



Riverside County  
**Waste Management Department**

Hans W. Kernkamp, General Manager-Chief Engineer

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Mark E. Smythe  
California Regional Water Quality Control Board  
Santa Ana Region  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

**RE: Comments Regarding Draft Sector-Specific Permit for Storm Water Runoff Associated with Industrial Activities from Metals and Wastes Recycling Facilities (Scrap Metal Facilities) within the Santa Ana Region (Order No. R-8-2011-001, NPDES No. CAG 618001)**

Dear Mr. Smythe:

The Riverside County Waste Management Department (Department) is a local municipality that would be regulated under the provisions of the Draft Sector-Specific Permit for Storm Water Runoff Associated with Industrial Activities from Metals and Wastes Recycling Facilities (Scrap Metal Facilities) within the Santa Ana Region (Order No. R-8-2011-001, NPDES No. CAG 618001). The subject permit shall be referred to as the Draft Permit throughout the remainder of this letter.

The Department thanks the California Regional Water Quality Control Board – Santa Ana Region (Regional Board) and the Metal Recyclers Water Quality Standards Committee for their effort in creating the Draft Permit. The Department supports regulation that mitigates pollutants in storm water runoff from metals and wastes recycling facilities, which is the goal of the Draft Permit. The means to achieve that goal can be accomplished in a number of different ways. The Department does not agree with some of the specific means contained within the Draft Permit.

The purpose of this letter is to provide the Regional Board with the Department's comments and concerns regarding specific provisions of the Draft Permit and accompanying Fact Sheet. The referenced section of the Draft Permit is italicized, immediately followed by the Department's comments and concerns. Where appropriate, the Department also provides recommendations or alternative language for use in the Draft Permit and Fact Sheet.

#### **Draft Permit Comments**

*Draft Permit, Section II.A.2., Page 5 – "Upon adoption of this Order, all scrap metal facilities within this Region will be required to get coverage under this Permit. Permit coverage under the State's General Permit will cease once coverage is obtained under this Order."*

The Department has two landfill facilities where several different industrial activities occur. These industrial activities include metal recycling activities (proposed to be covered under the Draft Permit [SIC 5093]) and landfill activities (currently covered under the state wide general industrial permit [SIC 4953]) within close proximity to each other and sharing the same drainage system. Therefore, it does not seem appropriate for our facility to terminate coverage under the state-wide general industrial permit. The Draft Permit language seems to indicate that a facility would only have NPDES coverage under one permit or the other.

The Department anticipates that there may be other facilities within the Santa Ana Region that have a situation similar to ours. Any facility that handles waste and recycling material streams would have multiple SIC classifications. Thus the Draft Permit is not clear which SIC classification takes precedence and if multiple NPDES permits are required. Please provide clarification whether our facility, and similar facilities with multiple industrial activities, require multiple NPDES permits.

If multiple NPDES permits are required, then permit compliance becomes onerous. The permit requirements for the Draft Permit and the state-wide general industrial permit are not the same. Discharge sampling, monitoring, observation, reporting requirements differ in each permit. Corrective action requirements for each permit also differ. These differences, and the resulting confusion between these differences, unnecessarily increase the likelihood of permit non-compliance.

*Draft Permit, Section II.H.26. Page 9 – “Technology-based effluent limitations are established by USEPA in regulations known as effluent limitations guidelines for specific industry categories or subcategories after conducting an in-depth analysis of treatment technologies available for that industry. The USEPA has not established effluent limitation guidelines for the scrap metal industry. Therefore, Regional Board staff has used best professional judgment\* in establishing effluent limitations\* in this Permit.”*

The subject section describes the process used by the USEPA to establish effluent limitations. The Regional Board has used a markedly different process, referred to as best professional judgment, to establish numeric effluent limits for the Draft Permit.

The Department has a concern regarding the Regional Board's best professional judgment approach. The Regional Board provides little information describing the process of best professional judgment. The process appears both arbitrary and subjective. If the Regional Board is going to use an approach that differs from the USEPA's in depth analysis, the Department recommends that the approach be transparent, technically sound and justifiable. The Department requests that the Regional Board provide additional information regarding their use of best professional judgment.

The Draft Permit does specify that treatment technologies are currently being evaluated by the Metal Recyclers Water Quality Standards Committee (refer to Section III.C.1.g.). Similar to the USEPA's in depth analysis, the Department recommends that the Metals Recyclers Water Quality Committee's evaluation of the treatment technologies be completed and used as a basis for setting numeric effluent limits (NELs). It is the Department's opinion that setting NELs prior to completion of this evaluation is premature.

