



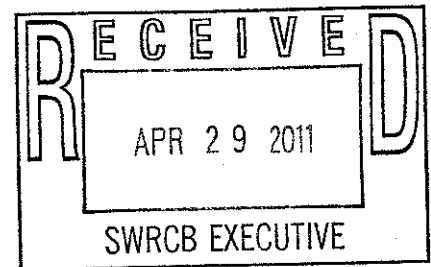
# METAL CASTING STORMWATER MONITORING GROUP, INC.

2971 Warren Lane - El Dorado Hills, CA 95762 | (916) 933-3062 | fax (916) 933-3072 | [www.stormwatergroup.org](http://www.stormwatergroup.org)

April 29, 2011

**Via E-Mail**

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



**Re: COMMENT LETTER: January 2011 Draft Industrial General Permit**

Dear Ms. Townsend and Members of the Board:

The metal casting industry has been a proactive participant in storm water compliance efforts since the first permit was issued almost twenty years ago. The industry is also one of the pioneers in group monitoring by establishing a state water board approved Metal Casting Storm Water Monitoring Group ("MCSMGI") in 1992.

MCSMGI group members re-melt processed metal ingots, baled metal, and even scrap metal that would otherwise sit in recycling yards. All metal melting operations are conducted under a roof. Additionally, most facilities have invested in their plants so that ancillary operations are under roof as well.

As an approved monitoring group, in good standing, since 1992, MCSMGI's comments are submitted with the group members' desire to meet their compliance obligations in a manner that will result in protection of California's waters without placing unrealistic and arbitrary compliance burdens on industrial dischargers.

The 2011 IGP, however, contains several elements with which MCSMGI members have expressed deep concern that Group Monitoring was eliminated without sufficient justification

**I. The 2011 IGP Proposes Elimination of Storm Water Monitoring Groups Without Sufficient Justification**

Since the 1990s, group stormwater monitoring has served numerous functions – that of which was initially to bring facilities into industrial permit coverage. Throughout the years, group

monitoring has evolved into not only ensuring industrial permit coverage but being able to provide reliable monitoring data on an industry-by-industry basis and providing tailored best management practices (“BMPs”). Not to mention, groups prepare and submit Annual Group Evaluation Reports (“AGERs”) that provide the SWRCB and regional water boards with a snapshot of the facilities on an annual basis. Furthermore, the majority of group leaders, who provide guidance and oversight, are experienced environmental consultants with a technical understanding of the industry they represent. It is thus evident that the monitoring groups have benefited SWRCB and California’s water quality in general. Therefore, eliminating storm water monitoring groups without sufficient justification and notice, is wholly unfair to the group members who have steadfastly complied with the industrial general permit since its inception.

The 2011 IGP makes only *one* reference to the elimination of group monitoring – that of which is not sufficient to eliminate group monitoring after industries have relied on group monitoring for twenty years. The 2011 IGP fails to acknowledge the benefits of group monitoring including: industry-specific compliance and data gathering and group quantitative and narrative data developed under professional and experienced guidance.

#### **A. Group Monitoring Regulatory History**

##### **1. The United States Environmental Protection Agency**

Group monitoring originated from the Environmental Protection Agency’s (“EPA”) two-part group application process in its 1990 final stormwater application rule. EPA’s rule required regulated facilities to submit an individual permit application, to submit a “group” permit application, or to seek coverage under a general permit. Thus, EPA allowed groups of regulated facilities with similar operations to organize and form groups for purposes of generating and negotiating industry specific permits. Part 1 involved collecting narrative data to submit to EPA to demonstrate that the group applicants were sufficiently similar. See 55 Fed. Reg. 47990 (November 16, 1990). Part 2 involved submitting sampling data to EPA. See *id.* Instead of taking sampling data from the entire group, only 10% of group applicants were required to submit data. See *id.* The group application procedure was challenged—and upheld—in 1992. See *NRDC v. EPA*, 966 F.2d 1292 (9th Cir. 1992).

In 1995, EPA used the group application data to promulgate the multi sector general permits (“MSGP”) and to assist EPA in determining which of the 29 industrial sectors should be required to conduct any sampling. Nine of the 29 industrial sectors were categorically eliminated from sampling—either because of lack of data or because the data did not support targeting those sectors. Of the remaining 20 sectors, eight exempted some subsectors from storm water sampling.

