Appendix F.

406.3 Encroachment Permit Application Review

The permit applicant is responsible for documenting which BMPs were considered, incorporating the appropriate BMPs, and preparing the appropriate storm water document. The permit writer determines if the applicant has submitted the appropriate documentation by using information supplied by the applicant and may also use the "Encroachment Permit Storm Water Assessment" (form TR-0132).

The permit writer may request that other functional units review the application package. The permit writer should request a review by the Caltrans EPSWC for all projects requiring a WPCP or SWPPP. Using the "Encroachment Permit Application Review" (form TR-0110), the functional units and EPSWC will approve, deny, or request further clarification on the documents submitted. The Headquarters (HQ) EPSWC is also available to review project documents.

The permit inspector should review the stormwater document and notify the permit writer concerning possible amendments to the ESCP, WPCP, or SWPPP document.

The permit writer cannot issue the Contractor's double permit, and the Contractor cannot begin work until Caltrans has accepted the appropriate storm water document. Issuing an encroachment permit or rider without the appropriate storm water document is a non-compliance action of the Order. If this occurs, the permit writer must fill out a "Notification of Non-Compliance" (form TR-0134). The form must be submitted to the District NPDES Coordinator within three (3) business days of the finding of non-compliance.

For projects covered under the CGP, Caltrans is responsible for reviewing the qualifications of proposed field staff including the QSD and QSP working for the contractor. To verify QSD and QSP certification, go to:

http://www.owp.csus.edu/qsd-lookup.php

This same website has a link to report a QSD or QSP problem to the SWRCB.

The plans and total DSA will be reviewed by the permit writer. To determine proximity to an ESA, the permit writer will review the Environmental Documents and the HQ Division of Environmental Analysis website at:

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http://svctenvims.dot.ca.gov/wqpt/wqpt.aspx

The permit writer will include "Storm Water Special Provisions for Minimal or No Impact" (TR-0400) for all projects that do not require a storm water document.

406.3A Erosion and Sediment Control Plan

The permit writer verifies that all BMPs are Caltrans approved. The permit writer includes "Storm Water Special Provisions for Minimal or No Impact" (TR-0400) and the "Storm Water Inspection Form" (form TR-0135) with the permit.

406.3B Water Pollution Control Program

The permit writer ensures the current version of the Caltrans WPCP template is used, a QSP has prepared it, and that Caltrans approved BMPs are used. The permit writer attaches the Encroachment Permit Storm Water Special Provisions for REW projects. The permit writer obtains acceptance from the EPSWC via the "Encroachment Permit Application Review" (form TR-0110).

The permit writer verifies that the Caltrans WPCP and drawings follow the guidance in the Caltrans SWPPP/WPCP Preparation Manual and Technical Memorandum dated 2012. For REW projects, the permit writer verifies SMARTS entries.

For high risk projects, the permit writer informs the EPSWC that an independent, third party QSD (IA) will be required for the project. The EPSWC will contract for services with the IA. The permit writer verifies the IA certification (form TR-0135) is signed by the IA, the permit applicant, and their contractor.

406.3C Storm Water Pollution Prevention Plan

The Legally Responsible Person (LRP) or authorized signatory must submit the SWPPP through SMARTS to obtain a WDID number. The LRP is typically the project sponsor or permit applicant.

The WDID number and a copy of the Notice of Intent (NOI) must be included with the SWPPP. Linear Utility Projects that span RWQCB boundaries may require more than one WDID. The WDID(s) must be submitted to the District Encroachment Permits Office before construction begins. For access to SMARTS, go to:

https://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp

Caltrans requires the LRP or authorized signatory to hire an independent, third party QSD (IA) for Quality Assurance. The SWPPP must be amended to include the IA certification (form TR-0135) which is signed by the IA and the LRP. The IA certification must be uploaded into SMARTS prior to the start of the encroachment permit activity. The IA must work with the State representative to report on the Contractor's reportable discharge or the failure to submit a notice of discharge to the RWCQB.

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The permit writer will verify that the Caltrans SWPPP and drawings follow the guidance in the Caltrans SWPPP/WPCP Preparation Manual and Technical Memorandum dated 2012. The permit writer will obtain acceptance from the EPSWC via the "Encroachment Permit Application Review" (form TR-0110).

The permit writer will verify that the IA certification is in SMARTS. A permit to construct cannot be issued until Caltrans receives the WDID number from the applicant.

406.3D Dewatering Plan

Prior to issuing an encroachment permit for dewatering, the Permit Writer submits a copy of the encroachment permit application package to the EPSWC for their acceptance. The package may also need concurrence from District Hydraulics, District Maintenance, and District NPDES reviewers. An encroachment permit for dewatering activities cannot be issued until Caltrans receives the Dewatering Permit (DWP) number from the applicant.