*Draft Permit, Section II.H.27., Page 9 – “The Panel concluded that numeric limits or action levels are technically feasible to control industrial storm water discharges, provided that certain conditions are considered. The Panel stated, ‘Board should consider the phased implementation of Numeric Limits and Action Levels, commensurate with the capacity of the Permittees and support industry to respond.’”*

*Draft Permit, Section II.H.28., Page 10 – “The Regional Board has considered the recommendations of the Blue Ribbon Panel and other available data in prescribing technology-based effluent limitations in this Permit. Based on the Panel's recommendation this Permit takes a phased approach to implement both NELs and numeric action levels (NALs). This Order takes a phased approach to develop technology-based effluent limitations.”*

The Department reviewed the Blue Ribbon Panel's report. The Blue Ribbon Panel findings were focused on three separate types of activities: municipal, construction and industrial. The Blue Ribbon Panel's recommendation for the phased implementation of NALs or NELs was specific to construction activities. The Department is not opposed to the phased implementation of NALs or NELs. However, the Draft Permit is not accurate in the representation that the phased implementation was a recommendation of the Blue Ribbon Panel for industrial activities. Further, the phased implementation specified in the Draft Permit does not address the concerns expressed by the Blue Ribbon Panel regarding industrial activities.

In fact, the Blue Ribbon Panel provided a number of recommendations and concerns for industrial activities, which the scrap metals and waste recycling facilities are a part of, which were not addressed in the Draft Permit. It is the Department's opinion that each of the Blue Ribbon Panel's recommendations and concerns should be specifically addressed in the Draft Permit. If the Regional Board disagrees with the recommendations or concerns, then an explanation for the disagreement

should be provided. If the Regional Board has implemented or addressed the recommendation or concern in the Draft Permit, then this should be clarified in the Draft Permit.

*Draft Permit, Section II.H.28., Page 10 – “Unless the Committee recommends alternate NELs based on Phase I BMP evaluation for the four constituents listed in Table 1, the numeric effluent limits specified in Table 1 will be the effluent limits from May 30, 2012. These NELs are based on the best professional judgment of Regional Board staff. Where there is insufficient data to support a NEL, NALs are used.”*

The Department commends the Regional Board for conducting the Phase I BMP evaluation. However, the evaluation is essential to validate or revise all NELs and NALs. All NELs and NALs should not be adopted in the final permit until these studies are complete and appropriate evaluation of these studies is also complete.

The Blue Ribbon Panel identified the following concerns regarding the setting of NALs or NELs: the existing data monitoring sets are inadequate, improved monitoring is required to collect useful data, and California data or national data applicable to California is preferable to the broad use of national data. The Department is concerned that the Regional Board did not consider the Blue Ribbon Panel's concern regarding the data utilized to set NELs or NALs, or did not explain how the NELs or NALs were set in the absence of such data.

Including a specified adoption date of the NELs in the draft permit does not allow for delays in the Phase I BMP evaluation or the ability to complete follow-up studies and presupposes that sound science will support them. Therefore, the NELs could be adopted and studies later prove that the NELs are not appropriate. Further, the timeline specified in the Draft Permit does not allow much time for the Regional Board to evaluate the data and amend the permit, if necessary. The Department recommends that numeric values in the permit are not adopted until adequate data is collected and evaluated.

*Draft Permit, Section III.C.1.b.1) Paragraph 1, Page 17 – “All discharges from the regulated facilities shall be in compliance with the effluent limitations in Table 1.”*

The section numbering appears incorrect. The referenced section should be III.C.1.a.1).

The Department is not clear if the specified effluent limits function as effluent limits or action levels. Effluent limits have the connotation that if these are exceeded in the discharge effluent, that a violation of the permit occurs. However, Section C.1.f.3)b), Paragraph 1, Page 24 appears to indicate that compliance with the effluent limits specified on Page 17 can be achieved with the timely implementation of a Regional Board approved Phase III Corrective Action Plan.

The Department recommends that the name of the values specified in Table 1 for pH, turbidity, specific conductance and oil and grease be changed from “Effluent Limit” to “Action Level” to be consistent with the purpose that these levels serve in the Draft Permit.

*Draft Permit, Section III.C.1.b.1) Page 17 – “The Permittees shall design the SWPPPs to document compliance with the numeric action levels specified in Attachment B, which is hereby made a part of this Order.”*

The numeric action levels specified in Attachment B include seven of the eight parameters specified as benchmarks for Scrap Recycling and Waste Recycling Facilities in the EPA 2008 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP). It appears the concentration for lead was typed incorrectly, as the value specified in the MSGP is 0.122 mg/l and the draft permit specifies 0.0122 mg/l. The Department recommends that if the intent of numeric action levels was to match the MSGP benchmark, then the value be corrected. However, it is the Department's opinion that MSGP benchmarks should not be used as numeric action levels without a

detailed evaluation of their suitability to serve as such. The MSGP benchmarks serve a specific purpose, as quoted from the EPA MSGP, below:

"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."

The benchmarks of the MSGP assist the discharger in determining whether additional corrective action(s) MAY be necessary. The MSGP further indicates that it is possible that "no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice."

The numeric action levels do not function the same way as the MSGP benchmarks, as the name itself implies action. Instead of actions that are practical and achievable, the Draft Permit specifies mandatory corrective actions in the Phase II requirements, which include "an advanced media filtration system or an equivalent treatment system."

The Department realizes that numeric action levels and benchmarks do not necessarily have to function the same way, and that mandatory actions can be required as a result of a numeric action level exceedance. However, the same concentrations used for benchmarks should not be used for numerical action levels since the concentrations serve different purposes. Similar to the Department's other comments regarding NELs, the Department recommends that numeric action level concentrations be based on regional industry specific studies and the recommendations of the Blue Ribbon Panel.