##### **2. The State Water Resources Control Board**

Over twenty years ago, the SWRCB embraced the industry group compliance option. Initially, the SWRCB allowed “monitoring groups” of similarly situated industries to conduct monitoring at only 20% of the facilities in the group on a Regional Board by Regional Board basis. Under that proposal, groups could form and over the five year permit term a fixed subgroup (20%) of “representative” facilities would sample. See 1992 IGP at 13. When the permit was adopted in 1991 and revised in 1992, the SWRCB allowed groups to form statewide. These permits adhered to EPA’s model of allowing a fixed subgroup – thus increasing it to 20% – of the “representative” facilities to conduct twice per year sampling. In 1997, the SWRCB modified this option to require rotation of monitoring such that the group as a whole would still receive the 80% sample reduction but each group member would have to sample twice every five year permit term. The 1997 Permit also introduced mandatory

site visits (twice per permit term) by the group leader. The SWRCB reasoned in its Response to Comments on the 1997 Permit:

Group monitoring was intended to result in (1) better group member understanding of their storm water management program, (2) better compliance from group members, and (3) self-developed, self-tested, and group specific BMPs that are appropriate and effective in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges. Response to Comments at 40.

Despite this twenty year history, in 2011, the SWRCB proposed an industrial storm water permit that eliminates group monitoring with *only one* reference to monitoring groups:

This General Permit requires an improved training baseline, similar to that required in the Construction General Permit, which includes the requirement for the discharger to have a QSD and a QSP. The previous permit had no baseline training although it was arguable that the group leader performed some of the QSD functions. *This permit emphasizes sampling and analysis as a means to determine compliance with BAT/BCT. Reduced sampling of the magnitude provided to group participants interferes with that goal.* 2011 IGP Fact Sheet at 6 (emphasis added).

**B. There is No Evidence Presented to Support the Elimination of Monitoring Groups**

The Fact Sheet to the SWRCB permit is bereft of any justification for elimination of monitoring groups – even though they have existed in some form or another in California for the past twenty years. The State proposes to eliminate them only because “[r]educed sampling of the magnitude provided to group participants interferes with . . . [the] goal” of emphasizing sampling and analysis as a means of determining compliance with BAT/BCT. 2011 IGP Fact Sheet at 6. Instead of requiring increased sampling, increased site inspections or more stringent group leader requirements, the State simply takes the easy way out and eliminates the compliance option that approximately 2,000 dischargers have come to rely upon. Moreover, the State assumes sampling and analysis are a “means of determining BAT/BCT.” As MCSMGI notes in other sections of these comments, sampling and analysis (as envisioned by the State in the 2011 IGP) cannot be linked to BAT/BCT industrial stormwater permit compliance.

Any inequity was resolved when the monitoring group provision was tightened and reorganized in 1997 when 80% of group members were no longer exempted from sampling. Instead, the total number of samples to be collected was reduced by 80% – from 10 to 2 – over the five year permit term.

**C. The Monitoring Group Model Leads to Better Data Collection**

The SWRCB infers that group monitoring, because of its reduced sampling, will ultimately impede the end result – better water quality. However, what the SWRCB fails to note is that group members are subject to more scrutiny (from regulator and group leader site inspections) than similarly situated individual dischargers. These site visits take up valuable time and resources for each group member facility. In fact, MCSMGI group members have received fifteen to twenty percent more Regional Water Board inspections as have individual dischargers. This additional scrutiny, MCSMGI believes, can generate more accurate data collection because at the time of the site visits – sampling

protocol may be discussed, discharge points may be reviewed, and an overall review of the industrial activities at the site are evaluated to determine storm water compliance.

On a related note, the Santa Ana Regional Quality Water Board ("SARWQCB") has recently endorsed the group monitoring concept in its proposed metal recycling permit for exactly these reasons – to produce better quality monitoring data.<sup>1</sup> In addition, the SARWQCB Permit provides that "[a]ll [p]ermitees are encouraged to participate in the GMP [Group Monitoring Program] for the following reasons: [t]o reduce administrative and technical costs; [t]o develop reliable data; [and] [t]o ease the regulatory burden. SARWQCB at 55.

#### **D. Group Data Can be Utilized to Develop Industry Specific Permits**

By the State's own acknowledgement, collection of data on an industry specific basis provides utility. In fact, the SWRCB notes that it does not have the resources to collect such industry specific data under a permit that covers so many industrial sectors:

Because of the diverse industries covered by this General Permit, the development of a more comprehensive list of minimum BMPs, that would constitute full compliance with BAT/BCT for all dischargers, is not currently feasible. 2011 IGP Fact Sheet at 18.