406.4 Construction Site Inspection

The permittee and contractor are responsible for implementing and maintaining appropriate BMPs inside and outside the State right-of-way that will meet the conditions of the CGP. The contractor, the contractor's Water Pollution Control Manager (WPCM), permit inspector, IA, regulatory inspectors work together to minimize discharges.

Construction related to soil disturbance cannot begin until the required BMPs are in place.

The permittee or contractor must ensure the storm water documents are always available to the permit inspector, regulatory personnel, and the IA.

The permit inspector records the following in the permit file:

- Caltrans SWPPP/WPCP acceptance date
- Date of pre-construction meeting with WPCM
- Start and End Construction Date
- Results of SWPPP/ WPCP inspections
- Review WPCM's Visual monitoring reports
- Dates of notices of discharge/non-compliance
- Dates of Independent QSD (IA) inspections and report submittals to NPDES
- Dates of RWQCB inspections, NOVs, NOCs, etc.
- Verification Contractor training records in SWPPP

406.4A Erosion and Sediment Control Plan

The permittee and contractor are responsible for implementing and maintaining the construction site BMPs as described in the ESCP. The permittee must ensure that the appropriate BMPs are installed, maintained, and effective within the encroachment area.

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406.4B Water Pollution Control Program

Work cannot begin on the site until the WPCP has been accepted by the permit inspector and the EPSWC. The contractor and contractor's WPCM are required to follow the Caltrans Standard Specifications for developing and implementing the WPCP (Section 13-2, Standard Specifications). The contractor is responsible for implementing and maintaining the BMPs as described in the WPCP. The Contractor is required to hire a QSP for the construction site. If the QSP is not appointed, the WPCM or the QSD shall perform the responsibilities of the QSP. The Contractor's WPCM must be a QSP to implement the WPCP. [Section 131.01D (2)].

The contractor must ensure that employees receive water pollution control training before starting work at the job site. If the BMPs identified in the WPCP are not effectively controlling discharges, the QSP must amend the WPCP and place effective BMPs. If an amendment is required, work must stop until the permit inspector has accepted the WPCP amendment. The District Permit Engineer (DPE) can require an independent, third party QSD (IA) for WPCP projects.

The Quality Control/ Quality Assurance (QC/QA) Plan applies to all WPCP projects (See Section 406.5).

406.4C Storm Water Pollution Prevention Plan

Work cannot begin on the site until the SWPPP has been accepted by the permit inspector and the EPSWC. The contractor and contractor's WPCM are responsible for implementing the BMPs as described in the SWPPP. The WPCM must be a QSD if the project requires a SWPPP [Section 13-1.01D 3(a)]. The contractor must ensure that employees receive water pollution control training before starting work at the job site. If the BMPs identified in the SWPPP are not effectively controlling discharges, the QSD must amend the SWPPP and place effective BMPs. If an amendment is required, work must stop until the permit inspector has accepted the SWPPP amendment. The LRP must retain inspection records for three years from the date they are generated.

The QC/QA Plan applies to all SWPPP projects (See Section 406.5).

406.5 Construction Site Quality Control / Quality Assurance Plan

The project owner, contractor, and the State all participate in the Quality Control/ Quality Assurance Plan (QC/QA) which consists of three levels:

1. Quality Control (QC)(contractor)
2. Quality Assurance (QA)(permit or construction inspector, and EPSWC)
3. Independent Quality Assurance (IA)(third party QSD)

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406.5A Quality Control

The contractor's WPCM must implement a Quality Control and Assurance program (QC) as described in Section 13-1.01D of the Standard Specifications. The WPCM must use and maintain visual monitoring reports to document visual inspections of the construction site BMPs on a weekly basis and daily during rain events. These reports must remain at the construction site as part of the SWPPP. Standard Specification 13-3.01B (5) must be used in preparing the visual monitoring reports.

The WPCM's visual inspection must include:

- Verifying adequacy of trash receptacles
- Verifying waste disposal practices (e.g., recycle vs. hazardous waste bins)
- Examining integrity and use of containment structures
- Verifying use of employee education programs for the various activities
- Noting the location of activity (e.g., outdoor vs. indoor, concrete vs. grass)
- BMPs for any chemicals or fuels not addressed in the SWPPP must be developed
- Effectiveness of BMPs

The WPCM typically meets with the permit inspector and EPSWC at the pre-construction meeting.

406.5B Quality Assurance

Quality Assurance (QA) provides the LRP and the contractor's WPCM the opportunity to correct non-compliance in a timely manner in an effort to avoid reporting to the RWQCB(s). The LRP may delegate its QA responsibilities to an authorized signatory for SMARTS submittals.