*Draft Permit, Section III.C.1.b.1), Table 1, Footnote 10, Page 17 – "These NELs become effective on May 30, 2012 if the Regional Board has not adopted alternative NELs for these constituents based on studies conducted during Phase I implementation of the minimum BMPs described below."*

The Department commends the Regional Board for conducting the referenced studies. However, the studies are essential to validate or revise all NELs and NALs. All NELs and NALs should not be adopted in the final permit until these studies are complete and appropriate evaluation of these studies is also complete.

The Blue Ribbon Panel identified the following concerns regarding the setting of NALs or NELs: the existing data monitoring sets are inadequate and improved monitoring is required to collect useful data, and California data or national data applicable to California is preferable to the broad use of national data. The Department is concerned that the Regional Board did not consider the Blue Ribbon Panel's concern regarding the data utilized to set NELs or NALs, or did not explain how the NELs or NALs were set in the absence of such data.

Including a specified adoption date of the NELs in the draft permit does not allow for delays in the initial studies or the ability to complete follow-up studies and presupposes that sound science will support them. Therefore, the NELs could be adopted and studies later prove that the NELs are not appropriate. Further, the timeline specified in the Draft Permit does not allow much time for the Regional Board to evaluate the data and amend the permit, if necessary. The Department recommends that numeric values in the final permit are not adopted until adequate data is collected and evaluated.

*Draft Permit, Section III.C.1.c.1), Page 18 – "If a facility has multiple discharge points for storm water that has come in contact with industrial areas, processes, materials, products or wastes, area-weighted averages of the arithmetic means should be calculated using the relative tributary area for each discharge point."*

The Department is not clear about the meaning of the subject sentence. The sentence appears to indicate that one area weighted average for the entire facility will be compared to NELs or NALs. Please confirm the Department's understanding of the weighted average, as described in the example below, is correct.

For example, a facility has two discharge points, and discharge point A drains 70 percent of the facility and discharge point B drains 30 percent of the facility. From storm 1, the O&G concentrations from points A and B are 10 and 20 mg/l, respectively. The area weighted average O&G concentration for the facility is  $0.7 \times 10 + 0.3 \times 20 = 13$  mg/l. Therefore, the area weighted average O&G concentration from the facility, 13 mg/l, is less than O&G NEL of 15 mg/l and no triggers occur.

*Draft Permit, Section III.C.1.d., Page 18 – "All treatment systems shall be designed to treat 95% of the annual average volume of runoff based on a continuous simulation of all rainfall data available for the area where the regulated facility is located."*

The Department recommends that the design storm account for storm intensity and not average annual volume. The recently distributed State Water Resources Control Board Draft General Industrial NPDES Permit and the existing Construction NPDES Permit specify design storms (or compliance storms) as hour-frequency storm events. Stormwater discharges from sites as a flow rate, not an average annual volume. Thus, the Department recommends that the permit specify a 10 year – 24 hour storm event for the permit, which is the same as the Draft General Industrial NPDES Permit. This compliance storm event accounts for the variability in flow rate as a result of storm intensity.

*Draft Permit, Section III.C.1.e.2), Page 19 – "State Board sponsored or approved Qualified SWPPP Developer (QSD) program. A Qualified SWPPP Practitioner (QSP) shall implement the SWPPP (see State Board Order No. 2009-009-DWQ for details regarding required qualifications and training for a QSD/QSP)."*

The section numbering appears incorrect. The referenced section should be III.C.1.e.1).

The subject section refers to State Board Order No. 2009-009-DWQ for additional information regarding the QSD/QSP certifications. The existing training for QSD/QSP is for construction specific activities and is not directly applicable to the industrial activities that are the subject of the Draft Permit. The Department recommends that the references to the State Board Order No. 2009-009-DWQ be removed from the permit and that curriculum specific to the metals and wastes recycling industries be used for the QSD/QSP certifications specified in the Draft Permit.

*Draft Permit, Section III.C.1.f., Page 19 – "If the Permittees fully implement each phase as per the time schedules specified below, they will not be found in violation of this subsection of the Permit."*

The Department requests clarification on which "subsection of the Permit" the text refers to (subsection III.C.1.f. or to III.C.1.).

*Draft Permit, Section III.C.1.f.1)b), Page 20 – "Each facility shall implement the following preventative measures"*

*Draft Permit, Section III.C.1.f.1)b)iii., Page 20 - "Pave all industrial areas prone to erosion"*

The referenced sections specify that pavement is required for areas prone to erosion. Pavement is expensive and not practical or cost effective for every industrial facility area that is prone to erosion. The Department recommends that the section be revised as follows: "To the extent practical, pave or line all industrial areas prone to erosion..."

*Draft Permit, Section III.C.1.f.1)b)iv., Page 20 – “Develop and implement a Rain Event Action Plan (REAP). This plan should consider the following additional measures in the event of a predicted storm >0.1 inches with a 40% or greater probability”*

The Draft Permit does not include a standard reference that should be consulted to determine the probability of a rain event and at what frequency the consultations should occur. The weather forecast, including the rain probability, changes frequently and is not the same depending on which reference one consults. For example, the national weather service updates their forecasts every several hours. The Department is not aware of a standard online forecast (weather.gov, weather.com, accuweather.com) that provides the amount of predicted rainfall (inches) several days in advance of a storm.