MCSMGI believes group monitoring confers a fundamental, but misunderstood, benefit: industry-specific institutional knowledge developed by group leaders and transmitted to the group members. It is through Group Monitoring that the intimate operational and empirical knowledge of a specific industrial activity can come together in a proactive and cooperative forum with the level of stormwater quality expertise that is fundamental and mandatory to develop and evaluate effective BMPs, specific to that industrial activity's operations and resources.

Simply put, group data can be used to accelerate "the development of a more comprehensive list of minimum BMPs" which the State has presently deemed "infeasible." 2011 IGP Fact Sheet at 18. There are many options that may be utilized to increase the reliability and quality of group sampling data while preserving some type of reduction in sampling for group members. MCSMGI recommends convening a stakeholder group to consider feasible and effective options that can be proposed as part of the next IGP draft.

#### **E. The SWRCB Should Retain Monitoring Groups Because They Reduce the Inspection Burden on Regional Water Boards and Play a Critical Role in Developing Industrial Group BMPs**

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<sup>1</sup> The SARWQCB recently endorsed the group monitoring concept in its proposed sector specific permit for metal scrap recyclers:

The Permit encourages all Permittees under this Order to participate in a group monitoring program approved by the Regional Board. This is critical for appropriate quality control and quality assurance and to produce quality monitoring data. Individual monitoring is also an option; however, those opting to develop an individual monitoring program are required to undergo appropriate training programs and follow strict quality control protocols. SARWQCB Permit at p. 12, II., K., 43.

MCSMGI has not endorsed the SARWQCB Scrap Permit but supports the statements it makes in support of group monitoring.

Group stormwater monitoring offers industrial dischargers access to cost effective/resource efficient permit compliance support that is specific to the discharger's industrial activities. This translates to more direct oversight by experienced professionals with intimate knowledge of the industry. Regional Water Boards should be able to reduce their inspection burden by relying on monitoring group leaders to supplement the Regional Water Board site visits.

In addition, the State acknowledges that more effective BMPs can be developed by industrial groups in the Fact Sheet to the 2011 IGP:

The State Water Board recognizes that industrial activities and operating conditions at many facilities change over time. In addition, *new and more effective BMPs are being developed* by various Dischargers and by *industrial groups*. 2011 IGP Fact Sheet at 34 (emphasis added).

In conclusion, the SWRCB, has capriciously and arbitrarily eliminated group monitoring without balancing the additional benefits that monitoring groups provide to California's stormwater program – including increased, more reliable stormwater quality data that is centered on a specific industrial activity and reduction of inspections which relieves resource-strained regional water boards and MS4s.

## II. The 2011 IGP's Use of the Multi-Sector General Permit Benchmark Levels as Numeric Effluent Limits ("NELs") or Numeric Action Levels ("NALs") is Misapplied and Misinterpreted<sup>2</sup>

The 2011 IGP's use and reliance of the benchmark values in the EPA's Multi-Sector General Permit for Stormwater Discharges Associated With Industrial Activity ("MSGP")<sup>3</sup> as NELs/NALs is inappropriate given the fact that the EPA never intended that the MSGP benchmarks be effluent limitations. In fact, the MSGP and its Response to Comments state clearly and unequivocally *twice* that benchmarks are not effluent limitations:

The **benchmark concentrations are not effluent limitations**; a benchmark exceedance, therefore, is not a permit violation. Benchmark monitoring data are primarily for your use to determine the overall effectiveness of your control measures and to assist you in knowing when additional corrective action(s) may be necessary to comply with the effluent limitations in Part 2. MSGP at Part 6.2.1 (emphasis added). EPA notes that Part 6.2.1 emphasizes that the benchmark thresholds used for monitoring **are not effluent limits**, but rather information that is primarily for the use of the industrial facility to determine the overall effectiveness of the control measures and to assist in understanding when corrective action(s) may be necessary.<sup>4</sup>

Despite these clear and unequivocal statements, finding 42 in the 2011 IGP states that "The State Board finds that the USEPA benchmarks serve as an appropriate set of technology based

<sup>2</sup> The legal argument for Section II of this letter brief is authored, in part, by the California Stormwater Quality Association (CASQA) Industrial Permit Subcommittee.

<sup>3</sup> 73 Fed. Reg. 56572 (September 29, 2008).

<sup>4</sup> 73 Fed. Reg., 56572, 56574.

effluent limitations that demonstrate compliance with BAT/BCT.” Moreover, the United States Central District federal court held in *Santa Monica Baykeeper v. Kramer Metals* (C.D. Cal. 2009) 619 F.Supp.2d 914, 924 that:

“[a]lthough the Benchmark levels are useful objective guidelines, the Court is not persuaded it would be appropriate to hold that samples showing concentrations in excess of the Benchmark levels constitute a violation of Effluent Limitation B(3) simply by virtue of exceeding those Benchmark levels. Doing so would effectively – and inappropriately – turn these Benchmarks into numeric effluent limitations.”

