

SPECIAL HEARING

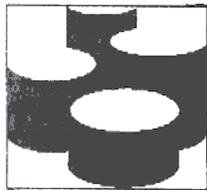
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cc: BD, DI, DWQ

E-Cys: BD, CC, HMS, TH, CMW

January 31, 2005

Can Manufacturers



Institute

Via: E-mail and Fax

Ms. Debbie Irvin, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, California 95812-0100

Re: CMI Comments on the Reissuance of the Draft NPDES General Permit for Discharges of Storm Water Associated with Industrial Activities (December 2004)

Dear Ms. Irvin:

The Can Manufacturers Institute (CMI) appreciates this opportunity to submit comments concerning the Draft General Permit for Discharges of Storm Water Associated with Industrial Activities (Industrial General Permit). CMI is the national trade association of the metal can manufacturing industry and its suppliers in the United States. CMI members account for over 90 percent of annual domestic production of 136 billion cans; together they employ some 26,000 people with plants in 36 states.

The CMI Group currently operates under the Industrial General NPDES Permit (No. 97-03-DWQ), and is composed of five member companies, with a total of 11 facilities. As a member of the regulated community, CMI is supportive of the State Water Resources Control Board (SWRCB) efforts to develop reasonable storm water regulations associated with runoff from industrial facilities, and in particular, the Board's dedication to the group concept and preservation of the group option in the 2004 Draft Permit. However, CMI does have some important concerns and therefore urge the Board to seriously consider our comments on the Draft Industrial General Permit. They are as follows:

- **Section IX.3.a** – "...A GMP shall include no less than ten participants."

Comment – The CMI group strongly disagrees with mandating an arbitrary 10 participant minimum for a GMP. Smaller groups "on the cusp" like CMI allow for better management and communication between the Group Leader and the participants. A group report consolidates information from multiple sites into a single report making review more efficient. Group programs and reports benefit from the expertise of environmental professionals, who have experience and

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skills, which would not be expected of individual facility managers or operators. Also, we recommend there should be language included in this section stating that once a group has been formed, it cannot be terminated if the group falls below the minimum number of participants during the five year permit term.

Section VIII.4.f.ii – *“When analytical results exceed the USEPA benchmark values in Table VIII.2 dischargers shall comply with the following requirements: ...ii. Collect and analyze samples in accordance with Section VIII.5.c from at least the next two consecutive qualifying storm events. This applies to all dischargers including participants in a group monitoring plan. Dischargers shall continue sample collection and analysis until two consecutive samples result in no further exceedances of the USEPA benchmarks.”*

Comment – This language appears to use the benchmark values as numerical limits, instead of guidelines for reviewing BMPs. Also, grab samples are not always truly representative of runoff from industrial activities at the site. Due to the nature of storm water discharges, collecting representative samples requires technical expertise that beyond what a facility operator should be expected to possess and the cost to hire an outside expert to collect representative samples is beyond the reach of most facilities. In many cases, collecting truly representative samples will require major modifications to onsite drainage systems. Most importantly, the Board has not shown that such an approach has any environmental benefits or that industrial storm water discharges above benchmark values are impacting water quality or causing state waters from meeting designated uses.

- **Table VIII.2** – *Parameter Benchmark Values, Test Methods, Detection Limits, and Reporting Units.*

Comment – It is the belief of the CMI Group that the benchmark values and detection limits appear to be arbitrary and overly stringent. There is no discussion in the permit pertaining to the methodology used to develop the benchmark values and detection limits. The CMI Group is concerned that the proposed Draft Permit expands the use of benchmarks as a catalyst for

enforcement rather than as an analytical tool for the indication of the presence of pollutants in the storm water. A BMP weighted approach, with benchmark values used as guidance, should be used instead. This approach is consistent with USEPA's approach for storm water discharges, especially given the difficulty in establishing appropriate numeric limitations, the difficulty and costs associated with collecting and assessing analytical storm water discharge samples, and the technical challenges associated with treating storm water.

Because of the uncertainty associated with an effluent limitations approach, the California Industrial General Permit should not serve as a national test case for such an approach, but instead the Board should work with EPA Region 9 to study the feasibility of such an approach in the future.

- **Section IX.2.c.v (4) through (6)** - *"(4) Within 15 days of a Group Leader inspection, the Group Leader shall prepare and transmit an inspection report to the Participant that includes any recommended corrective actions necessary for the Participant to achieve General Permit compliance, and a proposed corrective actions implementation schedule. ... (5) Within 30 days of a Group Leader inspection, the Group Leader shall provide the appropriate RWQCB a copy of the Group Leader inspection report signed by the Participant. ... (6) Within ninety days of a Group Leader inspection, Group Leaders shall provide the appropriate Regional Water Board a copy of the Participant's signed compliance response checklist identifying the status of all deficiencies, corrective actions, and additional BMPs recommended in the Group Leader inspection report."*

Comment – The CMI group disagrees with automatically filing inspection reports to the Regional Boards. Group Participants should have the opportunity to correct problems identified by the Group Leader prior to submitting annual reports to the SWRCB and RWQCBs. By automatically filing inspection reports, it forces the Group Leader to police the Group instead of helping or consulting the Group. The proposed Draft Permit forces the Group Leader to conduct inspections on behalf of the Board at the Group's expense.