The District Permit Inspector has the primary role for conducting regular stormwater inspections to verify that the necessary BMPs are installed and maintained according to the approved stormwater document. For projects with planting, the inspector coordinates with Landscape Architecture, EPSWC, and the PW to verify plant establishment before the project is accepted.

The District EPSWC conducts routine field inspections as part of the QA plan. The District EPSWC also acts as liaison with the HQ EPSWC and District NPDES Coordinator.

If after notification of non-compliance (see Section on Notification of Non-Compliance), the WPCM fails to correct the non-compliance, the permit inspector takes the following progressive actions:

1. Issue and document a verbal warning
2. Notify the LRP and contractor's WPCM in writing
3. Suspend the permit and notify the IA

Action one – The permit inspector will provide clear reasons for the non-compliance and corrective actions that are required. The instructions to the contractor are recorded in permit files.

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Action two - The permit inspector and or the EPSWC prepares a written report of the non-compliance that specifies the required corrective actions. The report is submitted to the LRP and contractor's WPCM. The project LRP must direct the Contractor's WPCM to meet with the permit inspector and IA. The Contractor's WPCM documents all communication with the permit inspector and IA, then takes the necessary steps to comply with the terms of the non-compliance.

Action three - The permit inspector notifies the IA. The IA will complete the "Notification of Non-Compliance" (form TR-0134) and submit to NPDES with copies to the permit inspector and LRP, or permittee. The LRP or permittee and IA must meet to develop a plan that will correct the non-compliance. No work can be done, except for corrective actions, until the permit suspension is lifted.

The permit inspector removes the suspension after receiving written notification from the IA that the site is in compliance.

The contractor's Double Permit may be revoked and other permits may be suspended. In addition, the LRP may be required to secure bonds for future work within the State right-of-way.

406.5C Independent Quality Assurance

Caltrans will provide a third party, Independent QSD (IA) for WPCP projects. (Still need approval for funding) The IA for WPCP projects will only be activated when the contractor is unresponsive, fails to take corrective action, or during non-compliance with the possibility of discharge to waters of the State.

The LRP must provide the IA for SWPPP projects.

At action three, the IA prepares a "Notification of Non-Compliance" (form TR-0134) if it is a reportable action. The IA submits the TR-0134 to the permit inspector, the NPDES Coordinator and the LRP.

The IA coordinates with the LRP to develop an action plan and implementation timeline that the WPCM uses to bring the site into compliance. After concurrence by the LRP, the IA submits the plan to the WPCM for implementation. The WPCM will contact the IA when the site is ready for inspection. The IA will coordinate a site meeting with the WPCM, permit inspector, and EPSWC. The IA issues written notification to the permit inspector when the site is in compliance.

The permit remains suspended until the site is brought into compliance.

The IA is responsible for decisions concerning SWPPP/ WPCP amendments.

406.5D Notification of Non-Compliance

The IA and the permit inspector conduct a field inspection to prepare the report. The following are triggers for the preparation of the "Notification of Non-Compliance" (form TR-0134):

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1. Failure to report sudden, unexpected, unpreventable incidents that threaten public health, public safety, property, or the environment that pose a clear and imminent danger requiring immediate action to prevent or mitigate the damage or threat, and that result in a discharge or potential discharge.
2. Failure to meet any non-administrative requirement of the Order or SWMP or to meet any applicable water quality standard.
3. Failure to meet any administrative or procedural requirement of the Order or SWMP including submission of required reports, notifications and certifications.

The following documents are gathered by the IA for submittal to the District NPDES Coordinator during implementation of action three:

1. Copy of the Encroachment Permit
2. Signed (IA and permit inspector) "Notification of Non-Compliance" (form TR-0134)
3. Photos describing the time and extent of the discharge
4. Copy of the project's vicinity map indicating approximate location of storm drain or receiving waters
5. Copy of the water pollution control plan sheet(s) or site plan to indicate the location of discharge and failed construction site BMPs
6. Documentation of verbal or written communication with the Contractor's WPCM

The "Notification of Non-Compliance" (form TR-0134) describes when reporting is required.

406.6 Notice of Termination

Prior to electronically filing the Notice of Termination (NOT) into SMARTS, the Contractor's WPCM must notify the permit inspector when the DSA, subject to soil stabilization requirements, is ready for inspection. The State Inspector will coordinate with Landscape Architecture, Maintenance and the EPSWC to ensure the soil is stabilized. All DSA must be stabilized before closing the site. After the RWQCB representative has certified that construction activities have been completed, the LRP or authorized signatory can process the NOT in the SMARTS database.

