

April 14, 2011

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street 24<sup>th</sup> Floor  
Sacramento, CA 95814

Via Email & U.S. Mail  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**Re: Comment Letter  
Draft Industrial General Permit**

Dear Ms. Townsend:

The CRRC is a trade association comprised of more than a hundred solid waste collection and recycling firms throughout California. Our membership includes material recovery facilities (MRFs), transfer stations, green waste composting facilities, construction and demolition recycling facilities, and e-waste collection facilities. As an industry that facilitates the recycling of waste, we work on a daily basis to keep our state clean and healthy. Multiple new provisions in the Draft Permit make positive strides toward improving the regulation of storm water, something our industry supports. However, we feel several requirements of the Draft Permit improperly use existing regulations and would cause economic hardship to the recycling industry, particularly in the context of the current business climate in our state. In addition, the intent of the Board is unclear in parts of the Draft Permit and additional clarification would be helpful, especially for storm water dischargers in the refuse and recycling industry.

**Pollutant Sources**

We are pleased the SWRCB has recognized that storm water pollution can result from processes other than industrial activities, including atmospheric deposition<sup>1</sup>. The CRRC supports these additions to the Draft Permit. Recent sampling data from member facilities, as well as published scientific studies, show that atmospheric deposition and subsequent roof runoff can significantly contribute to the concentration of pollutants in storm water. While we are pleased to see these issues addressed, we believe the permit language is vague and does not describe how a discharger would go about certifying that pollutants in discharges are not the result of industrial activities. The definition of "industrial activity" is also poorly defined. For example, many of our members have built covered structures to shield their materials sorting processes from rainwater. Such structures should not be considered "industrial activity," and this should be clarified somewhere in the permit. The permit should also contain easy-to-follow guidelines to provide dischargers with information on how to certify that pollutant sources are not related to industrial activity.

<sup>1</sup> - Section I(E)(48): *Pollutants in storm water discharges caused by atmospheric deposition and/or run-on from forest fires, or any other natural disasters do not apply towards and NAL corrective action trigger determinations.*

Section XVII(B)(2)(c): *Pollutant source(s) causing exceedances of the NAL are not related to the facility's industrial activities and no additional BMPs or SWPPP implementation measures are required to reduce or prevent pollutants in storm water discharges in compliance with BAT/BCT. The certification shall describe the non-industrial related source*

## No Exposure Certification

We are supportive of the No Exposure Conditional Exclusion as outlined in Section XXI of the Draft Permit. At many of our facilities, industrial operations are conducted under cover and materials have limited or no exposure to storm water. Again, how to obtain the Exclusion should be clearly defined as the current regulations are unclear and not consistently applied throughout California.

## Application of SIC Codes

For our membership that will not be excluded from the Draft Permit, confusion remains on which of two Standard Industrial Classification (SIC) codes would apply to their facilities. Currently, and in the Draft Permit, many recycling and refuse facilities are considered to be operating under SIC 5093, Scrap and Waste Materials. This SIC code applies to "*establishments primarily engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste material.*" In the description available from the U.S. Department of Labor, this code seems directed toward automobile wreckers and dismantlers, an industry subject to the numerous chemicals used in machinery which can significantly pollute storm water. However, our industry primarily deals with inert household materials that have little potential to contaminate storm water.

It is our opinion that SIC 4953 (Refuse Systems) is a more accurate category for recycling and refuse facilities. The introduction to Major Group 49, Electric, Gas, and Sanitary Services, states that operations covered by the 49XX SIC codes include "*sanitary systems engaged in the collection and disposal of garbage, sewage, and other wastes by means of destroying or processing materials.*" Of the defined operations that apply to SIC 4953, several apply to MRFs, transfer stations, and the other facilities of our membership. These include:

- Garbage: collecting, destroying, and processing
- Rubbish collection and disposal
- Street refuse systems

However, Table 2 of the Draft Permit states that this SIC code applies to "Landfills and Land Application Facilities." and separately lists "Hazardous Waste Facilities" under the same SIC code. We believe this description should be changed (or list material recovery facilities (MRFs), transfer stations, green waste composting facilities, construction and demolition facilities, and e-waste collection facilities separately as an SIC 4953 entry in Table 2). We believe that our membership's facilities should be included under SIC 4953 for the purpose of storm water regulation.

## Improper Application of Water Quality Standards

Two references in the Draft Permit suggest water quality standards more stringent than those outlined in the permit can be applied to storm water discharges at the discretion of the Regional Water Quality Control Boards<sup>2</sup>. Specifically, references are made to the Statewide Water Quality Control Plan, California Toxics Rule (CTR), and the Basin Plans. The *Policy for Implementation of Toxic Standards for Inland Surface*

4 – Section XII(A)(1): *Dischargers shall visually observe and collect samples of storm water discharges from all discharges from all drainage areas associated with industrial activity. The storm water discharge collected and observed shall be representative of the storm water discharge in each drainage area.*

5 – Section VII(B)(3): *The discharger shall ensure that the SWPPP's BMPs and monitoring requirements are implemented by a Qualified SWPPP Practitioner (QSP). The discharger shall ensure that the QSP successfully completes the State Water-sponsored or approved QSP training course within one year from the effective date of this General Permit.*

6 – Section II(Q)(3): *Existing dischargers shall revise and implement necessary revisions to their SWPPP and Monitoring Program in accordance with Section VIII. Revisions shall be made in a timely manner, but no later than ninety (90) days after adoption of this General Permit.*

*Waters, Enclosed Bays, and Estuaries of California* issued by the SWRCB in 2005 states that the toxic standards of the CTR cannot be applied to the regulation of storm water discharges (Page 3, Note 1). We believe it was the intent of the SWRCB to exempt the application of the CTR to storm water.