The CMI group supports the group concept as a way to more efficiently manage stormwater issues. Although the sampling frequencies are reduced for group members, we believe inspections and assistance from the group leader better promotes best management practices and is more useful than sampling alone. Therefore, we strongly disagree with requiring group leaders to report suggested corrective actions to the agency because this discourages members from contacting the group leader for assistance. Any self reporting should be performed by the individual facility and enforcement should be managed by the agency. Inclusion of the draft permit language would discourage most facilities from participating in a group.

- **Section VIII.6.a & b** – *“One-Time Pollutant Scan (a.) In addition to the analysis required in Section VIII.5.c, dischargers shall each analyze at least one sample collected from the first storm event during the 2008-2009 compliance year for the parameters described in Subsection 7.b [6.b.] below. Dischargers shall submit the analytical results with their Annual Report. (b.) The sample identified in Subsection 7.a [6.a.]above shall be analyzed for the following additional parameters: Chemical Oxygen Demand, Copper, Zinc, Lead, Aluminum, Iron, Magnesium, Arsenic, Cadmium, Nickel, Mercury, Selenium, Silver, and semi volatile organics as described in SM 5210B (See Table VIII.2).”*

Comment – The data received from the one-time pollutant scan would not be from a controlled environment, which may make the analytical results statistically invalid. A State run, statistically valid, controlled sampling and analysis plan could be developed and implemented to collect usable data from a variety of collection points and storm events.

The results of the sampling could then be used to determine guidelines for each specific type of industry.

- **Section VII.1.b** – *“...shall implement any necessary revisions to their SWPPP no later than [the adoption date].”*

Comment – According to the current language of the Draft permit, it appears that the revisions will need to be in place on the adoption date. A provision of at least

six months will be needed by most group members to revise and update their SWPPP if the Draft Permit is adopted.

- **Section VII .6.c** – *“Describe all industrial activities that generate dust or particulate pollutants that may be deposited within the facility’s boundaries.”*
Comment – It is not clear whether this language is meant to include particulate matter from internal combustion and or natural gas. Also, it would be difficult to determine if dust was being deposited within the facilities boundaries without extensive sampling and testing. The word visible should be inserted between “generate” and “dust” in the Draft Permit.

Section VIII 3.e – *Prior to completing each monthly visual observation required in Subsection 4.a, dischargers shall record any storm events that occurred during operating hours that did not produce a discharge.*

Comment – The language in the Draft Permit should be changed to *“did not produce a discharge in sufficient quantity or duration to collect a sample.”*

- **Section IX.2.c.xi** – *“Group Leaders shall provide GMPs, Evaluation Reports, quarterly updates, etc. via electronic mail, floppy disk, or CD-ROM.”*
Comment – CMI disagrees with the requirement to file electronically since the state has not provided a submission format, the computer software to do so, and the means to transfer the required certifications/signatures electronically.
- **Section IX.1.b** – *“...Participants shall collect and analyze samples from a minimum of two qualifying storm events during the five-year term of the General Permit, in accordance with the GMP sampling schedule described in Subsection IX.2.c.vi,”* and **Section IX.2.c.vi (1)** – *“Existing participants shall be scheduled to collect samples from two storm events within the first four reporting years of the General Permit, and in non-consecutive years. No less than half of the participants shall collect and analyze a sample the first reporting year.”*
Comment – Section IX.1.b appears to contradict Section IX.2.c.vi (1). If the participants are required to sample twice in the first four years of the five-year term of the General Permit, that implies that none of the facilities would have to sample during the fifth year of the General Permit term. Please clarify the sampling schedule.

- **Section XL8.e** – *“The discharger shall allow the Regional Water Board, State Water Board, U.S. EPA, local storm water management agency, and Compliance Inspection Designee upon the presentation of credentials and other documents as may be required by law, to ... Photograph or videotape outdoor areas of the facility to document compliance or non-compliance with the General Permit.”*

Comment – Photographs and/or videotapes of the facility grounds and/or operations may be a confidentiality issue. If the agency wishes to collect photographs and/or videotapes, it is CMI’s request that they must either sign a confidentiality agreement, or the collected photographs and/or videotapes must be approved by the facility before their removal from the facility grounds.

- **Section VIII.3.f** – *“Prior to anticipated storm events, dischargers shall visually observe all storm water drainage areas during operating hours to identify any spills, leaks, or uncontrolled pollutant sources and implement appropriate corrective actions.”*

Comment – Best Management Practices (BMP) and Storm Water Pollution Prevention Plans (SWPPP) should be adequate for reducing or eliminating potential pollutant sources. Observation of all storm water drainage areas in the anticipation of each possible or forecasted rain event is impractical and unnecessary when the BMPs and SWPPP are in place for the facility.

CMI appreciates the opportunity to submit these comments on this important matter of mutual concern. Please contact me at 202-232-4677 with any questions.

Sincerely,



Geoffrey Cullen
Director of Government Relations
CMI

CC: Leo Cosentini, SWRCB