The Department recommends that the section be revised as follows: “Develop and implement a Rain Event Action Plan (REAP). This plan shall be implemented in the event of a predicted storm with a 50% or greater probability. The probability of a storm should be determined no more than three days in advance and need only be documented once a day. The facility shall refer to the National Weather Service (weather.gov) to determine the storm probability.”

*Draft Permit, Section III.C.1.f.1)d), Page 23 – “Upon implementation of Phase I minimum BMPs specified above, the Permittees shall be deemed to be in compliance with”*

The sentence quoted above is incomplete.

*Draft Permit, Section III.C.1.f.2)c), Page 23 – “The facility shall select and design an advanced media filtration system or an equivalent treatment system to treat the design volume from exposed industrial areas. The design volume shall be greater than or equal to 95% of the annual average runoff volume from exposed areas not eliminated by Phase I BMPs.”*

The Phase II requirement specified above requires the use of an advanced media filtration system or an equivalent system. The Department recommends that this requirement be removed from the draft permit. First, a treatment system may not be required at every facility where a trigger has been exceeded. Additional or improved implementation of BMPs may serve as a sufficient corrective action. Second, a treatment system could be very expensive to purchase and operate. Not only would significant capital cost be required to purchase a treatment system, but ongoing maintenance costs, both materials and experienced personnel, would also be required.

The draft permit specifies that trained and qualified personnel, a QSD, prepare SWPPPs. The Department also recommends that a QSD prepare any required corrective action plans. Thus, the Regional Board should rely on the QSD to recommend the appropriate corrective action(s), which could include a treatment system.

The draft permit also specifies that the Regional Board will review and approve correction action plans. The Regional Board has the opportunity to require a treatment system, if necessary, during the review and approval process.

The Department recommends that the design storm account for storm intensity and not average annual volume. The recently distributed State Water Resources Control Board Draft General Industrial NPDES Permit and the existing Construction NPDES Permit specify design storms (or compliance storms) as hour-frequency storms events. Stormwater discharges from sites as a flow rate, not an average annual volume. Thus, the Department recommends that the permit specify a 10 year – 24 hour storm event for the permit, which is the same as the Draft General Industrial NPDES Permit. This compliance storm event accounts for the variability in flow rate as a result of storm intensity.

*Draft Permit, Section III.C.1.f.3)b), Page 24 – “The Phase III Corrective Action Plan, when fully implemented, should meet the BAT/BCT standards and constitutes a water-quality based effluent limitation as per 40 CFR 122.44(k). The Permittee will be considered to be in compliance with the effluent limitations once the Phase III Corrective Action Plan is fully implemented.”*

The Department is not clear what purpose the NELs serve when compliance with the effluent limitation is based upon Phase III Corrective Action Plan Implementation. Therefore, as specified in a previous Department comment, the Department recommends that the name of the values specified in Table 1 for pH, turbidity, specific conductance and oil and grease be changed from "Effluent Limit" to "Action Level" to be consistent with the actual implementation of each in the Draft Permit.

*Draft Permit, Section III.C.1.g), Page 24 – “Development of Sector-Specific Additional NELs: Based on data generated from the group monitoring program and treatment technology evaluations conducted under the auspices of the Metal Recyclers Water Quality Standards Committee, the Regional Board may consider establishing additional NELs. This Permit may be reopened to incorporate additional NELs.”*

The section numbering appears incorrect and the Department is unsure what the correct section number is.

The Department commends the Regional Board for participating in the referenced evaluations. However, the studies are essential to validating or revising all NELs and NALs. All NELs and NALs should not be adopted in the final permit until these evaluations are complete and appropriate assessment of these studies is also complete.

The Blue Ribbon Panel identified the following concerns regarding the setting of NALs or NELs: the existing data monitoring sets are inadequate, improved monitoring is required to collect useful data, and California data or national data applicable to California is preferable to the broad use of national data. The Department is concerned that the Regional Board did not consider the Blue Ribbon Panel's concern regarding the data utilized to set NALs, or did not explain how the NALs were set in the absence of such data. The Department recommends that numeric values in the final permit are not adopted until adequate data is collected and evaluated.

*Draft Permit, Section III.C.2., Page 24 – “Each Permittee shall meet water quality standards through implementation of the technology-based control measures prescribed in Subsection 2, above. If the Permittee or the Regional Board determines that water quality standards are not being met, a Phase III Corrective Action Plan shall be prepared and implemented as described in Phase III, above. Once the Phase III Corrective Action Plan is fully implemented, the Permittee will be considered to be in compliance with the effluent limitations specified in this Permit.”*

The Department is not clear what purpose the NELs serve when compliance with the effluent limitation is based upon Phase III Corrective Action Plan Implementation (narrative effluent limits). The Draft Permit appears to indicate that average sample data, which exceeds NELs, is not a permit violation if the Regional Board approved Phase III Corrective Action Plan is implemented. Therefore, as specified in a previous Department comment, the Department recommends that the name of the values specified in Table 1 for pH, turbidity, specific conductance and oil and grease be changed from "Effluent Limit" to "Action Level" to be consistent with the actual implementation of each in the Draft Permit.

