

TIME TO CELEBRATE

you have a waiver

The Monthly Dirt
A monthly newsletter on the California
Construction General Permit

waiver noun

waiv·er (wā-vər)

[Synonyms of waiver >](#)

1 : the act of intentionally relinquishing or abandoning a known right, claim, or privilege

also : the legal instrument evidencing such an act

Source: <https://www.merriam-webster.com/dictionary/waiver>

First the Fine Print!

Before we get into the details and you before you breakout the balloons and party-poppers, let's review some instances where the erosivity waiver will not apply:

- ⊖ Projects with more than 5 acres of soil disturbance.
- ⊖ Projects that are part of a larger common plan of development, or dischargers that have programmatic permit coverage, do not qualify for a waiver unless **the entire project** qualifies for a waiver.
- ⊖ Projects that were sold to another owner if the original start date (of the previous owner) causes the erosivity "R" factor to be above 5.
- ⊖ Projects where a Regional Water Board staff determines that the discharge from the project causes or contributes to an exceedance of a water quality standard or violates a prohibition in an applicable regional or statewide water quality control plan (i.e., a Basin Plan).
- ⊖ Projects that last, in most cases, more than 6 months.

A waiver can be a good thing! It can exempt someone from having to do something that they would rather not do. *Imagine if you got a waiver from the Federal government on paying income tax.* That would be really good! It's as if you got a significant raise and would probably do a little celebrating. In this edition of **The Monthly Dirt** we are going to give some of our readers another reason to celebrate. Now, imagine if you did not have to prepare a SWPPP, do inspections or water testing, prepare an annual report, or even file a Notice of Termination. That could save you a boat-load of money and probably elicit a bit of celebrating too! If you have a project under 5 acres, you don't have to imagine too hard, it is all very much a possibility with a little flexibility in your schedule.

How to Qualify

As mentioned, the project cannot be over 5 acres and has to be, generally, short lived. The 2022 Construction General Permit (CGP) states the following:

Dischargers are eligible for the Small Construction Rainfall Erosivity waiver (waiver) if:

- a. *The site is between one and five acres; and*
- b. *The construction activity will take place during a period when the calculated rainfall erosivity factor is less than five.*

What about projects under one acre? Don't they qualify for the waiver? Remember, for a project to be subject to the CGP, it has to disturb more than one acre of soil. So, small projects according to the CGP are between one and five acres in size. (As a technical note, the waiver criteria is based on the project size and not the area of soil disturbance. It is possible to have a 10 acre project with only 4 acres of soil disturbance. According to the Permit, this project would not qualify for the waiver.)

The second qualifier for an erosivity waiver is

that the project needs to occur during a period of time when the calculated erosivity factor is less than five. The erosivity factor is the "R" factor that is in the Revised Universal Soil Loss Equation (RUSLE):

$$A=R \times K \times LS \times C \times P$$

According to the CGP's glossary, "*the R factor represents the erosivity of the climate at a particular location. An average annual value of R is determined from historical weather records using erosivity values determined for individual storms. The erosivity of an individual storm is computed as the product of the storm's total energy, which is closely related to storm amount, and the storm's maximum 30-minute intensity.*"

There are four pieces of information that are needed to determine the R factor for a given project:

- ⊖ Location (latitude and longitude in decimal degrees);
- ⊖ The project start date;
- ⊖ The project ending date; and

☺ The USEPA’s low erosivity waiver (LEW) website. <https://lew.epa.gov/>

Now notice that we did not say the duration of the project. That is because six months centered around the wet season will have a much different R value for a given location than six months centered around the dry season. Typically, to have an R value less than 5, the project needs to be occurring during the dry season in California. But the dry

Location	Starting	Ending	R Factor
San Diego	Apr. 14	Nov. 10	4.97
Riverside	May 17	Sep. 30	4.99
Los Angeles	Apr. 19	Nov. 10	4.97
Barstow	Mar. 28	Nov. 13	4.98
Mammoth Lakes	May 12	Sep. 30	4.99
Fresno	Apr. 6	Nov. 14	4.97
San Francisco	Apr. 26	Oct. 31	4.95
Sacramento	Apr. 24	Oct. 31	4.95
Redding	Apr. 29	Sep. 30	4.93
Eureka	May 1	Sep. 30	4.98
Death Valley	Jan. 1	Dec. 31	4.39

season will vary by a few weeks on both ends depending upon where the project is located. In Death Valley, you can do the project whenever you feel like it during a one year period (but I recommend avoiding the summer months in this case!)