Given the express intent of the EPA in drafting the MSGP, in conjunction with *Kramer Metals*, relying on the EPA benchmarks is clearly a whimsical, misapplied, and misinterpreted attempt to apply effluent limitations without any evidentiary support.

### **III. Background Levels Must Be Taken Into Account in Any Stormwater Sampling Program**

The NALs/NELs do not take into account background levels and natural occurrence of many regulated constituents such as metals or their prevalence in our cities in the form of common building construction materials, vehicles, and day-to-day human activities. For example, aluminum in the form of aluminum oxides is present on painted buildings and zinc is common in buildings with galvanized metal siding or roofs, cyclone fences, and automobile tires and undercoating. In fact, it is almost certain that facilities not falling into an SIC Code regulated by the IGP could not achieve the NALs/NELs if they were required to conduct storm water sampling and analysis. Thus, it is simply inequitable to place an unfair burden on industrial dischargers – that of which is beyond their practical ability to control – while other businesses in non-regulated SIC Codes with similar infrastructure are not required to employ any storm water management practices.

### **IV. Draft Santa Ana Region 8 Permit Promotes Group Monitoring:**

One of the recent activities in California has been the draft sector specific permit for scrap recyclers in the Santa Ana Water Quality Region. The State Water Board should draw some basic lessons from the process. The first is that by engaging all parties before releasing a draft the various stakeholders are more committed to working towards a common goal. And second, the draft explicitly promotes the benefits of group monitoring and encourages “Permittees to participate in the GMP.” (page 55)

### **V. Examples of Group Monitoring Benefits for Small Manufacturing Businesses**

The MCSMGI is only available to members of the California Metals Coalition. Less than 1/3 of the total CMC membership chooses to be a member of MCSMGI. MCSMGI has a separate set of fees, which are above and beyond CMC membership. The majority of MCSMGI participants are smaller facilities which greatly benefit from the technical leadership, legal input, selective sampling requirements as a member the group, and on-site training.

#### **A. Group and On-Site Training:**

In addition to the annual training provided by the MCSMGI to its group participants, every facility gets a thorough visit from the MCSMGI group leaders. Several years ago, MCSMGI's group leaders implemented a requirement that every facility will receive at least one annual visit from

the group leader. This includes a meeting with employees, review of paperwork and recordkeeping, and an extensive walk-through of the facility.

### **B. Employee Training DVD (English and Spanish):**

Employees are at the front lines of storm water compliance. Their actions—or inactions—can have a significant impact on the facility when a qualified storm occurs. The MCSMGI Group Leaders commissioned the creation of a professional video that is geared at employee training. This DVD (English and Spanish) is used for ongoing training, as well as new hire training.

The 18 minute training video covers standard procedures and situations where workers' duties can impact storm water.

One of the main topics covered by the video is the Storm Water Pollution Prevention Plan or SWPPP. The video begins by tracing the history of the SWPPP to its beginnings at the U.S. EPA.

Another important topic detailed on the video is Best Management Practices or BMPs. BMPs are the prevention measures outlined in a facility's SWPPP. The video categorizes BMPs into 3 areas: (1) Structural; (2) Procedural; (3) Spill Control.

Specific cases where contamination may occur at a foundry—as well as ways to mitigate these contamination sources—are additional aspects of the video. Trash containers, fuel, oil, and forklifts and other potential contamination sources are reviewed in the program.

Lastly, the video covers the parameters and importance of sampling. Employees will receive general knowledge about sampling procedures and how this impacts the storm water program.

In all, this industry video is an innovative and comprehensive training tool that any-sized facility can use. But without the collective participation of group members through the current permit parameters of group participation, tools such as the DVD would likely not materialize.


### **VI. Conclusion**

In conclusion, MCSMGI strongly advocates for the retention of the group monitoring provisions in the current industrial general permit and the inclusion of further evaluated, properly noticed, and justified NALs/NELs that are formulated on an industry-by-industry basis, rather than an arbitrary number.

The MCSMGI also requests that the SWRCB review the onerous monitoring and reporting requirements and design a program that will not only improve surface water quality but will also not cause a significant burden on California businesses.

We appreciate the opportunity to present these comments. If you have any questions or comments, please feel free to call.

Sincerely,



James Simonelli  
Executive Director