## **Glossary Comments**

*Glossary, Page 37 – “Best Professional Judgment - The method used by permit writers to develop technology-based NPDES permit conditions on a case-by-case basis using all reasonably available and relevant data.”*

The definition specifies that best professional judgment is a method, based on data, to establish numeric limits specified in the Draft Permit. The method is not described in the Draft Permit, nor is any data utilized for the best professional judgment method provided or described in the Draft Permit. The Department requests that the Regional Board provide additional information regarding their use of best professional judgment.

*Glossary, Page 43 – “Qualifying Storm Event - An event that meets the following criteria:*

- 1. Occurs during facility operating hours;*
- 2. Is a storm event that has produced runoff (generally 0.1 inches of rainfall); and*
- 3. Is a storm event that was preceded by two consecutive days of dry weather. Dry weather shall be defined as two consecutive days of combined rainfall of less than 0.1 inches as measured by an on-site rainfall measurement device.”*

Instead of loosely defining a qualify storm event as “generally 0.1 inches of rainfall” the Department recommends that the definition be specific to eliminate misinterpretation. The Department also recommends that the volume be increased to be consistent with the Draft General Industrial NPDES Permit. The Department recommends that item number two of the definition be edited as follows: “2. Is a storm event that has produced runoff and where at least 0.25-inches of rainfall have been measured in a continuous 24-hour period by an on-site rainfall measurement device.”

#### **Monitoring and Reporting Program Comments**

*Monitoring and Reporting Program, Section III.A.1., Page 50 – “Each month a QSP\* or a group leader shall conduct visual inspections of the industrial areas of the permitted facility and record the findings in a permanent log.”*

The “group leader” is not defined in the draft permit. Please clarify the definition of a “group leader.”

*Monitoring and Reporting Program, Section III.B.1., Page 51 – “Each permitted facility shall collect at least four samples of runoff per year from qualifying storm events<sup>26</sup> from each discharge point.”*

The Department recommends that the sample frequency be changed to spread the sampling over a longer period of time. As is presently stated in the Draft Permit, all the required sampling could be completed in a one month period. If the sampling is spread out over a longer period of time, the results will be more representative of the facility discharge throughout the year and encourages continued maintenance of BMPs throughout the year. The Department recommends that the sample frequency be specified as follows: “Each permitted facility shall collect at least four samples of runoff per year from qualifying storm events for each facility discharge point. The discharge samples shall be collected monthly, until a minimum of four samples of runoff are collected. For example, if qualifying storm events occur on October 15, December 3, 20, January 12, 29, and February 4, 10, 21, then samples will be collected from the discharge points on October 15 (first sampling event), December 3 (second sampling event), January 12 (third sampling event) and February 4 (fourth and final sampling event).”

*Monitoring and Reporting Program, Section III.B.1., Footnote 26, Page 51 – “A qualifying storm event is defined as a storm event preceded by at least two consecutive days of dry weather (dry weather is defined as two days of combined rainfall of less than 0.1 inches of rain) that produces runoff from the site (generally storm events with intensities equal to or grater than 0.1 inches of rain).”*

Instead of loosely defining a qualify storm event as “generally 0.1 inches of rainfall” the Department recommends that the definition be more specific to eliminate misinterpretation. The Department also

recommends that the rainfall volume be increased to be consistent with the Draft General Industrial NPDES Permit. The Department recommends that subject sentence be edited as follows: "A qualifying storm event is defined as a storm event preceded by at least two consecutive days of dry weather (dry weather is defined as two days of combined rainfall of less than 0.1 inches of rain) that produces runoff from the site and where at least 0.25-inches of rainfall have been measured in a continuous 24-hour period by an on-site rainfall measurement device."

*Monitoring and Reporting Program, Section III.B., Table 3, Page 53 – Specified test methods.*

The subject table specifies two test methods for the following constituents: pH, turbidity and specific conductance. To minimize the implementation cost of the permit and potential confusion with conflicting test results, the Department recommends that the discharger be allowed the option to choose either laboratory analysis or field monitoring analysis. The requirement of purchasing and maintaining field monitoring equipment, and paying for laboratory analysis of these constituents is redundant and cost prohibitive.

**Fact Sheet Comments**

*Fact Sheet, Section III. Page 3 – "A review of the monitoring reports for the last five years (2005-2010) for the scrap metal facilities within the Region indicates that approximately 50% of the facilities exceeded the USEPA's benchmark\* levels for one or more metals. Additional control measures, including treatment systems, may be needed to reduce pollutant concentrations in storm water runoff from these facilities such that water quality standards are met in the receiving waters."*

The Department requests that the Regional Board's data analysis, specified in the subject section, be provided for public review. This will aid the public in understanding the severity of the pollutant concentrations discharged from facilities in the region.