Waiver Requirements

An important thing to recognize is that when a project qualifies for the erosivity waiver, it is not actually under the CGP. The permit states that “a waiver does not provide General Permit coverage. Dischargers with a waiver are not required to comply with post-construction, sampling, monitoring, or other SWPPP requirements in this General Permit.” But, it will still feel somewhat like you are under a permit because you will still need to file a Notice of Intent (NOI) on [SMARTS](#), pay a \$200 waiver fee to the Water Board, receive a WDID number (in this case, it has a “W” in it to

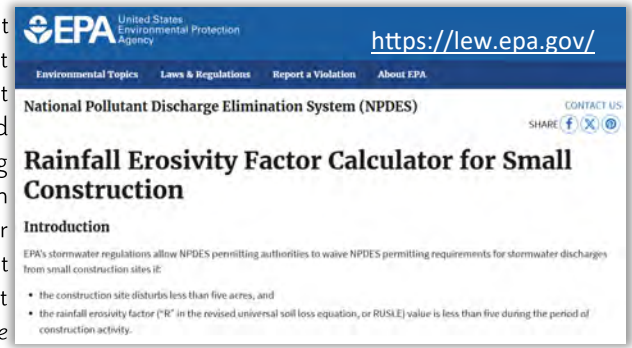
indicate that it is for a waiver), post the WDID number in a location that is visible to the public, make sure that construction activities are performed within the waiver starting and ending dates, and achieve final stabilization of disturbed soils prior to the waiver ending date. Regarding the last requirement, the CGP Fact Sheet provides further clarification, “The

period of construction activity begins when the WDID number is issued and ends when the disturbed areas of the project meet the final stabilization conditions in Order Section III.H.” (which are the same Notice of Termination stabilization conditions as for projects under the CGP.) The Fact Sheet also specifies that “a waiver eligibility condition requires the operator to **periodically inspect and properly maintain the area until the criteria for final stabilization defined in this General Permit is met.** If use of this interim stabilization eligibility condition is relied upon to qualify for the waiver, a signature on the waiver with a certification statement constitutes acceptance of and commitment to complete the final stabilization process.” In other words, any soil disturbance occurring on a construction project covered by the erosivity waiver must be stabilized with vegetation, impervious surfaces, wood mulch, an aggregate covering, or some other means of stabilization. The above quote from the Fact Sheet would seem

to indicate that a temporary (interim) stabilization method could be installed by the waiver ending date as long as the discharger periodically inspects the project site and has a commitment to make sure that final stabilization is achieved. An example of this would be a site that is hydroseeded. The hydraulic mulch-covered soils would meet the waiver conditions as long as the project owner assures that the hydroseed successfully germinates and provides the necessary soil coverage.

Timing

When it comes to waivers, timing is everything. If you have a small project with a 5 to 6-month duration, the date you choose to start the project could make a big difference in cost. The permit fee for a 1 to 5-acre project ranges from \$565 to \$781. The cost of a SWPPP preparation will be in the



tune of \$2,500. And QSP and QSD inspection costs during the wet season will run from \$2,500 to \$5,000/month—not to mention the cost of reporting, documentation for the NOT, post-construction requirements, TMDL monitoring, and implementing mandatory BMPs. *If the same project can be started around the middle of April and be done by the end of September, you may be able to save well over \$20,000 in CGP-related costs! Now that is something worth celebrating!*

But what happens if a project is delayed and cannot be completed by the waiver ending date? The CGP states, “The discharger shall update the project end date through the Change of Information process in SMARTS prior to expiration of the waiver if the project completion date is anticipated to extend past the waiver expiration date. If the updated project end date results in a rainfall erosivity factor of five or greater, the discharger shall obtain coverage under this General Permit. If the discharger fails to update the project end date prior to expiration of waiver, they shall immediately obtain coverage under this General Permit.” One possible permitting strategy for small projects that last longer than six months might be to enter the waiver first at the beginning of the dry season, and then, before it expires, file permit registration documents and a NOI to be covered under the CGP. This could save CGP implementation costs for up to the first 6 months of the project and give another reason to celebrate!