However, in two recent federal court decisions involving two industrial facilities, the court imposed CTR limits despite the limitations of the SIP (*Santa Monica Bay Keeper v. International Metals Ekco, Ltd.*, 619 F.Supp.2d 936; *Santa Monica Bay Keeper v. Kramer Metals, Inc.*, 619 F.Supp.2d 914.). If the intent of the SWRCB is to not use the CTR for the regulation of storm water effluent, this should be stated clearly in the new permit. Based on these recent decisions, it is obvious clarification of the application of the CTR and SIP to storm water is required. At a minimum, if the CTR is to apply to storm water dischargers, the applicable sections of the SIP allowing mixing zones and dilution credits should also apply.

It should also be noted that water quality objectives for metals measured in recycling facility effluent are presented as the total concentration of metals, which include particulate and dissolved fractions. The water quality objectives presented in the Basin Plans are for dissolved metals only. The Draft Permit does not require facilities to analyze for the dissolved fraction of metals in storm water effluent, and to do so would add significant cost to every sampling event. It would therefore be impossible to compare effluent data to the objectives in Basin Plans. For the aforementioned reasons, we request that Basin Plan and CTR references be either clarified or removed from the language of the final permit.

### **Receiving Water and Hardness**

Several references in the Draft Permit relate water quality standards to specific receiving waters<sup>3</sup>. In fact, many of the water quality standards for metals currently measured at our membership's facilities are dependent on the hardness of the receiving water. Storm water in many heavily industrialized areas does not enter any natural water body directly, but rather flows into a municipal storm drain where it commingles with runoff from roads, parking lots, and other industrial producers and is indistinguishable from other runoff-producing areas. Is the storm water conveyance system the receiving water for industrial dischargers, or is it the receiving natural water body? The final Draft Permit should provide clarification on the definition of receiving water, how a discharger can go about identifying receiving water, and where a discharger can reference the hardness of the receiving water. We recommend that discharges into all municipal systems be exempt from the regulations. The municipality is directly responsible for this discharge, which is already covered under a General Storm Water Permit.

### **Increased Costs and Regulatory Burden**

The members of CRRC truly value our clean and healthy environment, as demonstrated by the type of work we do. However, we feel the environmental regulations put forth in the Draft Permit would be damaging to an industry that strives to keep our environment clean. Numerous aspects of the Draft Permit would cause great financial burden to the independently owned refuse and recycling firms represented by CRRC. It is difficult enough in today's economy to keep a business in the black; but, when competing with industry giants as our members must, the cost of increased regulation is a serious threat to CRRC members being able to continue operations.

The Draft Permit fails to address the increased cost associated with the implementation of quarterly sampling at a minimum. Sample analysis can cost upwards of \$250 for each sampling point and event at current laboratory prices, which are continuing to increase. In addition to quarterly sampling, the Draft Permit

suggests that in some instances dischargers may be required to sample following every qualified storm event, which could easily add up to thousands of dollars per facility per year. At one point, the Draft Permit states that dischargers should collect samples from all areas associated with industrial activity<sup>4</sup>. Is the intent to require dischargers to sample storm water at every drop inlet at their facility? If so, the cost of monitoring for some refuse and recycling facilities would increase by as much as \$3,000 per qualified event and a minimum of \$12,000 annually. In our opinion, samples should only be required to be collected from the main outfall, which represents the actual concentrations of pollutants exiting the property in effluent. Also, the Draft Permit requires dischargers to sample storm water at every discharge point on a property, rather than allowing a site to eliminate sampling of identical discharge points that represent similar processes and pollutants. This adds cost in labor and materials for facilities with multiple discharge points. In the past, a facility could perform annual evaluations of material storage locations and flow patterns to determine whether the effluent at different discharge points was identical. If so, they could eliminate sampling at the identical discharge points to save cost and avoid redundancy.

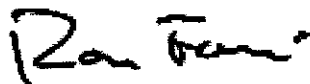
The Draft Permit also tightens the restrictions on who is qualified to prepare a site Storm Water Pollution Prevention Plan (SWPPP) and who can collect effluent water samples, mandating the need for a Qualified SWPPP Developer (QSD) and Qualified SWPPP Practitioner (QSP). It also appears that the prerequisite requirements to become a QSD, as listed in Section VII (B)(1)(b), have changed from previous versions of the draft General Permit, further limiting who can actually obtain the designation. The requirements are so stringent as to essentially necessitate contracting with a specialized environmental consultant and engineer for on-call services, placing yet another financial burden on the CRRC membership. As a whole, the recycling and refuse collection industry we represent will pay for over 100 staff members to attend 2-day training sessions within 1 year from the issuance of the new permit<sup>5</sup>. Hiring a professional to conduct storm water sampling also poses a challenge, as it is nearly impossible to accurately forecast a qualified storm event in order to retain a QSP to sample.

Dischargers are also required to update their site SWPPPs within 90 days of the approval of the Draft Permit<sup>6</sup>; however, the new permit requires changes be made by a QSD, a certification only assigned to professional engineers, geologists, hydrologists or landscape architects. This is a sound and fair approach, since such individuals would also be required complete the State Water Board-sponsored or approved training to obtain and maintain the QSD designation.

In conclusion, please know that the members of CRRC and the refuse removal and recycling community as a whole fully support measures that improve the quality and health of California's environment. As California community members, we are sad to see aspects of the Draft Permit that are vague, subject to interpretation, and that will cause financial hardship to small businesses. Hopefully, our comments will assist the SWRCB in revising the Draft Permit in a manner that will serve our environment and businesses together.

Thank you for your consideration of these comments.

Sincerely,



Ron Fornesi  
CRRC State President