*Fact Sheet, Section VI.B., Paragraph 2, Page 7 – "For industrial storm water permits, the Blue Ribbon Panel indicated that numeric effluent limits are feasible for some industrial categories. The Panel recommended a phased approach for numeric effluent limits based on currently available technology. The Panel recognized that numeric effluent limits based on the current monitoring database might not be advisable due to inconsistencies in monitoring. The Panel stated, 'Board should consider the phased implementation of Numeric Limits and Action Levels, commensurate with the capacity of the dischargers and support industry to respond.'*

*The Regional Board carefully considered the findings of the Blue Ribbon Panel and related public comments. In developing effluent limitations for this Permit, the Regional Board also reviewed the Preamble prepared by the Committee, a 2011 draft for the renewal of the State's General Industrial Permit and permits recently issued/drafted for industrial storm water runoff by other states<sup>38</sup> and the USEPA<sup>39</sup>. After consideration of the Panel's and the Committee's recommendations, this Permit includes a phased implementation of numeric effluent limitations and action levels for this specific industrial sector."*

The Department reviewed the Blue Ribbon Panel's report. The Blue Ribbon Panel findings were focused on three separate types of activities: municipal, construction and industrial. The Blue Ribbon Panel's recommendation for the phased implementation of NALs or NELs was specific to construction activities. The Department is not opposed to the phased implementation of NALs or NELs. However, the Draft Permit is not accurate in the representation that the phased implementation was a recommendation of the Blue Ribbon Panel for industrial activities. Further, the phased implementation specified in the Draft Permit does not address the concerns expressed by the Blue Ribbon Panel regarding industrial activities.

In fact, the Blue Ribbon Panel provided a number of recommendations and concerns for industrial activities, which the scrap metal and waste recycling facilities are a part of, which were not addressed

in the Draft Permit. While the Draft Permit specifies that "the Regional Board carefully considered the findings of the Blue Ribbon Panel", the text of the Draft Permit does not document how the Blue Ribbon Panel's recommendations were considered or incorporated. It is the Department's opinion that each of the Blue Ribbon Panel's recommendations and concerns should be specifically addressed in the Draft Permit. If the Regional Board disagrees with the recommendation or concern, then an explanation for the disagreement should be provided. If the Regional Board has implemented or addressed the recommendation or concern in the Draft Permit, then this should be clarified in the Draft Permit.

*Fact Sheet, Section VI.B., Page 8, Paragraph 2 – "This Permit contains numeric effluent limitations for pH, turbidity, oil and grease, and specific conductance, set using best professional judgment."*

The Department requests that the Water Board provide a comprehensive explanation of the "best professional judgment" process used to set numeric effluent limitations (NELs). The Department agrees with the Blue Ribbon Panel that NELs are feasible, provided that the data utilized to determine the NELs is of sufficient size to be statistically significant, is specific to the scrap metals and wastes recycling industries and is specific to California (considers storm duration, frequency and intensity). "Best professional judgment" should be a justifiable process that accounts for these data variables.

*Fact Sheet, Section VI.B. Page 8, Paragraph 3 – "Since the NELs are based on best professional judgment, the Permittees or the Committee has the option of proposing alternate NELs for the four parameters in Table 1 based on monitoring data from Phase I."*

*Fact Sheet, Section VI.B. Page 9, Paragraph 5 – "Generally the USEPA establishes the effluent limitation guidelines for specific industry categories or subcategories after conducting an in-depth analysis of that industry and the available treatment technologies."*

Establishing NELs based on best professional judgment appears premature based on the above statements. The first statement seems to indicate that additional data collected during Phase I could be useful in determining NELs in the final permit. Accordingly, it seems prudent to wait until this data is available before prematurely setting NELs in the final permit.

The Department previously commented that the "best professional judgment" method of establishing NELs is not transparent within the draft permit. Further, the Regional Board indicates in the second sentence referenced above that the USEPA performs an "in-depth analysis" to establish effluent limitations, which appears to differ significantly from the Regional Board's use of "best professional judgment." The Department believes that the Regional Board should determine NELs based on an in-depth analysis, similar to the USEPA approach, utilizing all available data and including data produced during Phase I. An approach like this would result in NELs derived from a more scientific process that is transparent and technically sound.

*Fact Sheet, Section VI.D., Paragraph 3, Page 11 – "The Phase II control measures may include treatment controls, designed to treat at least 95% of the average annual runoff volume (design volume)\* from exposed industrial areas and any comingled runoff volume from non-industrial areas."*

The Department recommends that the design storm account for storm intensity and not average annual volume. The recently distributed State Water Resources Control Board Draft General Industrial NPDES Permit and the existing Construction NPDES Permit specify design storms (or compliance storms) as hour-frequency storms events. Stormwater discharges from sites as a flow rate, not an average annual volume. Thus, the Department recommends that the permit specify a 10 year – 24 hour storm event for the permit, which is the same as the Draft General Industrial NPDES Permit. This compliance storm event accounts for the variability in flow rate as a result of storm intensity.