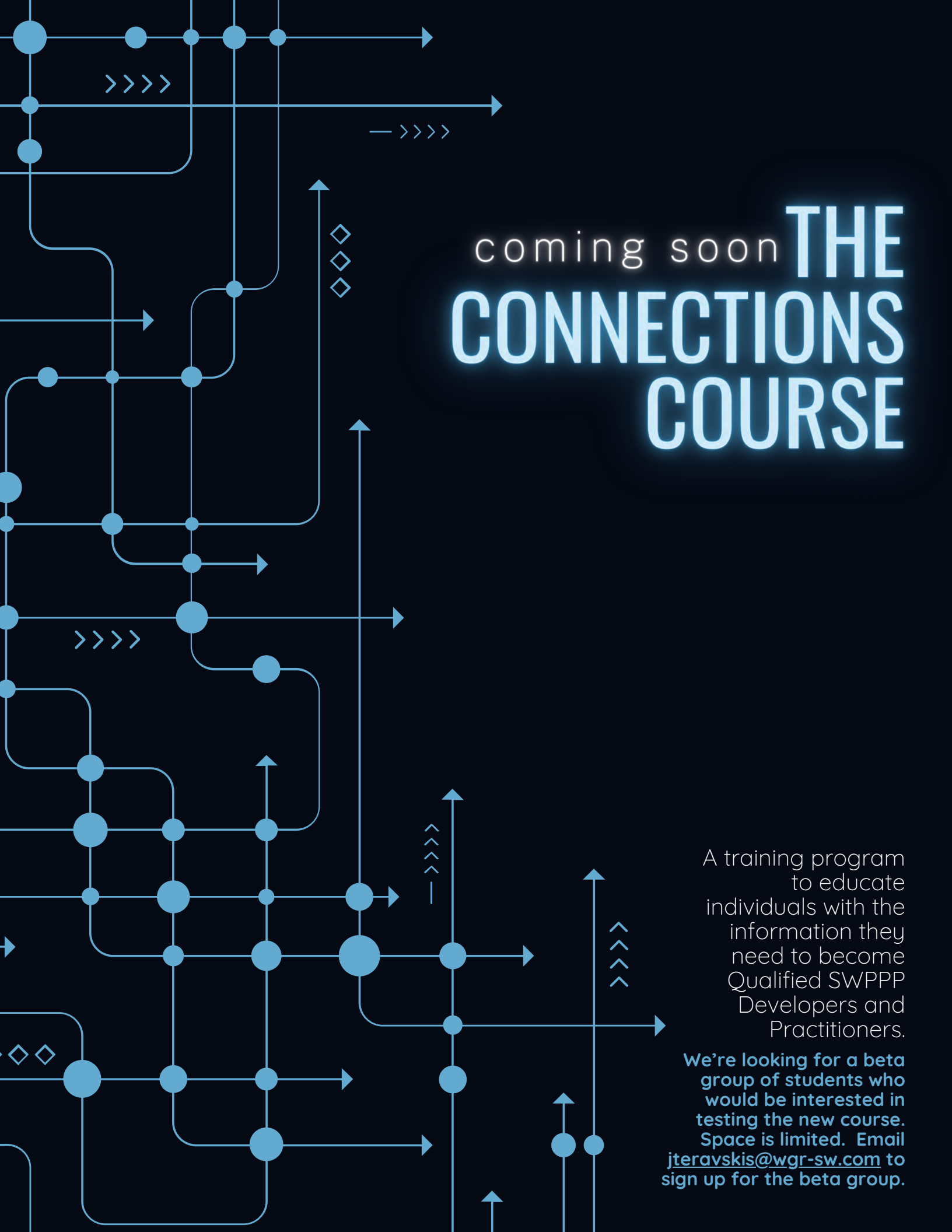
Please contact us if you have any questions ... The Monthly Dirt

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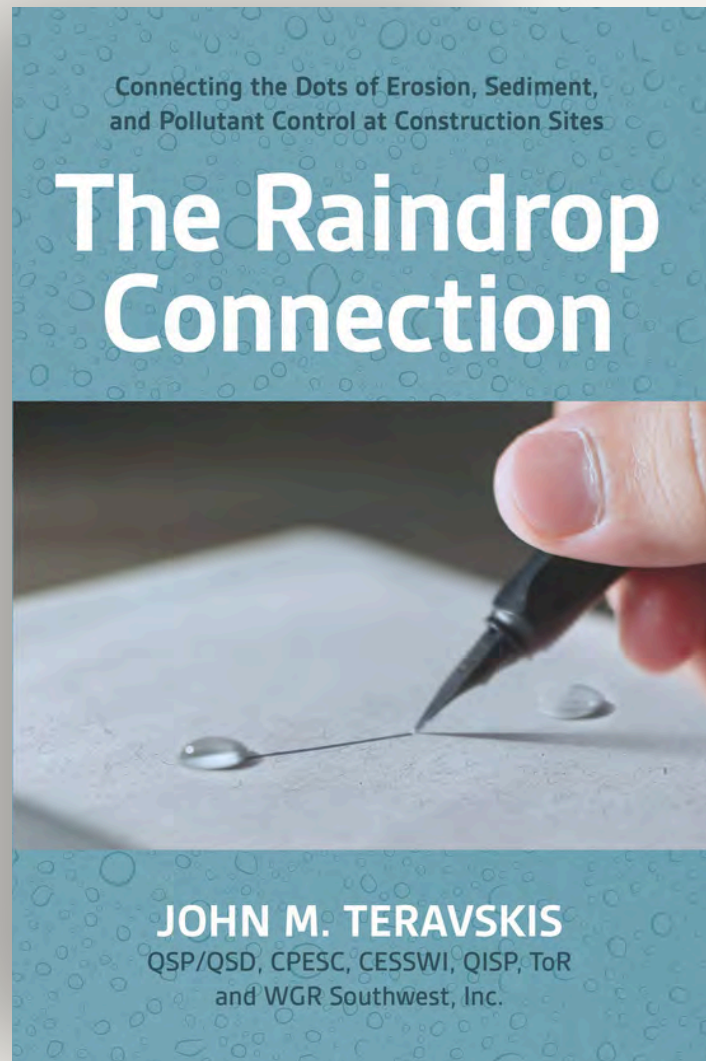
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