406.7 Record Keeping and Archiving

The LRP or authorized signatory must all monitoring and reporting records for a period of at least years from the generation or submittal date, longer as required by the RWQCB. The District Encroachment Permits Office should keep electronic copies for three years. Anything beyond that should only include basic information such as; project scope and duration, NOI/WDID, LRP or authorized signatory certification, discharge reports, names of contractor, QSD, and QSP.

The HQ and District EPSWC's compile and prepare materials for the Encroachment Permit Program's portion of Caltrans's Statewide Storm Water Management Program Annual Report to the SWRCB.

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406.8 Encroachment Permit Stormwater Training

Construction site BMP training is required of all staff involved in the preparation and implementation of the SWPPP and WPCP document. The State Inspector shall verify that the Contractor's QSP has trained personnel assigned to the implementation and maintenance of construction site BMPs. The training should cover responsibilities for BMP implementation, how to implement BMPs, general good housekeeping, and protection of BMPs in place. The LRP must certify in the SWPPP document that the Contractor's QSP has delivered construction site BMP training to all staff involved in SWPPP implementation.

The HQ and District EPSWCs, and DPEs will assist Districts in assuring staff receive the required training and refresher courses to enable them to carry out the quality assurance aspects of the Encroachment Permit Program.

407 AERIALLY DEPOSITED LEAD MANAGEMENT GUIDANCE FOR ENCROACHMENT PERMIT PROJECTS

Until the mid-1980's gasoline and other fuels contained lead as an additive. As each motor vehicle traveled the highways, tiny particles of lead were emitted in the exhaust and settled on the soils next to the highways. This lead is referred to as aerially deposited lead (ADL). Most of the time, lead tends not to move very far or very fast in the environment. Over the years, lead accumulated alongside the highways and became ubiquitous in the built environment. As a result, highway projects disturb soils which often contain elevated concentrations of lead.

ADL is usually found within 30 feet of the edge of the pavement and within the top six inches of the soil. In some cases, the lead is as deep as two to three feet below the surface. The Department of Toxic Substances Control (DTSC) sets regulatory thresholds for lead in soil, based on risk assessment work performed by CalEPA's Office of Environmental Health Hazard Assessment (OEHHA). In areas where road construction will occur, Caltrans has found levels of lead that exceed the regulatory threshold throughout the State.

Therefore, ADL management has to be addressed when proposed work within state highway right-of-way includes soil disturbance by either Caltrans or other entities. Encroachment Permit (EP) projects will be categorized into three classifications for ADL compliance, as follows:

- **Minimal disturbance (E.g.: pole replacement, driveways, service connections etc.):** Projects which result in minimal soil disturbance and all disturbed soil can be placed back within work limits in the immediate area from which it was excavated.
    - The following Special Provision must be included in all permits that qualify under this classification:

"Permittee must reuse the soil within the work limits in the immediate area from which it was excavated. If any excess soil is generated, it becomes the property of the permittee. Permittee must transport all excess soil outside of Caltrans'

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right-of-way, and dispose of it in accordance with all applicable environmental laws and regulations."

- **Excess Soil (E.g.: utility mainline trenching, etc.):** Projects that result in excess soil which cannot be reused within the work limits and needs to be transported off of the project site qualify under this classification.
    - "Hazardous Materials and Hazardous Waste Management Special Provisions" (TR-0408) must be included in all permits. (See appendix K)
- **All highway widening and reconfiguration projects:** All highway widening and reconfiguration projects, and projects involving right-of-way dedication must follow the following protocol:
    - Permittee will be required to perform sampling and analysis of the soils for lead and other contaminants of concern that will be excavated. For this activity, permittee will be required to submit an initial EP application for sampling. A Sampling and Analysis Plan (SAP), and a Health and Safety Plan (HaSP) must be submitted along with the application for review by the District Hazardous Waste (HW) management office. HaSP must be prepared, signed, and sealed by a Certified Industrial Hygienist (CIH). The final soil assessment report including chain of custody, laboratory data, and statistical analysis must be submitted to Caltrans for review. Upon the permit review, additional environmental documents may be required. The HW management office will review the report and recommend the need for soil management restrictions in the permit.
    - Permittee can then submit the permit application for full project review and approval. Package must include a Lead Compliance Plan (LCP) and a soil management plan, if applicable, as recommended by the HW management office. The package must be sent for review and approval by the HW management office.
    - "Hazardous Materials and Hazardous Waste Management Special Provisions" (TR-0408) must be included in all permits. (see Appendix K)
- The permittee is not responsible for clean-up of contaminated material which Caltrans would be legally required to clean up regardless of whether an encroachment permit project is proposed or not. However, encroachment work should not be allowed within the contaminated areas until clean-up is complete, unless permittee is willing to clean-up within their proposed project limits within state right-of-way at their own expense to move forward with their encroachment work.

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