*Fact Sheet, Section VI.D.1), Page 12 – “If a facility has multiple discharge points for storm water that has come in contact with industrial areas, processes, materials, products or wastes, area-weighted averages shall be calculated using the relative tributary area for each discharge point.”*

The Department is not clear about the meaning of the subject sentence. The sentence appears to indicate that one area weighted average for the entire facility will be compared to NELs or NALs. Please confirm the Department’s understanding of the weighted average, as described in the example below, is correct.

For example, a facility has two discharge points, and discharge point A drains 70 percent of the facility and discharge point B drains 30 percent of the facility. From storm 1, the O&G concentrations from points A and B are 10 and 20 mg/l, respectively. The area weighted average O&G concentration for the facility is  $0.7*10 + 0.3*20 = 13$  mg/l. Therefore, the area weighted average O&G concentration from the facility, 13 mg/l, is less than O&G NEL of 15 mg/l and no triggers occur.

*Fact Sheet, Section VI.D., Page 13, Paragraph 1 – “This Permit includes a criterion for designing treatment controls based on a specified design storm event. All treatment systems shall be designed to treat at least 95% of the annual average volume of runoff based on a continuous simulation of all rainfall data available for the area where the regulated facility is located.”*

The Department recommends that the design storm account for storm intensity and not average annual volume. The recently distributed State Water Resources Control Board Draft General Industrial NPDES Permit and the existing Construction NPDES Permit specify design storms (or compliance storms) as hour-frequency storms events. Stormwater discharges from sites as a flow rate, not an average annual volume. Thus, the Department recommends that the permit specify a 10 year – 24 hour storm event for the permit, which is the same as the Draft General Industrial NPDES Permit. This compliance storm event accounts for the variability in flow rate as a result of storm intensity.

*Fact Sheet, Section VI.D.1.f), Page 13 - “Develop a Rain Event Action Plan (REAP). This plan shall address the following additional measures in the event of a predicted storm >0.1 inches with a 40% or greater probability:”*

The Fact Sheet does not include a standard reference that should be consulted to determine the probability of a rain event and at what frequency the consultations should occur. The weather forecast, including the rain probability, changes frequently and is not the same depending on which reference one consults. For example, the national weather service updates their forecasts every several hours. The Department is not aware of a standard online forecast (weather.gov, weather.com, accuweather.com) that provides the amount of predicted rainfall (inches) several days in advance of a storm.

The Department recommends that the section be revised as follows: “Develop and implement a Rain Event Action Plan (REAP). This plan shall be implemented in the event of a predicted storm with a 50% or greater probability. The probability of a storm should be determined no more than three days in advance and need only be documented once a day. The facility shall refer to the National Weather Service (weather.gov) to determine the storm probability.”

*Fact Sheet, Section VI.D.1.h), Page 14 – “Minimize dust generation and erosion from the site by paving industrial areas.”*

The referenced section specifies that pavement is required to minimize dust and erosion. Pavement is expensive and not practical or cost effective for every area of an industrial facility that is prone to erosion. The Department recommends that the section be revised as follows: “To the extent practical, minimize dust generation and erosion from the site by paving or lining industrial areas.”

*Fact Sheet, Section VI.D.3., Paragraph 3, Page 15 – “After implementation of Phases I and II, if the triggers are being exceeded, the Permittee shall develop a Corrective Action Plan. This Plan shall identify the potential causes of the violation, proposed solutions, and a time schedule for implementing the proposed corrective actions. The Corrective Action Plan, when fully implemented, shall meet the BAT/BCT standards and constitutes a water-quality based effluent limitation as per 40 CFR 122.44(k). The Permittee will be considered to be in compliance with the effluent limitations once the Corrective Action Plan is fully implemented.”*

The Department is not clear what purpose the NELs serve when compliance with the effluent limitation is based upon Phase III Corrective Action Plan Implementation (narrative effluent limitation). Therefore, as specified in a previous comment, the Department recommends that the name of the values specified in Table 1, for pH, turbidity, specific conductance and oil and grease, be changed from “Effluent Limit” to “Action Level” to be consistent with the actual implementation of each in the Draft Permit.

*Fact Sheet, Section VI.E. Page 16 – “Any person who is certified by the State Board under the General Construction Permit (2009-0009-DWQ) as a Qualified SWPPP Developer (QSD) is considered to be a qualified person to develop and certify a SWPPP under this Permit. Any person who is certified by the State Board under the General Construction Permit (2009-0009-DWQ) as a Qualified SWPPP Practitioner (QSP) is considered to be a qualified person to implement a SWPPP under this Permit. If the QSP is not a responsible person from the facility, a responsible facility person must countersign the SWPPP.”*

The subject section refers to State Board Order No. 2009-009-DWQ (Construction NPDES Permit) for additional information regarding the QSD/QSP. The existing training for QSD/QSP is for construction specific activities and is not directly applicable to the industrial activities that are the subject of this Draft Permit. The Department recommends that the references to the State Board Order No. 2009-009-DWQ be removed from the permit and that curriculum specific to the metals and wastes recycling activities, which are the subject of the Draft Permit, be added to the final permit.

It appears that the Regional Board recognizes that it is not always practical to have a discharger employ a QSP at the facility, as evidenced by the ability to have a responsible facility person countersign the SWPPP. The Department recommends that the responsible facility person identified in the SWPPP also be allowed to perform inspections (refer to Section VI.F of the Fact Sheet) and sampling (refer to Section VI.F.1.) under the direction and supervision of the QSP.

*Fact Sheet, Section VI.F. Page 17, Paragraph 4 – “All facilities are required to inspect all discharge points from the facility during the first week of each month to determine the presence of any (or indications of any prior) authorized or unauthorized non-storm water discharges.”*

This section of the Fact Sheet does not match with Section II.K.42. (page 12) of the Draft Permit, which specifies a monthly inspection, but not that the inspection occur during the first week of each month. The Department recommends that the subject section be modified to eliminate the requirement that the inspection occur during the first week of the month. Instead, the Department prefers to allow the discharger to schedule monthly inspections at their discretion during the month.

*Fact Sheet, Section VI.F. Page 17, Paragraph 5 – “All inspections must be performed by a qualified SWPPP practitioner (see QSD/QSP, above).”*

This section of the Fact Sheet does not match with Section II.K.42. (page 12) of the Draft Permit, which does not specify that a QSP must perform the inspections. The Department recommends that the subject section be modified to allow these inspections be performed by a responsible facility person, under the direction and supervision of the QSP. The QSP can be ultimately responsible for timely and proper inspections; however, it is easier and more cost effective to allow designated facility personnel to perform these inspections. This allows a single QSP to be responsible for multiple

facilities, while designated facility personnel (dedicated to specific facility locations) perform the inspections.

*Fact Sheet, Section VI.F.1. Page 18 – “Qualifications for Sample Collection, Preservation and Handling: Each facility shall designate a qualified person for sample collection, preservation and handling. This person must have received at least four hours of classroom training provided by a certified laboratory in sample collection, quality assurance and quality control protocols. Each laboratory providing such training shall provide a certificate of completion only after testing the participants understanding of the protocols for sample collection, quality assurance and quality control. Proof of such training, such as a certificate of completion from the certified laboratory, shall be included in the SWPPP.”*

*Fact Sheet, Section VI.F. Page 19, Paragraph 1 – “The group leader (the entity or person proposing the group monitoring program) shall be a professional with experience in the SWAMP program, industrial storm water runoff characterizations, and must have received a certificate of completion (see Subsection a), above) from a certified laboratory. The group leader shall also take full responsibility to train any facility personnel involved in the sample collection, handling and sample preservation protocols.”*

It is the Department's opinion that additional laboratory training for sample collection, preservation and handling is an unnecessary requirement for several reasons. First, no such training program currently exists and the subject section provides limited guidance for commercial laboratories to develop such a program. Therefore, the training programs offered by different commercial laboratories would be highly variable and not necessarily provide the training as envisioned in the Draft Permit. A significantly greater level of specificity is required in the Fact Sheet to develop a sample collection, preservation and handling program. If the Regional Board chooses to specify a detailed training program, the Department recommends that such a program be a part of the QSP training, and not a separate training/certification apart from the QSP.

Second, other similar Regional Board programs do not have training requirements for sample collection, preservation and handling. For example, groundwater sampling, preservation and handling for landfills, underground storage tank (UST) sites and site cleanup program sites do not have a specific laboratory training requirement for the field sampling personnel. Rather, sampling activities for these Regional Board programs is completed under the responsible charge of a California professional civil engineer or professional geologist. The Department recommends that the sample collection, preservation and handling be conducted under the direction and supervision of the QSP.

*Fact Sheet, Section VI.G., Paragraph 2, Page 20 – “The Permittees will be considered to be in violation of the NELs if the annual average of all the monitoring data collected during the reporting period exceeds the NELs specified in the Permit.”*

The Department is not clear what purpose the NELs serve or whether the NELs will be enforced as sample effluent limits. Other portions of the Draft Permit (Section III.C.2., Page 24 and Section III.C.1.f.3)b), Page 24) and the Fact Sheet (Section VI.D.3., Page 15) appear to indicate that compliance will be achieved through narrative effluent limits (by the timely and complete implementation of Corrective Action Plans). The referenced sections and the subject section of the Fact Sheet appear to contradict each other. The Department recommends that the subject section of the Fact Sheet, Section VI.G., be removed.

## **Conclusion**

The Department commends the Regional Board on their effort to create the Draft Permit. The Department supports the Regional Board's effort to minimize adverse impacts to storm water quality from metals and wastes recycling facilities in the Santa Ana Region.

Mr. Mark E. Smythe  
April 18, 2011  
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While the Draft Permit is a good start to that end, the Department's comments in this letter convey our opinion that many portions of the Draft Permit should be clarified or changed. The water quality benefit of some of the Draft Permit initiatives is not known, the cost to implement these initiatives without a known water quality benefit is a tenuous position and some of the initiatives of the Draft Permit are not substantiated by sound scientific methods.

If you have any questions regarding the information provided herein, please feel free to contact Todd Shibata of my staff at (951) 486-3200.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Hans W. Kernkamp', is written over a light blue rectangular background.

Hans W. Kernkamp  
General Manager – Chief Engineer

HWK/JRM/ACMD:tds

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